

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "C", KOLKATA**

**BEFORE SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER**

**ITA No.1764/Kol/2019
Assessment Year: 2015-16**

ITO, Ward-1(2), Kolkata	Vs.	M/s. Kabra Transport Pvt. Ltd. 3, Kapalitolla Lane, Ground Floor, Kolkata – 700 012. [PAN: AADCK 7884 Q]
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Akhay Ringasia, ACA
Revenue by : Smt. Ranu Biswas, Addl. CIT, DR

Date of Hearing : 27.09.2022

Date of Pronouncement : 21.11.2022

ORDER

PER SONJOY SARMA, JM:

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 11.04.2019 for the assessment year 2015-16. The grounds raised by the revenue are as follows:

"1. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A)-1, Kolkata has erred in granting relief to the assessee on account of unexplained credit of Rs. 1,56,74,037/- u/s 68 in respect of bogus creditors.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)-1, Kolkata was justified to delete the addition of Rs. 1,56,74,037/- made by the AO keeping in view of NP% (net profit percent) in earlier years and later year.

3. The appellant craves leave to amend, modify, alter or abrogate any ground of appeal during the course of hearing of this case."

2. At the time of hearing, the registry has informed that there is a delay of 5 days filing this instant appeal. However, the assessee explained the reasons for delay and considering the same, we condone the delay as prayed by the appellant.

3. Brief facts of the case are that the assessee filed its return of income on 30.09.2015 declaring total income of Rs. 26,75,480/-. The case of the assessee was selected for scrutiny under CASS and statutory notices were issued and duly served upon the assessee. During the course of assessment proceeding, the AO noted that assessee had claimed to have creditors on account of trade payable to the extent of Rs. 6,23,93,489/- out of which 56 creditors allegedly had balance above Rs. 2,00,000/- totaling Rs. 1,86,41,626/-. The AO subsequently issued notice u/s 133(6) of the Act upon such creditors but those were returned back by the Postal Authority. Finally the AO treated a sum of Rs. 1,86,41,626/- being sum credited in the books of assessee is considered as unexplained cash credit u/s 68 of the Act and added the same to the income of the assessee and assessment framed u/s 143(3) of the Act.

4. Dissatisfied with the above order, the assessee preferred an appeal before the Id. CIT(A) where the appeal of the assessee was partly allowed.

5. While passing the order by the Id. CIT(A), the operative part of the order is extracted as under:

"I have perused the asstt. folder. The assessment order fails to mention any timeline as to when requisitions were made and when the compliances were met by the appellants. From the asstt. order alone it is difficult to appreciate the appellant's case which broadly hints at lack of proper opportunity to the appellant to file details and denial of opportunity to explain its case. From the A.O's observation of no reply or return of notices from creditors having balances of 4 lakhs or more, and from the order sheet, I get the impression that the A.O did not offer proper opportunity to the appellant to file details of creditors and to explain its side. On the A.O's observations about the compliances to notices u/s. 133(6) of the Act, after 27.7.17, I find in the order sheet appearance of Sri Manoj Soni on 05.12.17, when he was asked to furnish address of creditors having balances above Rs. 2 lakhs without fixing any time for compliance. I find it strange that after more than 4 months the Ld. A/R appeared before the A.O without any notice having been issued as it appears from the record and that even on 27.7.17 the A.O notes "he is asked to furnish complete details", again without fixing any date for compliance.

17. On 08.12.17 requisitions u/s.133(6) are noted to have been issued by the A.O, who on 28.12.17 passes asstt. order by noting in the order sheet that the

said requisitions were returned back by Postal Authority with remarks that "no such person".

18. It is thus very apparent that the A.O has abruptly closed the enquiry after he issued notices u/s. 133(6) on 08.12.17 just before he passed the asstt. order. From the build up of the A.O's case as appearing from the asstt. folder I get the impression that verification was initiated much too late after sitting over the case for undue amount of time and in the month when the asstt. was getting time barred. That too without giving ample time to furnish details and without confronting the appellant with his findings of return of notices and lack of reply from the notices.

19. Trade creditors are very much part of the business and in the case of appellant, which does not seem to own vehicle of its own to sustain high turnover, some transporters have to be employed. Credit balances do show up in the returns of income in earlier and later years. In fact in the current year the sundry credit balances are claimed to be much more healthier than in other years.

20. The application of section 68 to sundry creditors is not correct in the facts of the case. These balances represent payable part of dues on account of transport and expenditure to various vehicle owners or suppliers. So treating only the credit balances as unexplained is not correct. Either the corresponding expenditure has to be treated as bogus or part of the same has to be treated as not genuine; only then addition can be made. There is no finding at the A.O's end which may indicate that the expenditures are bogus, though return of notices and lack of reply from the said creditors do raise some doubts about the genuineness of the corresponding expenditure. But the A.O cannot act on doubt alone and the appellant has to be confronted with adverse materials to be used against it.

21. On some specific points the A.O was directed to carry out the verifications and report there on. The relevant directions from CIT(A) dated 25.02.19 is reproduced as under:

OFFICE OF THE COMMISSIONER OF INCOME TAX (APPEALS)-12,
KOLKATA,
3, GOVERNMENT PLACE (WEST), 1ST FLOOR, KOLKATA-700001.

No. CIT(A)-12/KOL/TA.No.10233/2018-19/967

Dated: 25.02.2019.

To
The Income-tax Officer,
Ward-1(2),
Kolkata.

Sub:- Verification of facts in the case of M/s. Kabra Transport Pvt. Ltd. - Appeal No. 10233/CIT(A)-12/Ko/2018-19 - PAN: AADCK78840 - A.Y.: 2015-16 - Regarding.

Please refer to the above.

2. The five notices being (i) Abhay Kumar Singh (Address: Old Baridih, Ghagra Road, Baridih, Jamshedpur, PAN: BMJPS1217F); (ii) Ajay Prasad (Address: Adityapur, Jamshedpur); (iii) Mullesh Kumar, PAN: AEHPK5261N (Address: Road No.4, Ganesh Nagar, Bagbera, Jamshedpur, Jharkhand-831002); (iv) Pappu Singh, PAN: CLAPS9465C (Address: Jingsalai, Jamshedpur) & (v) Sri Ram Chaurasiya, PAN: ALRPC8686N, are claimed to have sent responses, which are shown to have been received in the A.O.'s office on 26-03-2017.

2(a) Copies of Courier receipt and the receipts of notices are enclosed.

2(b) Check from the office record whether the said letters were received in the office on indicated date.

3. Notices u/s. 133(6) dated 08-12-2017 are seen to have been issued to ten (10) creditors as against eleven (11) written in the assessment order [Page-2].

- 3.1. (i) Confirm whether only ten creditors were issued notices.
(ii) When were the said notices despatched out from the A.O.'s offices?

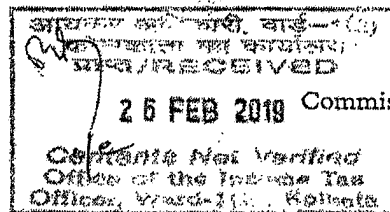
4. From the assessment folder [Order sheet] and the appellant's submission dated 06-12-2018 to C.I.T.(A), it appears that the order u/s. 143(3) was passed without issuing show-cause notices to the appellant or, intimating lack of response or return of notices u/s. 133(6) to the appellant.

4.1. (i) Comment on the above observation.

5. A copy of the appellant's submission to C.I.T.(A) dated 06-12-2018 is forwarded to your end. You may send your comment on the said submission within a week.

6. Above informations/observations/comments must be sent to this end within a week.

Encls: As above.



[MOHD. USAMIN]
Commissioner of Income-tax (Appeals)-12,
Kolkata.

22. As the AO has not responded to the directions contained in the above letter, I proceed to adjudicate the relevant points on the basis of records before me.

23. Though the ratio of credit balances to transport expenditure is very healthy this year, the net profit margin on the return furnished is very low. The return of notices in 4 cases with the remarks as noted by the AO has to be

taken against the appellant. But in respect of other creditors the appellant's claim that five of them responded has to be considered in favour of the appellant as acknowledgement from the couriers do show that the responses or confirmations was received in the AO's office on 26.12.2017, being before passing of the asstt. Order. In respect of one creditor (Kunal Kumar singh), the appellant is silent as to whether the confirmations were sent to the AO. There is one more point to be considered that the AO sent notices only in respect of 10 creditors as 11 noted in the asstt. Order.

24. The decision has been made keeping in view appellant's profitability in transport business in earlier and later years. The NP percentage along with turnover and net profit figures are listed as under:

FY	2012-13	2013-14	2014-15	2015-16	2016-17
Turnover	4785.12	7487.46	9479.33	7847.38	5823.63
Net Profit	10.41	15.15	20.42	31.35	40.96
NP%	0.21	0.20	0.22	0.40	0.70

25. In view of the above, I think it is reasonable to treat additions in respect of 4 creditors and one more as correctly added by the AO. As regards, balances against 5 creditors whose confirmations are claimed to have been received in the AO's office before passing the asstt. Order, the AO's action of making the addition cannot be sustained to any extent. I, therefore, confirm the addition of sundry creditors on the 5(four + one) creditors as discussed above. This results in the confirmation of above addition to the amount of Rs. 29,67,589/-. The name and details of the 5(four + one) creditors are given as under:

1	Manoj Kumar	4,26,560
2	Ritesh Roshan	4,67,501
3	Bilash Yadav	5,27,397
4	Rupesh Kumar Singh	5,61,640
5	Kameshwar Mahto	9,84,491
	Total	29,67,589

26. Considering the above addition as confirmed, net profit as assessed is Rs. 20.40 lac + Rs. 29.68 lac = Rs. 50.08 lac, which is 0.53% of turnover. This percentage of NP is higher than the NP of about 0.20% in assessment years 2013-14 and 2014-15 as finally accepted u/s 143(3) in respective assessment. This figure also is higher than NP of 0.40% in AY 2016-17 not disturbed by

the department. I, therefore, delete the balance addition of Rs. 1,56,74,037/- (Rs. 1,86,41,626/- - Rs. 29,67,589/-)''

6. We after hearing the rival submission and perusing the material available on record including the impugned order passed by the Id. CIT(A), we find that the Id. CIT(A) directed the AO to carry out verification and reports of the facts of the case vide letter dated 25.02.2019. But the AO did not respond to the direction contained in the said letter and the Id. CIT(A) adjudicated the points on the basis of records available with him and he holds that ratio of the transport expenditure was very healthy for the assessment year in question and return of notices in four cases with remarks as noted by the AO as taken against the assessee. However, in respect of other creditors claimed by the assessee that five of them responded has considered in favour of the assessee. Since the acknowledgement from the couriers has shown that the responses or confirmations was received in the AO's office on 26.12.2017 and which was received even before passing of the present assessment order in question. Moreover, in respect of the one creditor namely Kunal Kumar Singh as appellant was silent as to whether the confirmations were sent to the AO or not. Since the AO had sent notices only in respect of 10 creditors as against 11 noted in the assessment order. Therefore, the Id. CIT(A) while passing the order, decision has been made keeping in view appellant's profitability in transport business considering the earlier and later years figure and he viewed that it was reasonable to treat additions in respect of 4 creditors and one more as correctly added by the AO and remaining balance against 5 creditors whose confirmations have claimed to be received in AO's office before passing the assessment order. Therefore, he viewed that action of making addition cannot be sustained and he confirmed the addition of sundry creditors on 5(4+1) and name and details of 5(4+1) creditors whose names are as under:

<i>1</i>	<i>Manoj Kumar</i>	<i>4,26,560</i>
<i>2</i>	<i>Ritesh Roshan</i>	<i>4,67,501</i>
<i>3</i>	<i>Bilash Yadav</i>	<i>5,27,397</i>
<i>4</i>	<i>Rupesh Kumar Singh</i>	<i>5,61,640</i>
<i>5</i>	<i>Kameshwar Mahto</i>	<i>9,84,491</i>

	<i>Total</i>	29,67,589
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7. While going through the impugned order, we note that the ld. CIT(A) confirmed the net profit of assessee is Rs. 20.40 lakhs + Rs. 29.68 lakhs = Rs. 50.08 lakhs and which is 0.53% of turnover. However, this net profit is higher than net profit of about 0.20% in assessment years 2013-14 and 2014-15 as accepted u/s 143(3) in respective assessment years. While perusing the order passed by ld. CIT(A), we also note that the ld. CIT(A) holds that the net profit figure so arrived is 0.40% higher than the net profit of A.Y. 2016-17 and the ld. CIT(A) deleted the addition of Rs. 1,56,74,037/- (Rs. 1,86,41,626/- - Rs. 29,67,589/-) and the appeal of the assessee was allowed.

8. Under these facts and circumstances of the case and considering the order passed by the authorities below as discussed above, we are inclined to uphold the order passed by the ld. CIT(A) and did not find any merits in the appeal of the revenue and dismiss.

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

Order pronounced in the open court on 21.11.2022.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Kolkata, Dated: 21.11.2022.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: ITO, Ward-1(2), Kolkata.
2. The Respondent: M/s. Kabra Transport Pvt. Ltd.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata