

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
[Before Shri J. Sudhakar Reddy, Accountant Member]**

**I.T.A. No. 1573/Kol/2019
Assessment Year: 2009-10**

Shamik Raha.....Appellant
[PAN: AHDPR 7307 K]

Vs.

ITO, Ward-26(4), Kolkata.....Respondent

**I.T.A. No. 1574/Kol/2019
Assessment Year: 2010-11**

ITO, Ward-26(4), Kolkata.....Appellant

Vs.

Shamik Raha.....Respondent
[PAN: AHDPR 7307 K]

Appearances by:

Sh. Manish Tiwari, AR., appeared on behalf of the Assessee.

Sh. Dhrubajyoti Ray, JCIT, Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : March 16th, 2020
Date of pronouncing the order : June 18th, 2020

ORDER

Per J. Sudhakar Reddy, AM:

These are cross appeals filed by the assessee and the Revenue, respectively directed against the order of the Commissioner of Income Tax (Appeals)-7, Kolkata ['CIT(A)' for short] dated 24.12.2018 u/s 250 of the Income Tax Act, 1961 ('the Act' for short) for AY 2009-10 and 2010-11.

2. In both these appeals, the ld. Counsel for the assessee submitted that there was a violation of the principles of natural justice, as during the course of survey under Section 133A of the Act, books of account were (soft copies) impounded by the Department and the copies were not provided to the assessee. He submits that as the books of account which were in the custody of the Revenue Authorities, it was not possible for the assessee to represent the case with proper facts and figures. He disputed the ad hoc additions made by the AO of various bank deposits etc. and

submitted that the Id. CIT(A) is also not granted an opportunity to the assessee for factually explaining the transactions. He submitted that the income has been accounted in one year and whereas the expenditure relating to such income was booked in other year and that all the accounts have to be examined together so as to arrive at correct taxable income of the assessee. He further pointed out that the appeal for the AY 2008-09 is before the Id. CIT(A) and if these two appeals are restored to the file of the Id. CIT(A) the facts of all the three years can be examined by him to gather by obtaining a remand report. He submitted that unless such comprehensive exercise is done, great justice would happen to the assessee, as the books of account were with the Department and was not provided to him, making it impossible for him to present his case effectively.

3. The Id. DR on the other hand, opposed the contentions and submitted that the AO has given a number of opportunities to the assessee to collect the books of account and it was the assessee who has not properly co-operated before the Revenue Authorities. He also took this Bench to the order of the Id. CIT(A) and relied on the same and submitted that the assessee has not extended proper co-operation to the Id. CIT(A) to complete the appeal objectively.

4. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, perusal of the papers on record and case laws cited, I hold as follows.

5. The Id. AO at Page 3 of his order states that, "The impounded documents did contain a CD having soft copy of computerized books of accounts of the assessee taken from the computer of the assessee. However, the contents of the hard copy could not be taken out as the CD could not be optically read. The request to the assessee to submit the hard copy of his computerized books of accounts was in that context and the assessee was duty bound to submit it since it was his document in his computer, which was never impounded by the Department and the onus lay with him to substantiate his claim of expenditure and other transaction in P & L account/balance sheet and other relevant entries in his bank accounts through cash book, ledgers and bills and vouchers."

6. On a conspectus of the matter, I am of the considered opinion that the principles of natural justice, demand that the assessee should have given one more opportunity to demonstrate his case. The ld. Counsel for the assessee submitted that the appeal for the AY 2008-09 is pending disposal before the ld. CIT(A). Under these circumstances, I set aside both the appeals to the ld. CIT(A) for fresh adjudication in accordance with law. The AO shall also provide to the assessee a soft copy of the accounts of the computerized accounts which is in the possession of the Department. A holistic view may be taken for all the three assessment years.

7. Before parting, it is noted that the order is being pronounced after ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, I rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dated 14th May, 2020.

8. In the result, both these appeals are allowed for statistical purposes.

Kolkata, the 18th June, 2020.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated: 18.06.2020
Bidhan

Copy of the order forwarded to:

- 1. Shamik Raha, 142, Regent Estate, Ground Floor, Kolkata-700 092.***
- 2. ITO, Ward-26(4), Kolkata.***
- CIT(A)-7, Kolkata. (sent through e-mail)
- CIT-
- CIT(DR), Kolkata Benches, Kolkata. (sent through e-mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches