

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

[Before Sri J. Sudhakar Reddy, Accountant Member]

**I.T.A. No. 2438/Kol/2016
Assessment Year: 2009-10**

Somdeb Biswas.....Appellant
Raghabpur, Panpara
Ranaghat, Nadia
W.B. - 741403
[PAN : AGHPB 3404 G]

I.T.O. Ward-2, Nadia..... Respondent
Krishnanagar
Nadia

Appearances by:

Shri S.K. Kochar & Shri Anil Kochar, Advocate, appeared on behalf of the assessee.
Shri Sailen Samaddar, Addl. CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : January 18th, 2018

Date of pronouncing the order : March 9th, 2018

O R D E R

Per J. Sudhakar Reddy :-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-12, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 01/03/2016.

2. The Id. Counsel for the assessee filed revised grounds of appeal. He submitted that he is not pressing Ground No. 2, 4 & 5. Hence, the same are dismissed as not pressed.

3. Ground No. 1 and 7 are general in nature.

4. Ground No. 6, is on the delay in filing of the appeal.

4.1. As per the registry, there is no delay in filing of this appeal. hence this ground is dismissed as infructuous.

5. This leaves us with Ground No. 3, which reads as follows:-

"3. For that the Ld. CIT(A) ought to have properly considered the facts of the case of the appellant as noted in the written submissions and ought

not to have confirmed the addition of Rs.18,57,000/- out of the total addition of Rs.19,77,000/-, which was challenged by the appellant.”

6. After hearing rival contentions, I hold as follows:-

The assessee is an individual and is trading in cement and building material. The undisputed fact is that, an undisclosed bank account was found by the revenue authorities. The assessee admitted to have deposited an amount of Rs.17,06,660/-, towards investment in share trading business and that he made payment of Rs.1,82,000/- for purchase of cement from Ultra Tech Cement Company from this bank account. The Assessing Officer added the entire amount as undisclosed income as the assessee did not furnish any details. On appeal before the Id. First Appellate Authority, the assessee submitted that the amount deposited in the bank was paid to portfolio managers, namely, VCK Shares & Stock Broking Services Ltd., Motilal Oswal Securities Ltd., Appollo Sindoori (Later taken over by Aditya Birla Money Ltd.), and that the assessee had done share trading business through these portfolio managers. He claimed that the assessee has incurred a loss of Rs.7,43,657/-. The Id. CIT(A) called for a remand report. The Assessing Officer as well as the JCIT confirmed that the assessee has incurred a loss of Rs.7,43,657/-. They were of the view that the addition was made on account of investment and hence the loss cannot be set off. The Id. CIT(A) referred to Section 157 of the Act and held that this loss cannot be carried forward.

6.1. Aggrieved, the assessee is before us.

7. In my view, the Id. CIT(A) has committed an error by referring to Section 157 of the Act. The undisputed fact is that the assessee has loss from share trading business of Rs.7,43,657/-. It is also not in dispute that the assessee has deposited a total amount of Rs.18,57,000/-, in this bank account. The assessee withdrew an amount of Rs.1,20,000/-, on four occasions from this bank account and the Id. CIT(A) has rightly directed that telescoping should be given for Rs.4,80,000/- from Rs.18,57,000/-. As the loss is of the current year and it is not a case of carry forward of unabsorbed loss and as the Assessing Officer brought this amount to tax as “unrecorded income”, I direct

that the amount of Rs.7,43 657/- to be deducted from the unrecorded income of Rs.19,77,000/- and only the balance to be brought to tax.

8. In the result, appeal of the assessee is allowed in part.

Kolkata, the 9th day of March, 2018.

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Dated :09.03.2018
{SC SPS}

Copy of the order forwarded to:

1. Somdeb Biswas
Raghabpur, Panpara
Ranaghat, Nadia
W.B. - 741403

2. I.T.O. Ward-2, Nadia
Krishnanagar
Nadia

3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches

