

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

**Before Shri Sanjay Garg, Judicial Member
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 1513/KOL/2019
Assessment Year: 2011-2012**

***Deputy Commissioner of Income Tax,.....Appellant
Circle-3(1), Kolkata,
Aayakar Bhawan,
4th Floor, Room No. 19,
P-7, Chowringhee Square,
Kolkata-700069***

-Vs.-

***M/s. Narsingh Ispat Limited,.....Respondent
16, Strand Road, Fairly Place, 15th Floor,
Diamond Heritage, Unit-1512,
Kolkata-700001
[PAN: AACCN0208J]***

Appearances by:

*Shri P.P. Barman, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue
Shri Miraj D. Shah, A.R., appeared on behalf of the
assessee*

**Date of concluding the hearing : April 05, 2023
Date of pronouncing the order : April 18, 2023**

O R D E R

Per Dr. Manish Borad, Accountant Member:-

This appeal at the instance of Revenue for assessment year 2011-12 is directed against the order of Id. Commissioner of Income Tax (Appeals)-1, Kolkata dated 11.03.2019, which is arising out of the order under

section 143(3)/147 of the Act on 26.12.2018 framed by DCIT, Circle-3(1), Kolkata.

2. The Registry has pointed out that the appeal is time-barred by 12 days. With the assistance of ld. Representative, we have gone through the record carefully. According to Shri Anand Kumar, IRS, DCIT, Circle-3(1), Kolkata that the appellate order passed by the ld. CIT(Appeals), Kolkata was received in the office of Pr. CIT-1, Kolkata on 10.04.2019 and the limitation date was 08.06.2019. On 8th & 9th June, 2019 being Saturday and Sunday, the letter intimating the filing of appeal before ITAT was received in the office on 19.06.2019. Consequently this office was unable to file appeal on 10th June, 2019 itself and papers work for filing took some time and filed on 21.06.2019. After looking into the explanation of the ld. DCIT, we are satisfied that it was prohibited by sufficient reasons for not presenting the appeal within time. Therefore, we condone the delay and admit the appeal for adjudication.

3. Grounds of appeal raised by the Revenue are as under:-

(1) That on the facts and circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.4,00,00,000/- as unexplained expenditure u/s 69C made by AO. The ld. CIT(A) has erred in appreciating the fact that the assessee has failed to establish the genuineness of the said transaction by furnishing cogent evidences.

(2) The appellant craves leave to make any addition, alteration or modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings.

4. Brief facts of the case are that the assessee is a Limited Company engaged in manufacturing and trading of iron and steel products. Income of Rs.2,23,01,310/- declared in the return for A.Y. 2011-12 was filed by the assessee on 09.09.2011. The said return was processed under section 143(1) of the Act on 01.05.2012. Thereafter on prior approval of appropriate authority, notice under section 148 of the Act was issued on 31.03.2018 and the re-assessment proceeding were carried out. The ld. Assessing Officer while examining the details and also possessing information received on account of search and seizure operation under section 132 and survey operation under section 133A of the Act carried out on two entry operators namely Bhartia Group and Newatia Group noticed that these entry operators were providing accommodation entries through authorized Private Limited Companies and the list of such names also included M/s. Paramdham Agencies Pvt. Limited. During the year under consideration, the assessee-company received Rs. 4 crores from M/s. Paramdham Agencies Pvt. Limited. When the assessee was confronted, it was submitted by the assessee that it has advanced the said sum to M/s. Paramdham Agencies Pvt. Ltd. In the preceding years and during the year under consideration, the advance given was received back. However, the ld. Assessing Officer was not satisfied and he made the addition under section 68 of the Act towards unexplained expenditure of Rs.4 crores and assessed income at Rs.6,23,01,310/-. Aggrieved, the assessee preferred appeal before the ld. CIT(Appeals) and succeeded, as ld. CIT(Appeals) after taking note of the fact that the alleged sum was not a fresh transaction and it was a refund

of previous year and thus does not call for any addition. Aggrieved, the Revenue is now in appeal before the Tribunal.

5. The ld. D.R. at the time of hearing vehemently supported the order of ld. Assessing Officer.

6. On the other hand, ld. Counsel for the assessee at the time of hearing reiterated the submissions filed before the ld. CIT(Appeals) and further stated that it is not a case of unexplained expenditure and the alleged sum was given as an advance to M/s. Paramdham Agencies Pvt. Limited in the preceding year and there was a opening debit balance of Rs.4 crores as on 01.04.2011, which the assessee received during the year under consideration.

7. We have heard the rival contentions and perused the relevant record placed before us. The Revenue is aggrieved with the deletion of addition of Rs.4 crores made by the ld. Assessing Officer applying the provision of section 68 of the Act, however, wrongly mentioning section 69C while computing the total income. The ld. Assessing Officer made this addition under section 68 of the Act on the basis of information that M/s. Paramdham Agencies Pvt. Limited is a shell company used by the entry operators for the purpose of providing accommodation entry. During the year under appeal, Rs.4 crores was received by the assessee from M/s. Paramdham Agencies Pvt. Limited.

Though it was stated that it has not received any loan from this company nor it is in the nature of share capital or share premium, but it is a refund of the advance given to Paramdham Agencies Pvt. Limited in the preceding year, still Id. Assessing Officer was not convinced and he made the addition of Rs.4 crores under section 68 of the Act. Further Id. CIT(Appeals) granted the relief to the assessee observing as follows:-

“9. I have gone through the order of the Id. A.O. and the impugned detailed submissions made by the Id. A.R. of the assessee. In order to appreciate the facts of the case, it may be worthwhile to mention to refer to Section 69C of the Income-tax Act, 1961. The relevant Section 69C of the Income-tax Act, 1961 reads as under:-

“69C. 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, 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./”

10. The Id. A.R. of the assessee has claimed that they had offered the explanation. It is observed that the assessee has stated that they had made expenditure. Copy of the Accounts in the case of M/s. Paramdham Agencies Pvt. Ltd. was also given u/s.250(4) of the Income-tax Act, 1961. It is observed that the assessee on 18.05.2011, 19.05.2011, 20.05.2011, 21.05.2011, 23.05.2011, 25.05.2011, 27.05.2011, 28.05.2011 and 31.07.2011 have credits of the following nature vis-a-vis M/s. Paramdham Agencies Pvt. Ltd. It was stated that the purpose for which the amount had been advanced to M/s. Paramdham Agencies Pvt. Ltd. did not materialised and the entire amount was refunded by the said company within a short period of time. The said refund was received by the assessee again through banking

channels only. Confirmation from the said party has also been filed.

- 11. The provisions of Section 69C of the Income-tax Act, 1961 not only mandates that an expenditure should have occurred but explanation also has to be offered by the assessee company. It is evident from Para 3.2 of the impugned order. Nonetheless, it has been stated that expenditure is what is paid out or put away and a something which has given irretrievably. Who explain the word 'expenditure', the Id. A.R. of the assessee has relied on the decision of Indian Molasses Co. Pvt. Ltd. vs. C.I.T. 37 ITR 66 (SC). It is further argued that the 'expenditure' cannot be termed as deposits.*
- 12. Thus, it is evident that the assessee has given out money to a company by cheque and has been returned by cheque. Explanation has been offered. If explanation is offered and is creditable, no addition can be made. In other words, the money was lent or given out in the previous year and in the following previous year, the same had been returned. At this stage, I may also like to state that the Revenue cannot force an assessee to maximise its profits. The assessee is free to conduct the business in a manner, it deems fit. The decision in Supreme Court in S.A. Builders Ltd. vs. CIT(Appeals) & Anr. 288 ITR 0001 would apply. The Id. A.O. has not been able to state that how the explanation is not acceptable. A report from the Investigation Wing cannot be final. It has to be investigated, if deemed necessary.*
- 13. Thus, the assessee succeeds in Ground of Appeal No. 2".*

8. On going through the above finding of Id. CIT(Appeals), we notice that the basis for deleting the addition is that there is no fresh credit by the alleged party M/s. Paramdham Agencies Pvt. Limited during the year and the assessee has explained the source of such alleged sum with the help of entries appearing in the books of account. Before us, Id. Counsel for the assessee has referred to the copy of ledger account of M/s. Paramdham Agencies Pvt. Limited in the books of assessee as on 01.04.2011

opening balance is appearing at Rs. 4crores and during the year i.e. from 18.05.2011 to 30.07.2011, the total sum of Rs.4 crores has been received back and the account is squared up. Thus it is not a case where provisions of section 68 or 69C can be invoked since it is not a case of fresh credit during this year and secondly assessee has successfully explained source of alleged sum. We thus fail to find any infirmity in the finding of Id. CIT(Appeals) in deleting the alleged addition. Thus all the effective grounds of appeal raised by the Revenue are dismissed.

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

Order pronounced in the open Court on 18th April, 2023.

Sd/-

**(Sanjay Garg)
Judicial Member**

Sd/-

**(Manish Borad)
Accountant Member**

Kolkata, the 18th day of April, 2023

*Copies to :(1) Deputy Commissioner of Income Tax,
Circle-3(1), Kolkata,
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4th Floor, Room No. 19,
P-7, Chowringhee Square,
Kolkata-700069*

*(2) M/s. Narsingh Ispat Limited,
16, Strand Road, Fairly Place,
15th Floor,
Diamond Heritage, Unit-1512,
Kolkata-700001*

*(3) Commissioner of Income Tax (Appeals)-1,
Kolkata;*

4) Commissioner of Income Tax- ;

(5) The Departmental Representative

ITA No. 1513/KOL/2019
Assessment Year: 2011-2012
M/s. Narsingh Ispat Limited

(6) Guard File
TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.