

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “C” KOLKATA**

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.2350/Kol/2016
Assessment Year :2012-13

Neel Kamal Agarwal Mr. M.L. Jain, & Associates, 9/12 Lal Bazar Stret, Block-E, 4 th Floor, Kolkata-700001 [PAN No.ACIPA 1982 B]	V/s.	Income Tax Officer, Ward-35(2), Aayakar Bhawan, Poorva, 110, Shanti Pally, E.M. Bypass, Kolaktata-107
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Miraj D Shah, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Robin Choudhury, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	06-02-2019
घोषणा की तारीख/Date of Pronouncement	28-02-2019

आदेश /ORDER

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-10 Kolkata's order dated 29.09.2016 passed in case No.49/CIT(A)-10/W-35(2)/15-16/Kol, involving proceedings u/s 144 of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's former substantive ground challenges correctness of both the lower authorities' action adding his sundry credits of ₹1,10,17,324/- as unexplained in the course of assessment as upheld in the lower appellate discussion as follows:-

"05. Grounds No. 3 relates to the action of the Ld. AO in adding Rs. 1,10,17,324/- under head 'unexplained credit-sundry creditor'. The matter has been dealt by the Ld. A.O as under:

There had been claim of Sundry Creditors for the sum of Rs.1,10,17,324/- and Expenses payable (Audit fees, Telephone Expenses & Mobile Expenses) of Rs.9,350/- in the Balance Sheet of the assessee for the A.Y 2012-13. Accordingly, such Sundry Creditors of Rs.11,10,17,324/- were credits in the accounts of the assessee during the F.yr. 2011-12 relevant to the A. Y 2012-13. The assessee did not explain the above credits in his accounts by furnishing accounts, confirmation of such balances from the respective parties and bills and vouchers in support of such claim of Sundry Creditors Balances. Accordingly, the assessee was directed to show cause as to why the above credits in his accounts should not be treated as unexplained credit in his account during the financial year 2011-12 and the same should not be added to his total income for the A. Y 2012-13

The assessee did not offer any explanation against the above show cause and also did not furnish any documentary evidence in support of his claim. Accordingly, the sum of Rs.1,10,17,324/- is treated as unexplained credit in his account during the financial year 2011-12 and is added to his total income for the A. Y2012-13. The penalty proceedings u/s 271(1)(c) of the I. T. Act, 1961 has been Initiated separately for concealment of particulars of income.

06. During the appeal stage the appellant / Ld. A.R for the appellant has submitted as under:

"Hon'ble sir, the Ld. Assessing officer erred in adding Rs.1,10,17,324/- being the amount of sundry creditors and advances received from debtors, stating as unexplained credit to the total income of the assessee.

Hon'ble sir, the assessee has filed his return of income and submitted the audited Balance Sheet, Profit & Loss Account with Tax Audit Report. Bank Statements and confirmations from some of the creditors, the Ld. AO should have passed the assessment order after taking into all relevant materials which the Ld. AO has gathered or has in her possession. Even in case of best judgment assessment the Ld. AO should have passed the assessment order taking into accounts the relevant materials and figures submitted to her. The audited Balance Sheet & Profit & Loss Account together with Tax Audit Report was in her possession and since the Income Tax Return was filed electronically having all the figures relating to Balance Sheet & Profit & Loss Account therein, there is no reason to say that she could not go through them. Sir, assessments are done on the basis of performance of the business of the assessee but the AO did not go through the figures of Profit & Loss Account. The assessee is a wholesale trader and total sales turnover was of Rs. 96,32,929/- only and the gross Profit rate and net Profit rate disclosed there on were 11.56% and 3.65% respectively. The Ld AO might have compared the such results with the other business results of same nature, but she did not. Instead she made an addition of Rs.1,10,17,324/- which comprises Rs.73,86,727/- dues of creditors and Rs.36,30,597/- being advances received from the debtors (customers) stating them as unexplained credit which is totally wrong. The appellant therefore strongly pray to your honour to delete the addition of Rs.1,10,17,324/-"

07. DECISION:

1. I have carefully considered the action of the Ld AO in making a disallowance of Rs.1,10,17,324/- on account of the unconfirmed Sundry Creditors / unexplained credits. During the course of the assessment, the Ld AO noticed that there had been claim of Sundry Creditors for the sum of Rs.1,10,17,324/- and Expenses payable (Audit fees, Telephone Expenses & Mobile Expenses) of Rs.9,350/- In the Balance Sheet of the assessee for the A.Y 2012-13. Accordingly, the Ld.AO reckoned that such Sundry Creditors of Rs.1,10,17,324/- were credits in the accounts of the assessee during the F.Y. 2011-12, relevant to the A.Y 2012-13. According to the Ld AO, the assessee-Individual did not explain the above credits in his accounts by furnishing accounts, confirmation of such balances from the respective parties and bills and vouchers in support of such claim of Sundry Creditors Balances. Therefore, as recorded by the Ld AO, the assessee was directed to show cause as to why the above credits in his accounts should not be treated as unexplained credit in his account during the Financial Year 2011-12 and the same should not be added to his total income for the A.Y 2012-13. The Ld AO has recorded further, that the assessee- individual did not offer any explanation against the above show cause and also did not furnish any documentary evidence in support of his claim. Therefore, the Ld AO treated the sum of Rs.1,10,17,324/- "**unexplained credit**" in his account during the financial year 2011-12 and added the same to the total income returned for the A.Y 2012-13.

2. During appeal, the Ld A.R for the appellant has submitted that the assessee has tiled his return of income and submitted the audited Balance Sheet, Profit & loss Account with Tax Audit Report. It was contended that the Bank Statements and confirmations from, some of the creditors were also submitted. It was argued that therefore, the Ld. AO ought to have passed the assessment order after taking into all relevant materials which the Ld. AO has gathered or has in her possession. It was pleaded that even in a case of best judgment assessment the Ld. AO should have passed the assessment order taking into accounts the relevant materials and figures submitted to her, and that the audited Balance Sheet & Profit & loss Account together with Tax Audit Report were in her possession and since the Income Tax Return was filed electronically having all the figures relating to Balance Sheet & Profit & Loss Account therein, there is no reason to say that she could not go through them. It was argued that the assessments are done on the basis of performance of the business of the assessee but the Ld. AO did not go through the figures of Profit & loss Account. It was contended that the assessee is a wholesale trader and total sales turnover was of Rs.96,32,929/- only and the gross Profit rate and net Profit rate disclosed there on were 11.56% and 3.65% respectively. It was argued that the Ld.AO might have compared such results with the other business results of same nature, but she did not, and that instead she made an addition of Rs.1,10,17,324/- which comprises Rs.73,86,727/- dues of creditors and Rs. 36,30,597/- being advances received from the debtors (customers) stating them as

unexplained credit which is totally wrong. It was pleaded that the additions be deleted.

3. I have given my considered thought to the action of the Ld. AO as recorded in the assessment order and the position taken by the assessee-appellant during the course of the scrutiny proceedings. It is seen that from the period 26.03.2015 to 30.03.2015, the Ld. AO has given multiple opportunities to the assessee to bring forth the necessary evidence relating to the credits appearing in the books / Balance Sheet. This was after the Ld.AO has noticed that the figure of Rs.73,86,727/- was appearing as Sundry Creditors and the figure of Rs.36,30,597/- was appearing under the head of Advance Credit in the liabilities, as per the Balance Sheet ended 31.03.2012. Though the specific requisition had been made by the Ld. AO by the order sheet noting of 26.03.2015 available on record, calling for the account confirmation of all the Sundry Creditors, details of whether liabilities were discharge with documentary evidence, bank and party details of the creditors, etc, there was no compliance by the assessee, as has also been noted by the Ld.AO. Though the names of the parties had been enclosed with the balance sheet of M/s Champion Sales and Services, the proprietary concern of the assessee, the specific confirmations as requisitioned by the Ld. were not offered by the appellant-assessee. During appeal also, the appellant has made no effort to obtain and furnish the proof from the Sundry creditors by way of confirmation of accounts, or even payments over the succeeding years. The appellant has only depended upon the lack of any enquiry by the Ld AO. However, in my considered opinion, as the assessee-appellant has not supplied any details either during the assessment or even during the appeal stage, at no point In time has be discharged the onus of giving the basis details such as address for communication, account confirmations etc., to place on record some semblance of identity or genuineness of the parties. It Is not even known whether they were trade creditors for the assessee during the relevant year. Hon'ble Courts have for long held that the onus is cast on the appellant to explain the credits in the books of accounts, otherwise they would remain unexplained, and liable for being disbelieved. Similarly f it Is noticed that in the matter of the amount of Rs.36,30,597/-which has been claimed by the appellant to be advances received from the debtors (customers), the assessee has not supported such claims either before the Ld.AO or before this forum.

4. In the case of Suresh Kumar T Jain Vs ITO, Ward-2(1), Banalore, the Hon'ble ITAT, Bangalore, Bench-A, reported in [2011] 128 ITD 74 (Bangalore) by their order dated 08.01.2010 have held as follows:

Section 68 read with section 41(1) of the Income-tax Act, 1961 - Cash credits - Assessment year 2005-06 - In course of assessment, Assessing Officer asked assessee to prove genuineness of sundry creditors shown in return of. income - In reply, assessee merely filed confirmation letters issued by some of alleged creditors - Assessing Officer rejected those letters

and made addition under two heads, i.e., 'brought forward creditors balances treated as cessation of trading liability under section 41(1) and 'current creditors under section 68 - Commissioner (Appeals) confirmed addition - On instant appeal, it was seen that Assessing Officer went to root of issue; made inquiries and brought on record that brought forward alleged sundry creditors and current year's creditors were not genuine. Further, assessee never tried to reconcile difference of brought forward balances nor produced any bills of purchase, etc., for verification in spite of being provided with ample time to reconcile - Whether, on facts, assessee had failed to discharge onus cast on him to substantiate his claim and, therefore, impugned addition made by authorities below was to be upheld - Held, yes

5. Similarly in the case of Asht Laxmi Diamond & Jewellery Vs ITO, Mumbai, the Hon'ble ITAT, Bench A by their order dated 20.02.2015, reported in [2015] 59 taxmann.com 430 (Mumbai - Trlb.) have held as under:

IT : Where assessee could not provide addresses, confirmation, etc., from two creditors and It was found that in last so many years those parties had never been seen by anybody and they had also not made any demand from assessee for last more than 10 years, liability In respect of said creditors was considered as having been ceased under section 41(1) Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability (Cessation of liability) - Assessment year 2007-08 - During assessment proceedings, Assessing Officer asked assessee to furnish details and confirmation of all sundry creditors shown In balance sheet - Assessee could not submit confirmation of two creditors - It was found that in last so many years those parties has never been seen by anybody, nor any known address of them was available; that there was never any demand for payment by any of said parties from assessee for last more than 10 years; and that no Income-tax returns had been filed by them - Whether liability of assessee had ceased to exist and was liable to be added under section 41(1) - Held, yes **[Para 8] [In favour of revenue]**

After a careful analysis of the action of the Ld. AO and the submissions made by the appellant, and in the light of the judicial pronouncements made by different Hon'ble Courts, in my considered opinion, the Ld AO cannot be faulted for making the additions that she has made, and accordingly confirm the same.

As the result, the ground taken by the appellant stands dismissed."

3. We have given our thoughtful consideration to rival contentions. There is hardly any dispute that this assessee is a wholesale dealer / trader in various electrical items and appliances such as water pumps, fans, coolers, gesysers, home appliances etc.,. It transpires during the course of hearing that neither of the lower authorities has rejected assessee's corresponding sales nor have they treated assessee's purchases to be bogus. They simply hold the corresponding parties as bogus sundry creditors. Learned Departmental Representative fails to dispute that if the corresponding sales and purchases are treated as genuine, the very course of action has to be followed regarding creditors parties in issue in order to avoid inconsistency. We therefore reverse the impugned addition in principle on this count alone.

4. Next comes equally important aspect that the assessee has also failed to prove its relevant parties to be genuine. Mr. Shah vehemently contends during the course of hearing that the lower authorities have accepted sales of the corresponding items and all this sufficiently proves assessee's purchases to be genuine. We find no substance in assessee's instant argument as it is assessee's bounden duty to prove of the purchases in issue by way of leading cogent evidences. The fact also remains whole of the assessee's purchases cannot be treated as bogus since corresponding sales have already been accepted. We hold in these peculiar facts and circumstances that the impugned purchases deserve to be disallowed @ 12.5% only. We therefore direct the Assessing Officer to restrict the impugned disallowance of ₹1,10,17,324/- to the extent 12.5% thereof only in consequential computation. This former substantive ground is partly accepted in above terms.

5. Next comes short term capital gains addition of ₹10.57 lac made in both the lower proceedings treating assessee's agricultural land sold to be a capital asset. It emerges during the course of hearing that the Assessing Officer had completed his best judgment assessment u/s. 144 of the Act on 31.03.2015. The assessee could not produce all the relevant details in the lower appellate proceedings as well. We reiterate that we have already restored the former issue back to the Assessing Officer with specific directions (supra). We

therefore deem it appropriate that larger interest would be met in case the Assessing Officer adjudicate the instant issue afresh as per law after affording three effective opportunities to the assessee. This latter substantive ground is accepted for statistical purposes.

6. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court 28/02/2019

Sd/-

(लेखा सदस्य)

(Dr.A.L. Saini)

(Accountant Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 28/02/2019 कोलकाता ।

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Neel Kamaal Agarwal, M/s M Jain & Associates, 9/12 Lal Bazar Street, Block-E, 4th Floor, Kolkata-001
2. प्रत्यर्थी/Respondent-ITO Ward-35(2), Aayakar Bhawan, Poorva, 110, Shantipally, E.M. Bypass, Kolkata-107
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।