

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA
[Virtual Court Hearing]**

**Before Shri P.M. Jagtap, Vice-President
& Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 2605/KOL/2019
Assessment Year: 2014-2015**

Sukumar Mondal,.....Appellant
Gobindapur,
Vill. & P.O. Gobindapur,
Howrah-711314
[PAN: AEUPM4095D]

-Vs.-

Income Tax Officer,.....Respondent
Ward-47(4), Kolkata,
3, Government Place (West),
Kolkata-700001

Appearances by:

Shri S.M. Surana, Advocate, for the Appellant
Shri Supriya Pal, Addl. CIT, Sr. D.R., for the Respondent

Date of concluding the hearing : July 14, 2020

Date of pronouncing the order : July 22, 2020

O R D E R

Per Shri P.M. Jagtap, Vice-President:-

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-14, Kolkata dated 21.11.2019 and the solitary issue involved therein relates to the addition of Rs.51,63,531/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of the profit allegedly earned by the assessee on undisclosed turnover.

2. The assessee in the present case is an individual, who is engaged in the business of distribution of food and supply of Ration Goods and dealing in Lafarge and ACC Cement. The return of income for the year under consideration was filed by him on 17.09.2014 declaring total income of Rs.5,54,330/-. The said return was selected for limited scrutiny on the ground that the cash deposits found to be made in the Savings Bank Accounts of the assessee were more than the turnover. During the course of assessment proceedings, the Assessing Officer found that the assessee has maintained three Bank accounts namely Account No. 10380100001206 with Paschim Banga Gramin Bank, Account No. 08160510000298 with UCO Bank, Shyampur and Account No. 11245243909 with State Bank of India. He also found that out of the said three Bank accounts, the balance of only one Bank account with State Bank of India was reflected in the audited balance-sheet filed by the assessee, whereas the balances of the remaining two Bank accounts maintained with Paschim Banga Gramin Bank and UCO Bank were not reflected in the balance-sheet. He also noticed that interest charged in one account and interest credited in the other accounts had also not been reflected in the accounts of the assessee. Keeping in view these serious discrepancies in the accounts of the assessee, the Assessing Officer treated the total deposits found to be made in the two Bank accounts maintained by the assessee with Paschim Banga Gramin Bank and UCO Bank aggregating to Rs.5,42,38,779/- as the undisclosed turnover of the assessee's business and applying a gross profit rate of 9.52% as reflected in the audited accounts of the assessee, he made an addition of Rs.51,63,531/- to the total income of the assessee in the assessment completed under section 143(3) of the Act vide an order dated 23.11.2016.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) and the following submissions were made on behalf of the

assessee before the Id. CIT(Appeals) in support of his case that the addition of Rs.51,63,531/- made by the Assessing Officer on account of profit allegedly earned on undisclosed turnover was not sustainable:-

"The assessee has three bank accounts viz. (i) Paschimbanga Gramin Bank, (ii) CC Account with UCO Bank, Shyampur and (iii) State Bank of India, Uluberia. All the cash received from the ration shop is deposited in Paschimbanga Gramin Bank account and from the same, the demand drafts are prepared for payment to FCI. It is submitted that the total sales on account of this business as disclosed in my books of accounts is Rs.3,29,61,654/- whereas the total deposits in the Paschimbanga Gramin Bank account is Rs.2,91,40,029/-. Therefore, the total amount deposited in Paschimbanga Gramin Bank account is less than the total sales disclosed by the assessee in his profit and loss account from ration shop. Hence all the deposits made in this bank account is forming part of sales and already disclosed in the profit and loss account. This is further proved from the fact stated above that the payment for purchase is made from the very same account and all purchases are also forming part of the accounts for which the payment is made from this bank.

Further, in relation to the second business of the assessor as cement dealer of Lafarge, ACC, it is submitted that the same process which is followed in the ration supply business is followed in this business i.e. the sales are made in cash and the proceeds are deposited in the CC account of UCO Bank. The payment for purchase of cement is made in cheques or demand drafts from the CC account of UCO Bank itself. The total amount deposited in this account is Rs.2,50,98,750/- whereas the sales on this business as disclosed in profit and loss account filed before the department is Rs.2,60,60,841/-. Therefore, the total amount of deposits in UCO Bank account is less than the total sales disclosed by the assessee in his profit and loss account. Hence, all the deposits made in this bank account is forming part sales and already disclosed in the profit and loss account.

The fact however remains that due to oversight these two bank accounts were omitted to be taken in the balance sheet though the purchase contained and payment made for the same is part of the profit and loss account and books of accounts. The non-mention of the account in the balance sheet is a sheer bonafide mistake which is further

proved from the fact that the genuine interest paid on the overdraft CC account was also not debited to the profit and loss account. Therefore, in such circumstances the AO could have added the closing balance in the bank account as income. However, on the facts this addition was not called for since in UCO Bank there was OD of Rs.17,38,565/- as on 31.03.2014 and in Paschimbanga Gramin Bank, there was balance of Rs.77,158/- only. The bank balance on the opening day i.e. 1.4.2013 was Rs.1,37,752/-. Hence, the balance was not more than the opening balance and no addition can be made.

These explanations were submitted to the AO at the time of assessment proceedings, but the AO rejected the same and added Rs.51,63,531/- as gross profit on account of these alleged undisclosed sales on an estimate basis. Therefore, the action of the AO in adding back the gross profit on this sale is not correct as it is already included in the gross profit already disclosed and if the same is added again, then it will be double addition. It is submitted that the addition cannot be made solely on the basis of two bank accounts which inadvertently were missed to be incorporated in the balance sheet of the assessee.

The copy of the bank statement for both banks is attached herewith. The facts stated above are fully verifiable from the bank accounts where for purchase payments even the names of the sellers are mentioned. Hence, the addition was not called for and may be deleted”.

4. The ld. CIT(Appeals) did not find merit in the submissions made on behalf of the assessee and rejecting the same, he confirmed the addition of Rs.51,63,531/- on the issue under consideration for the following reasons given in paragraph no. 3.3 of his impugned order:-

“3.3. I have gone through the submission of the appellant and perused the relevant records. The appellant has three accounts with the following banks:-

- (i) Paschimbanga Gramin Bank (A/c. No.10380100001206);*
- (ii) CC Account with UCO Bank, Shyampur (A/c. no. 08160510000298) &*
- (iii) State Bank of India, Uluberia (A/c. No. 11245243909).*

The appellant had reflected only account with State Bank of India, Uluberia, A/c. No. 11245243909 in its audited balance sheet. The remaining two bank accounts were not reflected in the audited balance sheet of the appellant. The AO had estimated undisclosed income earned from these two undisclosed bank accounts @ GP rate of 9.52% on total deposits amounting to Rs.5,42,38,779/-. The A/R of the appellant in his submission had stated that the omission to include these two bank accounts in the audited balance sheet is due to oversight and that all the purchases and sales made from these two bank accounts have been reflected in the audited accounts of the appellant. On examination of these two bank accounts, it is found that huge amounts were deposited in cash. The AR of the appellant could not correlate between these cash deposits and sales made in the books. It is true that these undisclosed bank accounts also reflect purchases by RTGS/cheque made from Lafarge India Limited and ACC Ltd. but as mentioned earlier the AR of the appellant could not provide evidence that the sales were reflected in the books. The AO had not added back the total deposits in these two bank accounts but computed income from these accounts on the basis of gross profit of 9.52%. I find no merit therefore, to interfere in the order of the AO. The addition of Rs.51,63,531/- is confirmed. This ground of appeal fails and is therefore not allowed".

Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. The first contention raised by the Id. Counsel for the assessee is that the case of the assessee having been selected for limited scrutiny on the issue of cash deposits in the Bank accounts being more than the turnover, the scope of the assessment was limited and the Assessing Officer was not justified to make the addition on account of profit allegedly earned by the assessee on undisclosed turnover, which was an altogether different issue. We are unable to accept this contention of the Id. Counsel for the assessee. While examining the issue of cash deposits in the Bank accounts of the assessee being more than the turnover, it was found by the Assessing Officer that two Bank accounts maintained by the assessee with Paschim Banga

Gramin Bank and UCO Bank were not reflected in the accounts of the assessee. He also noticed that huge deposits aggregating to Rs.5,42,38,779/- were made in the said Bank accounts and since the said Bank accounts were found to be not reflected in the accounts of the assessee, the same were treated by him as the undisclosed turnover of the assessee's business and estimated profit thereon was added by him to the total income of the assessee. It is thus clear that the impugned addition made by the Assessing Officer on account of profit allegedly earned by the assessee on undisclosed turnover was directly related to the ground on which the case of the assessee was selected for limited scrutiny and the same being fall-out of the verification made by the Assessing Officer on the issue on which the case of the assessee was selected for limited scrutiny, we do not find merit in the contention raised by the Id. Counsel for the assessee that the impugned addition made by the Assessing officer is beyond the scope of limited scrutiny.

6. The second contention raised by the Id. Counsel for the assessee is that the deposits found to be made in the two Bank accounts maintained with Paschim Banga Gramin Bank and UCO Bank aggregating to Rs.5,42,38,779/- represented the sale proceeds of the regular business of the assessee and the same having been included in the turnover of Rs.5,65,50,985/- as declared by the assessee in his return of income for the year under consideration (copy at page no. 15 of the paper book), it was not a case of undisclosed turnover and the addition made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of profit allegedly earned by the assessee on such undisclosed turnover is not sustainable. In this regard, it is observed that a similar contention was raised by the assessee even during the course of appellate proceedings before the Id. CIT(Appeals) but the same was rejected by the Id. CIT(Appeals) on the ground that the assessee could not co-relate between the cash deposits found to be made in his two Bank accounts and the sales reflected in the books. As already noted by us, serious

discrepancies were found in the books of account of the assessee, inasmuch as, the substantial balances in the two accounts maintained by the assessee with Paschim Banga Gramin Bank and UCO Bank were not reflected in the audited balance-sheet of the assessee. Similarly the interest earned by the assessee in one Bank account as well as interest charged in the other Bank account was also not reflected in the accounts of the assessee. Keeping in view these serious discrepancies seriously doubting the reliability of the audited accounts of the assessee, the onus, in our opinion, was greater on the assessee to establish by furnishing cash flow statement duly supported by the relevant books of account that the deposits found to be made in the Bank accounts maintained with Paschim Banga Gramin Bank and UCO Bank represented the sale proceeds of his business, which were duly reflected in the books of account and included in the total turnover finally declared in the return of income. Since this exercise was not specifically done by the assessee either during the course of assessment proceedings before the Assessing Officer or during the course of appellate proceedings before the Id. CIT(Appeals), we consider it fair and proper and in the interest of justice to set aside the impugned order of the Id. CIT(Appeals) on this issue and restore the matter back to the file of the Assessing Officer for deciding the same afresh after giving the assessee an opportunity to support and substantiate his case on the issue by preparing and furnishing a cash flow statement duly supported by the relevant books of account.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on July 22, 2020.

**Sd/-
(A.T. Varkey)
Judicial Member**

**Sd/-
(P.M. Jagtap)
Vice-President)**

Kolkata, the 22nd day of July, 2020

- Copies to :
- (1) **Shri Sukumar Mondal,**
Gobindapur,
Vill. & P.O. Gobindapur, Howrah-711314
 - (2) **Income Tax Officer,**
Ward-47(4), Kolkata, 3, Government Place (West),
Kolkata-700001
 - (3) *Commissioner of Income Tax (Appeals)-14, Kolkata;*
 - (4) *Commissioner of Income Tax- , Kolkata*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.