

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Shri Aby. T. Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 10/Kol/2016

Assessment Year : 2011-12

ITO, Ward-36(1), Kolkata

-vs-

Shri Rajesh Agarwal

[PAN: ADHPA 3042 O]

(Appellant)

(Respondent)

I.T.A No. 27/Kol/2016

Assessment Year : 2011-12

Shri Rajesh Agarwal

[PAN: ADHPA 3042 O]

(Appellant)

-vs-

ITO, Ward-36(1), Kolkata

(Respondent)

For the Appellant : Shri Arindam Bhattacharjee, Addl. CIT

For the Respondent : Shri Anil Kochar, Advocate

Date of Hearing : 14.03.2018

Date of Pronouncement : 13.04.2018

ORDER

Per Bench:

1. This cross appeal by the revenue as well as assessee arise out of the order passed by the Learned Commissioner of Income Tax (Appeals) -10, Kolkata (in short the Id CITA) in Appeal No. 58/CIT(A)-10/Wd-36(1)/14-15/Kol dated 30.10.2015 against the order passed by the ITO, Ward-36(1), Kolkata [in short the Id AO] under section 144 of the Income Tax Act, 1961 (in short “the Act) dated 28.03.2014 for the Assessment

Year 2011-12. As the issues are identical in nature, hence, they are taken up together and disposed off by this common order for the sake of convenience.

2. The revenue has raised the following grounds of appeal :-

- 1. That, on the facts and circumstances of the case, the Ld. CIT(A) has erred in estimation of gross profit.*
- 2. That, on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition correctly made by the AO, on account of undisclosed trading business.*
- 3. That, on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition correctly made by the AO, on account of undisclosed investment.*
- 4. That, on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition correctly made by the AO, on account of unexplained bank deposit.*
- 5. That, on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition correctly made by the AO, on account of undisclosed STCG.*
- 6. That, on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition correctly made by the AO, on account of subletting rental income.*
- 7. That, on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition correctly made by the AO, on account of undisclosed commission income.*
- 8. That, on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition correctly made by the AO, on account of undisclosed bank interest.*
- 9. The appellant craves the leave to make any addition, alteration, modification of grounds at the appellate stage.*

3. The assessee has raised the following grounds of appeal :-

1. For that the Ld. CIT(A) ought to have considered all relevant facts and even though books of accounts have been rejected, the estimate of income by applying 10% of the total turnover of contractual receipts was high & excessive.

2. For that further grounds of appeal may kindly be allowed to be taken at the time of hearing of the appeal.

4. The brief facts of this appeal are that the assessee is engaged in the business of civil construction and had filed his return of income for the Asst Year 2011-12 on 27.12.2011 declaring total income of Rs 2,07,824/-. The ld AO in the assessment proceedings observed that the assessee had disclosed gross turnover of Rs 37,34,996/- in the said return, gross profit @ 15.78% amounting to Rs 5,89,497/- and net profit of Rs 2,73,880/-. The ld AO observed that from Form 26AS of the assessee, the assessee had received contractual receipts of Rs 3,80,46,132/- during the year. In order to address this discrepancy in turnover, the ld AO issued a notice u/s 142(1) of the Act dated 3.10.2012 asking the assessee to produce the books of accounts and other details and documents mentioned in the questionnaire. Meanwhile the ld AO issued notices u/s 133(6) of the Act to the persons whose name appeared in Form 26AS and they also confirmed that they had business transactions with the assessee and / or his proprietary concern M/s Agarwal Construction Co. during the Financial Year 2010-11 and had made payments to the assessee during the year.

4.1. The assessee then submitted his fresh final accounts for the financial year 2010-11, which were restructured accounts, prepared after considering all the transactions and showing the total turnover at Rs 3,88,43,336/-, Gross Profit of Rs 9,76,340/- in the trading account. The assessee also produced his books of accounts for verification on the basis of which fresh final accounts were prepared for the year under consideration. The ld AO contended that the books of accounts produced were

not complete in all respects and had no details in respect of some important heads of accounts such as work in progress, purchases, project wise receipts , details of materials consumed project wise, wages paid project wise, party wise details of machine hire charges etc. The ld AO further asked the assessee to explain how he claimed his opening stock in the restructured trading accounts at Rs 26,95,151.89 while his return of income reveals the opening stock at Rs 1,34,326/- only and as to how he claimed the stock in progress at Rs 4,37,49,264/-.

4.2. The ld AO issued a letter dated 11.2.2014 and 12.3.2014 asking to explain as to why his books of account with regard to contract business should not be rejected u/s 145(3) of the Act and his gross profit should not be estimated at the rate of his gross profit disclosed in his return of income for the Asst Year 2011-12 and / or earlier years considering the payments received from different persons towards contractual receipts and deposited the same in his bank accounts during the financial year 2010-11 as his gross turnover.

4.3. The ld AO further contended that the assessee's bank accounts and other documents submitted to him reveal that the assessee had received the payment of sum of Rs 66,32,500/- from two different persons on which no tax was deducted by them and further the parties had confirmed the payment made by them for civil work done by the assessee. The ld AO considered gross contractual receipts at Rs 3,78,15,971/- which was allegedly confirmed by the parties and Rs 66,32,500/- totaling to Rs 4,44,48,472/- and gross profit on the said amount @ 15.43% amounted to Rs 68,58,399/- . Since the assessee had already disclosed the gross profit of Rs 5,89,497/- in his return of income, the remaining amount of Rs 62,68,902/- (68,58,399- 5,89,497) was taken as undisclosed business income and added to the total income of the assessee for the year under consideration.

4.4. Undisclosed Profit on Trading Business – Rs 92,589/-

The Id AO noticed that the assessee had supplied building materials worth Rs 6,00,000/- to M/s Anjana Exports Pvt Ltd and according to Id AO, the same was not disclosed in the return of income filed for the Asst Year 2011-12 by the assessee. Hence profit percentage of 15.43% was applied on the same by the Id AO and addition of Rs 92,589/- was made in the assessment.

4.5. Unexplained Investment in the business of the assessee – Rs 25,00,000/-

The Id AO added Rs 25,00,000/- as the estimated initial investment required for running the business and which, according to the Id AO was not disclosed in his return of income. The Id AO observed that the assessee had working capital as on 1.4.2010 at Rs 6,77,322/- with no loan whether secured or unsecured and sundry creditors and thus it is apparently not possible for the assessee to carry out such construction business with such meager funds /working capital. Accordingly, he observed that the assessee might have invested substantial portion towards his initial capital for carrying on the civil contract business. Since the activities of the business were not properly explained by the assessee, the Id AO made an addition towards initial investment in the business of Rs 25,00,000/- on an adhoc basis.

4.6. Unexplained bank deposits – Rs 95,53,079/-

The Id AO observed that there were certain deposits in Axis Bank account maintained by the assessee for which proper explanations were not given and accordingly he sought to add the same as unexplained bank deposits u/s 69 of the Act in the sum of Rs 95,53,079/- in the assessment.

4.7. Addition towards short term capital gain arising on sub-leasing the property – Rs 62,84,925/-

The Id AO noticed that the assessee through his restructured trading account for the year ended 31.3.2011 claimed to have received contractual receipt of Rs 30,00,000/- from Skipper Textiles Pvt Ltd for the sale of premises located at 16F, East Topsia Road. According to the Id AO, the assessee further admitted in his statement u/s 131 of the Act that he had received the sum as advance against entire ground floor of the property. The Id AO further stated that M/s Skipper Textiles Pvt Ltd had replied in compliance to the letter u/s 133(6) of the Act issued to it that a deed of sub-lease was executed for Rs 30,00,000/- on 26.12.2012 and the stamp duty valuation of the property was determined was Rs 62,84,925/- The Id AO further observed that the assessment records of the assessee do not suggest that he had engaged in such business that deals in trading in flats / office premises during the financial year 2010-11 and / or in earlier years and thus the provisions of section 50C of the Act was attracted to the sale of the office premises. Therefore, the Id AO was not satisfied with the submissions of the assessee and calculated the short term capital gains of Rs 62,84,925/- taking the cost of acquisition at Rs Nil and by invoking section 50C of the Act.

4.8. Addition on account of sub-letting rental income – Rs 8,19,808/-

Disallowance of rent paid – Rs 7,20,000/-

The Id AO observed from Form 26AS that the assessee had received the total rental income of Rs 5,17,506/- , whereas the parties confirmed the rental amount paid by them aggregating to Rs 5,81,508/-. The Id AO further contended that the assessee had confirmed a further receipt of rental income amounting to Rs 2,38,300/- and he also claimed the payment of rental expense of Rs 7,20,000/-. The Id AO contended that the assessee could not prove his claim with any documentary evidence that he had paid Rs 7,20,000/- towards the property. Further, according to the Id AO, the 'leave and licence' agreement dated 6.7.2006 reveals that Notary Public has certified it with his seal but genuineness of the lease agreement was not proved by the

assessee and it is not relevant for the year under consideration. The Id AO disallowed Rs 7,20,000/- as rental expenses and computed sub-letting rental income of Rs 8,19,808/- as undisclosed business income and added the same to the total income of the assessee.

4.9. Addition of Rs 41,000/- towards undisclosed commission income

The Id AO noticed from Form 26AS that the assessee had received a sum of Rs 41,000/- from M/s BMS Builders Pvt Ltd as commission but the same was allegedly not disclosed in his return of income. The Id AO added a sum of Rs 41,000/- towards undisclosed commission income in the assessment.

4.10. Addition towards undisclosed bank interest – Rs 5,165/-

The Id AO noticed from the copy of bank statement of the assessee maintained with Axis Bank that he had received interest on deposits amounting to Rs 5,165/- and the same was not disclosed in his return of income and accordingly added the same as income from other sources in the assessment.

5. Estimation of Profit

The assessee submitted that the total turnover of the assessee during the year are as under:-

<u>Name of the Party</u>	<u>Details of Project Site</u>	<u>Amount</u>
Anjana Exports Pvt Ltd	Bantalla Leather Complex	15,99,850
Bajaj Chemicals	Bantalla Leather Complex	25,50,000
Hsiang Li Tannery	Bantalla Leather Complex	11,07,000
Labbaik International	Bantalla Leather Complex	79,50,000
Misc. Parties	Bantalla Leather Complex	79,54,217
Nova Lab Industries`	Bantalla Leather Complex	46,80,225
Rajlaxmi Marketing P Ltd	3, Pagladanga Road, Jalan Complex, Junglepur	51,51,209
Skipper Textiles Pvt Ltd	16F, East Topsia Road	30,00,000
Tristar Exports	67A, Shreedhar Roy Road	5,00,171

Vinit Gloves Manufg Pvt Ltd	Bantalla Leather Complex & 3, Pagladanga Road	39,32,500

Total Receipts		3,88,43,336

The assessee also submitted that the following balances are outstanding from the following parties :-

<u>Name of the Party</u>	<u>Details of Project Site</u>	<u>Amount</u>
IGT Exports Ltd	Bantalla Leather Complex	(53,14,000)
Maple Export Pvt Ltd	3, Pagladanga Road	(26,50,000)
Nove Lab Industries	Bantalla Leather Complex	37,37,860
Rupa & Co. Ltd	Jalan Complex, Junglepur	(2,13,66,251)
Singhi Export Pvt Ltd	Bantalla Leather Complex	(4,00,000)

The aforesaid details were submitted before the Id AO and the same are recorded in page 4 of the assessment order. The assessee submitted before the Id CITA the complete set of restructured accounts with the break up of items in the trading account and pleaded that the Id AO's observation about the amount of Rs 66,32,500/- setting that this was not forming part of the total turnover was totally wrong. The assessee submitted that he had received an advance of Rs 27,00,000/- from IGT Exports Ltd during the year and Rs 39,32,500/- from Vineet Gloves Manufacturing Pvt Ltd . The amount received in the sum of Rs 39,32,500/- is already included in the actual turnover of Rs 3,88,43,336/-. The assessee also submitted that the advance of Rs 27,00,00/- received from IGT Exports Ltd is part of advance outstanding from the said party in the total sum of Rs 53,14,000/-. In other words, it was submitted that Rs 27,00,000/- is included in Rs 53,14,000/-. By these explanations, the assessee primarily pleaded that the total turnover should be construed only at Rs 3,88,43,336/- and no addition of Rs 66,32,500/- to the same should be made. The Id AO did not agree to this contention even in the remand proceedings.

The assessee in the rejoinder to the remand report submitted before the Id CITA the party wise details of turnover duly explaining the figure adopted by the Id AO and the actual turnover figure and tried to justify that the total turnover of the assessee should be adopted at Rs 3,88,43,336/- only. He later requested the Id CITA to apply profit percentage on the said turnover of Rs 3,88,43,336/- . It was also submitted that the profit percentage adopted by the Id AO at 15.43% is excessive whereas in the earlier years, the Id AO himself had adopted only 12%. The Id CITA agreed to the turnover figure to be adopted at Rs 3,88,43,336/- appreciating the party wise details and contentions submitted by the assessee and after verification of ledger account copies of the various parties and applied profit percentage at 10% of Rs 3,88,43,336/- .

5.1. We have heard the rival submissions and perused the materials available on record. We find that the assessee had submitted the party wise details of amounts received towards contractual receipts as detailed above and also recorded in page 4 of the assessment order. We find that the assessee had also explained the discrepancies in turnover figures adopted by the Id AO vis a vis the correct turnover figures in respect of each of the parties from whom contractual receipts were received. We find that the assessee had duly explained with cogent reasons and evidences that Rs 66,32,500/- being amounts received from two parties supra should not be included in the turnover figure as was done by the Id AO. We find that Rs 27,00,000/- received as advance from IGT Exports Ltd is included in the sum of Rs 53,14,000/- due to such party by the assessee and hence the same should not be included in the turnover. We find that the assessee had already included a sum of Rs 39,32,500/- received from Vinit Gloves Manufacturing Pvt Ltd as could be evident from the aforesaid table , in the turnover of Rs 3,88,43,336/- and hence there is no need to include once again the same in the turnover of the assessee. The Id CITA had verified these explanations with reference to the ledger account copies of various parties and had categorically

held that the total turnover of the assessee should be adopted at Rs 3,88,43,336/-, on which no interference is called for. The only dispute is with regard to determination of profit percentage thereon. The Id AO applied the profit percentage at 15.43% which was reduced to 10% by the Id CITA. We find that this tribunal in the earlier years i.e for the Asst Years 2007-08 to 2010-11 in assessee's own case in ITA nos.6 to 9 and 24 to 26 / Kol/2016 dated 4.10.2017 had held that adoption of profit at 8% would meet the ends of justice . Respectfully following the said decision, we hold that the profit should be determined at 8% on the turnover of Rs 3,88,43,336/- for the year under appeal. **Accordingly, the Ground No. 1 raised by the revenue is dismissed and Ground No. 1 raised by the assessee is partly allowed.**

6. With regard to the addition made in the sum of Rs 92,589/- towards undisclosed trading business of Rs 6,00,000/- , the assessee explained that he had supplied building materials worth Rs 6,00,000/- to M/s Anjana Exports Pvt Ltd for which payment was received by him during the year under appeal. The assessee stated that the same is duly included in the turnover of the assessee in the sum of Rs 3,88,43,336/-. The assessee explained that the Id AO took the total work done by the assessee in respect of M/s Anjana Exports Pvt Ltd at Rs 9,99,850/- whereas the assessee had included Rs 15,99,850/-as supplies made to the said party. We find from the above table containing the party wise details of turnover of the assessee, as against M/s Anjana Exports Pvt Ltd, the assessee had included the turnover of Rs 15,99,850/- and accordingly the alleged difference in turnover according to Id AO i.e Rs 6,00,000/- (15,99,850 – 9,99,850) stands duly explained. Accordingly we hold that the sum of Rs 6,00,000/- cannot be construed as undisclosed trading business turnover of the assessee and consequentially no addition towards profit thereon in the sum of Rs 92,589/- could be added. We hold that the Id CITA had rightly appreciated this fact and hence his order does not require any interference in this regard. **Accordingly, Ground No. 2 raised by the revenue is dismissed.**

7. With regard to the undisclosed investment addition made in the sum of Rs 25,00,000/- made by the Id AO in the assessment, we find that the assessee has been carrying on this business in the earlier years also. Infact assessments were framed by the Id AO for the Asst Years 2007-08 to 2010-11 and the matter had reached upto tribunal and decisions were rendered thereon. Hence it cannot be said that the assessee had commenced his business only during the year under appeal warranting making of initial investment in business. In any case, the Id AO had made this addition only on an estimated basis which cannot be sustained as per law. It is not the case of the revenue that the assessee had made certain investment in some assets other than in business which does not stand properly explained and accordingly addition needs to be made u/s 69 of the Act. On the contrary, the Id AO clearly states that the addition is made towards investment in business of the assessee towards the initial amount. We find that this is done on a totally wrong premise of the Id AO. These facts had been rightly appreciated by the Id CITA and deletion of addition made by him does not call for any interference. **Accordingly, the Ground No. 3 raised by the revenue is dismissed.**

8. Unexplained bank deposits – Rs 95,53,079/-

The Id AO made an addition of Rs 95,53,079/- towards unexplained deposits in Axis Bank for want of proper explanation regarding ,source of the same. During remand proceedings, the assessee produced the bank book of Axis Bank and summary fo account wise deposit mentioning amount, date, name of the party from whom received and head under which the same was received. The assessee also produced relevant ledgers. The assessee pleaded that all these deposits have been duly considered in the restructured accounts either in the form of total turnover, rent receipts, advance receipts etc. The break up of the said bank deposits in Axis Bank are as under:-

<u>Name of the party from whom recd</u>	<u>Amount</u>	<u>Nature of receipt</u>
Nova Labs & Industries	12,42,365	Contractual receipt
IGT Exports (P) Ltd	10,00,000	Advance
Tristar Exports	39,461	Contractual receipt
Puma Exports Ltd	2,32,600	Rent
Receipt from Misc. Parties	69,34,217	Contractual Receipt
Mackintosh Burn Ltd	1,04,436	Refund of excess material

Total	95,53,079	

With regard to :-

a) Receipt from Miscellaneous parties amounting to Rs 69,34,217/- is already included in the total turnover of Rs 3,88,43,336/- as it could be seen from the above table that Rs 79,54,217/- was shown as contractual receipts from miscellaneous parties. We find that this sum of Rs 69,34,217/- is already include in the total receipt from Miscellaneous Parties of Rs 79,54,217/- which in turn is included in the total turnover and profit estimated thereon as above, there is no need to make any separate addition towards the same. We hold that the credit stands duly explained and no addition u/s 68 of the Act is warranted.

b) Receipt from Nova Labs & Industries in the sum of Rs 12,42,365/- is already included in the total turnover of Rs 3,88,43,336/- as it could be seen from the above table that Rs 46,80,225/- was shown as contractual receipts from Nova Labs & Industries. We find that the assessee had included the total sales made to Nova Labs & Industries during the year in the sum of Rs 49,80,225/- and included the same in the turnover of the assessee at Rs 3,88,43,336/-. This sum of Rs 12,42,365/- only represents amounts received out of such sales and credited in Axis Bank. The ld AO had included the sales on accrual basis on one hand and had also considered the amounts received thereon on cash basis as unexplained cash credit on the other hand.

We hold that the sum of Rs 12,42,365/- is already included in the total sales to Nova Labs & Industries of Rs 49,80,225/- which in turn is included in the total turnover and profit estimated thereon as above, there is no need to make any separate addition towards the same. We hold that the credit stands duly explained and no addition u/s 68 of the Act is warranted.

c) Receipt of Rs 10,00,000/- from IGT Exports (P) Ltd is part of total advances received from the said party and included in the total advance sum of Rs 53,14,000/- as per the aforesaid table. The said credit is also duly explained and no addition is warranted. The break up of advances received from IGT Exports (P) Ltd are as under:-

Opening balance as on 1.4.2010		30,01,000
Add: Advances received on		
1.5.2010	5,00,000	
23.7.2010	5,00,000	
2.9.2010	4,00,000	
22.9.2010	3,00,000	
10.2.2011	10,00,000	
	-----	27,00,000

		57,01,000
Less: Repaid on		
25.7.2010	2,00,000	
14.8.2010	1,87,000	
	-----	3,87,000

Closing Balance of Advances as on 31.3.2011		53,14,000

This closing balance of advance as on 31.3.2011 is duly reflected in the restructured balance sheet of the assessee and the credit stands duly explained and hence there is no case for making any addition u/s 68 of the Act.

d) With regard to Tristar Exports in the sum of Rs 39,461/- , this represents amounts received on 13.4.2010 from the said party towards contractual receipt for the sales made on 1.4.2010. The assessee had made total sales to Tristar Exports during the year in the sum of Rs 5,00,171/- (which includes Rs 39,461/-) which in turn is included in the total turnover of Rs 3,88,43,336/- and profit estimated thereon as above, there is no need to make any separate addition towards the same. We hold that the credit stands duly explained and no addition u/s 68 of the Act is warranted.

e) With regard to rent credit of Rs 2,32,600/- from Puma Exports Ltd, the same is offered to tax separately by the assessee and hence no separate addition is warranted u/s 68 of the Act.

f) With regard to receipt of Rs 1,04,436/- from Mackintosh Burn Ltd, the assessee had made following payments to the said party which are reflected in the same Axis Bank Account :-

7.9.2010	2,00,000	
18.9.2010	1,50,000	
	-----	3,50,000

Out of these payments, the assessee got back a sum of Rs 1,04,436.35 on 22.2.2011 from the said party after adjusting the supplies made by the said party to the tune of Rs 2,45,563.65. All these transactions are duly reflected in the restructured accounts of the assessee and hence there is no case for making any addition u/s 68 of the Act as the credit stood duly explained.

8.1. Hence we hold that the entire addition of Rs 95,53,079/- towards deposits in Axis Bank account had been rightly deleted by the Id CITA on appreciation of facts with supporting evidences after calling for the remand report in respect of the same. Hence no interference is called for in the order of the Id CITA in this regard. **Accordingly, the Ground No.4 raised by the revenue is dismissed.**

9. Addition towards short term capital gain on sub-lease of the property – Rs 62,84,925/-

This relates to sale of office premises at 16F, East Topsia Road, Kolkata for Rs 30,00,000/- to M/s Skipper Textiles Pvt Ltd which has been erroneously included by the assessee in the total turnover figure of Rs 3,88,43,336/-. The circle rate for the subject mentioned property was Rs 62,84,925/-. The Id AO adopted the same as full value of consideration and did not give any deduction towards cost on the ground that it was not proved by the assessee that he is engaged in trading in flats. Accordingly the entire full value of consideration u/s 50C of the Act in the sum of Rs 62,84,925/- was taxed by the Id AO as short term capital gains in the assessment. The assessee stated that he had obtained lease hold rights in respect of a plot of land at 16F, East Topsia Road, Kolkata over which he had made construction. During the year under appeal, he had received Rs 30,00,000/- from M/s Skipper Textiles Pvt Ltd which has been included as part of contractual receipts in the sum of Rs 3,88,43,336/-. We find that the Id CITA had observed that since the sum of Rs 30,00,000/- had already been included by the assessee in the total turnover of Rs 3,88,43,336/- towards contractual receipts, the addition towards short term capital gains is to be made only to the extent of Rs 32,84,925/- (62,84,925- 30,00,000). Against this, the assessee had not preferred any appeal before us. We find that it is a fact that Rs 30,00,000/- received from Skipper Textiles Pvt Ltd had been included by the assessee as contractual receipts in the total turnover of Rs 3,88,43,336/- as could be evident from the table supra. Hence the Id CITA had rightly sustained the addition for the remaining portion of Rs 32,84,925/- and hence no interference is called for. **Accordingly, the Ground No. 5 raised by the revenue is dismissed.**

10. Addition towards sub-letting rental income of Rs 8,19,808/- and Disallowance of rent paid – Rs 7,20,000/-

The Id AO observed from Form 26AS that the assessee had received the total rental income of Rs 5,17,506/- , whereas the parties confirmed the rental amount paid by them aggregating to Rs 5,81,508/-. The Id AO further contended that the assessee had confirmed a further receipt of rental income amounting to Rs 2,38,300/- and he also claimed the payment of rental expense of Rs 7,20,000/-. The Id AO contended that the assessee could not prove his claim with any documentary evidence that he had paid Rs 7,20,000/- towards the property. Further, according to the Id AO, the 'leave and license' agreement dated 6.7.2006 reveals that Notary Public has certified it with his seal but genuineness of the lease agreement was not proved by the assessee and it is not relevant for the year under consideration. The Id AO disallowed Rs 7,20,000/- as rental expenses and computed sub-letting rental income of Rs 8,19,808/- as undisclosed business income and added the same to the total income of the assessee.

10.1. We find that the facts as noted in Id CITA order is that the assessee had taken on rent one house property and had been earning rental income by sub letting. The assessee submitted that both the rent receipt and rent payments were considered under the head income from other sources. The assessee submitted the following details of rental income in the remand proceedings before the Id AO :-

Sudhik Kr. Mooljee	2,21,508
Tristar Exports	3,60,000
Rajiv Daga	2,34,000
Puma Exports Ltd	2,32,600
	----- 10,48,108

10.2. With regard to rent paid, it was submitted that in respect of the income derived by the assessee arising from sub-letting of the premises No. 67, Shreedhar Roy Road, Kolkata – 700039 , the assessee submitted a Leave & Licence Agreement which is duly notarized. The assessee is the licensee and there are seven co-owners of the premises who have let out the premises to the assessee. The assessee submitted

certificates dated 12.3.2015 as duly signed by the three co-owners out of six co-owners who have been receiving license fees from the assessee. The Id CITA observed that this new evidence in support of payment of rent under the Leave and License Agreement has been considered and found that signature of three co-owners tallied with the signature put in the Leave and License Agreement. He also observed that the assessee filed another three certificates signed by the Id AR of the balance three co-owners confirming the receipt of rent. The assessee pleaded that the gross receipts derived by the assessee under the Leave and License Agreement has been assessed as income but no deduction was allowed because of the absence of relevant evidences in support of the payment of license fee. These evidences were submitted before the Id AO in the remand proceedings. We find that the Id CITA had observed that an amount of Rs 7,20,000/- was paid by the assessee per annum to the landlords. The assessee had sub-let the premises and had derived rental income thereon. The Id CITA held that this income would be assessable under the head 'income from other sources'. Since the receipt of rent by the landlords has been accepted by the Id AO in the remand proceedings, the Id CITA observed that the assessee is entitled for deduction towards rent paid in the sum of Rs 7,20,000/- . We find that the revenue cannot be aggrieved on this aspect. Accordingly we hold that the rental income of Rs 10,48,108/- received by the assessee should be assessed under the head income from other sources. We further hold that deduction of rent paid in the sum of Rs 7,20,000/- should be given under the head income from other sources. **Accordingly, the Ground No. 6 raised by the revenue is partly allowed.**

11. Addition towards commission income – Rs 41,000/-

We find that the Id AR during the course of hearing fairly admitted that this income should be separately assessed over and above the estimation of profit from business as this is an independent activity. **Accordingly, the Ground No. 7 raised by the revenue is allowed.**

12. Addition towards bank interest – Rs 5,165/-

We find that the Id AR during the course of hearing fairly admitted that this income should be separately assessed over and above the estimation of profit from business as this is assessed under the head income from other sources. **Accordingly, the Ground No. 8 raised by the revenue is allowed.**

13. The Ground No. 9 raised by the revenue is general in nature and does not require any specific adjudication.

14. In the result, the appeal of the revenue as well as assessee are partly allowed.

Order pronounced in the Court on 13.04.2018

Sd/-
 [A.T. Varkey]
 Judicial Member

Sd/-
 [M.Balaganesh]
 Accountant Member

Dated : 13.04.2018

SB, Sr. PS

Copy of the order forwarded to:

1. ITO, Ward-36(1), Kolkata, Aayakar Bhawan (Poorva), 8th Floor, 110, Shantipally, Kolkata-700107.
2. Rajesh Agarwal, 67, Shreedhar Roy Road, Kolkata-700039.
3. C.I.T(A)- , Kolkata 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

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

