

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH (SMC), KOLKATA  
[Before Shri P.M. Jagtap, AM]**

**I.T.A. No. 2035/Kol/2017  
Assessment Year : 2009-10**

**Shri Deepak Kumar Mantry.....Appellant**  
**Bikaner Building, 8/1, Lal Bazar Street,**  
**1<sup>st</sup> Floor, Suite No. 1A,**  
**Kolkata - 700 001.**  
**[Pan : ACXPR 9147 C]**

**ITO Ward 34(4) Kolkata.....Respondent**  
**110, Shanti Pally,**  
**Kolkata - 700 107.**

**Appearances by:**

*Shri B.K. Mantry, AR appearing on behalf of the Assessee.*

*Shri S.M. Tauheed, Addl. CIT appearing on behalf of the Revenue.*

Date of concluding the hearing : July 23, 2018

Date of pronouncing the order : September 28, 2018

**ORDER**

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) - 10, Kolkata dated 20.01.2015 whereby he confirmed the various additions made by the AO to the total income of the assessee.

2. The assessee in the present case is an individual who derives income from the business of trading as well as from salary and interest. The return of income for the year under consideration was filed by him on 11.02.2010 declaring a total income of Rs. 8,39,050/-. During the course of assessment proceedings, there was no compliance on the part of the assessee to the various notices issued by the AO fixing the case of the assessee for hearing. The Assessing Officer, therefore, was left with no option, but to complete the assessment to the best of his judgement u/s 144 on the basis of

material available on record. IN the assessment so completed vide an order dated for 19.12.2011, he disallowed the claim of the assessee for deduction on account of expenses of Rs. 3,51,492/- claimed against the interest income on the ground that his claim for the said expenses was not substantiated by the assessee. He also disallowed the claim of the assessee for deduction of Rs. 28,55,353/- u/s 54 on the ground that the said claim remained unverified. He also made a further addition of Rs. 4,61,959/- on account of expenses incurred by the assessee through his City Bank Credit Card by treating the same as unexplained.

3. Against the order passed by the AO u/s 144, an appeal was preferred by the assessee before the Ld. CIT(A) and after considering the submissions made by the assessee as well as material available on record, the Ld. CIT(A) confirmed the disallowance of Rs. 3,51,730/- made by the AO on the ground that the same represented interest paid by the assessee on the loan taken for personal purpose. He also confirmed the disallowance of Rs. 28,55,350/- made by the AO on account of assessee's claim for exemption u/s 54 on the ground that the investment made by the assessee was in purchase of land only and there was nothing brought on record by the assessee to show that any residential house was constructed on the said land. He also confirmed the addition of Rs. 4,61,959/- made by the AO on account of credit card expenses on the ground that the said expenses were personal in nature. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal on the following ground:

*"1. That inspite of all the documents submitted at the remand report stage, the amount of Rs. 3,51,491/- paid on account of interest by the assessee was confirmed as addition.*

*2. That inspite of providing the details of all the credit card payments, accounted for in books of accounts and shown at the remand report stage the amount of Rs. 4,61,959/- paid through credit cards were confirmed as addition.*

*3. That inspite of all the document of transactions for purchase and sale of residential properties being produced both at the remand report stage as well as at the time of appeal hearing before the Ld. CIT(A) – 10, the amount of Rs. 25,55,353/- being capital gain due to residential house switch over was confirmed as disallowed gain."*

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As regards the issue involved in Ground No. 1 relating to the disallowance of Rs. 3,51,491/- made by the AO and confirmed by the Ld. CIT(A) on account of interest expenditure, the learned counsel for the assessee has invited my attention to the relevant balance sheet of the assessee placed at page no 102 of the Paper Book to show that all the loans taken in personal name were given by the assessee to the company on interest. He contended that the interest received by the assessee from company was offered to tax under the head 'income from other sources and therefore, the interest paid on personal loan is eligible for deduction u/s 57(iii). He has contended that since this claim was not specifically raised by the assessee before the Ld. CIT(A), the matter may be sent back to the AO for verifying the claim of the assessee. Since the learned DR has not raised any objection in this regard, I restore this issue to the file of the AO for considering the claim of the assessee for deduction on account of interest u/s 57(iii) afresh after necessary verification. Ground No. 1 of the assessee's appeal is accordingly treated as allowed for statistical purpose.

5. As regards the issue involved in Ground No. 2 relating to the disallowance of Rs. 4,61,959/- made by the AO and confirmed by the Ld. CIT(A) on account of credit card expenses, the learned counsel for the assessee has invited my attention to the details of the credit card expenses incurred by the assessee as placed on page no 57 of his Paper Book to point out that personal expenses incurred by the assessee through credit card were debited to the drawing allowance and only the expenses relating to his business were claimed as deduction. He has contended that this matter can also be sent back to the AO for verification. Since the learned DR has not raised any objection in this regard, I restore this issue also to the file of the AO for deciding the same afresh after verifying the claim of the assessee that the credit card expenses claimed as deduction were incurred wholly and exclusively for the purpose of business. Ground No. 2 of the assessee's appeal is accordingly allowed.

6. As regards the issue involved in Ground No. 3 relating to the disallowance made by the AO and confirmed by the Ld. CIT(A) on account of assessee's claim for exemption u/s 54, the learned counsel for the assessee has invited my attention to the occupancy certificate dated 23.03.2009 issued by the concerned authority to show that a residential house was duly constructed by the assessee on the land purchased by him. He has also invited my attention to the balance sheet of the assessee as on 31.09.2009 to show that the value of land including the construction expenses was duly reflected in the said balance sheet. He has contended that this claim of the assessee now specifically made before the Tribunal may also be verified by the AO.

Since the learned DR has not raised in this regard, I restore this issue to the file of the AO for deciding the same afresh after verifying the claim of the assessee that a residential house was constructed on the land during the stipulated period in order to claim exemption u/s 54. Ground No. 3 of the assessee's appeal is accordingly treated as allowed for statistical purpose.

**7. In the result, the appeal of the assessee is treated as allowed for statistical purpose.**

Order Pronounced in the Open Court on 28<sup>th</sup> September, 2018.

Sd/-

(P.M. Jagtap)  
ACCOUNTANT MEMBER

**Dated: 28/09/2018**

Biswajit, Sr. PS

Copy of order forwarded to:

1. Shri Deepak Kumar Mantry, Kolkata.
2. ITO Ward 34(4), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.  
ITAT, Kolkata