

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

Before: **Shri M. Balaganesh, Accountant Member, and  
Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No. 2117/Kol/2016**  
A.Y 2011-12

**Subrata Dey**  
PAN: ACTPD5143J  
(Appellant)

**Vs.**

**I.T.O., Ward 1(3)  
Burdwan**  
(Respondent)

Appearances by:  
Shri Soumitra Choudhury, Advocate, Id.AR  
Shri Sallong Yaden, Addl. CIT, Id.DR

Date of hearing : 06-02-2018  
Date of pronouncement : 25-04-2018

**O R D E R**

**Shri S.S. Viswanethra Ravi, JM :-**

This appeal filed by the Assessee is against the order of the learned Commissioner of Income-tax (Appeals), Burdwan dated 30-08-2016 for the assessment year 2011-12.

2. The Id. AR submits that the AO completed the assessment to the best of his judgment u/s. 144 of the Act and referred to paras 4,6,7,8,9,10 & 11 of order and argued that no opportunity was given to assessee to participate in assessment proceedings. The AO made the additions for non submission of explanation and non filing of documentary evidence, besides, estimated the profit on presumptive basis.

3. The CIT-A confirmed all the additions made by the AO without considering the facts and circumstances of the case. The Id. AR prayed to remand the matter to the file of the AO for his fresh consideration.

4. The Id. DR submits that the AO has given many opportunities to the assessee to substantiate his claim and he failed to appear before the AO with all details as required by the AO. The assessee did not even appear in response to notice issued u/s. 274 and 131 of the Act. The AO rightly made the impugned additions basing on material on record and completed the impugned assessment u/s. 144 of the Act. The CIT-A was fully justified in confirming all the additions made by the AO as the assessee failed to bring on record any evidence in support of his contention either in appellate proceedings or remand proceedings. He referred to page 4 of the order of the CIT-A and relied on the orders of the AO & CIT-A. He objected to the submissions of the Id.AR in remanding the matter to the file of AO for his verification.

5. Heard rival submissions and perused the record. We find that ground no. 1 raised before us is in respect of confirmation by the CIT-A of addition made on account of trade creditors and estimation of profit at 8%. Ground no. 2 in respect of confirmation of addition on account of loan, which said to have been availed by the assessee. Ground no. 3 is relating to confirmation of addition on account of investments made from undisclosed sources without rejecting the books of account. On perusal of the order of the AO, it is clear that there was no assistance whatsoever of assessee in the assessment proceedings, thereby resulted the additions. On perusal of order of CIT-A, we find that the assessee could not participate in the first appellate proceedings. We note that the AO issued notices u/s. 143(2) & 142(1) of the Act dt. 1-8-

2012 & 6-12-2013 respectively to assessee. According to AO, he sought certain details i.e purchase and sale register, cash book, stock register and names and complete addresses of trade creditors and details of loans and advances. The AR representing the assessee appeared, but filed nothing except power of attorney/power of authorization. Thereafter, the AO issued two letters dt. 03-02-2014 & 26-02-2014 to assessee regarding the submissions of details as required by him under notices issued u/s. 143(2) & 142(1) of the Act. It is clear from assessment order that the assessee did not appear before the AO, even in response to show caused dt. 11-02-2014 fixing the date of hearing on 18-03-2014. The AO made the following additions in absence of assessee:-

1. Trade creditors amounting to Rs.13,55,000/- on account of there being no evidence provided by the appellant and hence unconfirmed.
2. Business profit estimated on presumptive basis upon a turnover of Rs.1,32,56,430/- coming to Rs.10,60,514/-
3. Cash deposits in the undisclosed c/a account with SBBI Surekalna branch amounted to Rs.82,55,660/-. Upon this amount, the presumptive rate of 1% was applied leading to an addition of Rs.6,60,453/-.
4. Closing balance in two of the appellant's accounts amounted to Rs.31,431/-. The amount shown by the appellant in his audited balance sheet, however, was Rs.13,632/-. The difference of the two amounts Rs.17,799/- was added back.
5. A loan of Rs.9,50,000/-, purported to have been received from the appellant's wife was not substantiated with any material. This amount was added back as bogus loan.
6. Investments to the tune of Rs.23,91,06/- purported to have been made in Bholu Shankar Cold Storage and Muktakeshi were not supported by any material to show their source. The same were therefore added back to the income of the appellant.

The above additions made by the AO suggests that there was no opportunity to the assessee during the course of assessment proceedings and the estimated the net profit and made the additions of presumptive basis.

6. On perusal of the order of the CIT-A, which is impugned before us and which goes to show that the assessee could not establish the genuineness of the creditors and creditworthiness of loan creditor i.e. wife of assessee and for non production of cogent material in respect of

of investment. Before us the Id.AR undertakes that the assessee may be granted an opportunity. In view of the fact that the AO determined the profit on presumptive basis and the additions made on different heads, which are not at all maintainable in the eye of law. We find force in the submissions of the Id.AR. We find that the profits are determined on presumptive basis and additions made on different heads on presumptive basis, which tantamount the double additions/taxation on same receipts. Therefore, taking into consideration the facts and circumstances of the case, submissions of assessee and in the interest of justice, we deem it fit and proper to remand the issues involved in the appeal of assessee to the file of AO for his fresh consideration and to make assessment denovo, after taking into considerations the submissions of assessee. The assessee is at liberty to file necessary evidences, in support of his claim and contentions. The assessee is also directed not to seek any adjournment before the AO. He shall cooperate the AO in the assessment proceedings by filing required evidences in support of his claim and submission.

7. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 25-04-2018

Sd/-  
**M. Balaganesh**  
**Accountant Member**

Sd/-  
**S.S.Viswanethra Ravi**  
**Judicial Member**

Dated:25-04-2018

Copy of the order forwarded to:-

1. The Appellant/Assessee: Shri Subrata Dey, Nandarambati, P.O Surekalna, Burdwan-713408.
  2. The Respondent/Department: The Income Tax Officer, Ward 1(3), Burdwan, Aaykar Bhawan, Court Compound, Burdwan-713101.
  3. CIT      4. CIT(A)
  5. The Departmental Representative
  6. Guard File
- True Copy By order

Sr.PS/H.O.O,ITAT,Kolkata  
ITAT Kolkata

\* PRADIP SPS