

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

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 463/KOL/2023
Assessment Year: 2014-15**

***Sri Pranab Chatterjee.....Appellant
[PAN: ACQPC 3756 K]***

Vs.

ITO, Ward-30(4), Kolkata.....Respondent

Appearances by:

Sh. Soumitra Choudhury, Adv., appeared on behalf of the Assessee.

Sh. Vijay Kumar, Addl. CIT, Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : June 28th, 2023

Date of pronouncing the order : July 13th, 2023

ORDER

Per Rajesh Kumar, Accountant Member:

The assessee is in appeal before the Tribunal against the order of Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short ld. 'CIT(A)'] dated 15.03.2023 passed under section 250 of the Income Tax Act, 1961 (in short the 'Act') for A.Y. 2014-15. The first issue raised is against the confirmation of addition of Rs.

3,89,449/- by the Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short Ld. 'CIT(A)'] as made by The Assessing Officer (in short Ld. 'AO') on account of bogus sundry creditors u/s 69C of the Act.

2. The facts in brief are that during the course of assessment proceedings Ld. AO observed that there has been increase in the sundry creditors of the assessee. Ld. AO in order to verify the genuineness of these sundry creditors also issued notice u/s 133(6) of the Income Tax Act, 1961 (in short the 'Act') however, in respect of eight parties mention at page no. 2 of the assessment order, the notices remained unserved. Consequently, Ld. AO added the same to the income of the assessee in the assessment framed u/s 143(3) of the Act dated 29.12.2016.

3. In the appellate proceedings Ld. CIT(A) dismissed the appeal of the assessee by holding that the notice issued u/s 133(6) of the Act could not be served upon these eight persons and therefore, justified the addition made at Rs. 3,89,449/- by the AO.

4. After hearing rival contentions and perusing the material on record, we find that Ld. AO as well as Ld. CIT(A) has come to the conclusion that notices issued u/s 133(6) of the Act were not served on the eight sundry creditors and therefore, the whereabouts of these creditors were not known. We note that these creditors were on account of purchase made by the assessee from these creditors which were not doubted nor rejected and even the corresponding sales made by the assessee out of these purchases were also accepted by the Department. In our opinion, the sundry

creditors as per the books of accounts cannot be added to the income of the assessee unless these creditors ceased to exist and the assessee has write back these creditors in the books of accounts. We are supported by the decision of Hon'ble Apex Court in the case of *Commissioner of Income-tax vs. Sugauli Sugar Works (P.) Ltd.* reported in [1999] 236 ITR 518 (SC) wherein the Court has held that the condition precedent for application of Section 41(1) of the Act to the sundry creditor is the remission or cessation of liability and unilateral entry in accounts cannot justify the writing off of sundry creditor. Therefore, we are inclined to set aside the order of Ld. CIT(A) and direct Ld. AO to delete the addition. The first issue raised by the assessee is allowed.

5. The second issue raised by the assessee is against the confirmation of the addition of Rs. 6 lakh by Ld. CIT(A) as made by Ld. AO on account of flat advance received from parties u/s 68 of the Act.

6. The facts in brief are that Ld. AO during the course of assessment proceedings found that the assessee has received advance from two parties namely Sh. Biswajit Dasgupta of Rs. 3.00 lakh and Smt. Sandhya Dasgupta of Rs. 3.00 lakh aggregating to Rs. 6.00 lakh. Ld. AO made the addition on the ground that notices u/s 133(6) of the Act issued to the parties were not served.

7. In the appellate proceeding, Ld. CIT(A) dismissed the appeal of the assessee by rejecting the contentions of the assessee that these were received against sale of flat.

8. After hearing rival contentions and perusing the material on record we find that the assessee has received these advances against sale of flat to Smt. Sandhya Dasgupta wife of Sh. Biswajit Dasgupta on 06.09.2013 which was supported by the agreement of sale. We note that the assessee has received these advances by account payee cheques only. We have examined the details/documents furnished before us and find that these cheques were cleared on 20.07.2013 and were received and adjusted against the sale of flat as per Deed no. 03809 dated 13.09.2013, a copy of which is attached in the paperbook. We have also examined the said sale deed and find that these advances were genuine which were received against the sale of flat from the above said parties. In view of these facts, we are inclined to set aside the order of Ld. CIT(A) and direct Ld. AO to delete the addition so made.
9. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 13th July, 2023.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Rajesh Kumar]
Accountant Member

Dated: 13.07.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Sri Pranab Chatterjee, P-240, Lake Road, Kolkata-700 029.**
- 2. ITO, Ward-30(4), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata