

additional incomes offered for each of the years under appeal and deleting the additions made towards investments made by the assessee, in the facts and circumstances of the case.

3. The brief facts of these appeals are that the assessee is an individual and an authorized dealer of Hindustan Petroleum Corporation since 1984 and was engaged in trading of kerosene oil in the trade name of M/s S.M.Shawkat. The facts of the case for Asst Year 2003-04 are taken for adjudication as a lead case and the decision rendered thereon would apply with equal force for other assessment years also except with variance in figures. The return of income for the Asst Year 2003-04 was filed by the assessee on 17.11.2003 showing total income of Rs 1,49,231/- comprising of income from kerosene dealership, rental income , interest income from FD and NSC. The ld DDIT(Inv.) Unit-III(5), Kolkata conducted investigation at the assessee's business premises in 2007 wherein several savings bank account as well as fixed deposits in banks were found which were not disclosed. The assessee in the course of investigation proceedings conducted by the DDIT(Inv.) admitted such accounts and Fixed deposits as undisclosed and expressed willingness to offer additional income. Accordingly, notice u/s 148 of the Act was issued on 12.3.2008. The reassessment was completed u/s 147/143(3) of the Act on 31.12.2008 making several additions towards undisclosed bank accounts and fixed deposits for want of proper explanations by the assessee. The assessee filed appeal before the ld CITA and during the course of appellate proceedings, after analyzing all the credits in the undisclosed bank accounts and fixed deposits for five assessment years, he offered additional income on the basis of recasted / revised balance sheet, revised profit and loss account, computation of additional income, details

of fixed deposits and cash account as on 31.3.2001 as well as similar statement of accounts relevant to Asst Years 2002-03 to 2006-07. These documents were submitted in paper books furnished in respect of each Asst Year during proceedings before the Id CITA. The Id CITA decided all the appeals for five years after obtaining remand report from the Id AO, against the assessee. Aggrieved, the assessee preferred appeal before this tribunal and this tribunal in ITA Nos. 998 to 1002/Kol/2011 dated 23.3.2012 vide para 4 had held as under :-

“We find that the assessee is running Kerosene deal rship since 1984 and Trade License issued by Food & Supplies Deptt. Govt. of West Bengal. Returns of income with audited accounts, balance sheets etc. were regularly filed in respect of assessee’s proprietary concern M/s S.N. Shawkat. We find that the assessee never filed his personal balance sheet showing his personal investments wherein he was making investments in cumulative growth of interest in long back as per record. Admittedly, interests earned on such investments were not disclosed and even it is not explained how these investments are pertaining to prior periods prior to the relevant assessment year 2002-03 and these are reinvestments. Further, it was not explained as to why these were not filed before the Assessing Officer but the simple reason that assessee expired on 04.06.2008 and the legal heirs could not trace the information at the time of assessment. Now Ld. Counsel for the assessee has undertaken to file all the details whatever is called by Assessing Officer. In view of the above facts and circumstances, we are of the view that at this stage investigation is not possible and hence entire facts require investigation whether the undisclosed investments in bank accounts pertains to earlier year or these are during the relevant years. In view of this fact, we set aside the issue to the file of Assessing Officer for all these assessment years and direct the assessee to file all necessary information before the Assessing Officer for adjudication the matters. Accordingly, all these appeals of assessee are set aside and allowed for statistical purposes.”

4. Pursuant to the order of this tribunal, the Id AO issued fresh notices u/s 143(2) of the Act dated 1.6.2012 fixing the case for hearing on 18.6.2012. In response thereto, the assessee through letter dated 31.8.2012 drew attention of the Paper Book submitted before the Id CITA containing all the relevant documents in the

first round of proceedings. The assessee drew the attention of the Id AO that one set of such paper book was already forwarded to the Id AO for submission of remand report in the first round of proceedings and hence prayed that the disputed issues may be adjudicated on the basis of such relevant documents. The assessee further prayed for specific details and / or documents from the Id AO that may be necessary for completion of set aside assessment proceedings. The next hearing was fixed by the Id AO on 27.9.2013 i.e. after more than a year and did not indicate any specific details and / or documents required by him in addition to the paper book containing all the relevant documents already available before him. Thereafter, the assessee did not appear before the Id AO. Accordingly, the Id AO completed the set aside assessment proceedings u/s 143(3)/254/251/143(3)/147 of the Act on 27.2.2014 by determining the same income as was assessed in the first round of proceedings subject to certain reliefs that were granted by the Id CITA in the first round of proceedings. In other words, the Id AO in the set aside assessment proceedings, ignored the entire paper book containing all the relevant documents and proceeded to make additions towards unexplained deposits in various bank accounts and unexplained fixed deposits and made additions thereon for each of the Ass Years under dispute.

5. Aggrieved, the assessee preferred appeals before the Id CITA mainly on the ground wherein the additions towards unexplained investments u/s 69 of the Act in undisclosed bank accounts and fixed deposits were common in all the years under dispute were contested. Before the Id CITA, the assessee filed written arguments and relied on various documents furnished through paper book in the first round of proceedings (that were already available before the Id AO and Id CITA). This paper book, inter alia, contained Balance Sheet, Profit and Loss

Account, Cash account, computation of additional income and details of fixed deposits arising from undisclosed bank accounts and undisclosed fixed deposits relevant to each Asst Year. It was pleaded that the Id AO in the set aside assessment proceedings did not find any fault in the revised statement of accounts and balance sheet that were already available with him which were drawn after taking into account all the undisclosed bank accounts and fixed deposits of the assessee and wherever, the deficits occurred, the same were duly offered to tax by the assessee as additional income. It was pleaded that these workings were completely ignored by the Id AO in the set aside assessment proceedings and the Id AO simply reiterated the very same additions that were made in the first round of proceedings subject to minor reliefs that were originally granted by the Id CITA.

6. The Id CITA granted relief to the assessee by observing as under :-

“5. **Conclusion**

After careful consideration of the arguments of the appellant including the documents relied upon in favour of declaring additional income based on entries in undisclosed bank accounts & fixed deposits as well as the observations and findings contained in the orders which are disputed, I proceed to deal with ground no. 1(a) & (b) as under:

5.1) Scrutiny of order reveal that in response to formal notice u/s 143(2) dated 01.06.2012 fixing the hearing of set aside proceeding the assessee filed letter dated 31.08.2012 reiterating same contentions as made during appellate proceeding including the supporting documents as listed in paper book for which a copy was also submitted before AO in remand proceeding. AO through subsequent letter dated 19.09.2013 insisted for extra documents if any other than the paper book which was denied on 25.10.2013 when AR appeared. In the process, the set aside proceedings were completed by AO on 27.02.2014. Having regard to the factual matrix stated above I agree with the submissions of the Ld. AR that the AO must have stated reasons for not considering documents forming

part of paper book. In absence of any comments of AO in the impugned orders, the correctness of additional income offered by the appellant is not disputed.

5.2) The set aside assessment orders completed on 27.02.2014 do not also suggest that AO has found any fault or discrepancy in the revised Balance Sheet or revised Profit and loss account or additional income offered including additional details like cash A/c, details of Fixed Deposits etc.

5.3) I have gone through the consolidated order dated 23.03.2012 of ITAT, Kolkata Bench in I.T.A. No. 998 to 1002/Kol/2011 wherein it is observed that the authorities below have not considered the issue in proper perspective and not examined all the details and without considering the revised statement of account, balance sheet incorporating all undisclosed bank accounts. Accordingly, ITAT had set aside earlier orders to consider whether the undisclosed investments in bank accounts pertain to earlier years or these were during the relevant years. Perusal and scrutiny of the disputed orders reveal that Assessing officer has confined his attention to income earlier assessed with modification as directed by CIT(A).

5.4) I have also examined the contentions and documents relied upon by AR viz. Balance Sheet, Profit and loss account, additional income offered, Cash A/c, details of FDs etc. in respect of undisclosed bank accounts and undisclosed FDs for the year ending 31.03.2001, 31.03.2002, 31.03.2003, 31.03.2004, 31.03.2005 & 31.03.2006. Contention of the appellant that income which arose during the assessment year 2001-02 i.e. Rs. 4,78,404/- is not liable to be taxed since limitation of six years has expired is correct. It is seen that undisclosed capital of subsequent years. The undisclosed capital on 31.03.2006 as per revised balance sheet has been at Rs. 1,02,87,569/-.

5.5) The additional income arising from undisclosed bank accounts and undisclosed Fixed Deposits as offered for taxation by considering rolled over undisclosed capital from 31.03.2001 in subsequent assessment years remains as under:

<i>2002-03</i>	<i>Rs. 17,00,727/-</i>
<i>2003-04</i>	<i>Rs. 9,47,438/-</i>
<i>2004-05</i>	<i>Rs. 16,11,398/-</i>
<i>2005-06</i>	<i>Rs. 12,19,874/-</i>
<i>2006-07</i>	<i>Rs. 13,91,068/-</i>

5.6) The relevant documents on the basis of which the appellant had offered additional income in different AYs as indicated above have been perused and considered. The undisclosed income offered mainly includes cash deposits and

fixed deposits created apart from accrued FD interest and other regular income from MIS/KVP/Saving interest etc.

5.7) I have also considered the facts and figures of appellant's explanation in respect of each of the additions made in the reassessments completed on 27.02.2014 for AYs 2002-03 to 2006-07. After due consideration of explanation furnished by the appellant. It is seen that such transactions do not call for any separate addition since these are covered by additional income offered by the appellant in respect of each A.Y.

In the result, the appeal for respective years are decided as indicated below:

5.7.1) AY 2002-03- AO is directed to consider the addition u/s 69 of Income Tax Act, 1961 amounting to Rs. 17,00,727/- instead of Rs. 5,76,691/- over and above income of Rs. 1,47,403/- as declared in original return filed u/s 139(1). The information relating to income of Rs. 5,76,691/- considered in the set aside proceedings was incomplete information and it did not consider the opening capital available with the appellant. The revised additional income including income of Rs. 5,76,691/- is included in sum of Rs. 17,00,727/- disclosed by the appellant in course of earlier proceedings.

5.7.2) AY 2003-04- AO is directed to delete addition u/s 69 of Income Tax Act, 1961 amounting to Rs. 68,39,530/-. He is further directed to consider additional income of Rs. 9,47,438/- over and above income of Rs. 1,49,231/- as declared in original return filed u/s 139(1).

5.7.3) AY 2004-05- AO is directed to delete addition u/s 69 of Income Tax Act, 1961 amounting to Rs. 18,78,867/-. He is further directed to consider additional income of Rs.16,11,398/- over and above income of Rs. 1,55,923/- as declared in original return filed u/s 139(1).

5.7.4) A Y 2005-06- AO is directed to delete addition u/s 69 of Income Tax Act, 1961 amounting to Rs. 30,21,207/-. He is further directed to consider additional income of Rs. 12,19,874/- over and above income of Rs. 1,46,118/- as declared in original return filed u/s 139(1).

5.7.5) A Y 2006-07- AO is directed to delete addition u/s 69 of Income Tax Act, 1961 amounting to Rs. 1,25,10,879/-. He is further directed to consider additional income of Rs. 9,47,438/- over and above income of Rs. 1,71,000/- as declared in original return filed u/s 139(1).

6. In the result, the appeals are partly allowed.”

7. Aggrieved, the revenue is in appeals before us on the following grounds :-

- 1. That on the facts and circumstances of the case the Ld. CIT(A)-9, Kolkata, erred in deciding the appeal in favour of the assessee on the basis of the documents filed earlier, whereas the Hon'ble Tribunal had restored the matter back to the file of the Assessing Officer with the direction to the assessee to file all necessary information before the Assessing Officer for fresh adjudication of the matter.*
- 2. That on the facts and circumstances of the case, the Ld. CIT(A)-9, Kolkata erred in deleting the addition of Rs. 19,21,400/- made by the Assessing Officer.*
- 3. That the appellant craves leave to submit additional grounds of appeal, if any, at or before the time of hearing and/or alter, modify, reframe any grounds of appeal at or before the time of hearing.*

8. We have heard the rival submissions. The facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. We find that the detailed paper book after analyzing all the credits in the undisclosed bank accounts and fixed deposits for five assessment years , comprising of recasted / revised balance sheet, revised profit and loss account, computation of additional income, details of fixed deposits and cash account as on 31.3.2001 as well as similar statement of accounts relevant to Asst Years 2002-03 to 2006-07, were very much available before the ld AO in the set aside assessment proceedings. The existence and availability of these documents before the ld AO had been duly acknowledged by the ld AO in his assessment order itself. While it is so, the action of the ld AO in not considering the documents in the paper book and framing the assessment in the same fashion as was done originally is unwarranted

and cannot be sustained as per law. We find that the Id AO had not adduced any reason for not considering the same in the set aside assessment proceedings. Hence it could be safely inferred and concluded that the Id AO did not have any adverse comments to offer on the said documents submitted in the paper book. The Id CITA had gone into the workings of additional income given by the assessee vis a vis the revised balance sheet and the details of undisclosed bank accounts and fixed deposits and then directed the Id AO to consider only certain incomes as directed above in his order and further directed the Id AO to delete the additions made towards unexplained investments in bank accounts and fixed deposits. In other words, the Id CITA after examining the entire details in the paper book, came to a conclusion that all the deposits in the bank accounts and fixed deposits were duly explained and wherever there were some deficits, the same has been offered by the assessee as additional incomes for each of the asst years under dispute and accordingly directed the Id AO to consider the additional incomes for each of the years under dispute before us. However, we find that the Id CITA while directing the Id AO to consider the additional income of Rs 9,47,438/- for the Asst Year 2006-07, he should have directed to add a sum of Rs 13,91,068/- for the Asst Year 2006-07. This typographical mistake committed by the Id CITA has been rectified by us in this order. Accordingly, we direct the Id AO to consider additional income of Rs 13,91,068/- for the Asst Year 2006-07 as against Rs 9,47,438/- directed by the Id CITA in para 5.7.5 of his order. In view of these observations in the facts and circumstances of the case, we do not find any infirmity in the consolidated order of the Id CITA in this regard. Accordingly, the grounds raised by the revenue for the asst years 2002-03 to 2005-06 by the revenue are dismissed and grounds raised by the revenue for the

Asst Year 2006-07 are partly allowed.

9. In the result, the appeals of the revenue for the Asst Years 2002-03 to 2005-06 are dismissed and appeal of the revenue for the Asst Year 2006-07 is partly allowed.

Order pronounced in the Court on 01.12.2017

Sd/-
[S.S. Viswanethra Ravi]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 01.12.2017
SB, Sr. PS

Copy of the order forwarded to:

1. ITO, Ward-31(1), Kolkata 10B, Middleton Row, Kol-71(4th Floor).
2. Shajahan S. Shawkat (Son & legal heir of S. M. Shawkat), 45, Lenin Sarani, Kolkata-700013.
- 3..C.I.T.- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches