

*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

**ITA No.2025/Kol/2018**  
Assessment Year:2012-13

Rajendra Prasad Bothra, 134/4, Mahatma Gandhi Road, 3 <sup>rd</sup> , Floor, Jorosanko, Kolkata-700007 [PAN No.ADIPB 8942 M]	बनाम/ V/s.	ACIT, Circle-43 3, Govt. Place, 2 <sup>nd</sup> Floor, Room No.2/34A, Kolkata-700 001
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri N.M. Bhansali, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri S. Venkatramani, ACIT- SR-DR
सुनवाई की तारीख/Date of Hearing	22-01-2019
घोषणा की तारीख/Date of Pronouncement	31-01-2019

**आदेश /O R D E R**

This assessee's appeal for assessment year 2012-14, arises against the Commissioner of Income-tax (Appeals)-13, Kolkata's order dated 04.06.2018 passed in case No.18/CIT(A)-13/Cir-43/Kol/2015-16 involving proceedings u/s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's former substantive grievance challenges correctness of both the lower authorities action invoking sec. 40A(3) disallowance amounting to ₹1,18,118/- alleging cash payment of business expenditure. Suffice to say, at the outset, there is no dispute that the assessee has made the impugned cash payments. His only case during the course of hearing is that the said cash payment do not exceed the statutory prescribed limit of ₹20,000/- as applicable in the impugned assessment year. Learned

counsel invites my attention to the paper book comprising details of all such payment figures. The Revenue fails to dispute that sec. 40A(3) disallowance provision comes into play when the assessee incurs any expenditure in respect of his payment or aggregate of payment made to a person exceeding of ₹20,000/- in cash. Neither the Assessing Officer nor CIT(A) have dealt with this clinching aspect for coming to the conclusion that the assessee has made his cash payment exceeding to ₹20,000/- “*in a day*”. I therefore restore the instant former issue back to the Assessing Officer to finalize necessary verification exercise and re-compute the impugned disallowance only qua payment or aggregate of payments made to a payee exceeding ₹20,000/- in a day. Needless to say, assessee shall be afforded adequate opportunity of hearing. This former substantive ground is taken as accepted for statistical purposes.

3. The assessee’s latter substantive ground pleaded in the instant appeal challenges correctness of both the lower authorities’ action making the estimated disallowance @ 10% various expenses claim in the nature of travelling and conveyance, motor car, depreciation on motor car, office expenses, collection charges, telephone, mobile & Fax, general expenditure and sales promotion involving varying sums. I find that neither the lower authorities have doubted genuineness thereof in principle nor they have drawn any comparison of the corresponding heads in any preceding or succeeding assessment years. The fact also remains that assessee has not been able to prove all head of expenditure by way of cogent supporting evidences. I therefore hold that the impugned estimated disallowance(s) @ 5% only than 10% under challenge would meet ends of justice with a rider that same shall not be treated as a precedent. This second substantive grievance is partly accepted.

4. This assessee’s appeal is partly allowed in above terms.

Order pronounced in open court on 31/01/2019

Sd/-  
(S.S. Godara)  
Judicial Member

Kolkata,

\*Dkp/Sr.PS

दिनांक:- 31/01/2019

कोलकाता

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Rajendra Prasad Bothra, 134/4, Mahatma Gandhi Road,  
3<sup>rd</sup> Floor, Jorasako, Kolkata-700 007
2. प्रत्यर्थी/Respondent-ACIT, Cir-43, 3 Govt. Place, 2<sup>nd</sup> Fl, R.No.2/34A, Kolkata-001
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।