

**IN THE INCOME TAX APPELLATE TRIBUNAL “A-SMC” BENCH: KOLKATA**  
[Before Shri A. T. Varkey, JM ]

<b>I.TA No. 1702/Kol/2019</b> A.Y 2008-09 <b>I.TA No. 1703/Kol/2019</b> A.Y 2011-12		
Anil Chandra Saha PAN: ALPPS2798P	Vs.	I.T.O., Ward 4(3), Kolkata
Appellant		Respondent

Date of Hearing	19-12-2019
Date of Pronouncement	28.02.2020

For the Appellant	Shri Subash Agarwal, Advocate, Id.AR
For the Respondent	Shri Jayanta Khanna, JCIT, Id. Sr.DR

**ORDER**

These appeals are preferred by the assessee against the separate orders of Ld. CIT (Appeals) , 2, Kolkata which are both dated 13-05-2019 for the assessment years 2008-09 and 2011-12.

ITA No. 1702/Kol/2019 A.Y 2008-09 ( by the assessee)

2. First of all I will consider the appeal in ITA No. 1702/Kol/2019 for the A.Y 2008-09. In this appeal the assessee has raised the following revised grounds of appeal:-

*1. For that the Ld. CIT(A) ought to have quashed the reassessment proceedings since the reassessment framed vide order dated 25.02.2016 is bad in the eyes of law.*

*2. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the action of the Ld. A.O. in making an estimated addition of Rs.1,00,000/-, being 5% of the alleged turnover of Rs.20,00,000/- by wrongly treating the same as deemed income on notional basis.*

*3. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.*

3. The ld. AR of assessee has not pressed ground no. 1. Hence, the same is dismissed.

4. Ground no.2 of revised grounds of appeal is against the action of the Id. CIT(A) in confirming the action of the AO in making an estimated addition of Rs. 1,00,000/-, being 5% of the alleged turnover of Rs.20,00,000/-.

5. Brief facts of the case as noted by the AO are that he got information from ITO ( I & C1)-III, Kolkata that the assessee had made cash deposits in Vijaya Bank, Salt Lake Branch (a/c No. 722601011000074) in the FY (2010-11) relevant AY (2011-12) under consideration. Therefore, he issued summons u/s. 131 of the Income-tax Act, 1961 ( in short, hereinafter, the 'Act') and found that the assessee had deposited and withdrawn cash from time to time; and was having cash balance of Rs. 66,40,614/- as on 01-04-2007. When asked by the AO to explain these cash transactions, the assessee replied that he frequently deposited/withdrew the cash from his said saving bank account. According to assessee, in order to buy an immovable property he required loan from the bank and as per the advice of the bank (verbal) in order to avail the loan facility he was required to show sufficient bank balance and for that he ventured into the frequent deposit/withdrew of his money in order to inflate the bank balance to avail house building loan/purchase of an immovable property. The AO notes that this explanation of assessee is not supported by any evidence because the assessee has not availed any loan. Therefore, he was of the opinion that the difference in the opening balance and closing balance need to be treated as turnover of the business of the assessee, which assessee has not disclosed. Thereafter, he works out the difference at Rs. 22,62,226/- [ Rs. 34,97,597 – Rs.12,35,371/-]. Thereafter, he rounded off the difference to Rs. 20,00,000/- and made the addition of Rs. 1,00,000/- i.e 5% of Rs. 20,00,000/-. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who was pleased to confirm the same. Aggrieved, the assessee is before us.

6. After hearing both the parties and perusing the material available on record, I note that the assessee is a salaried person, who is indulging frequently in depositing and withdrawing cash from his bank account. According to the Id. AR, the assessee had opening balance as on 1-4-2007 Rs. 66,40,614/-, which he had been frequently withdrawing and thereafter depositing the same. For that activity he has been hauled up by the department and the AO has erred in taking note of even the correct

difference in opening and closing balance while making the notional/estimated addition, which according to him is not sustainable in the eyes of law.

7. The Id. DR vehemently supported the actions of the AO and the Id. CIT(A). He does not want to interfere with the impugned order. I note that the assessee had an opening balance on 1/4/2007 to the tune of Rs.66,40,614/- and closing balance as on 31-03-2008 to the tune of Rs. 72,07,699/-. Therefore, the AO has erred in taking note of the correct opening/closing balance, which is discernible at pages 8 to 19 of the P/b. The difference between the opening/closing balance is of Rs. 5,67,083/-. Therefore, using the same methodology adopted by the AO, I am of the opinion that 5% of Rs.5,67,083/- i.e Rs.28,354/- only need be sustained. Therefore, I set aside the impugned order of the Id. CIT(A) and direct restricting the addition at Rs. 28,354/- in place of Rs 1 lakhs as made by the AO and confirmed by the Id.CIT(A).

8. Coming to AY 2011-12 (ITA No. 1703/Kol/2019), I note that the AO has again made the addition based on the frequent deposits and withdrawal made by the assessee to the tune of Rs. 89,76,557/- and this according to him is the turnover of the assessee's undisclosed business and therefore, made an estimated addition of 5% of Rs. 89,76,557/-, which comes to Rs.4,48,827/- (rounded to Rs.4,45,000/-). Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who was pleased to confirm the same. Aggrieved, the assessee is before us.

9. I note that in this AY, the assessee had opening balance of Rs. 54,76,621/- and a closing balance in the cash book of Rs. 8,85,445/-. The AO has made the addition taking note of the cash deposits of Rs.89,76,557/- and has made an estimated addition to 5% on it i.e at (Rs.4,48,827/-, rounded to Rs.4,45,000/-). According to me, the AO could not have made any addition simply because the assessee has made frequent deposits and withdrawal of his own money. I note there is no prohibition/bar in law regarding frequent withdrawal/deposit of the amount from his disclosed bank account. It is noted that the bank account from which the assessee had deposited/withdrawn the amounts as alleged by the AO is his disclosed bank account. It is also noted that the AO has not been able to show that the money so withdrawn by the assessee has been utilised for making any expenditure/investment. It is also not the case of the AO that the assessee had any other sources of income. In such a scenario, I am of the considered opinion that no addition in this assessment year was warranted.

Therefore, I am inclined to delete the impugned addition of Rs. 4,45,000/- made on this issue and allow this ground of assessee's appeal.

10. In the result, the appeal of assessee (ITA No. 1702/Kol/2019 for the AY 2008-09 is partly allowed and appeal of assessee (ITA No. 1703/Kol/2019 for the A.Y 2011-12) is allowed as stated above.

Order Pronounced in the Open Court on 28-02-2020

Sd/-  
A.T. Varkey  
Judicial Member

Dated : 28-02-2020

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee: Shri Anil Chandra Saha HB 100, Salt Lake City, Sector-3, Salt Lake, Kolkata-700 106.
2. Respondent/Revenue: The I.T.O., Ward 4(3), P-7 Chowringhee Sq., 8<sup>th</sup> Fl., Kolkata-700 069.
3. CIT,
4. CIT(A), Kolkata.
5. DR, Kolkata Benches, Kolkata

\*\*PP/SPS True Copy By By Order Assistant Registrar  
ITAT Kolkata