

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 765/Kol/2022
Assessment Year: 2014-15

M/s Kanupriya commercial Pvt. Ltd. (PAN: AACCK 5711 B)	Vs.	DCIT, Circle-11(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	23.03.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	22 .08.2023
For the Appellant/ निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the Respondent/ राजस्व की ओर से	Smt. Ranu Biswas, Addl. CIT D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 13.12.2022 for the AY 2014-15.

- Issue raised in ground no. 1 is general in nature and does not require specific adjudication.

3. Issue raised in ground no. 2 is against the confirmation of addition of Rs. 41,80,000/- of Ld. CIT(A) as made by the AO on account of sundry balances written off.

4. Facts in brief are that during the course of assessment proceedings, the AO noticed that the assessee has charged in the profit and loss account under "Other Expenses" an amount of Rs. 41,80,000/- on account of sundry balances written off. No details were furnished before the AO. Consequently the AO added the same to the income of the assessee in the assessment framed 143(3) of the Act.

5. Similarly the Ld. CIT(A) in the appellate proceedings confirmed the order of AO on this issue.

6. After hearing the rival contentions and perusing the material on record, we note that sundry balances have been written off in the ordinary course of business by the assessee and represent the genuine write off in the business of the assessee because of not recoverable or on account of being petty in nature however we restore this issue to the file of the AO to examine and decide after examining the details filed by the assessee as it was brought to our notice that the details filed by the assessee are not examined by the AO. Accordingly ground no.2 raised by the assessee is allowed for statistical purpose.

7. Issue raised in ground no. 3 is against the confirmation of addition of Rs. 21,64,926/- which was made by the AO in respect of short term capital loss incurred from sale of shares M/s Luminaire Technologies by treating the same as unexplained cash credit u/s 68 of the Act.

8. The AO during the course of assessment proceedings, observed that the assessee has sold 170500 equity shares of M/s Luminaire Technologies Limited for a consideration of Rs. 69,15,741/- which was purchased for Rs. 90,80,667/- and thus the assessee incurred a short term loss of Rs. 21,64,926/-. According to AO, the said loss incurred by the assessee is arranged loss and accordingly show cause notice was issued

as to why the said loss should not be rejected as not being genuine which was replied by the assessee by submitting that all the transactions were made through registered broker and all the evidences qua sale and purchase of shares on the recognized stock exchange were furnished duly evidencing the said transactions such as contract notes and transactions through banking channel. The reply of the assessee did not find favour with the AO and after discussing the modus operandi in the stock exchange the AO added the same as unexplained cash credit u/s 68 of the Act.

9. In the appellate proceedings, the Ld. CIT(A) confirmed the order of AO by observing that detailed investigation by SEBI and Investigation Wing, Kolkata had revealed that M/s Luminaire Technologies Ltd. was a company engaged in providing accommodation entries through persons/brokers acting in concerted manner and therefore held that the loss was rightly rejected by the AO.

10. After hearing the rival contentions and perusing the material on record, we find the assessee has incurred such loss on sale and purchase of shares of M/s Luminaire Technologies Ltd. which was duly evidenced by Contract Notes and payment being received through banking channels. The AO has added this amount to the income of the assessee as unexplained cash credit and the Ld. CIT(A) simply affirmed the same as unexplained cash credit which is incorrect and against the provision of Act. The loss cannot be added as unexplained cash credit which is not something which is finding in the books of account as credited but its a debit entry resulting from the sale price of shares sold is lower than purchase price and therefore the finding of the AO is totally incorrect which has been affirmed by the Ld. CIT(A) in the same manner. This We are not in concurrence with the conclusion drawn by the Ld. CIT(A) on this issue. Consequently we reverse the order of Ld. CIT(A) and direct the AO to delete the addition . The ground no. 2 is allowed.

11. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order is pronounced in the open court on 22nd August, 2023

Sd/-

Sd/-

(SonjoySarma /संजय शर्मा)

(Rajesh Kumar/राजेश कुमार)

Judicial Member/न्यायिक सदस्य

Accountant Member/लेखा सदस्य

Dated: 22nd August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Kanupriya Commercial Pvt. Ltd., 14, Ganesh Chandra Avenue, 2nd Floor, Kolkata-700013.
2. Respondent – DCIT, Circle-11(1), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata