

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

(Before Sri S.S. Godara, Judicial Member & Sri M. Balaganesh, Accountant Member)

ITA No. 363/Kol/2016
Assessment Year: 2009-10

Shri Dilip Kundu.....Appellant
1, Pannajhil, Noapara
Barrackpore Road
Barasat
Kolkata - 700 125
[PAN : AGXPK 0593 K]

Vs.

Assistant Commissioner of Income Tax, Circle-50, Kolkata.....Respondent

Appearances by:

Shri Soumitra Choudhury, Advocate, appeared on behalf of the assessee.
Shri Sankar Halder, Addl. CIT D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : December 24th, 2018

Date of pronouncing the order : January 1st, 2019

ORDER

Per Bench :-

This is an appeal preferred by the assessee against the order of Commissioner of Income Tax (Appeals) - 15, Kolkata, (hereinafter referred to as the "Ld. CIT(A)"), dated 23/12/2015, arising out the assessment order of the Assessing Officer (hereinafter referred to as the "Ld. AO"), dt. 30/12/2011, passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), relating to Assessment Year 2009-10.

2. The only effective issue to be decided in this appeal is whether the ld. CIT(A) was justified in upholding the addition of Rs.43,24,749/-, deposited in savings bank account no. 1439, maintained with Canara Bank, Barasat Branch, in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee is an individual and a whole time Director in a Private Limited Company from where he received Director's remuneration. The assessee is also the sole proprietor of two firms i.e., M/s Unicorn Trading & Co. and M/s Rezu Enterprises, which are engaged in wholesale and retail trading of oil and building materials and wholesale and retail trading of cement and other building materials respectively. The assessee is also partner in a partnership firm. The net taxable income declared by the assessee for the year under appeal was Rs.39,23,316/-. The ld. Assessing Officer observed that he assessee has maintained

undisclosed bank account in Canara Bank, Barasat Branch, wherein certain cash deposits were made for which no satisfactory explanation was offered by the assessee during the course of assessment. Accordingly, the Assessing Officer made an addition of Rs.36,98,000/-, thereon. Before the Id. CIT(A), a remand report was called for from the Id. Assessing Officer. In the said remand report the Id. Assessing Officer observed that the assessee had maintained savings bank account bearing no. 1439 with Canara Bank, Barasat Branch, which was undisclosed and in the said bank, total deposits to the tune of Rs.43,24,749/-, were made and it was also pleaded by the Id. Assessing Officer that this sum of Rs. 43,24 749/- should have been added instead of Rs.36,98,000/-. The assessee stated that this account was used for the purpose of business of the petrol pump of the assessee and accordingly only the peak credit balance should be brought to tax thereon. The assessee came forward to offer the peak credit balance of Rs.20,67,518/-, with regard to this bank account before the Id. CIT(A). The Id. CIT(A) on verification of the details of the said bank account observed that the payments/withdrawals made from such bank account were towards payments to finance companies like GE Capital, Cholamandalam or Ashok Leyland Finance, LIC payments etc. Hence, this cannot be linked with the business of the assessee. Accordingly, he rejected the peak credit theory offered by the assessee and proceeded to enhance the addition towards total deposits in the said bank account to the tune of Rs.43,24,749/-.

4. Aggrieved, the assessee is in appeal before us.

5. We have heard rival submissions. The Id. AR, submitted before us that the assessee be given one more opportunity before the Id. Assessing Officer to explain the contents of the bank account to the satisfactions of the Id. Assessing Officer. The Id. DR, vehemently objected to the same.

5.1. In these peculiar facts and circumstances of the case of the assessee before us, we deem it fit and appropriate, in the interest of justice and fairplay, to remand this issue to the file of the Id. Assessing Officer for *de novo* adjudication that if the said transactions in Canara Bank Savings Account, was used for personal dealership or business of the assessee, then the peak credit balance thereon or the net profit at an estimated rate as was done by the Id.

CIT(A), in respect of other bank accounts, in earlier Assessment Year should be made. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

Kolkata, the 1st day of January, 2019.

Sd/-
[S.S. Godara]
Judicial Member
Dated : 01.01.2019
{SC SPS}

Sd/-
[M. Balaganesh]
Accountant Member

Copy of the order forwarded to:

1. ***Shri Dilip Kundu***

***1, Pannajhil, Noapara
Barrackpore Road
Barasat
Kolkata - 700 125***

2. ***Assistant Commissioner of Income Tax, Circle-50, Kolkata***

3. CIT(A)-

4. CIT- ,

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

True Copy
By Order

Assistant Registrar
ITAT, Kolkata Benches