

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

**[Before Shri J. Sudhakar Reddy, Hon'ble Accountant Member & Sri S.S. Godara, Hon'ble Judicial Member]**

**I.T.A. No. 383/Kol/2018**  
Assessment Year: 2014-15

***Income Tax Officer, War-25(1), Kolkata.....Appellant***

***Vs.***

***Smt. Manju Devi.....Respondent***

***3/113/1, Azadgarh***

***Tollygunge***

***Kolkata - 700 040***

***[PAN: AFZPD 8239 E]***

***Appearances by:***

*Shri Supriyo Pal, JCIT, Sr. D/R, appearing on behalf of the Revenue*

*Shri A.K. Tulsiyan, FCA, appeared on behalf of the assessee.*

Date of concluding the hearing : October 16<sup>th</sup>, 2019

Date of pronouncing the order : October 23<sup>rd</sup>, 2019

**O R D E R**

**Per J. Sudhakar Reddy, AM :-**

This appeal filed by the revenue is directed against the order of the Learned Commissioner of Income Tax (Appeals) – 7, Kolkata, (hereinafter the "Id.CIT(A)"), passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dt. 26/12/2017, for the Assessment Year 2014-15.

2. The assessee is an individual and proprietor of M/s. Hanuman Trading Company. She reported M/s. Ankit Commodities, as a sundry debtor for Rs.1,05,77,862/-. Notice u/s 131 of the Act, was issued to M/s. Ankit Commodities. The Assessing Officer reports that the same could not be served by the Inspector at the address given as there is no existence of office or branch of M/s. Ankit Commodities, at that place. The Assessing Officer concluded that the assessee had traded in commodities during the relevant assessment year and earned Rs.1,05,77,862/-, but has not included the same in her income and had adjusted the same with the business loss suffered by her during the relevant assessment order.

3. The Assessing Officer further states that notice u/s 133(6) of the Act, were issued to various parties who were sundry debtors and sundry creditors. The Assessing Officer records that it sought to verify these entities and the inspector reported that no such persons were available. Ultimately, at page 4, para 1 of his order, the Assessing Officer concluded as follows:-

*“Since the amount involved in the instant case is huge; to protect the interest of the Revenue the Sundry Creditors claimed by the assessee amounting to Rs.45,40,23,753/- is added back to the income of the assessee as bogus Sundry Creditors, on **Protective Basis**.”*

3.1. Aggrieved, the assessee carried the matter in appeal. The Id. CIT(A) held as follows:-

*“6. I have considered the submission made by the assessee and perused the assessment order passed by the A.O. In the first instance, the addition made by the A.O of bogus sundry creditors is on protective basis, the ultimate beneficiary of which is M/s. MSP Metalics Ltd.*

*6.1 The A.O. has made the addition of Sundry Creditors of Rs.45,40,23,753/- alleging them to be bogus. However, the A.O. has not rejected the books of accounts of the assessee and has accepted the purchases and sales made by the assessee and also accepted the profit / loss on the sales & purchase of the goods. Hence it is a contrary stand taken by the A.O.*

*The A.O. held that the creditor is not available at its address. But the A/R submitted that Smt. Santosh Devi, proprietor of M/s. Shree Shyam Enterprises is also assessed by the same A.O., where he has accepted the sales, hence it is inconsistent stand taken by the A.O by making protective addition.*

*6.2 It is also evident from the assessment order, that the purchase and sales transactions were made on credit by the assessee and the closing balance of the sundry debtors and sundry creditors were standing in the books of the assessee. Also no payments were made or received out of these balances.*

*6.3 Thus, from the above, it looks like that the transactions of purchases and sales entered into by the assessee are of the paper transaction only to provide accommodation entry. As such, it is a fit case to reject the books of the assessee as well as the purchase/sales, debtors/creditors. It is seen that in these kinds of transactions, only commission amount is charged in lieu of the entries provided. The transaction entered by the assessee is also one of these types only. Therefore, only commission amount must be the amount of income earned here.*

*6.4 I further find that the addition of entire sundry creditors made by the A.O. cannot be sustained since the A.O. has accepted both the purchases & sales made by the assessee. If the purchases are accepted, the sundry, creditors cannot be treated as bogus as they are counterparts of the same transaction. Also, the party from which the purchases have been made is also assessed by him only where he has accepted the sales. Thus, the addition of Sundry Creditors cannot be sustained.*

*6.5. However, the fact that the authenticity of these transactions were not proved cannot be denied. The assessee indulged in providing accommodation entries of purchases & sales, must have charged certain percentage as commission. The said commission income earned by the assessee is to be added in the hands of the assessee. Generally, the basic percentage of commission charged in these kind of transactions, ranges between 0.15% to 0.25% of the*

transaction value. Thus, commission income @ 0.25% of Rs.45,40,23,753/- i.e., Rs.11,35,059/- is treated as the income earned by the assessee.

6.6. Therefore, the addition is restricted to Rs.11,35,059/-

6.7. The appeal on this ground is **partly allowed.**"

3.2. On the issue of addition on account of commodity income treaded as undisclosed income, the ld. CIT(A) held as follows:-

*"8. I have considered the submission of the assessee and perused assessment order. The A.O. made the disallowance of the commodity income earned by the assessee of Rs.1,05,77,862/-. From the asst. order, it is evident that the A.O has made the addition treating the common income to be undisclosed income of the assessee.*

*8.1 The assessee in her written submission has submitted that the said income has been accounted in the profit & loss etc of the assessee and was thus included in the return of income. Copies of Balance Sheet, Profit & Loss and ITR return filed were submitted by the assessee. Further, the assessee submitted contract notes and accounts confirmation relating to commodity income earned.*

*8.2 On perusal of the Balance Sheet, I find that the claim of A/R is correct. I find that the addition made by the A.O. of commodity income treating the same to be undisclosed income is unsustainable since the said income was duly accounted for by the assessee in her return of income. The said fact has been mentioned by the AO in his assessment order. Also, the AO has started its computation from the income declared by the assessee. Thus, it leads to double addition, therefore, I hold that the addition made of commodity income of Rs.1,05,77,862/- treating it to be undisclosed is already disclosed income of the assessee and included in the return of income furnished. Therefore, on this ground, the addition made by the AO is directed to be deleted. Appeal on this ground is allowed."*

4. Aggrieved the revenue is in appeal before us.

5. We have heard Shri Supriyo Pal, JCIT, on behalf of the revenue and Shri A.K. Tulsian, FCA, the ld. Counsel on behalf of the assessee. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

6. Ground No. 1 & 2 are on the issue of deletion of addition made towards bogus sundry creditors on protective basis. This Bench of the Tribunal in the case of *ITO vs. Pradip Kumar Khetan in ITA No. 385/Kol/2018; Assessment Year 2014-15, order dt. 19/06/2019*, at para 7 held as follows:-

*"7. After hearing the ld. DR for the Revenue, we note that in the first instance, the addition made by the A.O. of bogus sundry creditors is on protective basis, the ultimate beneficiary of which is M/s MSP Metallics Ltd. We note that the A.O.*

*has made the addition of Sundry Creditors of Rs. 18,03,16,081/- alleging them to be bogus. However, the A.O. has not rejected the books of the assessee and has accepted the profit / loss on the sales & purchase of the goods. Hence it is a contrary stand taken by the A.O. We note that during the appellate proceedings, the assessee submitted that Shri Arun Kumar Tekriwal, the proprietor of M/s Amit Enterprise is also assessed under section 143(3), where the A.O has accepted the Sales, hence it is conflicting stand taken by the A.O by making protective addition. We note that it is also evident from the assessment order, that the purchase and sales transactions were made on credit by the assessee and the closing balance of the sundry debtors and sundry creditors were standing in the books of the assessee. Also no payments were made or received out of these balances. We note that Id. CIT(A) has rejected the books of accounts of the assessee observing the following:*

*5.3 Thus, from the above, it looks like that the transactions of purchases and sales entered into by the assessee are of the paper transaction only to provide accommodation entry. As such, it is a fit case to reject the books of the assessee as well as the purchase/sales, debtors/creditors. It is seen that in these kinds of transactions, only commission amount is charged in lieu of the entries provided. The transaction entered by the assessee is also one of these types only. Therefore, only commission amount must be the amount of income earned here.*

*We note that the addition of entire sundry creditors made by the A.O cannot be sustained since the A.O has accepted both the purchases & sales made by the assessee. If the purchases are accepted, the sundry creditors cannot be treated as bogus as they are counterparts of the same transaction. Also, the party from which the purchases have been made is also assessed by him only where he has accepted the sales. Thus, the addition of Sundry Creditors cannot be sustained. However we note that the fact that the authenticity of these transactions were not proved cannot be denied. The assessee indulged in providing accommodation entries of purchases & sales, must have charged certain percentage as commission. The said commission income earned by the assessee is to be added in the hands of the assessee. Generally, the basic percentage of commission charged in these kind of transactions, ranges between 0.15% to 0.25% of the transaction value. Thus, commission income @ 0.25% of Rs. 18,03,16,081/- i.e. Rs. 4,50,790/- is treated as the income earned by the assessee. Therefore, the addition is restricted to Rs. 4,50,790/-. In these peculiar facts and circumstances, we note that there is no infirmity in the order passed by Id. CIT(A), hence we dismiss the ground raised by Revenue.”*

7. Consistent with the view taken therein, we find no infirmity in the order of the Id. CIT(A) and delete the addition. Hence, Ground No. 1 & 2 of the revenue are dismissed.

8. Coming to Ground No. 3, we find that the Id. CIT(A) has deleted the addition on the ground that income from commodity trading cannot be treated as undisclosed income as the assessee already accounted for the same as her income and filed the return of income. The Id. CIT(A) also mentioned that the Assessing Officer had mentioned the same in his assessment order. Thus, we dismiss Ground No. 3 of the revenue.

9. Ground No. 4 is general in nature.
10. In the result, appeal of the revenue is dismissed.

***Kolkata, the 23<sup>rd</sup> day of October, 2019.***

***Sd/-***  
**[S.S. Godara]**  
Judicial Member

Dated : 23.10.2019  
{SC SPS}

*Copy of the order forwarded to:*

***1. Smt. Manju Devi***  
***3/113/1, Azadgarh***  
***Tollygunge***  
***Kolkata - 700 040***

***2. Income Tax Officer, War-25(1), Kolkata***

3. CIT(A)-  
4. CIT- ,  
5. CIT(DR), Kolkata Benches, Kolkata.

***Sd/-***  
**[J. Sudhakar Reddy]**  
Accountant Member

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches