

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri S. S. Viswanethra Ravi, JM]

I.T.A No.2878/Kol/2013
Assessment Year: 1996-97

Mohan Kumar More
(PAN: AEUPM9027P)
(Appellant)

Vs. Assistant Commissioner of Income-tax,
Circle-35, Kolkata.
(Respondent)

Date of hearing: 07.03.2017
Date of pronouncement: 07.03.2017

For the Appellant: S/Shri S.P. Choudhury &
Soumitra Choudhury, Advocates
For the Respondent: Shri Sallong Yaden, Addl. CIT

ORDER

Per Shri M. Balaganesh, AM:

This appeal by assessee is arising out of order of CIT(A)-XX, Kolkata vide appeal No. 176/CIT(A)-XX/Circle-35/2007-08/Kol dated 22.10.2013. Assessment was framed by ACIT, Circle-35, Kolkata u/s. 147 of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Year 1996-97 vide his order dated 29.12.2006.

2. The only issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in upholding the addition made in the sum of Rs.16,50,000/- towards bank deposit in the facts and circumstances of the case.

3. The assessee is engaged in the high seas sale of imported consignment of HDPE Zinc, Brass, Polypropylene etc. in proprietorship business styled as M/s. M. K. Export & Import. There was a search conducted at the business premises on 30.11.1995 by the Directorate of Revenue Intelligence (DRI) and in the course of search books of accounts and documents were seized. The DRI subsequently, handed over the seized books of account and other documents to Director of Income-tax (DIT, Inv.), Kolkata on 03.10.1997. The assessee declared the high seas sales of Rs.13,41,92,258/-. The imported consignments were sold to different parties mostly outside Kolkata. The AO found that there were some unexplained credits in the books of the assessee to the tune of Rs.70,51,250/- and added the same to the total income of the assessee. The Ld. CIT(A) granted relief to the assessee to the tune of Rs.54,01,250/- and sustained the addition in respect of Rs.16,50,000/- by observing as under:

“After going through the facts and circumstance of the case, I find that the appellant filed the relevant detail with regard to quantity wise and value wise details of the items for which purchases/sales in high seas were made during the year with regard to various items which he dealt with. The appellant tried to establish the nexus between the items purchased and sold and the same was substantiated with the details of the quantity of the item also. However, the fact still remained to be explained i.e. with regard to the source of initial cash deposits of Rs.16.50 lakhs made by the appellant on 22.09.95 in the bank account no. 2210 in Syndicate Bank. The appellant could not explain the source of the said cash deposits with corresponding details/documents. In view of the fact and circumstances of the case, I find that the initial cash deposits of Rs.16.50 lakhs was nothing but unexplained income of the appellant which he deposited as cash into bank account. However, with regard to the balance addition of Rs.54,01,250/-, I find merit in the argument of the appellant that there was purchases which were explained with the help of quantity and value wise details of the items and the corresponding detail of the said items sold in high seas . Therefore, the appellant gets relief to the extent of Rs.54,01,250/- but the balance addition of Rs.16.50 lakhs is confirmed.”

Aggrieved, the assessee is in appeal before us on the following grounds:

“1. For that on the facts of the case CIT (A) was wrong in upholding, the addition of Rs. 16.50 lakhs as taxable for the A Y 2006-07 , his finding is erroneous, perverse and illegal.

2. For that the deposit in bank Rs. 16.50 lakhs was within the sales added in assessment Rs. 70,51,250/ - so different treatment should not be taken with regard to bank deposit Rs. 16.50 lakhs, such finding is contradictory.

3. For that on the facts of the charging interest u/ s. 234B & 234C is not automatic.

4. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.”

4. The Ld. AR argued that the AO doubted the sale transactions made by the assessee with five parties viz., M/s. Fine Electrode (P) Ltd., Saigal enterprises, M/s. Animex International, M/s. Bob International and M/s. Rohan Exim to the tune of Rs.70,51,250/-, but there were number of other transactions with the said parties which were accepted by the AO. He argued that all the sales and purchases were duly recorded in the books of account of the assessee which were not disputed by the AO. The sale proceeds are part of a regular transaction and the credits thereof deposited into bank could not be treated as unexplained. He stated that the main reason for the Ld. CIT(A) to uphold the addition was triggered based on mistaken understanding of the fact that there was initial cash deposit of Rs.16.50 lacs made by the assessee on 22.09.1995 for which source is not properly explained. He stated that factually there was no cash deposit on 22.09.1995 in the bank account No. 2210 of Syndicate Bank by the assessee to the tune of Rs.16.50 lacs. On the contrary, the assessee had received the said sum of Rs.16.50 lacs on 22.09.1995 from M/s. Bob International by way of account transfer from Bob International to assessee's account,

which is quite evident from the bank statement of the assessee. He also placed on record the copy of the bank statement to prove his contention. The assessee also placed a copy of the cash book proving that the said sum was received from Bob International vide cheque No.375836 on 22.09.1995. Hence, he prayed that the sum of Rs.16.50 lacs was already treated as sales by the assessee and the same cannot be added as unexplained credit. In response to this, the Ld. DR relied on the order of the AO.

5. We have heard rival submissions and gone through the facts and circumstances of the case. We find that the Ld. CIT(A) had wrongly considered that there is a cash deposit on 22.09.1995 by the assessee in the bank account no. 2210 maintained with Syndicate Bank for which source has not been properly explained by the assessee. On the contrary, we find that assessee had actually received a sum of Rs.16.50 lacs on 22.09.1995 towards sale proceeds from M/s. Bob International by way of account transfer vide cheque no. 375836 which is quite evident from the bank statement which is placed on record before us. In view of this, we hold that the Ld. CIT(A) had wrongly made the addition based on incorrect facts. Accordingly, we have no hesitation in directing the AO to delete the addition made on account of unexplained credit to the tune of Rs.16.50 lacs. Hence, the ground nos. 1 and 2 raised by the assessee is allowed.

6. Ground no. 3 raised by the assessee is consequential in nature and does not require any specific adjudication.

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

Order is pronounced in the open court on 07.03.2017

Sd/-
(S. S. Viswanethra Ravi)
Judicial Member

Sd/-
(M. Balaganesh)
Accountant Member

Dated : 7th March, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – Shri Mohan Kumar More, 23A, Netaji Subhash Road, 1st floor, Kolkata-700 001.
2. Respondent – ACIT, Circle-35, Kolkata.
3. The CIT(A), Kolkata
4. CIT, Kolkata.
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.