

आयकर अपीलीय अधिकरण
गुवाहाटी 'डीबी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI 'DB' BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

डॉ. मनीष बोरोड, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SRI SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 50/Gty/2019
Assessment Year: 2014-15**

***Mahesh Kumar Harlalka.....Appellant
[PAN: AALPH 4829 H]***

Vs.

ACIT, Circle-4, Guwahati.....Respondent

Appearances by:

Sh. S.P. Bhati, FCA, appeared on behalf of the Assessee.

Sh. N.T. Sherpa, JCIT, appeared on behalf of the Revenue.

Date of concluding the hearing : October 17th, 2022

Date of pronouncing the order : December 22nd, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2014-15 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the

“Act”) by Id. Commissioner of Income-tax (Appeals), Guwahati-2, Guwahati [in short Id. “CIT(A)”] dated 01.12.2018 arising out of the assessment order framed u/s 153A/143(3) of the Act dated 02.12.2016.

2. The assessee is in appeal before the Tribunal raising the following grounds:

“1. For that, the learned A.O. is not justified in making addition on account of two credit entries appearing in confirmation letter of two creditors.

2. For that, the learned C.I.T. (Appeals) is not justified in assuming our reliance on statement u/s 132(4) in negative and deciding the matter accordingly.

3. For that, the learned C.I.T. (Appeals) is not justified in imposing burden on your appellant to procure confirmation letter from the banker of these parties as to source of the purported entry knowing well that Appellant cannot enforce banker of third party and it is burden of A.O. to prove.

4. The Appellant craves the leave to take Additional Grounds at the time of hearing of Appeal.”

3. Brief facts of the case are that the grounds raised before us relates to the addition of Rs. 16,50,000/- towards unaccounted money/income and the same are that the assessee being an individual, carries on business in the name of M/s. Krishna Udyog and in the course of business the assessee regularly make purchases from M/s. Ambe Galvanizing and Ambe Wire Pvt. Ltd. Search and seizure operations were carried out in the case of the assessee on 25.09.2014. In the proceedings carried out, notice issued u/s 153A of the Act for AY 2014-15 apart from other issues, the relevant issue in the instant appeal is regarding the alleged payment of Rs. 9,00,000/- on 24.01.2014 and Rs. 7,50,000/- on

28.01.2014 to M/s. Ambe Galvanizing and Ambe Wire Pvt. Ltd., respectively. Ld. AO based on the confirmation letters of these two companies, noticed that these two payments are not appearing in the ledger accounts maintained in the books of the assessee. Though the assessee stated that it did not make any payment to these two parties but ld. AO relied on the confirmation letters of these two parties and made the addition for unaccounted money at Rs. 16,50,000/-.

4. When the assessee carried the matter before ld. CIT(A), it failed to succeed as ld. CIT(A) confirmed the addition observing as follows:

"I have gone through the relevant observations of the Ld AO as contained in the order impugned and also the submission of the appellant. The appellant had challenged the impugned addition on account of difference in balances of two parties, wherein the parties have confirmed to have received the payment from the appellant but the appellant, per contra, had denied to have made the respective payments to these parties.

As regard the addition made, the submission of the appellant are that firstly the statement under section 132(4) made by him has no evidentiary value and secondly that the Ld AO had not made any enquiry.

Per contra, the addition has been made by the Ld AO based on the statement of the appellant as also the fact that reconciliations/ confirmations were called from these parties. As regards the contention of the appellant that the statement made by him under section 132(4) on oath has no evidentiary value, the said contention is devoid of legal legs and requires no authority or judgment and is therefore rejected. Now what is to be seen is as to whether the addition has been made solely on the basis of a statement or something further has been done in this case. I find from a conspectus of the factual matrix that the addition was made, after it was discovered, based on enquiry that there were differences in the account of the impugned parties. I further find that the appellant had

nowhere denied that he had not transacted with these parties. In fact, it is incomprehensible as to why despite being confronted with the relevant entries during post search investigation, the appellant could not adduce any evidence, such as any affidavit, confirmation letter from the banker of these two parties as to the source of the purported entry, or even confirmation from these parties that these payments were not made by the appellant. The appellant has further tried to seek the benefit of exclusion clause of section 292C of the Act, thereby contending that the presumption under section 292C is rebuttable one. I find no merit in this contention of the appellant, since the appellant has failed to furnish any other evidence which would prove his story Thus it is clear that the entire addition has been challenged in thin air, without there being anything concrete on the ground I find no hesitation in confirming the addition made. The above ground of appeal is dismissed

In the result, the appeal is dismissed, in the result, of the appeal is decided as above.”

5. Aggrieved, the assessee is now in appeal before this Tribunal. Ld. Counsel for the assessee again reiterated the submissions made before the lower authorities stating that the assessee is having regular transactions of purchases with M/s. Ambe Galvanizing and Ambe Wire Pvt. Ltd. Payments are also made regularly through banking channel. However, the alleged sum has not been paid by it to these two parties. Therefore, addition is not called for.

6. On the other hand, ld. D/R vehemently argued supporting the orders of both the lower authorities.

7. We have heard rival contentions and perused the records placed before us. The issue in challenge before us is towards unaccounted income of Rs. 16,50,000/-. This issue has aroused on account of the information gathered by ld. AO from M/s. Ambe Galvanizing and Ambe Wire Pvt. Ltd. as per which they received

Rs. 9,00,000/- & Rs. 7,50,000/- on 24.01.2014 and 28.01.2014 from the assessee. Right from the beginning of the assessment proceedings the assessee has denied again and again that it had not made any such payments to these two parties. Copies of bank statement is filed before the lower authorities in which these transactions are not appearing. We also note that the assessee has denied categorically to have made any such payment giving details of the bank accounts held with United Bank of India bearing nos. 485001010021076, 485005040029195 & 485002010013504 and with UBI, Athgaon Branch, Guwahati and also given affidavit dated 11.07.2022 again stating on oath that the alleged sum has not been paid by it to either M/s. Ambe Galvanizing or Ambe Wire Pvt. Ltd.

8. We find that the assessee has successfully discharged its onus by filing necessary details to prove that the alleged sum has not been paid by it to the said two concerns. Now the Revenue authorities failed to come out with any fact or material to disprove the contentions made by the assessee and the same could have been in the form of bank statement of these two parties namely M/s. Ambe Galvanizing and Ambe Wire Pvt. Ltd. and then if such alleged payments were found in such bank statement, then the same should have been confronted to the assessee. However, no such evidence has been put for by the Revenue authorities to disprove the claim of the assessee. It is an admitted fact that the assessee is carrying out regular transactions of purchases with these two parties and regularly making payment through banking channels but the alleged two entries are not appearing in the ledger account maintained in the books of account of the assessee.

9. We, therefore, under the given facts and circumstances of the case, are of the considered view that since the Revenue has failed to rebut the claim of the assessee by placing any material evidence on record which could indicate or rather prove that the alleged sum has moved from any other undisclosed bank account held by the assessee, we fail to find any justification in the additions made in the hands of the assessee only on the basis of the confirmation letters of the two parties namely M/s. Ambe Galvanizing and Ambe Wire Pvt. Ltd. Thus, the finding of Id. CIT(A) is reversed and the addition of Rs. 9,00,000/- & Rs. 7,50,000/- for unaccounted income/money is deleted. Thus, the grounds of appeal raised by the assessee are allowed.

10. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 22nd December, 2022.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 22.12.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Mahesh Kumar Harlalka, M/s. Krishna Udyog, Sharma Gali, Athgaon, Guwahati-781 001.**
- 2. ACIT, Circle-4, Guwahati.**
3. CIT(A)- Guwahati-2, Guwahati.
4. CIT-
5. CIT(DR), Guwahati Bench, Guwahati.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata