

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

[Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member]

I.T.A. No. 341/Kol/2013
Assessment Year: 2008-09

Prasanta K. Bhattacharya.....Appellant
C/o Shri Somnath Ghosh, Advocate
Seven Brothers' Lodge
P.O. Chinsurah
Dist. Hooghly
PIN- 712 105
[PAN : AEOPB 9130 Q]

Income Tax Officer, Ward-2(4), Kolkata.....Respondent

I.T.A. No. 403/Kol/2013
Assessment Year: 2008-09

Income Tax Officer, Ward-2(4), KolkataAppellant

Prasanta K. Bhattacharya..... Respondent
C/o Shri Somnath Ghosh, Advocate
Seven Brothers' Lodge
P.O. Chinsurah
Dist. Hooghly
PIN- 712 105
[PAN : AEOPB 9130 Q]

Appearances by:

Shri Somnath Ghosh, Advocate, appeared on behalf of the assessee.
Shri Saurabh Kumar, Addl. CIT, DR, appearing on behalf of the Revenue.

Date of concluding the hearing : May 1st, 2018
Date of pronouncing the order : May 16th, 2018

O R D E R

Per J. Sudhakar Reddy :-

These are cross appeals directed against the order of the Id. Commissioner of Income Tax (Appeals) – XXXVI, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 18/12/2012, relating to Assessment Year 2008-09.

2. The assessee is an individual and is in the business of cold storage, saw milling business, potatoe trading business etc. He filed his return of income for the Assessment Year 2008-09 on 29/09/2008, declaring total income at Rs.4,93,510/-. The Assessing Officer completed the assessment u/s 143(3) on 31/12/2010, determining the total income at Rs.1,25,79,562/- *inter alia* making addition on account of undisclosed

investment in an undisclosed bank account, violation of Section 40A(3) of the Act and on account of unexplained sales. Aggrieved the assessee carried the matter in appeal.

2.1. The Id. First Appellate Authority, deleted the addition made on the ground that the assessee has unaccounted sales. On the issue of unaccounted investment, the Id. CIT(A) directed that the addition be limited to the peak which was worked out at Rs.14,52,775/-. At para 7.2. of his order he held that, the assessee will be entitled to the benefit to the extent of opening peak balance as on 01/04/2007 of a sum of Rs.3,85,217/-. Further, at para 8 he held that the payments were made to firms for the purchase of potatoes and hence the payment is covered within the scope of Rule 6DD(e)(i) of the Income Tax Rules, 1962 (hereinafter the 'Rules') and hence no disallowance can be made u/s 40A(3) of the Act.

3. Aggrieved, both the assessee as well as the revenue is in appeal before us.

4. We have heard the rival contentions. After perusing papers on record, orders of the authorities below and case-law cited, We hold as follows:-

First we take up the assessee's appeal being ***I.T.A. No. 341/Kol/2013; Assessment Year: 2008-09.***

5. The sole issue that is agitated in the assessee's appeal is that benefit to the extent of opening peak balance as on 01/04/2007 has to be given to the assessee. We find that the Id. CIT(A) at para 7.2. last line of his order accepted this contention of the assessee. Thus, we direct the Assessing Officer to delete the amount of Rs.3,85,217/-, from the peak credit of Rs.18,42,911/- sustained by the Id. CIT(A). Accordingly, the assessee gets relief of Rs.3,85,217/-.

6. In the result, appeal of the assessee is allowed.

7. We now take up the revenue's appeal being ***I.T.A. No. 403/Kol/2013; Assessment Year: 2008-09.***

8. Ground Nos. 1 & 2 are on the issue of direction by the Id. CIT(A) to take the peak credit as undisclosed investment. The Id. First Appellate Authority has in his order considered the facts of the case and at para 8 held as follows:-

"8. However, the action of the AO of resorting to the addition of the total deposits in the bank account, without giving benefit of withdrawals made from time to time, is not justified in the circumstances. The AO also did not understand the proximity of the transactions undertaken by the appellant in relation to the bank account. It was the requirement in law to understand the rotation of transactions made by the appellant and the failure of the AO in this respect renders his action unsustainable in law. Therefore, the addition made on this issue is sustained on principle but is restricted to an amount of Rs. 18,42,911/- in place and stead of Rs. 29,71,798/- made by the AO and as such, the ground nos. 1 to 3 of the appeal is allowed in part. Appellant gets a relief of Rs. 11,28,887/-.

8.1. This decision is in line with the proposition of law laid down by the Kolkata Bench of the Tribunal in the case of *Uday Shankar Mahawar, Kolkata vs Income Tax Officer, ITA No. 1903/Kol/2009; Assessment Year : 2006-07*. The Kolkata 'A' Bench of the Tribunal in the case of *Prasanta Kumar Bhattacharya vs. ITO in ITA No. 02/Kol/2013 & ITA No. 187/Kol/2013; Assessment Year 2007-08*, upheld the theory of peak credit for making the addition on account of undisclosed bank deposit.

8.2. Respectfully following the same, we dismiss Ground No. 1 & 2 of the revenue's appeal.

9. Ground No. 3 is against the deletion of disallowance made u/s 40A(3) of the Act.

10. We find that the payments in question were made to firms for the purchase of potatoes. Such payments are covered within the scope of Rule 6DD(e)(i) of the Rules, for the purpose of Section 40A(3) of the Act. Thus, this ground of the revenue is dismissed.

11. Ground Nos. 4 to 6 are against the deletion of an addition of Rs.89,64,254/-, made by the Assessing Officer as undisclosed sales.

The Id. CIT(A) in his order has given a factual finding that the assessee has an opening stock of Rs.93,41,400/-, as on 01/04/2007 and this was disclosed under the head "owned stock" in the balance sheet filed along with the income tax return for the Assessment Year 2007-08. What was sold by the assessee during the year was from this opening stock. The Id. D/R could not controvert these factual findings of the Id. CIT(A). The Id. CIT(A) held that the Assessing Officer's finding in the remand report as well as in the assessment order were perverse and against the facts of the case. We find no infirmity in such findings. Thus we dismiss all these grounds of the revenue.

12. Ground No. 7, is general in nature.

13. In the result, appeal of the revenue is dismissed.

Kolkata, the 16th day of May, 2018.

Sd/-

[S.S. Viswanethra Ravi]
Judicial Member

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Dated : 16.05.2018
{SC SPS}

Copy of the order forwarded to:

**1. Prasanta K. Bhattacharya
C/o Shri Somnath Ghosh, Advocate
Seven Brothers' Lodge
P.O. Chinsurah
Dist. Hooghly
PIN- 712 105**

2. Income Tax Officer, Ward-2(4), Kolkata

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