

आयकर अपीलिय अधिकरण, कोलकाता

पीठ- 'A'

**IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA  
BENCH-A**

समक्ष : श्री संजय गर्ग, न्यायिक सदस्य एवं

श्री मनीष बोरड, लेखा सदस्य

**Before: SHRI SANJAY GARG, JUDICIAL MEMBER and  
DR. MANISH BORAD, ACCOUNTANT MEMBER**

आयकर अपील सं.य/  
**ITA No. 2116/Kol/2019**  
निर्धारण वर्ष:  
Assessment Year:2013-14

<b>ACIT, Cir-10(2), Kolkata</b> Aaykar Bhavan, 3 <sup>rd</sup> Fl., P-7 Chowringhee Square, Kolkata-700 069.	<b>बनाम / V/s.</b>	<b>M/s. SKG Pulp &amp; Paper Mills Pvt. Ltd. 88 Basanta Lal Saha Road, New Alipore, Kolkata- 700 053. PAN: AABCS 6766L</b>
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/ By Appellant/Assessee		Shri Ashish Rustagi, CA, Ld.AR
प्रत्यर्थी की ओर से/By Respondent		Shri Partha Pratim Barman, Addl. CIT, Ld.DR
सुनवाई की तारीख/Date of Hearing		08-09-2022
घोषणा की तारीख/ Date of Pronouncement		22-11-2022

**आदेश / O R D E R**

**PER MANISH BORAD, ACCOUNTANT MEMBER:**

The instant appeal of the revenue is directed against the order dated 10-06-2019 passed by the Ld. Commissioner of Income-tax, Appeals [hereinafter referred to as 'CIT(A)'], 4, Kolkata for the AY 2013-14.

2. Brief facts of the case are that the assessee is a private limited company, engaged in the business of manufacturing of kraft papers & trading of husk. The e-return for the assessment year 2013-14 filed on 01-10-2013 declaring loss of Rs.(-)8,20,02,734/-. Case of assessee selected for scrutiny followed by serving of valid notices u/s. 143(2) and 142(1) of the Act. Various details were called by the Id. AO and submissions were filed by the assessee. After considering the same the assessment was completed u/s. 143(3) of the Act assessing income at Rs.3,17,36,000/- making certain additions.

3. Aggrieved, the assessee preferred appeal before the Id. CIT(A) and partly succeeded.

4. Aggrieved, the revenue is now in appeal before this Tribunal raising the following grounds of appeal:-

*1. That on the facts and the circumstances of the case, the Ld. CIT(A)-4, Kolkata had erred in fact as well as in law in the deletion of the addition of Rs. 1,97,30,393/- considered as unexplained Cash Credit u/s. 68 of the Act.*

*2. That on the facts and the circumstances of the case, the Ld. CIT(A)-4, Kolkata had erred in fact as well as in law in the deletion of the addition of Rs. 93,92,892/- considered as unexplained Cash Credit u/s. 68 of the Act.*

*3. That on the fact and in the circumstances of the case, the Ld. CIT(A)-4, Kolkata had erred in fact as well as in law in the deletion of the addition of Rs. 26,22,714/- considered as unexplained Expenditure u/s. 69C of the Act.*

*4. The appellant craves for leave to add, alter/or amend any of the grounds of appeal before or at the time of hearing.*

5. The Ld. Departmental Representative vehemently argued supporting the order of the Id. AO.

6. Per contra, the Ld. Counsel for the assessee vehemently argued supporting the detailed findings of the Id. CIT(A) and also various details filed in the paper book.

7. We have heard the rival contentions and perused the material placed before us.

8. Apropos the first issue regarding deletion of additions at Rs.1,97,30,393/-, which were made by the Id. AO towards unexplained cash credit u/s. 68 of the Act, we find that the same relates to difference in the balance of certain creditors and also for non compliance on the part of sundry creditors in reply to notice issued u/s. 133(6) of the Act. We further observe that the assessee provided complete details of sundry creditors along with the entries in the ledger account in order to show that various cheque return entries have been wrongly considered as purchases by Id.AO. We further find that the Id. CIT(A) after carefully examining the details filed by the assessee, deleted the addition observing as follow:-

*“Ground No. 2 is relating to addition of Rs.1,97,30,393/- u/s 68 of Income Tax Act, 1961 owing to difference in the balance of certain creditors. The Assessing Officer had observed in the Assessment order that notice u/s 133(6) of Income Tax Act. 190 i was issued to certain creditors and replies from certain creditors had been received and in two cases i.e M/s Raja Builders and S.D trading Co., the letters were returned unserved owing to insufficient address. The A/R was intimated about the same. However the issue is dealt separately under Ground No. 3. Further the A/R was required to explain the difference in balance of certain creditors from whom replies were received. The A/R had submitted detailed explanation in respect of the difference .in balances and the same was also considered by the Assessing officer during the course of assessment. In this case the appellant company had submitted complete details of the trade creditors during the course of assessment proceedings along with details of cheques returned/cancelled. The appellant company also submitted details of purchases from such parties during the assessment. Copy of letter furnished before the A.O. was also submitted before the undersigned. It can be seen from the assessment order and the details furnished by the AIR during the course of the assessment proceedings that the*

primary reason for the differences were cheque return entries which were not recorded in the ledger of the suppliers. The appellant company had considered the cheque return entries in the details furnished, however the Assessing officer had considered the same as purchases made by the appellant company. The A/R was asked to reconcile the same. The A/R had produced the supporting documents in support of its contention and the same had been considered in the assessment order itself, but was not accepted by the A.O. During the course of appellate proceedings the reason for the difference in the balances were submitted along with the supporting and the same was perused. It is apparent from the detail' furnished that the Assessing officer had erred in not considering the fact that the appellant company had considered the transactions under various heads of purchases and the primary reason for the difference was cheque return entries. The cheque return entries are part of the bank statement of the appellant company. Further the cheques issued to the parties were subsequently cleared or the matter is sub-judice as legal proceedings had been initiated against the appellant company for dishonoring the cheque u/s.138 of Negotiable Instrument Act. In the circumstances especially when proceedings have been initiated by aggrieved parties against the appellant 'company for dishonoring of cheques. The question of their bona fides-does-not-arise. Therefore. I have no doubt that the parties are identifiable and the transactions are genuine.

According to section 68 of the Act, "Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, In the opinion of the Assessing Officer, sari factory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year"

In view of the above discussion when Civil & Criminal Suits are being filed against the appellant company I do not think that there is any ground to invoke Section 68 of the Income Tax Act, 1961 for the difference in balance as the same is arising out of trade as the parties for which differences are arising are trade creditors and purchases are made from the said parties. Hence, addition of Rs. 1,97,30,3931- is hereby deleted.

9. The above finding of the Id. CIT(A) stands uncontroverted by the Id.DR. Therefore, under the given facts of the case we failed to find infirmity in the findings of the Id. CIT(A). Thus, ground no.1 raised by the revenue is dismissed.

10. Ground no.2 relates to addition of Rs. 93,92,892/- made by the Id. AO for unexplained cash credit on account of sundry creditors balance in case of M/s. S.D Trading Co. and M/s. Raja Builders. Complete details of the submissions along with their addresses and items purchased along with amount were filed before the Id. CIT(A). The said purchases were used by the assessee in carrying out its manufacturing activities. Based on these details the Id. CIT(A) deleted the addition observing as follows:-

*'The Assessing officer had made the addition on the plea that notice u/s 133(6) of Income Tax Act, 1961 had returned unserved. The assessing officer had intimated the return of notice to the appellant company and in response to the same the appellant company had intimated about the change of address in case of M/s S D Traders. However the appellant company had not intimated about any change in the address of M/s Raja Builders. However during the course of the assessment proceedings the Assessing officer had nor issued any fresh notice to M/s S. D Traders. The A/R had submitted details of the transactions with these parries, payment details to these parties during the assessment proceedings also. It can be seen from the ledger of M/s S.D Trading Co. submitted by the appellant company that the substantial part of the balance of the party i.e Rs. 3434527/- is owing to opening balance i.e purchases were made through this party in earlier year. Similarly in case of M/s. Raja Builders the appellant company had paid advances of Rs. 65,07,831/- as on 31.03.2012 and the transaction, arising during the year is mainly on account of transaction of sister concern i.e. M/s Kwality Box manufacturing Co. The loan taken from the sister concern had been reduced and the appellant company had undertaken liability of the sister concern. The appellant company had produced all the documents in support of the transactions undertaken during the year and the Assessing*

*Officer had accepted the books of accounts and had not rejected the same. This clearly implies that all the documentary evidences in respect of the transactions undertaken had been submitted before the Assessing Officer. During the course of appellate proceedings the appellant company has again provided the list of suppliers their address. items purchased and the amount of purchases. These details were available before assessing officer also. The judicial precedents and the facts that assessee was engaged in manufacturing activity which could not have been carried out without actual purchase of material, the purchases cannot be treated as bogus simply because the suppliers did not confirm the purchases during the year The transactions are arising out of the trade relations. Hence considering the fact that the balances of the parties was pertaining to earlier years or transfer of balance of group concern which had been demonstrated before the A.O. as well as undersigned the addition made on the premises that the credits are not explained is hereby deleted.*

11. The above finding remains uncontroverted by the Id. Departmental Representative and since the alleged addition is mainly on account of balance of the parties pertaining to the earlier year and transfer of balance of the group concern and thus we find no justification for making this addition. No interference is thus called for in the finding of Id. CIT(A) Thus, ground no. 2 raised by the revenue is dismissed.

12. Ground no. 3 relates to deletion of addition of Rs.26,72,714/- made by the Id. AO applying the provisions of section 69C of the Act for unexplained expenditure. This arised on account of reply received from M/s. Srikant Dutta in response to letter issued u/s. 133(6) of the Act showing difference in payments received by the vendor and the payments made by the assessee. The reconciliation statement was filed by the assessee before the Id.AO as well as the Id. CIT(A). The Id. CIT(A) after considering the merits of the case and facts indicated that the said difference was on account of cash payment made for purchase

of husk, which was used by power and fuel and these cash entries have been duly acknowledged by the seller. Based on these facts, the Id. CIT(A) deleted the addition observing as follow:-

*The Assessing officer had issued letter u/s 133(6) of Income Tax Act, 1961 to one of the vendor M/s Srikant Dutta. Based on the reply there was difference in the payment received by the vendor and the payment made by the party. The appellant company had shown payment of Rs. 68,43,877/- whereas the party had shown receipt of payment of Rs. 94,66,591/-. The Assessing officer had added the difference of Rs. 26,22,714/-. The appellant company was asked to explain the difference. The appellant company had submitted the reconciliation of the balance and had submitted that the appellant company had made purchase of husk from the said party and accounted for the difference in power & fuel. However the Assessing officer had not accepted the contention and made the addition under unexplained expenditure u/s 69C of the Income Tax Act, 1961 and further invoked the provision of Section 115BBE of I. T Act, 1961. The A/R had submitted the details in support of its contention. It is not understood that when the party itself is acknowledging that it had made sales to the party and also the fact that it had received payment then where is the question of invoking Section 69C which is in respect of unexplained expenditure. According to Section 69C of Income Tax Act, 1961.*

*"Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not in the opinion of the Assessing Officer satisfactory the amount covered by such expenditure or part thereof, as the case may be deemed to be the income of the assessee for such financial year.*

*Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income. "*

*In the instant case, the appellant has shown purchase of husk under the ledger head power & fuel for which payment have been made in cash. In fact the Assessing officer had disallowed the payment made in cash which is considered another ground of*

*appeal. The seller of husk has also acknowledged sale of husk and receipt or payment. Therefore. the expense is fully and satisfactorily explained. Hence, the addition Imide is hereby deleted.*

13. The above findings fact by the Id. CIT(A) remains uncontroverted by the Id. DR, Therefore, we failed to find any infirmity in the findings of the Id. CIT(A). Ground no. 3 raised by the revenue is dismissed.

परिणामतः निर्धारिती की अपील खारिज की जाती है।

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

आदेश खुले न्यायपीठ में दिनांक 22 -11-2022 को उद्घोषित।

Order pronounced in open court on 22 -11-2022

Sd/-  
(SANJAY GARG)  
JUDICIAL MEMBER  
Kolkata/ कोलकाता  
\*\*PP/Sr.PS

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

दिनांक:Date- 22/11 /2022

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant/**ACIT, Cir-10(2), Kolkata, Aaykar Bhavan, 3<sup>rd</sup> Fl., P-7 Chowringhee Square, Kolkata-700 069.**
2. प्रत्यर्थी/Respondent/**M/s. SKG Pulp & Paper Mills Pvt. Ltd.**  
88 Basanta Lal Saha Road, New Alipore, Kolkata-700 053.  
**PAN: AABCS 6766L .**
- 3.. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata.
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से, सहायक पंजीकार

आयकर अपीलीय अधिकरण, कोलकाता ।