

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA
[Before Shri Mahavir Singh, JM]

I.T.A No.250/Kol/2015
Assessment Year: 2007-08

Smt. Mousumi Mukherjee
(PAN: AJLPM9293R)
(Appellant)

Vs. Income-tax Officer, Wd-55(4), Kolkata
(Respondent)

Date of hearing: 09.12.2015
Date of pronouncement: 09.12.2015

For the Appellant: N o n e
For the Respondent: Shri Rajendra Prasad, JCIT, Sr. DR

ORDER

This appeal by assessee is arising out of order of CIT(A)-6, Kolkata vide Appeal No. 977/CIT(A)-6/Kol/09-10 dated 12.02.2015. Assessment was framed by ITO, Wd-55(4), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Year 2007-08 vide his order dated 31.12.2009.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in making addition of undisclosed sales at Rs.4,73,000/- by not accepting the additional evidence produced before him. For this, assessee has raised following ground nos. 2(a) and 2(b):

“2a) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in upholding the order of the AO in considering the sum of Rs.4,73,000/- as representing ‘undisclosed sales’ and in adding back the same.

2b) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in upholding the finding of the AO that the explanation offered by the appellant on this issue tantamount to production of Additional evidence and that Rule 46A prohibits production of such evidence.”

3. Briefly stated facts relating to this issue are that the AO noticed from the details of bank deposit and collection from sales that the total sales as per assessee’s details is at Rs.43,29,000/- whereas the total sales in the accounts declared are at Rs.38.56 lacs. For this, he observed as under:

“From the above statement it is seen that the total collection from sales is Rs.17,39,500/- + Rs.25,89,500/- = Rs.43,29,000/-, but the assessee has shown total sales as Rs.38,56,000/-. Thus, the assessee has suppressed sales of Rs.4,73,000/- (Rs.43,29,000/- - Rs.38,56,000/-) which is treated as undisclosed sales and added back to the total income of the assessee for the assessment year 2007-08.”

Accordingly, the AO made addition of suppressed sales at Rs.4.73 lacs. Aggrieved, assessee preferred appeal before CIT(A). Before CIT(A), assessee filed certain evidences i.e. receipt on account of commission, receipt of commission on sales on behalf of third parties and details of deposits in bank and tried to reconcile the difference as noted by the AO. But the CIT(A) after taking objection of the AO as per his remand report noted that there is a violation of Rule 46A of the I. T. Rules, 1962 and hence, this additional evidence cannot be admitted and he confirmed the addition. Aggrieved, now assessee is in second appeal before us.

4. I have heard rival submissions and gone through facts and circumstances of the case. I find from the facts of the case that this is simply a case of suppression of sales, if at all additional evidences are not admitted and that also to the extent of Rs.4.73 lacs. At the best only gross profit can be attributed to the same and the AO has to verify the gross profit rate of the assessee in the trading of painting as assessee is engaged in trading of painting and sale of painting during the year under consideration. But I find from the explanation submitted before the CIT(A) that the entire receipt on account of sale of painting is at Rs.38.56 lacs + gross commission is at Rs.4,75,000/-. The total receipts which are deposited by the assessee in its bank are at Rs.43.29 lacs, which have been correlated by the assessee and reconciled the figures. In any case, when there is no difference and these documents clearly prove that the assessee's total turnover from trading of painting is at Rs.38.56 lacs and other income, which is commission and moreover is disclosed by assessee, no addition on account of suppression of sale can be made. Accordingly, I delete the addition and allow the appeal of assessee.

5. In the result, appeal of assessee is allowed.

6. Order is pronounced in the open court.

Sd/-
(Mahavir Singh)
Judicial Member

Dated : December, 2015

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – Smt. Mousumi Mukherji, 28A, Deshapriya Park road, Akshay Apartment, 3rd floor, Kolkata-700 026.
2. Respondent – ITO, Wd-55(4), Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.