

IN THE INCOME TAX APPELLATE TRIBUNALKOLKATA BENCH '(B)', KOLKATA

[BEFORE SHRI P.M. JAGTAP, HON'BLE VICE PRESIDENT (KZ) &  
SHRI A. T. VARKEY, HON'BLE JUDICIAL MEMBER]

[Through Virtual Court]

I.T.A. No. 2275/Kol/2019  
Assessment Year: 2014-15

*Vijay Kumar Sharma*.....*Appellant*  
*278, Rabindra Sarani, 1<sup>st</sup> Floor,*  
*Kolkata - 700 007.*  
*[PAN: AUCPS 5662 ]*

*Vs*

*ITO, Ward - 45(4), Kolkata*.....*Respondent*

**Appearances by:**

*Shri Sunil Surana, FCA appearing on behalf of the Assessee.*

*Shri Sandeep Chaube, CIT, DR appearing on behalf of the Revenue.*

Date of concluding the hearing : July 13, 2021

Date of pronouncing the order : July 16, 2021

### **ORDER**

**PER P.M. JAGTAP, VICE-PRESIDENT (KZ)**

This appeal filed by the assessee is directed against the order of  
Ld. Pr. CIT, Central - 13, Kolkata dated 21.08.2019.

2. The assessee in the present case is an individual who is engaged in the business of readymade garments. The return of income for the year under consideration was filed by the assessee on 23.09.2014 declaring a total income of Rs. 3,20,524/-. The said return was selected for scrutiny by the AO and in response to the notices issued u/s 142(1) of the Act, the details and documents required by the AO were furnished by the assessee. As noted by the AO in the assessment order, the assessee however failed to produce the purchase register

which was required by him to verify the sundry creditors of Rs. 15,29,71,250/- appearing in the balance sheet of the assessee. He, therefore, issued notices u/s 133(6) of the Act to the concerned sundry creditors on 15.12.2016 and since there was no response from the concerned sundry creditors till the passing of the assessment order on 26.12.2016, the AO held that there was a Cessation of Trading Liability representing the sundry creditors. He accordingly made an addition of Rs. 15,29,71,250/- to the total income of the assessee u/s 41(1)(a) of the Act in the assessment completed u/s 143(3) of the Act.

3. Against the order passed by the AO u/s 143(3) of the Act, and appeal was preferred by the assessee before the Id. CIT(A) challenging the entire addition made by the AO u/s 41(1)(a) of the Act and since there was no satisfactory compliance on the part of the assessee to the notices issued by him fixing the said appeal for hearing from time to time, the Ld. CIT(A) dismissed the appeal of the assessee and confirmed the entire addition made by the AO u/s 41(1)(a) of the Act. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. As rightly pointed out by the Id. Counsel for the assessee, the notices u/s 133(6) of the Act were issued by the AO to the concerned sundry creditors on 15.12.2016 and since the assessment order was passed on 26.12.2016, even the reasonable time was not allowed by the AO to the concerned sundry creditors to respond to the notices issued u/s

133(6) of the Act. He has also pointed out that one of the sundry creditors had sought some time to submit the information required by the AO and this request made in writing on 28.12.2016 was mentioned by the AO in the assessment order passed on 26.12.2016. This glaring mistake committed by the AO clearly shows that the assessment order was passed by him in unusual haste giving antedate and making a huge addition of Rs. 15,29,71,250/- u/s 41(1)(a) of the Act without bringing anything on record to prove that the trading liability on account of sundry creditors as shown by the assessee had ceased to exist during the year under consideration. It is also noted that the fact of non-reply on the part of the concerned sundry creditors to the notices issued u/s 133(6) was never confronted by the AO to the assessee and no opportunity whatsoever was given by him to the assessee to prove the genuineness and existence of the trading liability on account of sundry creditors before invoking section 41(1)(a). As submitted by the Id. Counsel for the assessee, even the written submission filed by the assessee before the Id. CIT(A) was completely overlooked by him while confirming the arbitrary and unreasonable addition made by the AO u/s 41(1)(a). Keeping in view all these facts of the case as explained and highlighted by the Id. Counsel for the assessee, we find that the huge addition of Rs. 15.29 crores was made by the AO u/s 41(1)(a) of the Act and confirmed by the Id. CIT(A) without giving proper and sufficient opportunity of being heard to the assessee and there is a clear violation of principle of natural justice. Even the Id. DR has not been able to rebut or controvert this position clearly apparent from the orders passed by the authorities below. We, therefore, consider it fair and proper and in the interest of justice to set aside the impugned

order passed by the Ld. CIT(A) and restore the matter to the file of the AO for deciding the same afresh on merit in accordance with law after giving proper and sufficient opportunity of being heard to the assessee to establish the genuineness and existence of the liability on account of sundry creditors.

**5. In the result, the appeal of the assessee is treated as allowed for statistical purpose.**

Order Pronounced in the Open Court on 16<sup>th</sup> July, 2021.

Sd/-  
(A.T. VARKEY)  
JUDICIAL MEMBER

Sd/-  
(P.M. JAGTAP)  
VICE PRESIDENT

**Dated: 16/07/2021**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. Vijay Kumar Sharma, 278, Rabindra Sarani, 1<sup>st</sup> Floor, Kolkata – 700 007.
2. ITO, Wara - 45(4), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. Private Secretary / DDO  
ITAT, Kolkata Benches Kolkata