

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष**  
**Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member**

**I.T.A. No.1583/Kol/2018**  
**Assessment Year: 2012-13**

**ACIT, Circle-25, Kolkata.....Appellant**

**vs.**

**M/s Cellbiz Services.....Respondent**  
**108, Rajdanga Chakraborty Para,**  
**Kolkata-700107.**  
**[PAN: AAGFC8772M]**

**Appearances by:**

Shri Manish Tiwari, FCA, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : September 15, 2022

Date of pronouncing the order : November 21, 2022

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the Department against the order dated 24.04.2018 of the Commissioner of Income Tax (Appeals)-7, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The Revenue in this appeal has taken the following grounds of appeal:

*"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) failed to take cognizance of the Remand Report submitted by the A.O. where it has been clearly recorded that out of the total 31 parties of cash purchase the assessee failed to provide the address of 13 parties and could produce ledger Copy of only 21 parties but no supporting documents by way of bills/vouchers over 14 hearings and without appreciating these facts on record, the ld. CIT(A) deleted the addition of cash purchases by accepting fresh evidence in contravention to Rule 46A of the 1.T. Rules, 1962.*

*2. That on the facts and in the circumstances of the case, the powers of the ld. CIT(A) are co-terminus with those of the A.O. and once the A.O. in his Remand Report pointed Out that the assessee had produced only*

*hand-made bills that too without signature and thus it had failed to prove the genuineness of the transactions, ld. CIT(A) should have either sustained the addition u/s.68 of the Act or himself caused further inquiry or asked for further remand from the A.O.*

*3. That without prejudice to the above, the matter may be remanded back to the file of the A.O. for further verification of the genuineness of claim.*

*4. The appellant craves leave to add, alter and/or modify any one or all of the grounds of appeal mentioned above.”*

2. The brief facts of the case are that the assessee, a partnership firm during the year dealt in business relating to recharge services of various telecom companies including both mobiles and DTH under the name and style of M/s Cellbiz Services. The assessee firm used to purchase recharge top-ups from various distributors of various telecom companies and further sold these to its own network of distributors. The assessee declared sales of Rs.8.54 crores during the year under consideration. During the assessment proceedings, the Assessing Officer noted that the assessee had debited a sum of Rs.86,27,87,110/- under the head purchase. The Assessing Officer further noted that the assessee firm had made cash purchase of Rs.7,20,27,038/- against which payment of Rs.6,95,06,092/- was paid by cash and the difference of Rs.25,20,946/- was claimed to be the commission out of the above transaction. The Assessing Officer held that the assessee had violated the provision of section 40A(3) of the Act by making the aforesaid cash purchases amounting to Rs.7,20,27,038/-. Therefore, the Assessing Officer invoking the provisions to section 40A(3) of the Act, added back the said amount to the total income of the assessee.

3. Being aggrieved from the above order of the Assessing Officer, the assessee preferred appeal before the CIT(A). Before the ld. CIT(A), the assessee explained its business architecture by explaining that the assessee is a 'single sim multi-recharge platform provider' which means that the assessee provides a platform to numerous individual retailers

who from one single sim can simultaneously recharge the mobile and DTH services of different telecom companies/service providers. The assessee explained before the CIT(A) that each service provider company like Airtel etc. issue sim card of its own company which is a 'Local Area Payment Unit' (LAPU). If a retailer has to be in the business on commission for recharging of the Airtel services, then he has to keep some cash deposits, say Rs.2,000/- per day, with the said company. Similarly for providing recharge services of other telecom service companies such as Vodafone, Idea etc., he will have to use LAPU of each of those companies for which he would have to maintain cash balance with each of telecom service provider. The assessee on the other hand provides a single sim multi-recharge platform through which the retailer will maintain a low balance in the said sim, can carry on recharge business on behalf of different service providers like Airtel, Vodafone, BSNL, Docomo etc. by using a single sim provided by the assessee instead of using separate LAPU sim by each of the telecom services provider. The assessee in lieu of that takes part of the commission provided by the company to the retailers. The assessee in this way explained that the assessee not only buys back the LAPU sims from numerous retailers but also buys out their talk-time value. The assessee company also buys talk-time stock in bulk from big distributors and even from the company directly. It was explained that in the relevant financial year, the assessee has made bulk purchases of talk-time of Rs.79,07,60,072/-, wherein, all payments were paid by cheque and by bank transfer mode. However, only remaining amount of Rs.7,20,27,038/- which was the value of talk-time that has been purchased in cash from various other small distributors and retailers and as and when the need for such talk-time stock arose. That the aforesaid cash purchases have been made in enumerable number of

transactions on different dates and where not a single payment has exceeded the threshold limit of Rs.20,000/-. The cash book, purchase register and all individual invoices have been produced before the CIT(A). The Id. CIT(A), after considering the above submission and documents, deleted the disallowance made by the Assessing Officer observing as under:

*“The business model of the assessee functions as follows:*

*The assessee, as already mentioned earlier, by developing a single SIM multi recharge software, approaches each and every small individual retailers and offers to take away their LAPU SIMs meant for different service providers and feed the same LAPU sims in its own modem which is ultimately connected to his main server. He in turn offers a commission which is usually less than what this original retailer was getting from this each individual LAPU SIM. Now the question emerges as to why each individual retailer would surrender their LAPU SIMS along with LAPU talk time stock to the assessee and get a return, which is less than what he was getting earlier? The answer to this question is very simple. Say the individual retailer earlier by employing one LAPU SIM for Airtel was getting a recharge talk time value of Rs.2.30 per Rs.100.00 of recharge. He not only had to maintain one LAPU sim and one. dedicated hand set, he had to maintain wallet with the Airtel Company comprising of say an amount of Rs.2,000/- of talk time per day. Similarly, he was getting commission from other operator as well by maintaining different but dedicated individual LAPU SIMs for each operator and also had to maintain different wallets. Imagine a hypothetical situation like this where the retailer by maintaining five wallets with five different Companies is actually engaging Rs.10,000/- of his capital per day and getting return thereby on it as recharge commission in form of talk time value. Now by subscribing to a single SIM multi recharge platform which is provided by the assessee, he does not have to deploy more funds for pore wallets but far less fund in a single wallet with the assessee company. Since, less amount of fund is now kept deployed and the business of recharge of mobile and D2H services become less hassle free for the individual retailers, they have no hesitation in settling for a lower value of commission amount in the form of talk time stock which they now get from the assessee company. This in fact means that the assessee buys back not only the LAPU SIMs from the numerous individual retailer, it also buys out their talk time value. The assessee company in turn buys talk time stock in bulk from. big distributors or even from the company directly (at times). As can be seen from the accounts for the relevant financial year, the assessee had made bulk purchases of talk time of Rs.79,07,60,072/- where all the payments were*

*paid in cheque and by bank transfer mode. Only a remaining amount of Rs.7,20,27,038/-, value of talk time has been purchased in cash from various other smaller distributor and even other retailers, as and when the need for such talk time stock arose. This amount has been added by the A.O under section 40A(3) during the assessment stage against which the assessee is in appeal before me. From the records produced, it is amply clear that these cash purchases have all been made in enumerable number of transactions on different dates where not a single payment has exceeded the threshold limit of Rs.20,000/-. The cash book, purchase register and all individual invoices where cash transaction had taken place have been thoroughly checked and it is found that not a single such transaction actually exceeds the threshold limit. In view of the same, the addition made by the A.O to the tune of Rs.7,20,27,038/- under section 40A(3) of the Act is hereby deleted and the appeal of the assessee on this ground is treated as allowed.”*

4. After hearing the ld. representatives of the parties and after going through the record, we do not find any reason to interfere with the above order of the CIT(A). The ld. CIT(A) has categorically mentioned that the cash book, purchase register and all individual invoices where cash transaction had taken place have been thoroughly checked and it is found that not a single such transaction actually exceeded the threshold limit of Rs.20,000/-. In view of the aforesaid factual finding given by the CIT(A) after thoroughly checking the record and account of the assessee that not a single transaction actually exceeded the threshold limit of Rs.20,000/- and that there is no violation of the provisions of section 40A(3) of the Act, we do not find any reason to interfere with the order of the CIT(A) and the same is upheld.

5. In the result, the appeal of the Revenue is hereby dismissed.

***Kolkata, the 21<sup>st</sup> November, 2022.***

Sd/-

[गिरीश अग्रवाल /Girish Agrawal]

लेखा सदस्य/Accountant Member

Dated: 21.11.2022.

RS

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य/Judicial Member

*Copy of the order forwarded to:*

1. ACIT, Circle-25, Kolkata
2. M/s Cellbiz Services
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches