

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

[Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member]

I.T.A. No. 571/Kol/2016

Assessment Year: 2011-12

Ravi Kumar Lohia.....Appellant

4th Floor

Block-A

60, Bangur Avenue

Kolkata - 700 055

[PAN : AYPL 9065 G]

Joint Commissioner of Income Tax, Range-49, Kolkata.....Respondent

I.T.A. No. 626/Kol/2016

Assessment Year: 2011-12

Joint Commissioner of Income Tax, Range-49, Kolkata.....Appellant

Ravi Kumar Lohia.....Respondent

4th Floor

Block-A

60, Bangur Avenue

Kolkata - 700 055

[PAN : AYPL 9065 G]

Appearances by:

Shri Subash Agarwal, Advocate, appeared on behalf of the assessee.

Shri Saurabh Kumar, Addl. CIT, DR, appearing on behalf of the Revenue.

Date of concluding the hearing : April 18th, 2018

Date of pronouncing the order : July 13th, 2018

ORDER

Per J. Sudhakar Reddy :-

These are cross appeals directed against the order of the Id. Commissioner of Income Tax (Appeals) - 15, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 04/02/2016, relating to Assessment Year 2011-12.

2. The assessee is an individual and is in the business of trading of cloth. The additions which are agitated in these cross-appeals have been discussed by the Assessing Officer at page 16, last paragraph of his order, which is extracted for ready reference:-

“Under the circumstances the so called audited accounts of the assessee is rejected u/s.14S. The assessee stated that he was working in Adhunik Corporation in their Sales & Marketing Division and was earning a commission about Rs.40,000/- per month which comes to Rs.4,80,000/- per year. He also stated that he has lost about Rs.7 lakh to Rs.8 lakh trying to obtain the loan. Obviously he has earned at least Rs.10 lakh from trading if he has the capacity to lose Rs.7 lakh to Rs.8 lakh in a year. Hence, the assessee's claim of net profit from trading of Rs.2,68,483/- as well as balance sheet and P.L. Account is rejected. The assessee has claimed an opening capital of Rs.43,76,680/-. Since he himself has admitted that he did not have any such magnitude of business introduction of this opening capital without any basis or fact for building up his capital account cannot be justified. Hence, the opening balance of the capital is treated as suppressed income during this year. The loss claimed by the assessee of Rs.7 lakh to Rs.8 lakh for obtaining bank loan cannot be allowed as a deduction as not allowable u/s.37(1) being illegal in nature and not related to any business expenditure”

2.1. On appeal, Id. First Appellate Authority held that the opening balance of capital of Rs.43,76,680/-, cannot be added as income during the year for the reason that the assessee had submitted audited accounts for the Assessment Year 2009-10 and the Assessing Officer had scrutinized the return of income for this Assessment Year 2009-10. As regards income from commission of Rs.4,80,000/-, the Id. CIT(A) confirmed the same based on the statement of the assessee. On adhoc addition of Rs.10 Lakhs, the Id. CIT(A) held that the assessee has provided accommodation entries to various parties amounting to Rs.9.25 Crores (approx.) and that he might have earned net commission of 1% on providing these entries. Thus, he had confirmed the addition.

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

4. We first take up the revenue's appeal in ITA No. 626/Kol/2016.

The Id. CIT(A), in our view, has rightly deleted the addition for the reason that the opening balance carried forward from the previous year cannot be treated as income of this year especially when, this opening balance is supported by evidence. The assessment for the Assessment Year 2009-10 was scrutinized and the assessee had not produced audited statement of accounts for that period. Hence we uphold the order of the Id. CIT(A) and dismiss the appeal of the revenue.

5. We not come to the appeal of the assessee in ITA No. 571/Kol/2016.

5.1. Ground No. 1, is against the addition of Rs.4,80,000/- as earned towards commission. In response to question no. 29, which is extracted by the Id. CIT(A) at page 3 of his order, the assessee has stated that he was earning commission of about Rs. 40,000/- per month from Adhunik Corporation @ Rs.100 per metric tonne. Based on this statement the addition was made. We find no infirmity in the order of the Id. CIT(A), wherein this addition was confirmed. The assessee has not retracted from this statement, nor has he brought on record any evidence to controvert the conclusion of the Id. CIT(A). Hence we dismiss this ground.

5.2. The second addition disputed is on adhoc addition of Rs.10 Lakhs as undisclosed profit. The assessee claims to have incorporated the figures in his financial statement for the purpose of presenting a rosy picture before the banking authorities to obtain a loan. The assessee had stated before the Assessing Officer that he would have lost Rs.7Lakhs to Rs.8 Lakhs in the year in this process of trying to obtain a bank loan. The Assessing Officer was of the opinion that the assessee would have earned at least Rs.10 Lakhs from trading in view of the fact that he has lost Rs.7Lakhs to Rs.8 Lakhs.

On appeal the Id. First Appellate Authority stated that the assessee has given accommodation entries to various parties to the tune of Rs.9.25 Crores (app.) and in that process he would have earned 1% commission. This finding of the Id. CIT(A) is not supported by evidence. The very ground of addition is changed by the Id. CIT(A). Both the Assessing Officer as well as the Id. CIT(A) have made this addition based on surmises and conjectures. Such an addition cannot be upheld. Hence, we delete the same.

6. In the result, appeal of the revenue is dismissed and the appeal of the assessee is allowed in part.

Kolkata, the 13th day of July, 2018.

Sd/-

[Aby T. Varkey]
Judicial Member

Dated : 13.07.2018
{SC SPS}

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Copy of the order forwarded to:

1. Ravi Kumar Lohia
4th Floor
Block-A
60, Bangur Avenue
Kolkata - 700 055

2. Joint Commissioner of Income Tax, Range-49, 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