

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

[Before Hon'ble Shri J.Sudhakar Reddy, AM]

ITA Nos.1711 & 1712/Kol/2014Assessment Year : **2006-07**

M/s Shiv Ratan Agarwal(HUF) -versus-
Kolkata
(PAN: AAFHS 6012 R)
(Appellant)

I.T.O., Ward-36 (2)
Kolkata
(Respondent)

For the Appellant: Shri Manish Tiwari, FCA
For the Respondent: Shri D.C.Mondal, Addl. CIT

Date of Hearing : 15.03.2018.

Date of Pronouncement : 18.04.2018.

ORDER**PER J.SUDHAKAR REDDY, AM:**

Both these appeals are filed by the assessee directed against the order of the Commissioner of Income Tax-(A)-XX, Kolkata relating to A.Y. 2006-07. As the issues raised in these appeals are common, for the sake of convenience they are head together and disposed off by way of this common order.

2. There is a delay of 20 days in filing of the appeals. The assessee has filed a petition seeking condonation of delay, accompanied by an affidavit. After going through the same, I am satisfied that the assessee was prevented by sufficient cause from filing the appeals within the time prescribed under the statute. Thus, I condone the delay in filing these appeals by the assessee, and admit this appeal.

3. The grounds of appeal in both the appeals are identical with variation of figures. Grounds of appeal in ITA No.1711/Kol/2014 read as follows :-

"1. Learned CIT (appeals) is wrong in confirming the addition of the Assessing officer without considering the written and verbal submission made before him during the appellate proceeding.

2. Learned CIT (appeals) is wrong in confirming the additions of the Assessing officer based on pure guess, assumption, or, conjuncture.

3. Learned CIT (appeals) is unlawful in relying upon the remand report of the assessing officer which was biased and failed to consider the submission of the assessee during remand proceeding

4. Learned CIT (Appeals) has failed to uphold the position of law that, once the assessee had done his onus of proving the Identity, creditworthiness and genuineness 'of transaction it is the duty of the assessing officer to disprove it.

5. Learned CIT (appeals) is wrong in confirming the additions of the Assessing officer of the cash loan taken from relatives amounting Rs 980001- and receipt of repayment amounts of loan given by the assessee amounting Rs39177/- during earlier years under pure guess, conjuncture and surmise.

6. Learned CIT (appeals) is wrong in confirming the additions of the Assessing officer of the proceeds of sale of investments in equity share of M/s Millenium Industries P Ltd Rs 600000/- at par to 1 customer, M/S Sublime Securities India Ltd Rs 68800/- to 2 customers and in Shyam Niwas Viniyog P Ltd Rs 700001- to 1 customer by completely disregarding the requirement of law and under pure guess, conjuncture and surmise.

7. Learned CIT (appeals) is wrong in confirming the additions of the Assessing officer of receipt of refund of share application money from M/s Eurolink export Ltd amounting Rs 5000001-, and M/s Ritu viniyog & Trade P Ltd Rs 100000/- under pure guess, conjuncture and surmise

8. The appellant craves leave to file additional grounds, add, alter or modify the grounds of appeal at any time before or during the hearing of the appeal. “

4. Both the parties advanced arguments on the issues of violation of principles of natural justice. After hearing the rival contentions, I am of the opinion that the AO has not considered the written and verbal submissions made before him by the assessee at the time of assessment proceeding. The Id. CIT(A) has called for a remand report but the AO in the remand proceedings failed to consider the submissions and the materials placed on record by the assessee.

5. Under the circumstances, I deem it fit and proper to set aside the matter to the file of the AO for fresh adjudication in accordance with law. The AO is directed to

consider all the submissions made by the assessee and materials placed on record by the assessee and pass a fresh order in accordance with law.

6. In the result both the appeals are allowed for statistical purposes.

Order pronounced in the Court on 18.04.2018.

Sd/-
[J.Sudhakar Reddy]
Accountant Member

Dated : 18.04.2018.

[RG Sr.PS]

Copy of the order forwarded to:

1M/s Shiv Ratan Agarwal, 2, Lal Bazar Street, 3rd floor, Room No.315, Todi Chambers, Kolkata-700001.

2. I.T.O., Ward-36 (2), Kolkata.

3. C.I.T.(A)- XX, Kolkata 4. C.I.T-XII, Kolkata

5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

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