

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA**

**BEFORE SHRI N.V. VASUDEVAN, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.262/Kol/2015**

**(निर्धारणवर्ष / Assessment Year: 2010-11)**

<b>ACIT, Cir-3, Asansol</b>	<b>Vs.</b>	<b>Sri Pravin Kumar Hetamsaria</b>
"Parmar Building", 54, G.T. Road (West), Asansol – 713304.		C/o Pratik Automobiles, Old Hazaribagh Road, Patel Chowk, Ranchi – 8340001.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAYPH 0545 F		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : Shri Arindam Bhattacharjee, Addl. CIT

Respondent by : Shri K.M Roy, FCA & P.S. Paul, FCA

सुनवाईकीतारीख/ **Date of Hearing** : **23/11/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **07/02/2018**

**आदेश / ORDER**

**Per Dr. Arjun Lal Saini, AM:**

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2010-11, is directed against an order passed by the Commissioner of Income Tax(Appeals), Asansol, in Appeal No.122/C.I.T.(A)/Asl/Cir-3/13-14, dated 29.01.2015, which in turn arises out of an order passed by the Assessing Officer u/s.143(3) of the I.T. Act, 1961 (hereinafter referred to as the 'Act'), dated 20.03.2013.

2. The grounds of appeal raised by the Revenue are as follows:

*"i) "That the Id. Commissioner of Income Tax(A), Asansol has erred in law and on facts in deleting the addition of Rs.1,20,85,226/- made by the A.O. on account of unverifiable creditors/advances from customers shown as liabilities."*

3. The brief facts apropos this issue are that the assessee filed its return of income for the Assessment year 2010-11 on 01.10.2010, disclosing total income at Rs.24,85,430/-. The assessee's case was processed u/s 143(1) of the Act, on 03.05.2011 accepting the returned income. Later, the assessee's case was selected for scrutiny u/s 143(2) of the Act and the AO

has completed the assessment U/s 143(3) by making an addition of Rs.1,20,85,226 (Rs.1,22,18,226 – Rs.1,33,000/-) u/s 41(1) of the I.T. Act. In the balance sheet of assessee there was an entry of Rs.1,22,18,226/- being advance from customers. The AO sought details of the transaction and the assessee furnished the same but that was not in the format as required by the AO. Based on information received, the AO issued notices u/s 133(6) of the Act to the various customers. Notices were served on some customers and some customers furnished the reply which was in variance with the figures furnished by the assessee. In the assessment order, the AO narrated 59 cases in Page 2 and Page 3 and the assessee could not explain the creditors hence, he proceeded to make addition u/s 41(1) of the I.T. Act, 1961. Therefore, not being satisfied with the explanation offered by the assessee, the AO made addition of Rs.1,20,85,226/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A) who has deleted the addition made by the AO. The Id. CIT(A), (vide Page 3 Para 8 of the order), stated that assessee submitted an extensive list of papers, covering 480 persons demonstrating how the figure of Rs.1,22,18,226/- was arrived at and addresses has been furnished in about 145 cases. This was sent to AO, with written explanation on the matter for comments. This way, the Id. CIT(A) sent the matter to the AO to take the remand report on the issue involved. In para 8 of the order of the Id. CIT(A), the Id. CIT(A) himself stated that no comments was received from the AO. The Id. CIT(A) stated, on Page 7 Para 10 of his order, that in this case, assessee had given a clarification of sundry creditors on six counts. The AO was provided with all details (of course address of all sundry creditors were not given) as to how the sundry creditors has developed. The Id. CIT(A) held that section 41(1) was not applicable and hence opening balance of Rs.17,25,173/- cannot be considered as income for the year for which remission is to be established. The explanation in regard to refund and sale in subsequent year is accepted as it has logic and rationale and not a single case, the AO has established to be incorrect. The set off of debit and credit entries were visible from books of accounts and books of

accounts were not found to be defective. This way, the Id. CIT(A) held that the addition made by the AO u/s 41(1) was wrong. The Id. CIT(A) also held that on independent analysis [power of CIT(A)] is co-terminus with that of AO], he could not find any material evidence to show that credits were bogus. Therefore, he directed the AO to delete the addition of Rs.1,20,85,226/-.

5. Not being satisfied with the order of the Id. CIT(A), the Revenue is in appeal before us. At the outset, the Id. DR for the Revenue has pointed out that Id. CIT(A) did not wait for remand report and without examining remand report, he passed the order. Therefore, order passed by the Id. CIT(A) is against the principle of natural justice. Hence, the Id. DR for the Revenue prayed the Bench that the said matter should go back to the file of the AO to examine the issue afresh.

6. The Id. DR for the Revenue has also pointed out that on Page 3, in Para 8 of the order of the Id. CIT(A), wherein he held that *"The appellant submitted an extensive list covering 480 persons demonstrating how the figure of Rs.1,22,18,226/- was arrived at. Address has been furnished in about 145 cases. This was sent to AO and with written explanation on the matter for comments and no comments (already provided during assessment stage, according to Authorized Representative) was received."*

Therefore, the Id. CIT(A) has sent the matter to the AO to obtain the remand report on the issue but he did not wait for the remand report and adjudicated the issue without taking the remand report which is against the principle of natural justice. The Id. DR also stated that on Page 7, in Para 11 of the order of Id. CIT(A), wherein he stated that Id. CIT(A) has co-terminus powers with that of AO and, therefore, he concluded the issue as per his independent analysis without waiting for the remand report. If the AO did not send the remand report timely, then, Id. CIT(A) should wait for the remand report or he should remind the AO to send the remand report but the Id. CIT(A) has not done so in the assessee's case under consideration.

7. The Id. Counsel for the assessee has primarily reiterated the stand taken by the Id. CIT(A), which we have already narrated in our above para and is not being repeated for the sake of brevity.

8. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that Id.CIT(A) had sent the matter to AO for taking the remand report but he did not wait for the remand report and adjudicate the issue without taking into account the remand report. No doubt, the CIT(A) has co-terminus power with that of AO but when the remand report has been sent to the AO, then, the Id. CIT(A) is duty bound to wait for the remand report. If the AO did not send the remand report timely, then, it is the duty of the Id. CIT(A) to remind the AO to send the remand report. In the assessee`s case under consideration, we note that, Id CIT(A) has neither waited for remand report nor he sent reminder to assessing officer to send him remand report, therefore, it is against the principle of natural justice. Therefore, we are of the view that this issue is required a fresh examination at the end of the assessing officer, hence we set aside the order of CIT(A), and propose to remit the issue to the file of the assessing officer, to examine the issue afresh and adjudicate the issue as per provisions of law.

9.In the result, the appeal filed by the Revenue, is allowed for statistical purposes.

Order is pronounced in the open court on 07/02/2018.

**Sd/-**

**(N.V. VASUDEVAN)**

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata; दिनांक Dated 07/02/2018

[RS SPS]

**Sd/-**

**(DR. A.L.SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant –ACIT, Cir-3, Asansol
2. प्रत्यर्थी/ The Respondent-Sri Pravin Kumar Hetamsaria
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.  
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,  
Head of Office/D.D.O,  
I.T.A.T, Kolkata Benches,  
Kolkata.