

IN THE INCOME TAX APPELLATE TRIBUNAL "B"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.446/Kol/2019
Assessment Year: 2014-15

Shri Protim Dasgupta.....Appellant

C/o Dr. Pratima Ray,
Hariniketan Apartment,
1/7, Chittaranjan Colony,
Kazipara, Baghajatin,
Kolkata-700032.
[PAN:APKPD9631H]

vs.

ITO, Ward-62(2), Kolkata.....Respondent

Appearances by:

Shri Prabir Kr. Sen, Advocate, appeared on behalf of the appellant.
Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : March 28, 2022

Date of pronouncing the order : March 28, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 28.12.2018 of the Commissioner of Income Tax (Appeals)-19, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

"1. That on the facts and in the circumstances of the case, Ld. Commissioner of Income Tax (Appeals) was mistaken to limit the disallowance to the extent of Rs. 92,88,825/- on account of unverifiable creditors where the opening balance of the creditors for Rs.34,08,875 brought forward from last year, was ignored which would not be income for the assessment year 2014-15.

2. That on the facts and in the circumstances of the case, Ld. Commissioner of Income Tax (Appeals) failed to construe that section 133(6) of Income Tax 1961 is not the only conclusive machinery to substantiate the veracity of transactions giving rise to creditors, where details of bank transaction with the said creditors were available at the time of Remand-assessment.

3. That on the facts and in the circumstances of the case, Ld. Commissioner of Income Tax (Appeals) failed to consider and appreciate that the appellant was not given any opportunity to rebut the alleged no response to the notice u/s 136 of Income Tax 1961, issued to the creditors.

4. For this and other grounds, which may be urged at the time of hearing, the appeal may be allowed and justice rendered.”

2. At the outset, the Id. Counsel for the assessee has submitted that the sole issue involved in this appeal is relating to the addition made by the lower authorities of Rs.92,88,825/- on account of unverifiable creditors. The Id. Counsel has submitted that out of the aforesaid amount of Rs.92,88,825/-, there was opening balance of the creditors was at Rs.34,08,875/- which was brought forward from last year. He has submitted that as each year is a separate assessment year, therefore, the addition could not have been made by the Assessing Officer in respect of brought forward credits of Rs.34,08,875/-. The Id. counsel has further submitted that there were total four creditors. During the remand proceeding before the Assessing Officer, two creditors appeared and verified the transactions. However the remaining two creditors did not appear because of their own reasons and it was beyond the control of the assessee to compel them to appear before the Assessing Officer. However, the assessee has now persuaded them, upon which they have now supplied the copy of the ledger of the assessee in their books of accounts showing the aforesaid amount credited to the assessee. The Id. Counsel for the assessee has also relied upon the bank account statement to submit that the aforesaid amount was transferred to the assessee by the aforesaid creditors through banking channel. The Id. Counsel for the assessee has, therefore, submitted that the assessee may be given an opportunity to produce the aforesaid two creditors and relevant evidences to verify the genuineness of the transaction relating to the aforesaid credits and regarding the creditworthiness of the creditors.

The Id. DR has relied upon the findings of the lower authorities to submit that the Id. CIT(A) had given adequate opportunity to the assessee to produce the aforesaid creditors and the assessee even could not produce the aforesaid creditors in the remand proceedings before the Assessing Officer. She, therefore, has prayed for dismissal of the appeal.

3. We have considered the rival contentions of both the Id. representatives of the parties. In this case, the sole issue is relating to the addition made by the Assessing Officer due to unverifiable creditors. It is the case of the assessee that the assessee tried

his best to persuade the aforesaid creditors to appear before the Assessing Officer and verify the aforesaid credits. However, the assessee was not having control over the aforesaid creditors to compel their appearance before the Assessing Officer. On the other hand, the Assessing Officer had wide powers to compel the appearance of the aforesaid creditors before him but he failed to exercise that power. The Id. Counsel has also submitted that out of total addition of Rs.92,88,825/- on account of unverifiable creditors, an amount of Rs.34,08,875/- is pertaining to the earlier assessment year which has been brought forward as opening balance of the credits, which otherwise cannot be added back during the assessment year under consideration. The Id. Counsel has also relied upon the bank statements and copy of the ledger in the name of the assessee in the books of accounts of the aforesaid creditors and has further submitted that the assessee will produce the aforesaid two creditors before the Assessing Officer. In our view, the interest of justice will be well-serve if the assessee is given an opportunity to produce the necessary evidences/creditors for the verification of the transaction in question. In view of this, the impugned order of the Id. CIT(A) is set aside on this limited issue with a direction that the Id. CIT(A) will give an opportunity to the assessee to produce the evidences/creditors, if so required for the purpose of verification of genuineness of the transaction and creditworthiness of the creditors, thereafter the Id. CIT(A) will decide the issue afresh in accordance with law.

4. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 28th March, 2022.

Sd/-
[Girish Agrawal]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 28.03.2022.

RS

Copy of the order forwarded to:

1. Shri Protim Dasgupta
2. ITO, Ward-62(2), Kolkata

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

//True copy//

By order

Assistant Registrar, Kolkata Benches