

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

(Before Sri J. Sudhakar Reddy, Accountant Member)

ITA No. 300/Kol/2017
Assessment Year: 2012-13

Sk. Md. Mahasin.....Appellant
Vill.-Baragrm
P.O.-Rasulpur
Dist-Burdwan-713 151
[PAN : AKBPM 8919 P]

Income Tax Officer, Ward 2(1), Burdwan.....Respondent

Appearances by:

Shri Soumitra Choudhury, Advocate, appeared on behalf of the assessee.
Shri Satyajit Mondal, Addl. CIT, appearing on behalf of the Revenue.

Date of concluding the hearing : June 28th, 2018

Date of pronouncing the order : July 20th, 2018

ORDER

Per J. Sudhakar Reddy, AM :-

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-Burdwan, (hereinafter the 'Ld. CIT(A)'), dt. 30/12/2016, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2012-13.

2. Though the assessee in all raised 9 grounds before us, he pressed only Ground No. 4, which reads as follows:-

"For that on the fact of the case, the Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the addition amounting to Rs.30,82,738/- as undisclosed profit from undisclosed bank accounts which is completely arbitrary, unjustified and illegal."

2.1. The ld. Counsel for the assessee relies on page 3 para 4 of the order of the Assessing Officer and submits that, he was a money lender and hence should be assessed at a percentage of turnover as commission received. He drew the attention of the Bench to para 3.5. page 5 of the assessment order and submitted that the profit element of 1.46% was brought to tax, though in this line of business, the commission ranges from 0.25% to 0.50%. For the proposition that in the case of such money lenders only a percentage of turnover, being commission should be brought to tax, he relied on the following case-law:

- *Kolkata 'A' Bench of the ITAT in the case of Murli Manohar Karnani vs. Income Tax Officer, Kolkata, being ITA No. 1099/Kol/2015; Assessment Year 2006-07, order dt. 06/10/2017.*

2.2. The Id. D/R, on the other hand, opposed the contention and submitted that the assessee is in the business of rice trading and has a license for the same and that the Assessing Officer considered all the facts and circumstances of the case as well as audited statements given and arrived at this estimate of income. He submitted that the GP Ratio shown by the assessee was 1.46% and it was this percentage which was adopted by the Assessing Officer. He disputed the claim of the assessee that the transactions in question were that of one Shri Bimal Kumar Lahoti of Assam and that the assessee only earns commission on the transactions made in his name, using his trade license. He pointed out that Shri Bimal Kumar Lahoti had, under oath admitted that only some transactions in ICICI Bank and Axis Bank and had denied the transactions in other banks.

2.2.1. In reply, the Id. Counsel for the assessee submits that Shri Bimal Kumar Lahoti had accepted that the assessee is a name lender and that he earns only commission. He further pointed out that the assessee does not have any bank account in Axis Bank.

3. After hearing rival contentions, we find that the assessee had maintained unaccounted bank accounts in ICICI Bank, HDFC Bank as well as in Punjab National Bank. The assessee claims that he is a name lender and the transactions actually belonged to one Shri Bimal Kumar Lahoti of Assam. Shri Bimal Kumar Lahoti under oath, admitted before the revenue authorities that the transactions in some of these bank accounts belong to him. The only difference is that the assessee claims that all the transactions in all the unaccounted bank accounts belonged to Shri Bimal Kumar Lahoti and whereas Shri Bimal Kumar Lahoti owns up only transactions in ICICI Bank and Axis Bank. The assessee has no bank account in Axis Bank. So, the correct position is to be ascertained.

4. In view of the above contradiction in facts, I am of the opinion that the transaction in all these unaccounted bank accounts have to be considered as the transactions of Shri Bimal Kumar Lahoti and the assessee should be taxed at the rate of 0.50% of the entire turnover in all these three unaccounted bank accounts. This in my view would meet the ends of justice. Hence the assessee gets part relief.

5. In the result, appeal of the assessee is allowed in part.

Kolkata, the 20th day of July, 2018.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 20.07.2018
{SC SPS}

Copy of the order forwarded to:

1. ***Sk. Md. Mahasin***
Vill.-Baragrm
P.O.-Rasulpur
Dist-Burdwan-713 151

2. ***Income Tax Officer, Ward 2(1), Burdwan***

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