

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र) एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President (KZ) & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 1038/Kol/2019
Assessment Year: 2013-14

ITO, Ward-40(4), Kolkata	Vs.	Smt. Pushpa Devi Rathi (PAN: ACMPR 5629 Q)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	08.09.2022
Date of Pronouncement / आदेश उद्घोषणा की तिथि	09.11.2022
For the Appellant / निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the Respondent / राजस्व की ओर से	Smt. Ranu Biswas, Addl. CITDR

ORDER/ आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-12, Kolkata [hereinafter referred to as 'Ld. CIT(A)'] dated 28.02.2019 for the assessment year 2013-14.

2. Issue raised in ground no. 1 is general in nature and does not need any specific adjudication.
3. Issue raised in ground no. 2 is against the deletion of Rs. 6,50,000/- by the Ld. CIT(A) on the ground that the said amount is repayment of loan from Mamta Mohta

during the year which was given in the earlier year. Issue raised in ground no. 3 is against the order of Ld. CIT(A) allowing 40% on account of expenses from understated sales of Rs. 22,30,523/-.

4. Facts in brief are that the case of the assessee was selected under scrutiny and statutory notices were duly issued and served on the assessee. The assessee filed copy of tax audit report, bank statements of two banks but the supporting books of accounts and documentary evidences could not be produced for verification despite affording several opportunities. Thereafter the AO framed assessment u/s 144 as the best assessment by making an addition of Rs. 1,49,30,067/- towards unexplained deposit in the bank accounts which remained unexplained. The AO computed the total deposits in the two bank accounts of Rs. 7,45,99,198/- and after reducing the disclosed sale of Rs. 5,96,69,131/-, treated the balance as excess deposits in the bank accounts which remained unexplained due to non-production of books of accounts.

5. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee in respect of Rs. 1,49,30,067/- by reducing the contra entries to the extent of Rs. 1,20,49,544/- in the bank accounts and remaining of Rs. 28,80,523/- was explained from the debtors and loans repayments. The Ld. CIT(A) accepted Rs. 6,50,000/- on account of repayment from Mamta Mohta advanced in the earlier years and remaining of Rs. 22,30,523/- was treated as undisclosed sales. The Ld. CIT(A) confirmed the addition to the extent of Rs. 13,38,314/- by applying @ 60% of Rs. 22,30,523/- on account of understated sales by allowing 40% towards expenses. The Ld. CIT(A) while partly allowing the appeal of the assessee observing and holding as under:

“11. Ground no.2: Undisclosed sale of Rs.1,49,30,067/-:-*The A.O's case is that since Bank accounts show much higher figure of receipts than the sales of her profit & loss account the excess receipt in bank account is undisclosed sale.*

11.1. The appellant's case is that most of the sale increases in the receipt as alleged by the A.O is on account of contra entries in the same bank account pursuant to respective bouncing of cheques as is apparent from cursory look at the relevant entries. The appellant has given the aggregate of such contra entries which amounts to Rs. 1,20,49,544/-.

11.2. It is apparent that the A.O has jumped to the conclusion without appreciating the nature of entries in the bank account, this being to the above extent of Rs. 1,20,49,544/-,the

A.O Is wrong. The sale addition figures found by the A.O is thus overstated by that figure. The balance figure of Rs.28,80,523/- Is sought to be explained as received from earlier debtors and loan. As the said claim against the balance of Rs.28,80,523/- is not supported by specific details, I may sustain the A.O's view up to this amount of Rs.28,80,523/-, so far as the sales understand is concerned. Out of Rs.28,80,523/-, Rs.6,50,000/- Is further claimed as earlier loan received from Mamta Mohta, and is, therefore, also treated as explained. Thus, the sale under-stated totalling to Rs.[Rs.28,80,523/- - Rs.6,50,000/- = Rs.22,30,523/-], may be treated as such. As regards the income embedded in the aforesaid .understated sale derived at Rs.22,30,523/- the A/R's plea is that there are expenses from the bank accounts and the whole sum of sale cannot be treated as income. The corresponding purchase or expenses, according to the A/R, has to be factored in while computing the income to be added to the return of income. Since expenses or purchases are not very clear to me, I confirm the addition made on this account up to 60% of Rs.22,30,523/- being Rs. 13,38,314/-."

6. After hearing the rival submission and perusing the material on record, we find that the assessment was framed u/s 144 meaning thereby the assessee has not furnished the books of account and other documentary evidences before the AO except copy of tax audit report, balance sheet and copy of two bank accounts. The AO calculated the total deposits into these bank accounts as under:

<i>Name of the Bank</i>	<i>Account Number</i>	<i>Deposit during the year</i>
<i>Kotak Mahindra Bank</i>	<i>03232000019363</i>	<i>6,92,72,554/-</i>
<i>The Federal Bank Ltd.</i>	<i>11570200059037</i>	<i>53,26,644/-</i>
Total		7,45,99,148/-

Since the assessee had disclosed sales during the relevant year at Rs. 5,96,69,131/-, the AO computed the difference at Rs. 1,49,30,067/- and treated the same as excess deposits into bank accounts which remained unexplained and added the same to the income of the assessee. Before the Ld. CIT(A) the assessee furnished the details of various cheque bouncing contra entries which were to the tune of Rs. 1,20,49,545/- and also furnished the detail of earlier year loan received back of Rs. 6,50,000/-. The Ld. CIT(A) on the basis of assessee's submission treated the balance of amount to the tune of Rs. 22,30,523/- as understated sales and after applying 60% to the understated sales directed the AO to add a sum of Rs. 13,38,314/-. The Department is in appeal against the order of Ld. CIT(A) on two issues in ground no. 2 and 3. One is against the

accepting Rs. 6,50,000/- as loan repayment received during the year and second allowing 40% of understated sales towards expenses. We observe on the basis of evidences on record before us that Rs. 6,50,000/- was received back as repayment which was advanced by the assessee in the earlier years to Mamta Mohta and in no way constitute the additional evidence and thus there was no violation of Rule 46A as the assessee has furnished these details after the Ld. CIT(A) called for the same from the assessee. Accordingly, ground no. 2 of the revenue's appeal is dismissed. The ground no. 3 raised by the revenue is against the allowing of 40% of the understated sales as expenses is also devoid of any merit as we observe from the order of the coordinate bench in her own case for AY 2013-14 in ITA No. 1163/Kol/2019 for AY 2013-14 wherein the Ld. CIT(A) has estimated the profit on sales as 1.50%. Accordingly we do not find any merit in the issue raised in ground no. 3 and hence the same is dismissed.

7. Issue raised in ground no. 4 is against the deletion of Rs. 1,65,00,311/-.

8. The facts in brief are that the AO made an addition of Rs. 1,65,00,311/- on account of increase in credits which were calculated by comparing the amounts of sundry creditors as on 31.03.2013 vis a vis 31.03.2012 and treated the same as unexplained cash credit.

9. The Ld. CIT(A) partly allowed the appeal of the assessee by holding that the provisions of Section 68 of the Act are not applicable to the sundry creditors as in respect of sundry creditors, corresponding purchases are charged to the profit and loss account. The Ld. CIT(A) while partly allowing the appeal of the assessee observing and holding as under:

“12. Ground No.3: Incremental sundry creditors and loan of Rs.1,65,00,311/- : The A.O's case is that since the appellant did not respond to notices and show cause the creditors shown in excess of earlier year figures has to be treated as unexplained cash credit.

12.1. The appellant has given the whole list of sundry creditors as on 01.4.2012 and 31.3.2013. The individual figures against each entries has been given along with the gross purchases and transaction and payment against each of them. On my requisition the addresses of these creditors were furnished.

12.2. After perusing the details of sundry creditors it appears that these amounts are standing payable against trade parties. It is not cash or mere receipt which has to be tested under the conditions laid down u/s.68 of the I.T.Act, 1961. These amounts represent payable against amounts claimed to be purchases. So at the best they represent expenses claimed in the profit & loss account In terms of mercantile system but pending for payment as on the year end. The correct approach would to test the genuineness of the underlying purchases or expenditures. The A.O is not correct to apply section 68 to make the addition Once the stock and sale are accounted in view of the audited accounts, the purchases should not be disturbed without specific finding against the genuineness.

12.3. Assessment u/s.144 gives no licence to make wild and high pitched assessment. In any case, assessment can be based on materials and has to be reasonable, even In cases of best judgement assessment. This addition is illegal and also not reasonable in the context of the Department's acceptance of trading results in earlier and future years. One has to note that the assessment of previous year i.e. A.Y.2012-13 return were accepted u/s. 143(3) with the appellant's accounting results. In the other year also, it is claimed that her returned income has not been disturbed and accepted u/s.143(1). Keeping this in mind, I delete the addition by making some addition though, by substituting net profit of this year by the figure of earlier year, which was accepted u/s. 143(3). It is further held that addition under both the issues be limited to net profit based addition (para-12.4) or the addition against under-stated sales (Para-11.3), whichever is high.

12.4. Net profit + based addition :-

Addition = 0.75% (last year) [59669131 - 0.60 (current year)

= 0.15 [59669131]

= Rs.89,504/-“

10. We have heard the rival contentions and perused the materials as placed before us. Undisputedly the AO compared the sundry creditors at the year end with the corresponding preceding year and computed the increase in sundry creditors at Rs. 1,65,00,311/- which were on account of purchases made from these creditors and were already charged to the profit and loss account. In our considered view the provisions of section 68 are not applicable to the sundry creditors. The case of the assessee finds support from the decisions of Co-ordinate Benches namely *Raghubar Singh vs. DCIT reported in [2017] 83 taxmann.com 187 (Patna-Trib) and Allied Infra Suppliers, Ganjam vs. DCIT in ITA NO. 481/CTK/2017 dated 16.11.2018*. In both the above decisions, the Co-ordinate Benches have held that the provisions of Section 68 are to be applied to the case of cash credit and not to the sundry creditors arising out of purchases as claimed by the assessee. The Ld. Counsel for the assessee also cited before us the decision of Hon'ble Delhi High Court in the case of CIT vs. Ritu Anurag

Aggarwal reported in [2010] 2 taxmann.com 134 (Del) to buttress his arguments on the issue that where sales are treated as genuine the corresponding purchases cannot held to be bogus. The case of the assessee is squarely covered by the various other decisions of the Co-ordinate Benches namely *ITO vs. Zazsons Exports Ltd. reported in [2016] 158 ITD 1 (Lucknow-Trib) and Gulf Steel & Minerals vs. ITO in ITA No. 57/Ran/2016 dated 04.05.2018* wherein the Co-ordinate Benches have held that no addition can be made in respect of sundry creditor where sundry creditors related to the purchases which are accepted by the AO. The Co-ordinate Benches have held that without rejecting the purchases, the sundry creditor cannot be treated as the income of the assessee besides holding that the application of Section 68 to make addition in respect of current purchases is wholly arbitrary and against the law. Moreover the G.P. addition has already been made. In view of these facts and circumstances and detailed finding given by the Ld. CIT(A) and the ratio laid down in the various decisions as discussed hereinabove, we are inclined to uphold the order of Ld. CIT(A). Consequently ground no. 1 raised by the revenue is dismissed.

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

Order is pronounced in the open court on 9th November, 2022

Sd/-

(Rajpal Yadav / राजपाल यादव)
Vice-President / उपाध्यक्ष

Sd/-

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

Dated: 9th November, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO, Ward-40(4), Kolkata
2. Respondent – Smt. Pushpa Devi Rathi, 16, Tara Chand Dutta Street, Kolkata-700073
3. Ld. CIT(A)-12, Kolkata (sent through e-mail)
4. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata