

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

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

I.T.A No.689/Kol/2017
(Assessment Year: 2009-10)

Shri Ratan Paul Assessee

Vs

ACIT, Circle-50, Kolkata Revenue
[PAN: AEYPP 4377 D]

&

C.O No.52/Kol/2017
(A/o I.T.A No.689/Kol/2017)
(Assessment Year: 2009-10)

ITO, Ward-50(4), Kolkata Revenue

Vs

Shri Ratan Paul Assessee
[PAN: AEYPP 4377 D]

For the Assessee : Shri Subash Agarwal, Advocate
For the Respondent : Shri A. Bhattacharjee, Addl. CIT (DR)

Date of hearing : 10.04.2018
Date of pronouncement : 27.06.2018

ORDER

Shri S.S.Viswanethra Ravi, JM:

This appeal by the assessee against the order dated 20.02.2016 passed by the Commissioner of Income Tax (Appeals)-15, Kolkata and a Cross-Objection filed by the Revenue both for the assessment year 2009-10.

2. The only issue is to be decided is as to whether the CIT(A) justified in confirming the addition made by the Assessing Officer ex parte in the facts and circumstances of the case. The ld. AR submits that the CIT(A) without securing assistance of assessee confirming the addition made by the Assessing Officer by applying net profit @8% on gross receipts. The CIT(A) also confirmed the finding of the Assessing Officer in rejecting the books of accounts of assessee. The ld. AR argued that there was no opportunity for the assessee to contest the

grounds raised before him and prayed to remit the matter to the file of the CIT(A) for his fresh consideration. The ld. DR submits that the CIT(A) has given many opportunities to the assessee in the first appellate proceedings and preferred to Para No.5 of the order of the CIT(A). Further, the CIT(A) should have confirmed all the additions made by the Assessing Officer. The ld. DR also stated that Assessing Officer arbitrarily disallowed the addition made on account of income tax payment and prayed to remit the matter to the file of CIT(A).

6. Heard both and perused the material on record. The contention of the ld. AR is that the Assessing Officer rejected the books of account and applied net profit @8% on the gross receipts and without giving an opportunity to the assessee, the CIT(A) confirmed the addition in that regard.

7. The grievance of the ld. DR is that in the absence of assessee, CIT(A) deleted the addition made on account of income tax payment. Taking into consideration the submissions of both ld. AR and DR and in the facts and circumstances of the case and the interest of natural justice, we deem it appropriate to remit both the appeal of the assessee and cross-objection of the Revenue to the file of CIT(A). The CIT(A) shall pass order in accordance with law by giving an opportunity to the assessee. The assessee is directed to produce all the evidences in support of his contentions. Ground raised in appeal by the assessee and ground raised by the Revenue in cross-objection are allowed for statistical purposes.

5. In the result, the appeal of the assessee and Cross-objection of the Revenue both are allowed for statistical purposes.

Order pronounced in the open court on 27.06.2018.

Sd/-
(P. M. Jagtap)
Accountant Member
Dated : 27.06.2018
Place : Kolkata
(RS, Sr. PS)

Sd/-
(S.S. Viswanethra Ravi)
Judicial Member

Copy of the order forwarded to:

1. Assessee –Shri Ratan Paul, Prop. of M/s. R. P. construction, 407, R.N. Guha Road, Dum Dum, Kolkata – 700 074.
2. Revenue – ACIT, Circle – 50, Kolkata, Uttarapan Building, Manicktala Civic Centre, Ultadanga, Kolkata – 700 054.
3. The CIT(A) - 15, Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

//True Copy//

By order,

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