

आयकर अपीलीय अधीकरण, न्यायपीठ –“B” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
[Before Shri P. M. Jagtap, Vice President (KZ) & Shri A. T. Varkey, Judicial Member]

**I.T.A. No. 169/Kol/2020**  
**Assessment Year: 2012-13**

S. K. Developers Pvt. Ltd. (PAN: AAHCS9067P)	Vs.	Income-tax Officer, Ward-5(1), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	28.10.2021
Date of Pronouncement	11.11.2021
For the Appellant	Shri Manish Tiwari, AR
For the Respondent	Smt. Ranu Biswas, Addl. CIT

**ORDER**

**Per Shri A. T. Varkey, JM:**

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-10, Kolkata dated 16.12.2019 for AY 2012-13.

2. The 1<sup>st</sup> ground of appeal of assessee reads as under:

*“1a) That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in confirming the addition of Rs.1,39,00,000/- made by AO without properly considering the explanations and facts submitted by appellant.*

*b) That on the facts and in the circumstances of the case Ld. CIT(A) erred in confirming the addition of Rs.1,39,00,000/- u/s. 69C even when identity, creditworthiness and genuineness of the creditor was established by appellant.*

*c) That on the facts and in the circumstances of the case, Ld. CIT(A) erred in confirming the addition of Rs.1,39,00,000/- by AO who was also confused as to how the addition can be made either u/s. 68 or u/s. 69C inspite of relevant details.”*

3. Brief facts as noted by the AO are that while going through the Balance Sheet of the assessee company, the AO noted that Rs.1.39 cr. has been reflected under the sub-head “Advance to Customers” under the head “Other Current Liabilities” in Note 11 annexed to the Balance sheet. According to AO, this amount was reflected against the name of M/s. Sarada Construction Pvt. Ltd. (hereinafter referred to as “M/s. SCPL”) and on a query from the AO, the assessee replied that this amount was received as payment/advance for sale of property.

According to AO, he asked the assessee to furnish the agreement or instrument to confirm such a transaction. However, according to AO, assessee failed to produce any such documents. Further, the AO notes that it has been brought to his notice that the credit amount reflected against this company (M/s. SCPL) has already been paid by virtue of the order of Justice Shyamal Kumar Sen committee. However, according to AO, there was no direct concurrence of such payments and the amount reflected as advance from customer M/s. SCPL and according to him the assessee failed to substantiate how and for which purpose the payments were received from this M/s. SCPL. Thereafter, he disallowed Rs.1.39 cr. u/s. 69C of the Income-tax Act, 1961 (hereinafter referred to as the "Act"). Aggrieved the assessee preferred an appeal before the Ld. CIT(A), who was pleased to dismiss the same and observed that he is confirming the addition u/s. 68 or 69C of the Act.

4. We have heard rival submissions and gone through the facts and circumstances of the case. The main plea of the assessee is that this amount (credit of Rs.1.39cr.) lying in the name of M/s. SCPL under the head advance to customers was credited in the FYs 2008-09 to 2010-11, the details of which has been reproduced at pages 12 and 13 of the impugned order of Ld. CIT(A) is again reproduced for ready reference as under:

Sl. No.	FY, Date of transaction	Bank's name	Cheque No.	Amount Received	Amount Paid	Closing Balance
1	08-09 12.11.08	Bank of Rajasthan	692601	2,00,000		2,00,000
2	09-10 03.09.09	Bank of Rajasthan	707261	2,50,000		
3	08.10.09	Bank of Rajasthan	455046	1,00,000		
4	09.10.09	Bank of Rajasthan	455047	1,00,000		
5	27.10.09	Bank of Rajasthan	707268	2,50,000		
6	03.11.09	Bank of Rajasthan	707266	2,50,000		
7	06.11.09	Bank of Rajasthan	707269	2,50,000		
8	12.11.09	Bank of Rajasthan	707270	2,50,000		
9	16.11.09	Bank of Rajasthan	707267	2,50,000		
10	19.11.09	Bank of Rajasthan	707271	2,50,000		
11	26.11.09	Bank of Rajasthan	707272	2,50,000		
12	11.12.09	Bank of Rajasthan	707273	2,50,000		
13	18.12.09	Bank of Rajasthan	707274	2,50,000		
14	24.12.09	Bank of Rajasthan	707276	2,50,000		

15	30.12.09	Bank of Rajasthan	707275	2,50,000		
16	02.01.10	Bank of Rajasthan	710528	25,00,000		
17	05.01.10	Bank of Rajasthan	707277	2,50,000		
18	08.01.10	Bank of Rajasthan	707278	2,50,000		
19	15.01.10	Bank of Rajasthan	707255	2,50,000		
20	22.01.10	Bank of Rajasthan	707256	2,50,000		
21	30.01.10	Bank of Rajasthan	707257	2,50,000		
22	04.02.10	Bank of Rajasthan	710529	25,00,000		
23	09.02.10	Bank of Rajasthan	707265	2,50,000		
24	08.03.10	Bank of Rajasthan	708586	4,00,000		
25	19.03.10	Bank of Rajasthan	708587	4,00,000		
26	23.03.10	Bank of Rajasthan	708588	4,00,000		
27	23.03.10	Bank of Rajasthan	708585	4,00,000		
28	26.03.10	Bank of Rajasthan	708589	4,00,000		
29	26.03.10	Bank of Rajasthan	708590	4,00,000		
30	31.03.10	Bank of Rajasthan	710532	25,00,000		
				<b>1,46,00,000</b>	<b>0</b>	<b>1,48,00,000</b>
31	10-11 07.04.10	ICICI Bank	708591	4,00,000		
32	08.04.10	Chq.710532 bounced	Chq bounced		2500000	
33	16.04.10	ICICI Bank	708592	4,00,000		
34	21.04.10	ICICI Bank	708593	4,00,000		
35	03.05.10	ICICI Bank	708594	4,00,000		
				<b>16,00,000</b>	<b>25,00,000</b>	<b>1,39,00,000</b>

5. According to Ld. AR, the aforesaid relevant ledger account would substantiate that the amount in question (Rs. 1.39 cr.) was not credited in the year under consideration (AY 2012-13) but it was only carry forwarded balance from past several years. Thus, according to Ld. AR, since the amount in question (Rs.1.39 cr.) was not credited in the year under consideration (AY 2012-13) and only represents carry forwarded balance from earlier years, the said sum cannot be added u/s. 68 (unexplained credit) or u/s. 69C of the Act (unexplained expenditure) and for that he cited the decision of the Hon'ble Calcutta High Court in the case of CIT Vs. J. J. Development (P) Ltd. in ITA No.519 of 2008 dated 16.06.2016 (which has been reproduced by the Ld. CIT(A) at pages 14 and 15 of the impugned order) and also he cited the decision of Hon'ble Calcutta High Court in the case of CIT Vs. Embicon Engineering Private Limited in ITA 687 of 2007 and ITO Vs. Anil Kumar Singh, ITA 968 of 2010 of Hon'ble Calcutta High Court wherein the ratio of the aforesaid decisions were that the credit appearing in the books of the assessee if carry forwarded from previous year and not pertaining to the relevant assessment year, then there cannot be any addition made u/s. 68 of the Act as done by Ld CIT(A). Further, according to Ld. AR, the AO erred in making the addition under section 69C of the Act because the case of the AO/CIT(A) was

not that in this assessment year, the assessee had incurred any expenditure, source of which assessee could not explain, so section 69C of the Act cannot be attracted. So, the impugned action of the Ld. CIT(A) to confirm the erroneous addition of AO u/s. 69C of the Act was also patently erroneous.

6. Moreover, the Ld. AR also brought to our notice that the amount of Rs.1.20 cr. out of Rs.1.39 cr. has been refunded/repaid as per the order of the Justice Shyamal Sen Committee (*Against M/s. SCPL, ED enquiry and due to some inquiry headed by Justice Shyamal Sen Committee pursuant to the orders assessee made payment*) which fact is discernible from a perusal of page 9 to 13 of paper book wherein the bank statement of the assessee has been kept and we note that the assessee had made payments in five (5) installments of Rs.24.40 lacs each to the Justice Shyamal Sen Committee on various dates starting from 25.04.2014, 23.05.2014, 24.06.2014, 23.07.2014 and 29.08.2014 and thus total amount of Rs.1.22 cr. was repaid. Therefore, according to Ld. AR, looking from any angle, the addition made by the AO should not be sustained.

7. Per contra, the Ld. DR vehemently pleaded that the genuinity of the advance supposed to have been paid by M/s. SCPL is under suspicion because there was no agreement/instrument to support such a transaction as claimed by assessee. According to Ld. DR the assessee's claim that it has made repayment of Rs.1.22 cr. to the Justice Shyamal Sen Committee also need to be verified. So, according to Ld. DR the matter may be sent back to AO for verification.

8. After hearing the rival submissions and on perusal of the record, we note that the amount in question have been credited in FYs 2008-09 to 2010-11 as seen from the ledger account (supra). The addition made by the AO in this relevant assessment year i.e. AY 2012-13 u/s. 69C of the Act cannot be sustained for the simple reason that it is not the case of the AO that this amount was unexplained expenditure incurred by the assessee in this year. Coming to the addition as observed by the Ld. CIT(A) u/s. 68 of the Act also cannot be sustained for the

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reason that the credit of Rs.1.39 cr. is opening balance of this year which is carried forward balance from the past several years. Therefore, addition u/s. 68 and 69C of the Act is illegal and, therefore, deleted.

9. Next ground is against the action of the Ld. CIT(A) in not adjudicating the issue of short TDS credit of Rs.1,60,644/- by the AO in the computation sheet. We direct that this issue should be verified by the AO since assessee disputes it factually. So the AO to verify the facts and is directed to hear the assessee and pass order in accordance to law on this issue of short TDS credit of Rs.1,60,644/-. The assessee may submit documents to substantiate its claim and the AO to decide in accordance to law.

10. In the result, the appeal of assessee is partly allowed for statistical purposes.

Order is pronounced in the open court on 11<sup>th</sup> November, 2021.

Sd/-  
(P. M. Jagtap)  
Vice President

Sd/-  
(A. T. Varkey)  
Judicial Member

Dated: 11<sup>th</sup> November, 2021

*JD, Sr. PS*

Copy of the order forwarded to:

1. Appellant- M/s. S. K. Developers Pvt. Ltd., 23A, N. S. Road, 10<sup>th</sup> floor, Room No. 45, Kolkata-700 001.
2. Respondent – ITO, Ward-5(1), Kolkata.
3. CIT(A)-10, Kolkata (sent through e-mail)
4. CIT, Kolkata.
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO  
ITAT, Kolkata Benches, Kolkata

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