

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.267/Kol/2023  
Assessment Year: 2015-16**

Arindam Mukherjee 37A, Ballygunge Place, Kolkata, West Bengal- 700019. (PAN: AFFPM1842J)	Vs.	Assistant Commissioner of Income-tax, Circle-30, Kolkata.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Indranil Banerjee, FCA  
Respondent by : Shri Vijay Kumar, Addl. CIT, Sr. DR

Date of Hearing : 22.05.2023  
Date of Pronouncement : 29.05.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the Assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2022-23/1049255018(1) dated 30.01.2023 against the assessment order of ACIT, Circle-30, Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 23.12.2017 for AY 2015-16.

2. The sole issue involved in the present appeal is in respect of addition of Rs.2,73,782/- alleged as unverified credit balance relating to one sundry creditor M/s. Green Concretex Slab Pvt. Ltd. (GCSPL) u/s. 41(1) of the Act without appreciating the fact that it is a debit balance.

3. Briefly stated, facts are that Ld. AO made an enquiry in the course of assessment in respect of five sundry creditors. In the case of one sundry credit i.e. GCSPL, Ld. AO observed that assessee failed to establish its identity, creditworthiness and genuineness of the transaction. Ld. AO completed the assessment by making an addition of Rs.2,73,782/- in respect of GCSPL by holding that assessee has failed in establishing the fact that the credit balance in respect of the said party had not ceased to exist. Importantly, while noting this observation, Ld. AO in the last para has underlined the words “credit balances” and had put an asterisk mark (\*). Against this asterisk mark, as a post script, Ld. AO mentioned it as “debit balance”. Aggrieved by this addition, assessee went in appeal before the Ld. CIT(A). Before the Ld. CIT(A) assessee submitted that the amount which has been added, represents the year end debit balance and, therefore, it cannot be added u/s. 41(1) of the Act. However, Ld. CIT(A) confirmed the addition made by the Ld. AO by observing that assessee has not filed any submission in this respect.

4. Before us, Ld. Counsel for the assessee pointed out that in the impugned assessment order itself, ld. AO has factually noted that it is a debit balance by putting an asterisk mark while making his observation for the purpose of making the addition.

4.1. Ld. Counsel also asserted that all through the proceedings before the authorities below, assessee had been claiming that it is a debit balance appearing in the books of account and cannot be a subject matter of addition u/s. 41(1) of the Act.

5. On confrontation of the observation made by Ld. AO in the impugned order to the ld. Sr. DR, he fairly accepted the same that it has been wrongly added, being a debit balance.

6. We have considered the submissions of both the sides and perused the material available on record. We are unable to understand how a debit balance can be treated as an income u/s. 41(1) of the Act, more particularly when the Ld. AO himself is aware of the fact that the amount being added u/s. 41(1) is a debit balance. What section 41(1) contemplates is an addition in respect of a liability for which Ld. AO himself has reproduced Sec. 41(1) in the impugned order. Considering the facts on record and the provisions of sec. 41(1), we are of the view that it is incorrect to treat the impugned amount as income u/s. 41(1) of the Act, it being debit balance. We also fail to understand about the application of mind by the Ld. CIT(A) while dealing with this issue when the assessee brought out this fact in the first appeal that a debit balance has been added u/s. 41(1) of the Act, more particularly when the Ld. AO himself has observed it to be a debit balance by putting an asterisk mark in his observation to explain its nature as a debit balance. Such a mechanical approach by the authorities below is not at all appreciated, which if taken care of, can lead to avoid such wasteful litigation and save the resources of all the stakeholders. Accordingly, the addition made by the Ld. AO and confirmed by the Ld. CIT(A) is deleted. Grounds taken by the assessee in this respect are allowed.

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

Order pronounced in the open Court on 29th May, 2023.

**Sd/-**  
**(Rajpal Yadav)**  
**Vice President**

**Sd/-**  
**(Girish Agrawal)**  
**Accountant Member**

**Dated: 29<sup>th</sup> May, 2023**

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent
  3. CIT(A), National Faceless Appeal Centre (NFAC), Delhi
  4. CIT ,
  5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata