

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

BEFORE SHRI A.T. VARKEY, JM & DR. A.L.SAINI, AM

आयकर अपीलसं./ITA No.373/Kol/2017

(निर्धारणवर्ष / Assessment Year: 2012-13)

Panchanan Jana	Vs.	ITO, Ward-27(3), Haldia
Bhuban Kalua, Tamluk, Purba Medinipur, West Bengal-721627		
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. : ACSPJ 7683 C		
(Appellant)	..	(Respondent)

Appellant by : Shri Subash Agarwal, Advocate, Shri Atin Das & Sugata Das, Advocate

Respondent by : Shri Supriyo Pal, JCIT, Sr. DR

सुनवाई की तारीख/ Date of Hearing : 23/10/2019

घोषणा की तारीख/Date of Pronouncement : 22/11/2019

आदेश / O R D E R

Per Dr. A. L. Saini, AM:

The captioned appeal filed by the assessee , pertaining to assessment year 2012-13, is directed against the order passed by the Commissioner of Income Tax (Appeal)-7, Kolkata, in appeal no. 79/CIT(A)-7/Kol/Wd-27(3)/16-17, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 30.03.2015.

2. The grounds of appeal raised by the assessee are as follows:

- 1. For that on the facts and circumstances of the case, the ld. CIT(A) was not justified in confirming the addition of Rs. 92,51,789/- made by the A.O. on account of alleged difference between the proprietor's capital account declared in the original return and the revised return pertaining to A.Y. 2011-12.*
- 2. For that the ld. CIT(A) was not justified in giving directions to the A.O. to reopen the assessments of the assessee for the A.Ys. 2010-11 and 2011-12 for protective addition on account of alleged brought forward built up capital.*
- 3. For that on the facts and in the circumstances of the case, the ld. CIT(A) was not justified in confirming the addition of Rs. 80,78,700/- made by the A.O. on account of payments made to M/s Khadim India Ltd. by wrongly invoking the provisions of sec. 40A(3) of the Act.*
- 4. For that on the facts and in the circumstances of the case, the ld. CIT(A) was not justified in confirming the addition of Rs. 3,20,000/- made by the A.O. on account of alleged undisclosed contractual income.*
- 5. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.*

3. Ground Nos. 1 and 2 raised by the assessee relate to addition of Rs. 92,51,789/- made by the Assessing Officer on account of alleged difference between the proprietor's capital account declared in the original return and revised return pertaining to A.Y. 2011-12.

4. At the outset itself, the ld. Counsel for the assessee brought to our notice that this addition has already been made by the Assessing Officer in the A.Y. 2010-11 therefore, to make the addition in the current assessment year is tantamount to double addition. The ld. Counsel took us through the previous year's assessment order dated 29.12.2017, for A.Y. 2010-11 wherein the Assessing Officer has observed as follows:

“The assessee has filed his original return of income for the assessment year 2010-11 belatedly on 22.12.2010 declaring total income of Rs. 7,81,510/-. Thereafter, the assessee has also filed an another return on 31.03.2012 declaring total income of Rs. 8,31,510/-. Since the original return was filed belatedly, the return filed on 31.03.2012 was treated as non-est. By filing this return treated as non-est return, the assessee has enhanced his capital of Rs. 90,56,197/- (Rs. 1,22,20,494/- minus Rs. 31.64,297/- shown in original return). Taking cue from that non-est return for A.Y. 2010-11 capital account is drawn Rs. 1,31,15,571/- in the balance sheet as on 31-03-2012. Thus, the increase in capital of Rs. 92,51,789/- was added to the total income of the assessee for A.Y. 2012-13 in the assessment u/s 143(3) dated 30.03.2015. The assessee preferred the appeal against the said order u/s 143(3) dated 30.03.2015 and ld. CIT(A)-7, Kolkata vide his order dated 17.01.2017 has confirmed the said addition with a direction:

The A.O. is directed to reopen the assessment of the appellant of the A.Y. 2010-11 and A.Y. 2011-12 for protective addition of the brought forward built up capital of the appellant in the hands of the appellant in the protective assessment to be made for the A.Ys. 2010-11 and 2011-12 as the appellant has claimed that capital of Rs. 1,31,15,571/- had been carried over from the previous years relevant to the A.Ys 2010-11 & 2011-12.

Accordingly, the same is rejected. Consequently, the assessee has failed to substantiate the source of enhanced capital of Rs. 90,56,197/- during the F.Y. 2009-10 relevant to the A.Y. 2010-11. Accordingly, the same is added to the total income of the assessee. Penalty proceedings u/s 271(1)(c) is also initiated separately for concealment of income.

Since the addition on this score has already been made substantively in assessment u/s 143(3) dated 30.03.2015 for A.Y. 2012-13 and following the direction of ld. CIT(A)-7, Kolkata, dated 17.01.2017, the addition made in this protective assessment is protective in nature.”

5. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials available on record. We note that the assessee introduced fresh capital in assessment years 2010-11 and 2011-12. The increased capital balance of Rs. 92,51,789/- is coming as a brought forward balance from previous years. The said increase in capital of Rs. 92,51,789/- was added to the total income of the assessee for A.Y. 2012-13 in the assessment u/s 143(3) dated 30.03.2015. The assessee preferred appeal against the said order u/s 143(3) dated 30.03.2015 and ld. CIT(A) confirmed the said addition with a direction to Assessing Officer that he should make protective assessment for the assessment years 2010-11 and 2011-12. Accordingly, the Assessing Officer made

protective assessment in A.Y. 2010-11 and 2011-12. However, the Assessing Officer also made substantive assessment in the A.Y. 2012-13, which amount to double addition. We note that assessment order for A.Y. 2010-11 dated 29.12.2017 passed by A.O u/s 144 /147 of the Act, clearly speaks that addition of Rs. 90,56,157/- was made on protective basis. In the assessment order for A.Y. 2012-13 passed u/s 143(3) dated 30.03.2015, the addition of Rs. 90,56,157/- was made on substantive basis. Thus, in the A.Y. 2010-11 the addition was made on protective basis whereas in A.Y. 2012-13 the addition was made on substantive basis, hence it is double addition made by Assessing Officer which is not tenable in law; therefore, we delete the addition of Rs. 93,51,789/- made by Assessing Officer. These Ground Nos. 1 and 2 raised by the assessee are allowed.

6. Ground no. 3 raised by the assessee relates to addition of Rs. 80,78,700/- made by the Assessing Officer on account of payments made to M/s Khadim India Ltd.

7. When this issue was called out for hearing the Id. Counsel for the assessee invited our attention towards the additional evidences submitted by the assessee in respect of payment made otherwise than by account payee cheques which exceeds by Rs. 20,000/- the threshold limit prescribed by the provisions of section 40A(3) of the Act. We have gone through the additional evidences submitted by the Id. Counsel for the assessee and we are of the view that these additional evidences were never examined by the lower authorities therefore, we are of the view that this issue needs to be sent to the file of the Assessing Officer for fresh adjudication. The Id. Counsel for the assessee submitted before us the reasonable cause for non-production of these additional evidences before the lower authorities which is given below:

a) The Assessing Officer stated at page 6 of the assessment order that the entire payment of Rs. 80,78,700/- was made in cash by the assessee in violation of section 40A(3) as per the confirmation received from M/s Khadim India Ltd.

b) The A/R who appeared before the Id. CIT(A) made general submissions before him stating that since the transactions are genuine, section 40A(3) would not apply.

c) The assessee and the A/R bonafidely believed that the version of the A.O. as stated in the assessment order is correct. It is categorically stated that the Assessing Officer never placed before the assessee any letter allegedly obtained from M/s Khadim India Ltd. where they allegedly stated that the entire payments were received in cash in violation of section 40A(3).

d) The assessee approached M/s Khadim India Ltd. at the advice of the Counsel representing his case before the ITAT to ascertain the exact details of payments made in cash. Accordingly, the assessee approached M/s Khadim India Ltd.

e) The said M/s Khadim India Ltd. thereupon examined their records and then issued the certificate in question wherein they have certified the amount received by them in cash.

Therefore, we note that the assessee was prevented by sufficient cause for non-production of these evidences before the lower authorities, hence we set aside the order of the Id. CIT(A) on this particular issue and remit the issue back to the file of the Assessing Officer for de novo examination and to adjudicate the issue in accordance with law. Therefore, Ground No. 3 raised by the assessee is allowed for statistical purposes.

8. Ground no. 4 raised by the assessee relates to addition of Rs. 3, 20,000/- made by the Assessing Officer on account of undisclosed contractual income.

9. At the outset itself, the Id. Counsel for the assessee pointed out that this is undisclosed contractual income of the assessee. The Id. Counsel further argued that said undisclosed contractual income is related to the assessee's business therefore only net profit element is to be disclosed instead of making addition of the entire sum of Rs. 3,20,000/-. The Id. Counsel also submitted to the Bench that average net profit rate of the assessee consisting previous year and current year is at 9% therefore the maximum addition if any, to be made should not exceed 9% of Rs. 3,20,000/- which comes to Rs. 28,800/-. The Id. D.R. for the Revenue has fairly agreed that only net profit element is to be added.

10. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other

materials available on record. We note that the Hon'ble Calcutta High Court in the case of Ranicherra Tea Co. Ltd. reported in 207 ITR 979 held that only profit element that is net profit rate should be added to the total income of the assessee. Therefore, keeping in mind the principle of natural justice and fair play, we direct the Assessing Officer to disallow 9% of undisclosed contractual income of Rs. 3,20,000/- which comes to Rs. 28,800/-. Thus, ground raised by the assessee is partly allowed.

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

Order pronounced in the Court on 22.11.2019

Sd/-
(A.T. VARKEY)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक/ Date: 22/11/2019
(SB, Sr.PS)

Copy of the order forwarded to:
1. Panchanan Jana
2. ITO, Ward-27(3), Haldia
3. C.I.T(A)-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

4. C.I.T.- Kolkata.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches