

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

[Before Sri J. Sudhakar Reddy, Accountant Member]

I.T.A. No. 1981/Kol/2017

Assessment Year: 2013-14

Ram Bilas Agarwal.....Appellant

29, R.N. Mukherjee Road

Windsor House

Room No.19

2nd Floor

Kolkata - 1

[PAN : AACUPA 4511 E]

Income Tax Officer, Ward-36(1), Kolkata.....Respondent

Ayakar Bhawan(Poorva)

8th Floor

110, Shantipally

Kolkata - 700 107

Appearances by:

Shri V.N. Purohit, A.R., appeared on behalf of the assessee.

Shri Sanjoy Mukherjee, Addl. CIT. DR, appearing on behalf of the Revenue.

Date of concluding the hearing : December 28th, 2017

Date of pronouncing the order : March 16th, 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)-10, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 01/06/2018, on the following grounds:-

- “1. The Ld. CIT(A) has confirmed the bogus addition of Rs.562265/- on unaccounted purchase made by the Id. AO.
2. The Ld. CIT(A) has confirmed unaddition of Rs.182848/- made by A.O. based on surmise and conjecture that the interest on loan @ 12% instead of 9%.”

2. The assessee is an individual and is in the business of manufacturing and trading of EPS Products (resin). The Assessing Officer passed an order u/s 143(3) of the Act, on 25/02/2016. He rejected the books of account and made two additions to the returned income. The first addition is of alleged unaccounted purchase of Rs.5,57,358/-. Further amount of 0.88% was added

as G.P., on the unaccounted purchases. The second addition is of Rs.1,82,848/-, on account of non-charging of interest on certain loans given.

2.1. On appeal, the Id. First Appellate Authority rejected the contentions of the assessee. Further aggrieved, the assessee is before us.

3. The assessee explained the difference, which the Assessing Officer alleged to be unaccounted purchases as follows:-

"(ii)(a) In case of parties at serial Nos. 1 to 3 of said chart the difference was due to VAT amount which is separately debited and do not form part of purchase in P & L Account. VAT in case of these three parties is -

1.	BASF India Ltd.	Rs.1,15,933/-
2.	LG Polymers India P. Ltd.	Rs.53,777/-
3.	Solex Corporation	<u>Rs.1,97,580/-</u>
4.	East India Termopack Pvt. Ltd.	<u>Rs.2,868/-</u>
	Difference to accounting of VAT	Rs.3,70,158/-

(b) Originally a wrong figure of Rs.261,748/- was given against purchases from M/s. East India Termopack Pvt. Ltd. by not deducting Rs. 187,200/- from credit side total of party's account which is a receipt on current a/c - (Page No. 36 of P.B.) and without deducting VAT. Gross purchase from party was therefore Rs. 74,548/- (Rs.261,748/- Less Rs. 187,200/-) and after deducting therefrom Rs. 2,686/- net purchase in P&L Account taken at Rs. 71, 680/-. Thus value of purchases shown in P&L Account (net of VAT) of 4 parties (Page No. 69 of P.B.) will tally with P&L account amount of Rs. 92,53,848/-.

(c) In view of above the addition made by A.O. as unaccounted purchase Rs.557,358/- comprise of-

VAT as per (ii)(a) above	Rs. 370,158/-
Cheque Recd. wrongly considered as purchase in case of East India Termopack Pvt. Ltd. (Page No. 36 of P.B.)	<u>Rs.1,87,200/-</u>
	Rs.5,57,358/-

4. I am of the opinion that this issue should be set aside to the file of the Assessing Officer for verification. The Assessing Officer shall re-adjudicate the matter *de novo*, in accordance with law, after giving the assessee adequate opportunity of being heard. Accordingly, Ground No.1 of the assessee is allowed for statistical purposes.

5. Ground No. 2, has to be allowed as notional interest cannot be charged. The Hon'ble Gauhati High Court in the case of *High Way Construction Co.Pvt.Ltd. vs. CIT (1993) reported in 199 ITR 702*, held as follows:-

"There was no finding of fact by the Tribunal to the effect that actually the loan had been granted to the managing director or any other person on interest, or that interest had actually been collected and the collection of the interest was not reflected in the accounts. The finding of the ITO was that the assessee ought to have collected interest. If the assessee had not bargained for interest or had not collected interest the Income-tax authorities could not fix a notional interest as due or collected by the assessee. There is no provision in the Act empowering the Income-tax

authorities to include in the income interest which was not due or not collected.”

6. Respectfully following the same, we allow this Ground of the assessee.
7. In the result, this appeal of the assessee is allowed.

Kolkata, the 16th day of March, 2018.

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Dated : 16.03.2018
{SC SPS}

Copy of the order forwarded to:

1. Ram Bilas Agarwal
29, R.N. Mukherjee Road
Windsor House
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2nd Floor
Kolkata - 1

2. Income Tax Officer, Ward-36(1), Kolkata
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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