

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA

[Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Godara, Judicial Member]

I.T.A. No. 131/Kol/2016
Assessment Year: 2010-11

Nikhil Chandra Mitra.....**Appellant**
34, Chawlpaty Road
Baguihati
Kolkata - 700 069
[PAN : AHXPM 9169 L]

Income Tax Officer, Ward-49 (4), Kolkata.....**Respondent**

Appearances by:

Shri Subash Agarwal, Advocate, appeared on behalf of the assessee.

Shri Saurabh Kumar, Addl.CIT Sr. D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : December 6th, 2018

Date of pronouncing the order : January 16th, 2019

O R D E R

Per J. Sudhakar Reddy :-

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals)-15, Kolkata, (ld. CIT(A)) passed u/s. 250 of the Income Tax Act, 1961, (the 'Act'), dt. 08/12/2015, for the Assessment Year 2010-11.

2. The assessee is in the business of rice trading and dyeing of clothes. The grounds of appeal that have to be adjudicated are as follows:-

"1) 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. 1,14,720/- made by the AO. on account of alleged discount received from M/s. Dyechem International Pvt. Ltd.

2) For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in not adjudicating the ground relating to the addition made by the AO to the tune of Rs. 29,681/- on account of alleged discount received from M/s. Delta Chemicals.

3) For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in not adjudicating the ground relating to the addition of Rs. 1,41,723/- made by the AO. on account of alleged bogus purchase.

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. 7,99,800/- on account of alleged unreconciled closing balance as on 31. 03.2010 of UBI, CC account by wrongly invoking the provision of sec. 69A

5) For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in not adjudicating the ground relating to the addition of Rs. 24,358/- made by the AO. on account of alleged dyeing charges received treating the same as undisclosed income.

6) 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. 97,000/- made by the A.O. under the head Transportation Charges by wrongly invoking the provision of sec.40(a)(ia).

7) For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the disallowance of Rs. 1,50,000/- made by the A.O. under the head Staff Welfare expenses on account payment made to Mr. Latif.

8) For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the disallowance of Rs. 59,000/- made by the A.O. under the head Staff Welfare expenses on account payment made to Mr. Bappa Thakur.

9) 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. 11,74,341/- made by the A.O. on account of alleged bogus purchase of diesel.

10) 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. 4,50,000/- made by the A.O. on account of payments made to Sri Moti Mondal for purchase of diesel.

11) For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the disallowance of Rs. 60,000/- made by the A.O. on account of accounting charges, by wrongly invoking the provision of sec. 40(a)(ia).

12) 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. 90,000/- made by the A.O. on account of alleged income from undisclosed source.

13) For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs. 12,84,759/- on account of alleged low G.P.

14) For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in not adjudicating the ground relating to the addition of Rs. 2,20,000/- made by the A. O. on account of alleged bogus purchase of rice.

15) 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. 5,98,582/- made by the A.O. on account of transportation charges, by wrongly invoking the provision of sec. 40(a)(ia).

16) *That the appellant crave leaves to add, alter or delete all or any of the grounds of appeal."*

3. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

4. Ground Nos. 2, 3, 5, 12 & 14 are dismissed as not pressed.

5. Ground No. 1, is on the addition of Rs.1,14,720/-, made by the Assessing Officer on account of alleged discount received from M/s. Dyechem International Pvt. Ltd. The Id. CIT(A) confirmed this addition on the ground that the assessee should have reduced this amount from his purchases but had malafidely shown cash payments of equal amount to M/s. Dyechem International Pvt. Ltd. and has failed to prove the same with documentary evidence. During the course of hearing, the assessee had changed its stand and hence the Id. CIT(A) confirmed the addition in question. We find no infirmity in the same, and hence dismiss Ground No. 1 of the assessee.

6. Ground No. 4 is against an addition of Rs.7,99,800/-, which is an unreconciled closing stock balance as on 31/03/2010 of a cash credit account with United Bank of India (UBI). The Id. CIT(A), at page 7, last para of his order held as follows:-

"The assessee is claiming that the cheque of Rs.8 lacs was not deposited in the bank by it. However, the bank statements of Cash Credit a/c clearly shows that Rs.8,00,000/- have been transferred to the current a/c on 31.03.20 I O. Thus, if the assessee says that it had not deposited cheque of Rs.8 lacs in the current account, then he should not have increased its negative balance in the cash credit account to that extent. Hence the contention of the assessee is factually incorrect. Thus, the actual positive balance of the current account no. 1929 as on 31.03.2010 should have been Rs.8,01,679/- instead of Rs.1,879/- as claimed by the assessee. Hence, the asset side of the Balance Sheet of N.M. Dyeing understated by Rs.7,99,800/-. Thus, the addition of Rs.7,99,800/- is confirmed."

The assessee's contentions is that Rs.8,00,000/-, was withdrawn in cash during the period and the money was not entered in the cash book resulting in the

figures remaining unreconciled. It was submitted that such unreconciled amount would not result in any income.

6.1. We find that no such contention has been raised before the lower authorities. In any event, we set aside the matter to the file of the Assessing Officer for fresh adjudication, in accordance with law. Accordingly, Ground No. 4 of the assessee is allowed for statistical purposes.

7. Ground Nos. 6 & 15, are on the disallowance u/s 40(a)(ia) of the Act.

7.1. After hearing rival contentions, we set aside this matter to the file of the Assessing Officer for applying the judgment of the Hon'ble Delhi High Court in the case of *Commissioner of Income-tax-1 v. Ansal Land Mark Township (P.) Ltd. [2015] 61 taxmann.com 45 (Delhi)*, where the Hon'ble Court upheld the order of the Agra Bench of ITAT in *Rajiv Kumar Agarwal v. ACIT [IT Appeal No. 337 (Agra) of 2013]* and held that the insertion of second proviso to Section 40(a)(ia) of the Act is declaratory and curative and hence retrospective in nature. Thus, these two grounds of the assessee are allowed for statistical purposes.

8. Ground No. 7, is against the disallowance of Rs.1,50,000/-, under the head staff welfare expenses.

The assessee submits that this amount was paid to one Mr. Md. Latif by way of two cheques of Rs.25,000/- each in addition of Rs.1,00,000/-. It was submitted that Mr. Latif is a local politician and subscription is given for local puja purposes and also the amount has been disallowed on the ground that no evidence has been produced by the assessee. We find no infirmity in the same and uphold the order of the Id. CIT(A) and dismiss this ground of the assessee.

9. Ground No. 8 is against the disallowance of Rs.59,000/-, under the head staff welfare expenses.

The Id. Counsel for the assessee did not press the same to the smallness of the amount hence the same is dismissed as not pressed.

10. Ground No. 9 is on the disallowance of Rs.11,79,341/-, on the ground that there was bogus purchase of diesel.

The assessee could not produce all the vouchers as evidence of purchase of diesel before the Assessing Officer. When the matter came up before the Id. CIT(A), all the bills were produced. After examining the bills, the Id. CIT(A) at pages 10 to 12 of his order has given reasons as to why he is unable to deleted the disallowance made by the Assessing Officer. The reasons are that:-

- a) The assessee has shown huge purchases of diesel for almost 20 to 22 days in a month.
- b) Though there is a current running account with M/s. Rajendra Krishi Seba, the payments were made in cash in odd figures and some payments were made in cheques.
- c) There is no relationship between the payments and the purchases.
- d) Amount between Rs.17,000/- to Rs.19,000/-, to avoid rigors of Section 40A(3) of the Act.
- e) Substantial amount was paid towards year end to settle the accounts which creates serious doubts.
- f) Some of the bills are machine numbered and some bills were without machine printed serial numbers etc.

10.1. The assessee filed an application for admission of additional evidence. The additional evidences are the proof that electricity connection was provided to the assessee in the later part of the year. Thus, it was submitted that the assessee had to purchase huge quantities of diesel. It was submitted that the conclusions drawn by the Id. CIT(A) were erroneous and had these doubts been expressed to the assessee and an opportunity been given, they would have clarified the matters before the Id. First Appellate Authority. As no opportunity was given by the Id. First Appellate Authority, on this issue, the assessee has moved an application for filing of additional evidence.

The Id. D/R, though not leaving his ground ultimately submitted that the additional evidence may be admitted and the issue restored to the file of the Assessing Officer for fresh adjudication, in accordance with law.

10.2. After considering the rival contentions and as the Id. CIT(A) has not confronted the assessee with the information, we admit the additional evidence filed by the assessee as the assessee had no opportunity before the Id. CIT(A) on this issue. As the Assessing Officer did not have an opportunity to verify all the bills

as well as the additional evidence, we set aside the matter to the file of the Assessing Officer for fresh adjudication, in accordance with law. Accordingly, Ground No. 9, of the assessee is allowed for statistical purposes.

11. Ground No. 10, is against the disallowance of Rs.4,50,000/- made on account of payments made to one Shri Moti Mondal, for purchase of diesel.

11.1. The disallowance was made as the assessee could not produce any evidence in support of his claim. On these facts, we see no infirmity in the finding of the Id. First Appellate Authority. Accordingly, we dismiss Ground No. 10 of the assessee.

12. Ground No. 11, is against the disallowance of Rs.60,000/- made on account of accounting charges by invoking the provisions u/s 40(a)(ia) of the Act.

12.1. The assessee submits that the person whom the amount was paid was not a qualified professional and he was an accountant writing the accounts and hence 194J of the Act, does not apply. We agree with the submissions and deleted the disallowance made u/s 40(a)(ia) of the Act.

13. Ground No. 13, is on the issue of gross profits. After hearing rival submissions we direct the Assessing Officer to adopt gross profit @ 3.5% in place of 5% adopted by the Id. CIT(A), as in our view this would meet the ends of justice. In the result, this ground of the assessee is allowed in part.

14. In the result, appeal of the assessee is allowed in part.

Kolkata, the 16th day of January, 2019.

Sd/-
[S.S. Godara]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 16.01.2019
{SC SPS}

Copy of the order forwarded to:

1. Nikhil Chandra Mitra

34, Chawlpatty Road
Baguihati
Kolkata - 700 069

2. Income Tax Officer, Ward-49(4), Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches