

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
 (समक्ष) Before श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं/and श्री वसीम अहमद, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri Waseem Ahmed, AM]

I.T.A. No. 1407/Kol/2014
Assessment year: 2009-10

Ashoke Kumar Singhanian (PAN: ALUPS9226P)	Vs.	Commissioner of Income-tax-XX, Kolkata.
Appellant		Respondent

Date of Hearing	23.04.2018
Date of Pronouncement	18.07.2018
For the Appellant	S/Shri Surajit Samanta & Taraknath Jaiswal, Advocates
For the Respondent	Md. Usman, CIT, DR

ORDER

Per Shri A.T.Varkey, JM

This appeal filed by the assessee is against the revision order of Ld. CIT-XX, Kolkata dated 25.03.2014 for AY 2009-10 passed u/s. 263 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), which was dismissed by the Tribunal vide its order dated 08.07.2016.

2. Against the order of the Tribunal dated 08.07.2016, the assessee preferred an MA No. 19/Kol/2017 which was decided by the Tribunal vide order dated 22.11.2017 as under:

“7. The second point which was urged before us that the tribunal sustained the addition of Rs.14,11,763/- which was the unexplained portion of sums deposited in two bank accounts of the assessee. In the proceedings before the tribunal at the time of hearing of the appeal the ld. Counsel for the assessee had filed written submission and in the said submission it was urged that cash deposits to the extent of Rs.9,77,275/- would be explained by the additional capital account of the assessee in the balance sheet and the remaining sum would be explained by the withdrawals and deposits in the bank accounts. In the Miscellaneous application it has been submitted that though this plea was referred to in the order of the Tribunal in paragraph-14 of the order of the Tribunal the same was not dealt with on merits.

8. On this contention, We find that the assessee’s plea in this regard is set out in paragraph-14 of the order of the tribunal. It is also noticed that in the proceedings u/s 263 of the Act such a plea was not put forth by the assessee and therefore there was no occasion for the CIT to

examine this plea of the assessee. In these circumstances we are of the view that the plea of the assessee even though such a plea was not taken before the CIT ought to have been examined by the tribunal and failure to do so has resulted in an error apparent on the face of the record. Interest of justice would be served by recalling the order of the Tribunal dated 08.07.2016 to the limited purpose of examination of the aforesaid claim of the assessee. The registry is directed to fix the appeal for hearing for the limited purpose of adjudication of the plea of the assessee as set out in paragraph-14 of the order of the tribunal in usual course after notice to the parties.”

3. So the order of the Tribunal is recalled for adjudicating the limited plea of the assessee as aforesaid.

4. On merits the Ld. Counsel for the assessee submitted that the Ld. CIT has treated the difference between deposit in the bank and sale as income of the assessee; according to Ld. AR, the Ld. CIT erred in ignoring the fact that both the bank accounts were duly considered by the auditor while computing audit u/s 44AB and the balance sheet of said audit report also duly reflected the capital infused in the capital account to the tune of Rs 9,77,275.25. According to Ld. AR, the Ld. CIT also erred in overlooking the fact that there are cash deposit and cash withdrawal from these two bank accounts which do not affect the sales, purchases and profitability statement of the assessee. It was therefore submitted that out of Rs 14, 11,763/- i.e. difference noticed by the Ld. CIT of Rs 9,77,275.25 relates to addition in capital and rest are cash deposit and cash withdrawal which has zero affect on sale or purchase of the assessee and drew our attention to 2nd para of the assessment order which reads as under.

"The assessee derived income from business, remuneration, commission of LIC and income from other sources. The assessee maintained bank account with Axis Bank, Chinsurah Branch and SBL Mogra, Hooghly. Books of accounts produced and examined with reference to the details filed. "

5. For buttressing his contention, the Ld. AR drew our attention to page 8 of paper book wherein the Balance Sheet of assessee ending 31.03.2009 is placed. On perusal of the same, we note that in the capital account a sum of Rs.9,77,275.25 as father's contribution is reflected. So, according to assessee, this amount of capital was infused by the assessee for business and out of Rs.14.,11,763/- this sum has to be reduced and the rest of the amount are only cash deposit and withdrawal and the assessee given a chance before AO will be able to explain. We note that this plea of the assessee was not put forth before the Ld. CIT

so he also did not had an occasion to look into the merits of the contention. Though on principle we uphold the order of Ld. CIT, we note that the AO has given effect to the order of Ld. CIT. Therefore, sending this issue back to Ld. CIT is also not practical. So for the interest of justice and fair play, we are inclined to remand this issue back to AO for limited purpose as set out in para 2 (supra) for the de novo consideration of the AO. The AO is directed to adjudicate the plea of the assessee in respect of Rs.14,11,764/- which the Ld. CIT concluded that there was understatement of sales and directed addition and the claim of assessee about the capital infusion of Rs.9,77,275.25 and in respect of his claim of deposit and withdraw of the rest of the amount (Rs.14,11,763-Rs.9,77,275) in respect of difference of Rs.14.11,763/- in accordance to law after giving opportunity to the assessee So, this ground of assessee's appeal is allowed for statistical purposes.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 18.07.2018

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : `18th July, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Ashoke Kumar Singhania, Mogra, Tribeni Road, P.O. Mogra, Dist. Hooghly, Pin-712148.
2. Respondent – CIT-XX, Kolkata.
3. ITO, Ward-2(3), Hooghly.
4. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary