



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

**BEFORE SHRI ABY T VARKEY, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.988/Kol/2017
(Assessment Year:2010-11)**

Shri Purna Chandra Sahoo 43A, Bhupen Bose Avenue Kolkata – 700 004	Vs.	I.T.O. Ward – 41(1) 3, Government Place (W) Kolkata – 700 004
PAN/GIR No. ARKPS6458F		
(Appellant)	..	(Respondent)

Assessee by	Shri Akash Bansal
Revenue by	Dr. Sankar Halder
Date of Hearing	04/04/2019
Date of Pronouncement	26/04/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.988/Kol/2017 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-13, Kolkata in appeal No.462/CIT(A)-13/W-44(1)/Kol/2014-15 dated 24/01/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 26/03/2013 by the Id. ITO, Ward-41(1), Kolkata (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming addition made on account of unexplained income in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee is an individual and had filed his return of income for the A.Y.2010-11 on 13/10/2010 declaring total income of Rs.2,12,850/-. The assessee is engaged in the business of hiring of cranes, digging equipments and other equipments for civil construction. The Id. AO observed that assessee's authorised representative appeared from time to time and furnished books of accounts and other details / documents as called for vide notice u/s.142(1) of the Act in support of the return of income which were subject to test check by the Id. AO.

3.1. During the course of assessment proceedings, the Id. AO issued letters to different parties u/s.133(6) of the Act. On perusal of audited balance sheet for the year under appeal, the Id. AO found that assessee has shown sundry debtors / bills receivable on Rs.3,10,427/- against M/s. Simplex Infrastructures Ltd., whereas as per the balance shown in the books of M/s. Simplex Infrastructures Ltd., the closing balance was Rs.41,23,078/- as payable to assessee. The assessee was asked to explain the difference of Rs.38,12,651/- (Rs. 41,23,078 – Rs. 3,10,427). The Id. AO also provided the statement of accounts obtained by him u/s.133(6) of the Act from M/s. Simplex Infrastructures Ltd., to enable the assessee to reconcile the same. The assessee stated vide letter dated 25/03/2013 that there was no difference in the income offered under hire charges received by the assessee. It was pleaded that the income has been duly reconciled and the same matches with the audited accounts of the assessee, hence no addition towards the difference in closing balance need to be made as suggested by the Id. AO in the show-cause notice issued to the assessee. The Id. AO did not heed to this contention of the assessee and accordingly proceeded to add the difference in sundry debtors figure of Rs.38,12,651/- and added the same to the total income of the assessee in the assessment.

3.2. The Id. AO asked the assessee to furnish evidences in respect of purchase of crane of Rs.35,71,000/- shown in the asset side of the balance sheet. He observed that no evidences were furnished in this regard. The assessee was again show-caused vide letter dated 12/03/2013 wherein he was requested to furnish the evidences like bills / vouchers, blue book, copy of transfer of crane and party ledger of the person from crane was purchased by the assessee on 15/03/2013. The assessee vide letter dated 21/03/2013 replied that in case of crane, blue book and copy of transfer of crane is not required. Based on this statement, the Id. AO concluded that assessee does not have any evidence in support of purchase of crane together with source of payment for the same. Accordingly, he treated the sum of Rs.35,71,000/- as unexplained expenditure u/s.69C of the Act and added the same to the total income of the assessee. Before appellate proceedings, the assessee pleaded that he had no knowledge regarding books of accounts and had fully depended on qualified Chartered Accountant for the same and he could not explain the entries found in the books of accounts properly before the Id. AO during the course of assessment proceedings. An affidavit in this regard was also filed before the Id. CIT(A).

3.3. With regard to addition made towards difference in closing balance of sundry debtors in the sum of Rs.38,12,651/- it was pleaded that the Id. AO had not made any objection on the balance of sundry debtors as on 01/04/2009 and there was no difference in hire charges received during the financial year 2009-10 relevant to A.Y.2010-11. The assessee pleaded that the Id. AO had not found any defects in the books of accounts produced before him. Hence, no addition could be made merely because there is difference in closing balance of sundry debtors. The assessee pleaded before the Id. CIT(A) that the Id. AO found that M/s. Simplex Infrastructures Ltd., had shown closing balance of Rs.41,23,078/- which had to be shown as debtors of the assessee in the books of assessee

also. It was pleaded that the assessee had claimed purchase of crane in the assets side to the expenditure of Rs.35,71,000/- . If the balance sheet of the assessee is recasted and actual debtors are shown then there would be shortage of Rs.38,12,651/- on the liability side of the balance sheet which means that the assessee had introduced his unexplained income to the extent of Rs.38,12,651/-. Therefore, the only addition in this regard could be sustained which is unexplained cash from or unexplained investment for purchase of plant and machinery. It was pleaded that the debtors are correspondingly reflected in the form of hire charges received / sales by the assessee in his profit and loss account and there cannot be any addition separately made towards unexplained debtors due to difference in closing balance between the assessee's books and the books of accounts of the sundry debtor. The Id. CIT(A) deleted the addition made on account of unexplained cash credit in the sum of Rs.38,12,651/- for the difference in sundry debtors balance by observing as under:-

“The debtors are already taken in to consideration of his sale which cannot be said to be as unexplained debtors. The appellant has introduced plant & machinery in place of sundry debtors which shows that it was an attempt to avoid unexplained cash credit on the liability side of the balance sheet by replacing the figure of sundry debtor as plant and machinery. If debtors and plant & machinery both are shown in asset side of the balance sheet then their remains deficit in the liability side of Rs.38,12,651/-. Keeping in view the aforesaid fact, the addition made on account of sundry debtors which is already shown as a part of sale is hereby deleted and addition of unexplained cash credit of Rs.38,12,651/- is hereby directed to be made which has been utilised for purchase of plant & machinery. This ground of appeal is parity allowed.”

3.4. The Id. CIT(A) with regard to addition of Rs.35,71,000/- on account of purchase of crane observed as under:-

“6.3. Ground No.4(c) relates to the addition of Rs.35,71,000/- on account of of crane as unexplained expenditure u/s 69C of the Income Tax Act, 1961 which was not substantiated by purchase bills. The appellant could not explain the aforesaid purchase of machinery. As in the above paras the corresponding unexplained investment credit has already been added, therefore, the same addition against purchase of machinery is to be sustained in a sense that the investment in plant and machinery was unexplained. In nutshell ground nos.4(b) & 4(c), addition has been made on undisclosed debtors and unexplained investment for plant & machinery which clearly shows that the appellant, in order to adjust his balance sheet figure kept his debtors out of books and against this figure plant & machinery purchased was shown which has no corresponding source. While doing the aforesaid investment, on the liability side unexplained cash credit has been made without which matching of balance sheet was not possible. Keeping in view the aforesaid fact, the unexplained investment is raised to the extent of Rs.3812651/- in place of Rs.3571000/- as held in ground no. 4(b) of which is differential of sundry debtors and the same is upheld and the grounds of appeal is dismissed. Thus, the total addition on account of unexplained cash credit which includes addition on account of purchase of plant & machinery is worked out to Rs.38,12,651/-only.”

4. Aggrieved, the assessee is in appeal before us on the following grounds.

1. That on the facts and circumstances of the case the Ld.CIT(A)—15, Kolkata erred in holding the total addition on account of unexplained cash credit which includes addition on account of plant & machinery. The Ld. C.I.T. (A)-13, Kolkata recasted the Balance Sheet considering only one parts not all the full.

2. That the appellant craves the leaves to add, alter, modify, or delete any ground of appeal.

5. We have heard rival submissions. At the outset, we find that assessee has filed a particular balance sheet before the Assessing officer and had pleaded for recasting of the said balance sheet before the Id. CIT(A) by taking a plea that certain debtors were shown as purchase of plant and machinery. We are in preliminary agreement with the argument of the Id. AR that no addition could be made towards difference in closing

balance of the sundry debtors as long as the income component in the form of hire charges received during the year tallies in both the parties books. In other words, if the income of the year has been duly offered by the assessee correctly, then there could not be any addition separately that could be made towards difference in closing balance of sundry debtors between two parties. But we find that the Id. AR was trying to link this difference in sundry debtors with the purchase of crane in the sum of Rs.35,71,000/- by stating that debtors are being shown as plant and machinery in the balance sheet. We find that no such finding has been recorded by the Id. AO in his assessment order regarding these averments made by the assessee. Considering the totality of facts and circumstances of the case, we deem it fit and appropriate in the interest of justice and fair play, to remand this issue to the file of the Id. AO for *denovo* adjudication and decide the same in accordance with law. The assessee is at liberty to furnish additional evidences in support of his contentions. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

6. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 26/04/2019

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 26/04/2019

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)

ITAT, Kolkata