

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

[Before Hon'ble Shri S.S.Godara, JM & Shri M.Balaganesh, AM]

IT(SS)A.No.74/Kol//2013

Assessment year : 2009-10

D.C.I.T., Central Circle-XXIII
Kolkata

Vs

Sri Pankaj Agarwal
Kolkata
(PAN: AEJPA 2231 D)

(Appellant)

(Respondent)

ITA.No.1288/Kol//2013

Assessment year : 2010-11

Sri Pankaj Agarwal
Kolkata

(PAN: AEJPA 2231 D)

(Appellant)

A.C.I.T., Central Circle-XXIII
Kolkata

(Respondent)

For the Assessee : Shri A.K.Upadhyay, Advocate

For the Department Shri G.Hangshing, CIT (DR)

Date of Hearing : 19.06.2018.

Date of Pronouncement : 27.06.2018.

ORDER**PER S.S.GODARA, JM**

The Revenue and Assessee have filed their respective instant appeals for A.Y.2009-10 and 2010-11 against the CIT(A)-Central-III, Kolkata's separate orders; both dated 20.01.2012 passed in Appeal Nos.91&90/CC-XXIII/CIT(A)C-III/11-12/Kol partly reversing the Assessing Officer's action adding peak amount of Rs.3,12,44,093/- to the extent of 0.3% of expenses to Rs.46,59,857/- in former and upholding undisclosed income addition of Rs.1,00,16,960/- in latter case involving proceedings u/s 143(3) read with section 153A of the Income Tax Act, 1961 (In short the 'Act ') and u/s 143(3) of the Act; respectively.

Heard both the parties. Case files perused.

2. Both the learned representatives submit during the course of hearing that these two appeals in fact raise a common issue of addition of undisclosed income. The assessee is an entry operator. The department carried out the search in question at his

business premises on 09.05.2009. He surrendered undisclosed income of Rs.1,00,16,960/- in course thereof. The same culminated in initiating section 153A proceedings against him in above former assessment year and scrutiny assessment in latter assessment year. The Assessing Officer went by taking peak cash credit amount of Rs.13,12,44,093/- to add the same as the tax payer's undisclosed income in assessment order dated 29.12.2011. He thereafter made the entire addition of admitted undisclosed income of Rs.1,00,16,960/- in latter A.Y.2010-11.

3. The assessee preferred separate appeals. The CIT(A)'s order forming subject matter of appeal IT(SS)A.74/Kol/2013 holds that the assessment appellate authority has itself assessed assessee to be an entry operator handling cash of Rs.155,32,98,834/- to restrict the addition in question to Rs.46,59,897/- @ 0.3%. The Revenue seeks to apply the peak balance theory in order to revive the impugned addition of Rs.3,12,44,093/ in this back drop of facts. The assessee's grievance on the other hand, in latter assessment year (supra) is that the impugned undisclosed income pertains to these two assessment years than whereas both the lower authorities have added the same in A.Y.2010-11 only.

4. Both the parties reiterate their respective stands during the course of hearing. Learned Departmental Representative vehemently contends that the Assessing Officer had rightly followed peak cash credit formula to make the impugned addition of Rs.3,12,44,093/-. We find no substance in the instant argument. The fact remains that at the end of the day that is the assessee is admittedly an entry operator as per Assessing Officer's assessment order. A coordinate bench of this tribunal in ITA No.2400/Kol/2013 in DCIT vs Chandra Prakash Borthia decided on 06.12.2017 holds that such a double addition of both peak sum as well commission income is not sustainable. Coupled with this, we reiterated that the assessee had himself declared undisclosed income of Rs.1,00,16,960/-. The CIT(A) therefore has rightly assessed him qua the income component only @ 0.3% in the total cash handled as per his finding in latter assessment year while restricting the impugned addition to the extent of Rs.46,59,897/- under challenge. We conclude in these facts and circumstances that

the Revenue's sole substantive grievance raised in the former assessment year's appeal IT(SS)A.74/Kol/2014 deserves to be declined. So is the outcome of its appeal which is rejected accordingly.

5. We now advert to assessee's appeal ITA No.1288/Kol/2013. His only grievance is that there is no material on record that the impugned undisclosed income of Rs.1,00,16,960/- pertains to the impugned assessment year only. Learned counsel invites our attention to the assessee's stand during the course of lower appellate proceedings in former assessment year that he had filed a detailed working sheets of the cash sums handled from 28.11.2008 to 09.05.2009 involving two financial years relevant to A.Y.2009-10 and 2010-11. This clinching plea has gone unrebutted from the Revenue's side. We repeat that the assessee/ entry operator already stands assessed qua undisclosed income from his cash operations to the extent of Rs.46,59,897/- in preceding assessment year (supra) involving accounting period upto 31.03.2009. We therefore direct the Assessing Officer to assess the balance component of Rs.53,57,063/- going by the tax payer's surrendered income during the course of search. Learned Authorised Representative argues on these lines only before us. We therefore partly accept assessee's grievance to restrict the impugned addition of Rs.1,00,16,960/- to the remaining figure of Rs.53,57,063/- only since the balance sum of Rs.46,59,987/- already stands assessed in preceding assessment year. The instant assessee's appeal No.1288/Kol/2013 is partly accepted accordingly.

6. This Revenue's appeal ITA(SS)A.74/Kol/2013 is dismissed whereas Assessee's appeal ITA No.1288/Kol/2013 is partly allowed.

Order pronounced in the Court on 27.06.2018.

Sd/-
[M.Balaganesh]
Accountant Member

Sd/-
[S.S.Godara]
Judicial Member

Dated : 27.06.2018.

[RG Sr.PS]

Copy of the order forwarded to:

1.Shri Pankaj Agarwal, 18, Giri Babu Lane, Room NO.2C, Kolkata-700012.

2.D.C.I.T., Central Circle-XXIII, Kolkata.

3. C.I.T.(A)- Central-III, Kolkata 4. C.I.T-Central-III, Kolkata

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

True Copy

By order,

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