

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

Before: **Shri J. Sudhakar Reddy, Accountant Member and
Shri S.S. Viswanethra Ravi, Judicial Member**

I.T.A No.1378/Kol/2016
(Assessment Year: 2010-11)

Ashok Sharma
[PAN:AKJPS0470K]

Appellant

Vs

ITO, Ward-47(4), Kolkata

Respondent

For the Appellant : Shri Miraj D. Shah, FCA (AR)
For the Respondent : Shri C. J. Singh, JCIT, Sr.DR

Date of hearing : 07.02.2019
Date of pronouncement : 03.05.2019

ORDER

PER Shri S.S. Viswanethra Ravi, JM:

This appeal by the assessee against the order dated 15.04.2016 passed by the Commissioner of Income Tax (Appeals)-18, Kolkata ['CIT(A)'] for Assessment Year 2010-11.

2. Ground No.1 raised by the assessee is general in nature and hence requires no adjudication.

3. Ground Nos.2 & 3 raised by the assessee against the order of CIT(A) challenging the confirmation of additions made on account of undisclosed receipts in the facts and circumstances of the case. The contention of the Id. AR, that the assessee is a retired army officer and engaged in the business activities of security agency. In the similar identical facts the 'SMC' Bench of this Tribunal in the case of *Sri Asok Kumar Pal in ITA No.647/Kol/2014* decided the issue by placing reliance in the case of M/s Royal Security Guarding (P) Ltd.; G.A. No.3488 of 2013 dated 20.07.2014 of Hon'ble Calcutta High Court, wherein the 'SMC' Bench held that the entire contract receipt

cannot be added as income and all expenses including the expenses relating to undisclosed receipts from execution of contract job work has to be taken into consideration while arriving at the total income of the assessee. In the such circumstances, the 'SMC' Bench of the Tribunal held that the gross profit @31.75% is to be calculated. In the present case, the Id. AR, taking into consideration of the facts and circumstances of the present case, submits that gross profit 18.82% may be adopted for the undisclosed receipts as found by the A.O and confirmed by the CIT(A). The Id. DR reported no objection for the said rate of gross profit. Therefore, taking into consideration of the facts and circumstances of the case and the order of the 'SMC' Bench of this Tribunal, the matter is remanded to the file of A.O for calculation of gross profit @18.82% to the gross receipt. Thus, Ground Nos.2 & 3 raised by the assessee are allowed for statistical purposes.

4. Ground Nos.4 & 5 raised by the assessee challenging the action of CIT(A) in upholding the additions on account of loan received.

4.1 Heard both parties and perused the materials available on record. It is noted from the record that the A.O on perusal of the balance sheet observed that the assessee has obtained unsecured loan and an advance to an extent of Rs.5,00,000/- & Rs.3,70,000/-. The assessee was requested to show-cause as to why the said loan at advance should not be treated as bogus considering the same as income from undisclosed sources. For not giving satisfactory explanation and for not proving the genuineness, creditworthiness of the transactions, the A.O added the said amount to the total income of the assessee. It is noted from the impugned order, the assessee could not prove genuineness, creditworthiness of the transactions in respect of parties from whom he claimed to have obtained loans and advances. But however it is observed that the assessee has provided loans confirmations, PAN and names of the parties before the

authorities. Before us, the Id. AR contends that when the gross profit is accepted by placing reliance on the decision of Hon'ble High Court of Calcutta and to the extent of expenditure that telescoping may be applied to the amounts involved in Ground Nos.4 & 5. In our opinion, it is open to the assessee that the loans and advances had been brought into the business activity resulting into only one addition. While dealing with Ground Nos.2 & 3 in the aforementioned paras, we directed the A.O to adopt gross profit @18.82% and the said gross profit must have arisen from conducting business involving the expenditure incurred out of that income, and therefore, method of telescoping is required to be applied in such circumstances. We deem it proper to remand the matter to the file of A.O for telescoping the loans and advances received by the assessee from the parties. Thus, Ground Nos.4 & 5 are allowed for statistical purposes.

5. Ground No.6 is relating to challenging the action of CIT(A) in upholding the additions on account of unexplained cash credit.

5.1 Heard both parties and perused the materials available on record. The contention of the Id. AR is that the assessee deposited cash withdrawals again in the same bank in the same year. No evidence showing the same were before the A.O and CIT(A). Before us, a chart showing deposits of cash withdrawals filed in the Paper Book at page no.60 to 84 and prayed to remand the matter to the file of A.O for his verification. The Id. DR reported no objection in remanding the matter to the file to the A.O for his fresh consideration. Admittedly, there was no material evidence before the A.O to arrive at the conclusion to the issues raised in Ground No.6. Thus taking into consideration, the submissions of Id. AR and DR and the material evidence placed at Paper Book from page 60 to 84, we remand the matter to the file of A.O for his fresh adjudication. The assessee is at liberty to file evidences, if any, in support of his claim.

Thus Ground No.6 raised by the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 03.05.2019.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Sd/-
[S.S. Viswanethra Ravi]
Judicial Member

Dated : 03.05.2019

Place : Kolkata

RS, Sr.PS

Copy of the order forwarded to:

1. Appellant –Ashok Sharma, C/o D. J. Shah & Co, Kalyan Bhavan, 2 Elgin Road, Kolkata – 700020.
- 2 Respondent – ITO, Ward-47(4), Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

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By order,

Assistant Registrar,
ITAT, Kolkata