

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” 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. 474/Kol/2023**  
**Assessment Year: 2013-14**

Arihant Plantations Pvt. Ltd. (PAN: AAKCA 0589 R)	Vs.	DCIT, Circle-4(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	01.08.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	22.08.2023
For the Appellant/ निर्धारिती की ओर से	Shri S. K. Tulsiyan, Advocate Ms. Sonam Bajoria, CA
For the Respondent/ राजस्व की ओर से	Shri Sunil Kr. Agarwala, CITDR

**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 31.03.2023 for the AY 2013-14.

2. The only issue raised by the assessee in the various grounds of appeal is against the confirmation of addition of Rs. 11,68,22,403/- by Id CIT(A) comprising of Rs. 3,00,00,000/- on account of share capital and Rs. 8,68,19,403/- on account of unsecured loan as against the addition made by the AO of Rs. 16,96,94,616/-

comprising of Rs. 4,30,00,000/- on account of share capital and Rs. 12,66,94,616/- on account of unsecured loans.

3. Facts in brief are that the assessee filed return of income on 30.09.2013 showing loss at Rs. 70,10,570/-. The case of the assessee was selected for scrutiny and statutory notices were duly issued and served on the assessee. The AO on perusal of the balance sheet as on 31.03.2013 observed that the assessee company had shown to have raised fresh share capital and fresh unsecured loans during the year and accordingly the assessee was requested to furnish the details of share capital and unsecured loans taken including loan confirmations from the creditors concerned as well as complete names and present postal addresses of all the concerned persons. The assessee furnished evidences before the AO as called including loan confirmations. The AO has issued notice u/s 133(6) of the Act to the parties in order to verify the transactions of share capital and unsecured loans and notices were duly served on all the parties. Out of these parties only two parties replied and the remaining parties failed to comply with the notices. The said fact was confronted to the assessee by the AO that no replies were received from parties as mentioned at page 4 and 5 of the assessment order. Thereafter hearing was adjourned from time to time and but according to AO there was no compliance. Finally the AO treated the share capital to the tune of Rs. 4,30,00,000/- and unsecured loan of Rs. 12,66,94,616/- as unexplained cash credit and added the same to the income of the assessee in the assessment framed u/s143(3) of the Act dated 31.03.2016.

4. In the appellate proceedings, the Ld. CIT(A) after taking into account the contentions and submissions of the assessee partly allowed the appeal by partly sustaining the addition to the tune of Rs. 3,00,00,000/- in respect of share capital and Rs. 8,68,19,403/- in respect of unsecured loans.

5. The Ld. Counsel for the assessee vehemently contended that both the authorities have failed to appreciate the facts incorrect perspective . The Ld. A.R therefore submitted that the assessee has not received any share capital during the year

and all these are opening balances coming over from the preceding year. The Ld. A.R while referring to note No. 2 of balance sheet of the assessee, a copy of which is filed at page 17 of PB, stated that the company has acquired one tea estate as a whole under slump sale taking over existing assets and liabilities as on 1.4.2012 at book value pursuant to an agreement entered into with M/s SVM Cera Ltd. and accordingly all the existing assets and liabilities of above Tea estate have been accounted for at its book value during the year. The Ld. A.R also referred to the copy of agreement for slump sale dated 31.03.2012 copy of which is filed at page 325 to 351 of PB and submitted that the assessee has taken over total value of assets of Rs. 19,97,89,720/- and total value of liability of same amount and accounted the same in its books of account. The Ld. A.R stated that out of total liability of Rs. 19,97,89,720/-, the unsecured loans of Rs. 13,85,64,746/- represented the opening balance of unsecured loans as on 1.4.2012 in the books of account of the assessee. The Ld. A.R therefore prayed that the share capital was issued out of the amounts which are brought forward as opening balances. Similarly the unsecured loans which are added u/s 68 of the Act as unexplained cash credit also represented opening balances of unsecured loans brought forward from preceding year. The Ld. A.R also took us through the appellate order wherein the Ld. CIT(A) has accepted the fact of loans having been raised during the preceding year on the basis of evidences filed by the assessee from the same parties from whom it borrowed during the year. The Ld. A.R also referred to various documents such as balance sheets, ITRs, loan confirmations, bank statements of the parties which are placed at page 73 to 324 of PB and submitted that assessee has proved and discharged its onus by filing the necessary evidences however the authorities below have failed to carry out further investigations. The Ld. A.R submitted that the addition sustained in such a scenario cannot be sustained by strongly relying on the decision of Hon'ble Apex Court in the case of CIT vs. Orissa Corporation reported in [1986] 159 ITR 78 (SC), decision of Hon'ble Jurisdictional High Court in the case of STL Extrusion P Ltd. [2010] 333 ITR 269 (Cal), decision of Hon'ble Delhi High Court in the case of CIT vs. Gangeswari Metal P Ltd. in [2014] 361 ITR 10 (Del). The Ld. A.R therefore prayed before the Bench that the addition so sustained by the Ld. CIT(A) may kindly

be deleted. Alternatively the Id. A.R contended that issue may be restored to the file of AO to examine whether the addition sustained are out of loans received during the preceding year. The Ld. A.R therefore stated that if there are out of opening balances coming forward from the earlier year then the AO may be directed to delete the addition as the provisions of section 68 of the Act cannot be invoked in respect of share capital/ unsecured loan which were received in earlier years and not during the year by relying decision of Hon'ble Supreme Court in the case of Sumati Dayal vs. CIT, Bangalore in [1995] 125 CTR 124 (SC), decision of Hon'ble Rajasthan High Court in the case of CIT vs. Prameshwar Bohra in [2008] 301 ITR 0404 (Raj-HC) and decision of Co-ordinate Bench of Mumbai in the case of Rita Stephen Pinto vs. ITO in ITA No. 1219/Mum/2013.

6. Per contra, the Ld. D.R submitted before the Bench that it would be fair if the issue is examined at the level of AO and the veracity of arguments presented by the Ld. A.R of receipt of money in the preceding year and not in the current year would be examined and verified.

7. After hearing the rival contentions and perusing the material on record, we find that the assessee has acquired one tea estate under the name & style SVM Cera Tea Ltd. under slump sale vide agreement dated 31.03.2012. We observe from the perusal of the said agreement, a copy of which is filed at page 325 to 351 of PB, that the assessee has taken over all the assets and liabilities at book value as on 1.4.2012 in terms of said slump sale agreement. We note that total assets of Rs. 19,97,89,720/- and total liabilities of like amount were taken over and accounted for accordingly in the books of the assessee. We note that the unsecured loans coming over as opening balances out of above said liability accounted Rs. 13,85,64,746/- as on 1.4.2012 in the books of the assessee. We also note from the balance sheet, the assessee has appended Note No. 2 stating the details of assets and liabilities taken over on slump sale basis. At this stage we are not commenting on the merit of the issue whether these loans were genuine or not and we are only considering and accepting the alternative argument presented before us by the Ld. Counsel for the assessee Mr. S. K. Tulsian that the

said money was received in the earlier year and not credited in the books of account at all in the instant financial year.

The counsel of the assessee Mr. S. K. Tulsian stated that the share capital was issued out of unsecured loans brought forward from the preceding year as stated above and same is the position with regard to unsecured loans of Rs. 8,68,22,403/-. In our opinion, if there is no amount credited or received in the books of account of the assessee during the year in respect of share capital or unsecured loans and only the opening balances are there, then no addition can be made u/s 68 of the Act. The case of the assessee find support from the decision of Hon'ble Supreme Court in the case of Sumati Dayal (supra), decision of Hon'ble Rajasthan High Court in the case of Prameshwar Bohra (supra) besides the decision of Co-ordinate Bench of Mumbai in the case of Rita Stephen Pinto (supra). However the issue needs to be examined at the level of the AO in order to ascertain whether the money is credited in the books of accounts of the assessee during the year or not. Accordingly we are restoring this issue to the file of the AO. Needless to say that if no fresh cash credit is found to be credited in the books of the assessee in the current year, the additions on account of share capital and unsecured loan have to be deleted.

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

Order is pronounced in the open court on 22<sup>nd</sup> August, 2023

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 22<sup>nd</sup> August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Arihant Plantations Pvt. Ltd, 4, Fairlie Place, B.B.D Bagh, Kolkata-700001
2. Respondent-DCIT, Circle-4(1), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT-
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata