

**IN THE INCOME TAX APPELLATE TRIBUNAL “B(SMC)” KOLKATA**  
[Before Shri A. T. Varkey, JM ]

**I.TA No. 1994/Kol/2019**  
**A.Y 2013-14**

Sri Hiranmoy Das PAN: ACRPD6934D	Vs.	Dy. CIT, Circle-1, Durgapur
Appellant		Respondent

Date of Hearing	04-03-2020
Date of Pronouncement	05. 06.2020

For the Appellant	Shri Manoj Tiwari, FCA, Id.AR
For the Respondent	Shri Jayanta Khanra, JCIT, Id.DR

**ORDER**

This appeal is preferred by the assessee against the order of Ld. CIT (Appeals) , Durgapur dated 22-05-2019 for the assessment years 2013-14.

2. The main grievance of the assessee is against the action of the Id. CIT(A) in confirming the addition of Rs. 25,11,464/- made on account of unexplained cash credit u/s. 68 of the Income-tax Act, 1961 ( in short, the ‘Act’)

3. Brief facts of the case as noted by the AO are that the assessee had shown Rs. 83,39,310/- as credit balance against sundry creditor namely M/s. Satadal Rice Mill. The AO notes that when he asked the assessee to substantiate the same, the assessee produced a party ledger account showing cash payment. The AO notes that he issued verification letter u/s. 133(6) of the Act to the said sundry creditor, M/s. Satadal Rice Mill. According to AO, letter was returned back on 09-02-2016 with the postal remark “*Refused, return to sender address dated 03.02.2016*”. In this back ground the assessee was asked by the AO to show cause as to why aforesaid sundry creditor amounting to Rs. 83,39,310/- should not be disallowed as unexplained cash credit. According to the AO, the onus to substantiate the sundry creditor was on the assessee. The AO also noted these facts i) closing balance as on 31.03.2012 was of Rs.

58,27,846/-, ii) closing balance as on 31.03.2013 was Rs. 83,39,310/-, iii) closing balance as on 31.03.2014 was of Rs.83,39, 310/- and iv) closing balance as on 31.03.2015 was Rs. 78,24,810/-. The AO also notes after perusal of the ledger accounts of the assessee during FY 2012-13 that assessee had only paid Rs. 5,00,000/- in cash and in F.Y 2013-14 no payment was made to the said creditor. And in FY 2014-15 the assessee only made payment of Rs. 5,14,500/- in cash. So according to the AO, no businessman can keep such a huge balance in the form of interest free trade credit since 2.4.2011. Therefore, he added an amount of Rs. 25,11,464/- ( Rs. 83,39,310 – Rs. 58,27,846) being sundry creditor as unexplained cash credit u/s. 68 of the Act. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who was pleased to confirm the same. Aggrieved, the assessee is before me.

4. Having heard both the parties and perusal of the records, I note that the assessee is a trader of marbles, steel furniture and rice. According to assessee, he is a trader of rice and has been purchasing rice from said sundry creditor, M/s. Satadal Rice Mill, which is a private limited company registered under the Companies Act, 1956 with CIN U51909WB1996PTC077178 & PAN: AAICS3554NJ. The Id. AR of the assessee also drew my attention to page-3 of the P/B, which is the copy of Company Master Data downloaded. It shows that the said company is active and that it was created on 21-08-1997 with three (3) directors, whose names are reflected in the said company master data ( page-3 of the P/B-I). According to the Id.AR, this rice mill has taken secured loan from UCO Bank and that it has squared up the loan in the year 2016. According to Id. AR, the assessee had filed copy of ledger of M/s. Satadal Rice Mills for the period ending 31-03-2013, which is found at page-1 of the P/B-I. Thus according to him there cannot be any doubt about the identity of sundry creditor M/s Satadal Rice Mills. Moreover according to him, the credit reflected in the books of the assessee is nothing , but trade credit, which cannot be added u/s. 68 of the Act. According to the Id. AR, the AO has accepted the trading result, however, he has erroneously disbelieved the expenditure/purchases of Rs. 25,11,464/-, which cannot happen because without purchase no sale can take place. According to the Id.AR, if the purchases are disbelieved, then the assessee's books of account ought to have been

rejected by the AO and then income of the assessee should have been estimated. So according to Id.AR without following the procedure of making the Best Judgment assessment, the AO ought not to have made the entire addition based on the reason that it is bogus purchase.

5. Per Contra, learned DR vehemently contended that the assessee failed to produce any material to suggest that there was trading activity of rice between the assessee and M/s. Satadal Rice Mill. According to him, though the sundry creditor was of Rs. 58,27,846/- (opening balance) and the closing balance as on 31-03-2013 was of Rs. 83,39,310/- and the fact that assessee had paid only of Rs. 5 lakhs in cash in this AY shows that there was no actual trading. According to him, the huge liability of assessee to pay Rs. 80 lakhs to the sundry creditor cannot be believed and in the absence of any evidence to substantiate the genuineness of the purchase, the AO has rightly made the addition. He, therefore, does not want me to interfere with the impugned order of the Id. CIT(A).

6. I have heard both the parties and gone through the records. I note that the assessee is a trader in marbles, steel furniture and rice. I note that the AO has accepted the sale figures shown by the assessee. However, he has disbelieved the purchases of rice to the tune of Rs. 25,11,464/- supposed to have been purchased from M/s. Satadal Rice Mill. It is common knowledge that without purchases, sales cannot take place. I note that the AO has not rejected the books of account of the assessee, but has made the addition towards the bogus purchase. The assessee has also made the payment to the party in the subsequent year which is evident from the payment of Rs. 5,14,500/-, which fact has been noted by the AO. I note that this is not the case where books of account maintained by the assessee has been rejected and the profit has been estimated. However, I note that assessee has failed to produce documentary evidences in the form of lorry receipts, way bill receipts, octroi receipts etc. The assessee has failed to substantiate the movement of rice from the rice mill to the assessee. So assessee has not been able to show with the support of evidence that it has purchased the rice from M/s. Standard Rice Mills. However, it is significant to note that sales has been accepted by the AO/ department. Without purchases, there cannot be sales. Under such circumstances the possibility of the assessee purchasing/trading of rice

from other sources and procuring bills from the accommodation entry provider cannot be ruled out. Therefore, entire alleged bogus purchase made from M/s. Satadal Rice Mill cannot be added in the hands of the assessee to the tune of Rs. 25,11,404/-. In such factual circumstances discussed supra, I am of the opinion that estimation of profit from the sale of rice of Rs.25,11,464/- could be justified. I note that in the rice trading G.P of 3 to 5 % is there during the AY under consideration. Therefore, GP addition of 4% would be sufficient to meet the ends of justice. I note that four percentage of GP would be just and proper. Therefore, I direct the AO to make the GP addition of 4 % in place of the addition of Rs. 25,11,404/-.

7. Before parting, it is noted that the order is being pronounced after ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dt. 14<sup>th</sup> May, 2020. In the light of the above discussion, the appeal of assessee is partly allowed in above terms/discussion.

8. In the result, the appeal of assessee is partly allowed.

Order Pronounced in the Open Court on 05 -06-2020

Sd/-  
A.T. Varkey  
Judicial Member

Dated 05- 06-2020

\*PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee: Shri Hiranmoy Das C/o Kalpana Steel & Marbels  
P.No. 258, Muchipara, Shibpur Road, Durgapur, Burdwan-713212 W.B.
2. Respondent/Revenue: The Deputy Commissioner of Income- tax Officer, Circle-  
1, Durgapur, Aaykar Bhawan, Aayakar Bithi, City Centre, Durgapur, Burdwan-  
713216, W.B.
3. CIT,
4. CIT(A), Kolkata.
5. DR, Kolkata Benches, Kolkata

\*\*PP/SPS True Copy By By Order Assistant Registrar  
ITAT Kolkata