

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER  
&  
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

**I.T.A. No. 386/Kol/2020**  
**Assessment Year: 2009-10**

<b>M/s. Super Smeletrs Ltd.</b> Premlata Building 39, Shakespeare Sarani 3 <sup>rd</sup> Floor Kolkata - 700017 <b>[PAN : AAFCS1116F]</b>	Vs	<b>Deputy Commissioner of Income Tax, CC-2(4), Kolkata</b>
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri A.K. Tulsiyan, FCA
Revenue by :	Smt. Ranu Biswas, Addl. CIT, Sr. D/R

सुनवाई की तारीख /Date of Hearing : 23/02/2023  
घोषणा की तारीख /Date of Pronouncement: 17/05/2023

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

This is the appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-20, Kolkata (hereinafter referred to as the Id. CIT(A)], passed u/s 250 of the Income-tax Act, 1961 (hereinafter the 'Act'), dated 07/02/2020 for the Assessment Year 2009-10.

2. The sole grievance of the assessee raised in Ground Nos. 1 & 2 is that, Id. CIT(A) erred in confirming the action of Id. Assessing Officer making addition of provision of doubtful debt of Rs.45,51,125/- on the ground that the same is not allowable to the assessee.

3. Facts in brief relevant to this issue are that the assessee is a limited company engaged in manufacturing and trading of iron and steel. Original return of income for Assessment Year 2009-10 was filed on 27/09/2019 declaring total income of Rs.71,89,860/-. Thereafter subsequent to the

search, in reply to the notice u/s 153A of the Act, return was filed on 19/10/2011 disclosing loss of Rs.10,06,16,382/-. As far as the issue under consideration is concerned, Id. Assessing Officer observed that provisions for doubtful debts for Rs. 45,51,125/- was added back by the assessee in the computation of income filed with the original return of income, however, in the return filed in response to notice u/s 153A of the Act, same was omitted by the assessee resulting in escapement of income of Rs.45,51,125/-. Before the Assessing Officer assessee filed detailed written submission. It was submitted that assessee had not reduced the same from the income in the computation means that it has offered net income. However, Id. Assessing Officer was not satisfied with these submissions and he reduced the loss claimed by the assessee by Rs.45,51,125/-. Assessee failed to get any relief.

4. Dissatisfied with the findings, assessee preferred appeal before the Id. CIT(A) who confirmed the order of the Id. Assessing Officer by observing as follows:-

*"Assessee had filed return on 27.09.2009 declaring total income of Rs.71,89,860/-. Subsequently a search & seizure action was conducted in assessee's case and consequently notice u/s.153A was issued. In response to the same, assessee filed return on 19th October, 2011 disclosing loss of Rs.10,06,16,382/-. Order u/s. 143(3) read with 153A was passed on 30th December, 2011. Subsequently, it was observed that while filing original return, assessee had added back provision for doubtful debts of Rs.45,51,125/- in the computation of income. However, it was not added back in the computation of income while filing return in response to notice u/s.153A. Consequently, AO was of the opinion that income to the extent of has escaped assessment. Therefore, proceedings u/s.147 were initiated and notice u/s.148 dated 23.11.2012 was issued. Order u/s.143(3)/147/153A was passed on 27.03.2014, by adding of amount of Rs.45,51,125/-. In the assessment proceedings, as well as in appellate proceedings assessee has submitted that it had made provision for 'Sundry Debtors' at Rs.61,04,290/- and had also made provision for 'Doubtful Debt' of Rs.45,51,125/-. Assessee had also made provision for sales tax at Rs.3,78,333/-. According to assessee provision of sundry debtors was net off against provision for doubtful debt and provision for sales tax and the resultant amount of Rs.11,74,832/- has been adjusted with misc. income. Assessee has submitted that had the adjustment done separately in the computation of income, it*

would have got further deduction of Rs.11,74,832/- Hence, assessee submits that disallowance made by the AO should not be sustained.

I have carefully considered the facts of the case and the submission of the appellant. Notice u/s.153A is issued to give an opportunity to the assessee to file its return declaring income which includes the undisclosed income detected at the time of search. The scope of section 153A does not permit the assessee to re-contest / re-claim any deduction etc. which it has suo moto not claimed / foregone while filing the original return of income. If assessee believes that it had not claimed certain deduction or it had wrongly considered any income or expenses due to some misunderstanding, then it should have taken recourse to the provisions of sec. 119(2)(b) of the Income-tax Act which reads as under :

"The Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income-tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law."

Assessee should have filed petition u/s.119(2)(b) for any defects in the original return filed by it. As the assessee has not adopted the correct procedure, its action cannot be justified. Under the circumstances, the disallowance made by the AO to the extent of Rs.45,51,125/- is confirmed."

5. Aggrieved, the assessee is now in appeal before the Tribunal.
6. Ld. Counsel for the assessee vehemently argued referring to the written submissions mainly contending that its legally settled that provision for doubtful debts is not allowed and similarly provision for sundry creditors is not taxable and since the assessee in spite of adding doubtful debts and deductions of sundry creditors, has set off the same with each other. The excess income has been offered to tax in the return filed u/s 153A of the Act.
7. On the other hand, the ld. D/R supported the order of the lower authorities.
8. We have heard the rival contentions and perused the material placed before us.

The only issue before us whether the Id. CIT(A) erred in confirming the disallowance of provision for doubtful debts of Rs.45,51,125/-. It is an admitted fact that in the original return of income where the assessee has shown a positive income of Rs.71,89,860/-, the same was arrived at after adding back provisions doubtful debts of Rs.45,51,125/-. However, in the return filed u/s 153A of the Act, there was no specific *suo moto* disallowance by the assessee which came to the attention of the Id. Assessing Officer who has thereafter made the said disallowance. Before us, Id. Counsel for assessee submitted that during the year there was provision for doubtful debts of Rs.45,51,125/- and provision for sundry creditors (notional income) at Rs.61,04,290/-. There was also provisions for sales tax at Rs.3,78,333/-. The assessee reduced the provision for doubtful debts and provision for sales tax from the provision of sundry creditors and the resultant figure was Rs.11,74,832/-. Further the net provision of Rs.11,74,832/- has been reduced from the total miscellaneous expenses of Rs.10,06,16,382/-. Thus, only net miscellaneous expenses of Rs.88,64,490/- has been claimed in the Profit & Loss A/c. Thus, we find that the assessee instead of separately addition and deducting provisions for doubtful debts and sundry creditors has net off the same and has made net adjustments in computation of income u/s 153A of the Act.

9. Thus, under the given facts and circumstances of the case, we are of the considered view that assessee has already adjusted provision for doubtful debts by netting it off against the provision for sundry creditors and the net effect of the excess non-taxable notional income has been offered to tax by reducing it from the miscellaneous expenses. Since the alleged sum of provision for doubtful debts has already been offered as income by the assessee in the above stated manner, we fail to find any justification in the

action of the Id. Assessing Officer making the alleged disallowance. Thus, the finding of the Id. CIT(A) is reversed and Ground Nos. 1 & 2 raised by the assessee are allowed.

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

Order pronounced in the Court on 17<sup>th</sup> May, 2023 at Kolkata.

*Sd/-*  
(SANJAY GARG)  
JUDICIAL MEMBER

*Sd/-*  
(DR. MANISH BORAD)  
ACCOUNTANT MEMBER

Kolkata, Dated 17/05/2023

*SJC S.P.*

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata