

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 618/Kol/2020**  
**Assessment Year: 2012-13**

Abdus Sattar (PAN: AJDPS 3048 Q)	Vs.	ITO, Ward-2(3), Burdwan
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	14.02.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	23.02.2023
For the Appellant/ निर्धारिती की ओर से	Shri Suvo Chakraborty, Advocate
For the Respondent/ राजस्व की ओर से	Shri G. Hukugha Sema, CIT

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-Burdwan (hereinafter referred to as the Ld. CIT(A)”) dated 17.08.2020 for the AY 2012-13.

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon’ble Supreme Court in the case of Miscellaneous Application No. 665 of 2021 in SMW(C ) No. 3 of 2020, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the

limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. The only issue raised by the assessee is against the confirmation of addition of Rs. 8,50,000/- by the Ld. CIT(A) as made by the AO on account of investment from undisclosed sources.

4. Facts in brief are that the assessee filed return of income on 21.03.2013 disclosing total income of Rs. 3,22,880/-. The case of the assessee was selected for scrutiny under CASS and statutory notices were duly issued and served upon the assessee. The assessee has returned his income u/s 44AD of the Act from the sales of Paddy and Rice etc. of Rs. 2,37,420/-, income from Firm of Rs. 1,55,159/-, income from other sources of Rs. 4,826/- and agricultural income of Rs. 8,800/-. The AO observed from the AIR information that assessee he has made some investment in property during the year with 1/3<sup>rd</sup> share in the property with other co-owners Sk. Korban, Abdul Moktar which was purchased for Rs. 2,30,00,000/-. The AO observed that the loan borrowed for the purchase of said property was only 1,42,00,000/- and there was a gap in the money invested and available sources for the purchase of said property. The AO, after analyzing the balance sheet of the assessee as on 31.03.2011 and 31.03.2012 at page no. 4 of the assessment order, came to the conclusion that the assessee had short funds to the tune of Rs. 47,12,672/- (1/3<sup>rd</sup> of total consideration of Rs. 2,48,63,016 i.e 82,87672 minus Rs. 35,75,000 shown as investment in B/S as at 31.03.2012).the AO further observed that the assessee has shown share of loan obtained for the property at Rs. 47,64,995/-whereas the actual share of the assessee being 1/3<sup>rd</sup> of the sanctioned loan amount of Rs. 1,42,00,000/-comes to Rs. 47,33,333/- and thus there is a suppression to the extent of Rs. 31,662/- based on the above discussion. The AO made addition of Rs. 47,44,334/- in the hands of the assessee besides making other additions in the assessment framed u/s 143(3) vide order dated 20.03.2015.

5. The assessee challenged the order of AO before the appellate authority and the Ld. CIT(A) partly allowed the appeal of the assessee by sustaining the addition to the tune of Rs. 8,50,000/- being gifted by elder brother Sk. Moslem. The Ld. CIT(A) has called for a remand report from the AO in the appellate proceedings which was confronted to the assessee and assessee filed detailed reply in response thereto and only thereafter the Ld. CIT(A) partly allowed the appeal of the assessee. However the addition to the tune of Rs. 8,50,000/- was sustained which was on account of cash gift received by the assessee from his brother on which the remand report was totally silent. The Ld. CIT(A) affirmed the addition on the ground that brother of the assessee did not have sufficient sources as his income during the year was only Rs. 1,89,254/- whereas he has gifted Rs. 8,50,000/- to the assessee.

6. Aggrieved by the order of First appellate authority preferred an appeal before the Tribunal.

7. The Ld. A.R submitted before the Bench that the money was received from the elder brother SK. Moslem who had returned income to the tune of Rs. 1,89,254/- after claiming deduction u/s 50C to the tune of Rs. 9,50,000/-. The Ld. A.R also brought to our notice that the computation of income as on 31.03.2012 and balance sheet as on 31.03.2012 as placed at page 2 of paper book is extracted below:

Computation of Income as on 31/03/2012			
Total Sales of paddy			1746198.00
Estimated Profit (u/s 44AD )			185970.00
Add:-Other Sources of Income		3284.00	189254.00
Less:-u/s 80c (LIP)		10000.00	179254.00
BALANCE SHEET AS ON 31.03.2012			
LIABILITIES	Amount	ASSETS	Amount
Opening Balance	1680750.00	Equipment As per Last A/c	7400.00
Add:-Income of this year	189254.00	Sundry Debtors	8218.00
Less:-Gift to Brother (Abdus Sattar)	850000.00	Closing Stock	717070.00
	1020004.00		
Less:-Drawings (Include LIP of Rs. 10000/-)	112200.00 907804.00		
		Closing Balance	175116.00
	<u>907804.00</u>		0.00 <u>907804.00</u>

The Ld. A.R. also pointed out the assessee has estimated the profit u/s 44AD of the Act in respect of sale of paddy and rice and filed his return of income accordingly beside other income from various sources as stated as such. The Ld. A.R. further brought to our notice that the balance sheet filed by the donor with the Department showed the cash gift to Abdus Sattar of Rs. 8,50,000/-. The Ld. A.R. submitted that the authorities below has not disputed the genuineness of the amount but simply stated that the donor did not have sufficient sources whereas the balance sheet duly testied and vouched the said amount with corresponding sourcing in the assessee's balance sheet on asset side meaning thereby the assessee has sufficient cash balance to make the gift. We have perused the said balance sheet of the donor and find that the said donor had duly disclosed the same and thus the finding of the Ld. CIT(A) that Sk. Moslem did not have sufficient sources is fallacious and wrong. In our opinion no conclusion can be drawn merely on the basis of just income of the current year. In view of these facts, we are not in agreement with the conclusion drawn by the Ld. CIT(A) . Accordingly we modify the order of Ld. CIT(A) and direct the AO to delete the addition.

8. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 23<sup>rd</sup> February, 2023

Sd/-  
(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

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

Dated: 23<sup>rd</sup> February, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Abdus Sattar, Goda, P.O. Lakurdi, Dt. Purba Burdwan-713102.
2. Respondent – ITO, Ward-2(3), Burdwan
3. Ld. CIT(A)-Burdwan (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata