

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री गिरीश अग्रवाल, लेखा सदस्य
के समक्ष

Before
SRI SONJOY SARMA, JUDICIAL MEMBER

&
SRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

**I.T.A. No.: 124/KOL/2023
Assessment Year: 2013-2014**

Verdant Projects.....Appellant
[PAN: AAFFV 1602 A]

Vs.

ITO, Ward-30(3), Kolkata.....Respondent

Appearances by:

Sh. K.M. Roy, FCA, appeared on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT, Sr. D/R appeared on behalf of the Revenue.

Date of concluding the hearing : March 30th, 2023

Date of pronouncing the order : April 27th, 2023

ORDER

Per Girish Agrawal, Accountant Member:

This appeal by the assessee is directed against the order no. ITBA/NFAC/S/250/2022-23/1049497711(1) dated 07.02.2023 passed by the Ld. CIT(A), NFAC, Delhi for A.Y. AY 2013-2014 against the assessment order u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') passed by ITO, Ward-30(3), Kolkata dated 30.03.2016.

2. Grounds of appeal taken by the assessee reads as under:

"1. That CIT(A) has grossly erred in confirming the cessation of liability of Rs. 16,55,085/- without appreciating the fact that such liability are not time

barred and have been found to genuine in the course of scrutiny for earlier year.

2. That CIT(A) has failed to consider the order passed by jurisdictional ITAT in case of associate concern upon the same facts and circumstances wherein full relief was extended.”

3. Brief facts of the case are that the assessee is a builder and promoter of real estate. Assessee filed its return of income on 30.09.2013 reporting total income at Rs. 11,76,740/-, along with Tax Audit Report. In the course of the assessment proceedings, ld. AO found discrepancies from the information received from creditors which were received against the notices issued u/s 133(6) of the Act vis-à-vis assessee’s books of accounts, details of which are tabulated as under:

Sl. No.	Party Name	Balance as per party	Balance as per assessee	Difference
1.	M/s Shib Shakti Builders	NIL	Rs.382465.50	Rs.382465.50
2.	Emdee Builders	Nil	Rs. 1272620	Rs. 1272620
			Total	Rs. 1655085.50

4. For seeking explanation on the above, a summon was issued u/s 131 of the Act on the assessee. Ld. AO completed the assessment by making an addition of Rs. 16,55,085/- as cessation of liability for sundry creditors by observing that the assessee failed to prove the credit balance of these two parties.

5. Aggrieved, assessee went in appeal before the ld. CIT(A). Before the ld. CIT(A), it was submitted that the transaction carried out by the assessee with these two creditors were never doubted. According to the assessee, it is not a case of doubtful expenditure so as to doubt the very basis of the expenditure. Further, it was stated that the information sought by ld. AO by issuing notices u/s 133(6) of the Act was ambiguous in as much as it only sought details for the transactions during the year without getting complete details of the transactions including the opening balance and the closing balance. The assessee placed reliance on the decision of the Coordinate Bench of ITAT, Kolkata in the case of *ACIT vs. M/s. Shubham Constructions* in ITA No. 1754/KOL/2016 order dated 26.04.2018 which is one of the group companies

and operating in the similar line of business. In the said decision, according to the assessee, ld. AO had made addition on similar grounds as in the present case and relief was granted by the Coordinate Bench to the assessee. After considering the submissions made by the assessee, appeal of the assessee was dismissed.

6. Aggrieved, the assessee is now in appeal before this Tribunal.

7. Ld. Counsel for the assessee placed on record a paperbook containing 83 pages, index of which is reproduced for ease of reference:

<i>Sl. No.</i>	<i>Particulars</i>	<i>Page Nos.</i>
1.	<i>Financial Statements FY 2011-12 & Tax Audit Report FY 2011-12</i>	<i>1-14 & 15-26</i>
2.	<i>Financial Statements FY 2012-13</i>	<i>27-50</i>
3.	<i>Financial Statements FY 2013-14</i>	<i>51-62</i>
4.	<i>Assessment Order of Verdant Projects AY 2012-13</i>	<i>63-69</i>
5.	<i>ITAT Order of Shubham Constructions AY 2012-13</i>	<i>70-79</i>
6.	<i>Invoice & Ledger Account Of Emdee Builders</i>	<i>80-81</i>
7.	<i>Invoice & Ledger Account Of Shiv Shakti Builders</i>	<i>82-83</i>

8. Before us, ld. Counsel for the assessee asserted that Section 41(1) of the Act can be attracted only when there has been cessation of liability either by reason of operation of law i.e. on liability becoming unenforceable at law by creditor, and debtor declaring unequivocally his intention not to honour his liability. In the present case, the books of accounts of the assessee are audited u/s 44AB of the Act and the assessee has duly disclosed its liability in the audited financial statements and has acknowledged the debt, thus, there being no cessation of liability. Ld. Counsel for the assessee also referred to the invoices for the two creditors which were raised on 24.04.2009 relevant to AY 2010-11, placed on record in the paperbook at page 80 & 82. Ld. Counsel for the assessee also referred to the assessment order u/s 143(3) of the Act for the immediately preceding assessment year i.e. AY 2012-13 in the assessee's own case which is dated 30.03.2015. According to ld. Counsel for the assessee, in the assessment completed by ld. AO for AY 2012-13, the same incumbent Assessing Officer had accepted these balances of the two creditors and no such addition was made.

9. Per contra, ld. Sr. D/R placed reliance on the order of ld. CIT(A) and also asserted that the decision of the Coordinate Bench referred by the assessee in the case of *M/s. Shubham Constructions (supra)* is distinguishable on facts which has been discussed by ld. CIT(A) in his order.

10. We have heard the rival contentions and perused the material placed on record. Admittedly, this is not a case of doubtful expenditure. It is a case where on calling of information by ld. AO from the two creditors, there appears to be a difference in the balance confirmed by the creditors vis-à-vis reported by the assessee in its audited financial statements. Further, the assessee has duly acknowledged its debt and has not done anything to write off its liability as cessation thereof. Furthermore, assessment of the assessee has been completed u/s 143(3) of the Act by the same incumbent Assessing Officer for AY 2012-13 wherein these balances of the two creditors continuing from AY 2010-11 had been accepted and no additions made thereon. Also, assessee has placed on record the invoices which were raised in respect of these two liabilities and respective ledge accounts from its audited books of accounts. Considering these facts on record and the material made before us, we are in agreement with these submissions so made by ld. Counsel for the assessee and therefore, delete the additions so made. Accordingly, the ground taken by the assessee is allowed.

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

Order pronounced in the Court on 27th April, 2023 at Kolkata.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Girish Agrawal]
Accountant Member

Dated: 27.04.2023

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Verdant Projects, 36/1A, Garcha Road, Kolkata-700 019.**
2. **ITO, Ward-30(3), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata