

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'एसएमसी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH: KOLKATA**  
**श्री संजय गर्ग न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष**  
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member ]

**I.T.A. No. 911/Kol/2019**  
**Assessment Year : 2013-14**

ITO, Ward-48(4), Kolkata	Vs.	Shyam Bahadur Verma (PAN: ABRPV 9282 D)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	14.06.2022
Date of Pronouncement / आदेश उद्घोषणा की तिथि	01.09.2022
For the Appellant / निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the Respondent / राजस्व की ओर से	Shri Shallong Yaden, Addl. CIT

**ORDER / आदेश**

**Per Shri Rajesh Kumar, AM:**

This is the appeal preferred by the revenue against the order of the Commissioner of Income Tax(Appeals)-14, Kolkata [hereinafter referred to as 'Ld. CIT(A)'] dated 20.02.2019 for the assessment year 2013-14.

2. The issue raised in ground no. 1 by the revenue is against the order of Ld. CIT(A) violating the provisions of Rule 46A of the I.T. Rules ,1962 by accepting ledger accounts of the assessee which were never produced by the assessee during the

assessment proceeding and thus not giving opportunity to the AO. The second ground on which the revenue has assailed the order of Ld. CIT(A) is qua deleting the addition of Rs. 1,70,77,128/- as made by the AO on account of being bogus sundry creditors in respect of two parties namely: i) M/s Sandstone Infraprojects Pvt. Ltd. & ii) M/s Balaji Pipes on the ground of difference between the ledger accounts as per assessee books of accounts and as per information received from the said creditors u/s 133(6) of the Act in the opening balances.

3. Facts in brief are that during the assessment proceedings, the AO called upon the assessee to furnish the copies of sundry creditors and also prove the genuineness thereof. The assessee accordingly supplied the copies of ledger accounts with addresses. In order to verify the genuineness of creditors, the AO also issued notices u/s 133(6) of the Act to the sundry creditors which were replied by the credits by filing details and information as required. The AO, upon examination of the details as received u/s 133(6) of the Act vis a vis the books of the assessee, found that there are difference in the opening balances in respect of two parties namely i) M/s Sandstone Infraprojects Pvt. Ltd. of Rs. 1,65,77,128/- & ii) M/s Balaji Pipes Rs. 5,00,000/- and added the same to the income of the assessee.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by noting that the differences in the accounts of the sundry creditors were only in the opening balances which did not pertain the assessment year under appeal and coming from earlier years. The Ld. CIT(A) also recorded a finding a fact that there is no difference so far as purchases and payments of the current years are concerned. It was noted by Ld. CIT(A) that there are no differences qua the transactions done during the year and instead the difference is in the opening balances. The Ld CIT(A) noted that in the opening balance of Sandstone Infraprojects Pvt. Ltd. the difference was Rs. 1,70,77,128/- whereas in respect of second party M/s Balaji Pipes, the difference was Rs. 5,00,000/-. According to Ld. CIT(A), the said differences cannot

be added in current year and accordingly the same was deleted by relying on the series of decisions as discussed in the appellate order.

5. After hearing the rival parties and perusing the material on record including the impugned order of Ld. CIT(A), we note that undisputedly the addition was made in respect of two parties who were sundry creditors the details whereof are given hereinabove and there were difference in the opening balances as per the assessee's books of account vis a vis the details as supplied by the sundry creditors in response to notices issued u/s 133(6) of the Act. We also note that the Ld CIT(A) has not admitted any additional evidences but only the ledger copies which were part of books of accounts and were produced before the AO. The Ld. CIT(A) has deleted the addition on the ground that earlier years differences can not be added in the current year which appeared to be correct position of law considering the various case laws relied by the Ld. CIT(A). Besides, the Ld. A.R. referred to the decision of Co-ordinate Bench in the case of ITO vs. Garima Advisory Pvt. Ltd. in ITA No. 385/Kol/2019 for AY 2013-14 dated 20.05.2022 wherein the similar issue has been decided by the Co-ordinate Bench in favour of the assessee by holding as under:

*“9. With the assistance of the Ld. D.R, we have gone through the record carefully, but she was unable to pin-point, which is the additional evidence, filed before the Ld. CIT(A). The Ld. First Appellate authority has re-appreciated the position of accounts available in the balance-sheet right from the earlier years. The Ld. First Appellate Authority has categorically recorded a finding that these amounts were not received by the assessee during the accounting year relevant to the assessment year. Therefore, no addition can be made in this assessment year. The Ld. First Appellate authority for buttressing his finding made reference to the CBDT Circular No. 246/151/2017-A & PAC-1 dated 10.01.2018. After perusal of the finding of the Ld. CIT(A), we do not find any error in it and there is no substance in the grounds of appeal raised by the revenue. Accordingly, this appeal is dismissed.”*

The facts of the case before us are quite similar and therefore respectfully following the decision of the coordinate bench , the appeal of the revenue is dismissed on both the grounds by upholding the order of Ld. CIT(A).

*ITA No. 911/Kol/2019*  
*AY: 2013-14*  
*Shyam Bahadur Verma*

5. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 1<sup>st</sup> September, 2022

Sd/-

(Sanjay Garg / संजय गर्ग)  
Judicial Member / न्यायिक सदस्य

Sd/-

(Rajesh Kumar / राजेश कुमार)  
Accountant Member / लेखा सदस्य

Dated: 1<sup>st</sup> September, 2022

*SB, Sr. PS*

Copy of the order forwarded to:

1. Appellant- ITO, Ward-48(4), Kolkata
2. Respondent – Shri Shyam Bahadur Verma, 1<sup>st</sup> Floor, 3, Govt. Place West, Kolkata-700001.
3. The CIT(A)- 14, Kolkata (sent through e-mail)
4. Pr. CIT- Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata