

आयकर अपीलीय अधिकरण  
कोलकाता 'बी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' 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.: 600/KOL/2023**

**Assessment Year: 2014-15**

***M/s. M. Kantilal & Co.....Appellant***  
***[PAN: AAFFM 2055 C]***

***Vs.***

***ITO, Ward-36(1), Kolkata.....Respondent***

**Appearances by:**

***Assessee represented by – Sh. S.M. Surana, Adv.***

***Department represented by – Sh. P.P. Barman, Addl. CIT, Sr. D/R.***

Date of concluding the hearing : July 27<sup>th</sup>, 2023

Date of pronouncing the order : August 31<sup>st</sup>, 2023

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

This appeal preferred by the assessee is against the order passed by Learned Commissioner of Income Tax (Appeals) [in short ld. 'CIT(A)']-NFAC, Delhi dated 10.05.2023 for the Assessment Year (in short 'AY') 2014-15.

2. The issue raised in ground nos. 1 & 2 are general in nature and does not need any adjudication.

3. The issue raised in ground nos. 3 to 6 is against the confirmation of addition by Ld. CIT(A) of Rs. 17,38,112/- as made by the Assessing Officer (in short ld. 'AO') on account of commission being bogus.

4. The facts in brief are that during the course of assessment proceedings, Ld. AO observed that the assessee has debited commission on sales of Rs. 22,81,640/- in the profit and loss account. Accordingly, Ld. AO called upon the assessee to furnish the information/evidences qua the said commission besides issuing letter u/s 133(6) of the Act to the recipients. The assessee replied and furnished before the AO the details of commission agents and amount paid to them. Five persons out of the commission agents replied by furnishing incomplete documents to the AO namely Sh. Rajat Pugalia, Sh. Manoj Kumar Agarwal, Sh. Sanjay Mandal, Sh. Yogendra Sav and Sh. Bijay Mondal. Accordingly, Ld. AO issued show cause notice to the assessee as to why the commission expense of Rs. 22,81,640/- should not be treated as bogus which was replied by the assessee by stating that in absence of letters issued to the commission agents and sellers and also the response therefrom it is not possible to reply. Accordingly the assessee was supplied the details received from these parties. The letters were also issued to the Sale parties and in some cases, they denied the fact any agent was involved. Finally the AO calculated on this basis replied from the sale parties, who

denied to have any middlemen or brokers, disallowance at Rs. 17,31,112/- and added the same to the income of the assessee.

5. In the appellate proceedings, Ld. CIT(A) confirmed the addition by dismissing the appeal of the assessee by observing that the assessee could not prove the commission and disallowance was rightly made by the AO on the basis of replied of the parties who denied to have any middlemen.

6. After hearing rival contentions and perusing the material on record, we find that the assessee has furnished the details comprising names addresses of the recipients and also the sale parties to the AO in respect of commission paid of Rs. 22,81,640/- . We note that the payment of commission is a regular phenomenon in the business of the assessee and in the preceding and succeeding years, the same was accepted by the revenue, in some cases, even in scrutiny proceedings. However, during the current year the AO on the basis of the letter issued u/s 133(6) of the Act to the sales parties and after analysing the replies received from the said parties calculated the commission to be disallowed at Rs. 17,38,000/-. This is also undisputed that the commission was paid after deduction of tax at source and the payments were routed through banking channels as is apparent from the evidences filed before us. Under these circumstances, the only issue for our adjudication is whether the AO rightly rejected the commission payments to various agents which was paid after deduction of tax at source. In our opinion, considering the nature of business and consistency of payments over the years and therefore the rejection by both the authorities below is not

acceptable without assigning any plausible reasons. This is not the findings of the authorities below that this commission has not shown as income in the returns of income by the recipients. The case of the assessee finds support from the decision of Hon'ble Calcutta High Court in the case of CIT, Kolkata Vs. Alpha Hydraulics Pvt Ltd. ITA No. 549 of 2004 wherein the Hon'ble Court has held that where the payments were in made under binding contracts and the revenue cannot prove and demonstrate either the money was not paid or money was paid and routed back to the assessee, the expenses have to be allowed. The findings of the Hon'ble Court read as under:

*"We have considered the rival submissions and gone through the facts of the case. We find that in the present case there is a binding contract between the parties by which the \recipients of the commission had the right to enforce realisation of commission stipulated between the parties. We also find from the communication between the parties that the payment was duly received by the parties and paid by the assessee by account payee cheques. The revenue has not alleged that the parties to the transactions are related to each other or that the payments are not genuine or that the payments having been made by the assessee to the recipients have found their way back to the assessee some way or the other. Such being the case, we find that the authorities below were not justified in rejecting the claim of the assessee for payment of commission. Since all the ingredients necessary for genuine business transaction exist in this case, we do not find any merit in the addition made by the AO and in the action of the CIT(A) in confirming the same. In reversing their orders, and respectfully following the decision of the Hon'ble Calcutta High Court in the case of Masther & plant (India) Ltd. (Supra) and the case of the Tribunal, Mumbai Bench (Third Member) discussed herein above, we allow the appeal of the assessee."*

*Heard Mr. Das, learned advocate appearing for the appellant revenue and Mr. J. P. Khaitan, learned senior advocate appearing for the respondent assessee. Before us the' revenue could not demonstrate either the money was not paid or the money was paid and routed*

*back to the assessee. In the circumstances interference with the order of the Tribunal is not warranted. No question arise for adjudication. The application and the appeal are dismissed."*

6.1. We therefore, respectfully following the said decision, set aside the order of Ld. CIT(A) and direct Ld. AO to delete the addition. The ground no. 3 to 6 are allowed.

7. The second issue raised in ground nos. 7, 8 & 9 is against the confirmation of addition of unsecured loan taken by the assessee amounting to Rs. 37,19,000/- received from two parties and interest thereon of Rs. 2,19,000/-.

8. Ld. AO noticed during the course of assessment proceedings that the assessee has taken unsecured loans during the year from two parties and called upon the assessee to furnish the details thereof. The assessee furnished before Ld. AO the evidences and details comprising the names, addresses, PAN, bank statements, confirmations etc. Ld. AO has issued notices u/s 133(6) of the Act to these lenders which were duly replied by them. Ld. AO has also issued summons to the Directors of these lenders for personal appearance. However, the summons remained un-complied and consequently , Ld. AO treated these loans of Rs. 37,19,000/- as bogus and non-genuine on the ground that summons were not complied with and personal appearance was not registered and added to the income of the assessee besides, interest of Rs. 2,19,000/- on these loans.

9. The ld. CIT(A) dismissed the appeal observing that no submissions were made in support of claim of the assessee.

10. After hearing rival contentions and perusing the material on record, we find that undisputedly the assessee furnished before the AO the evidences as called for. We also observe that besides, the AO issued letters u/s 133(6) of the Act to the lenders which were duly replied confirming the transactions by lenders having lent to the assessee on interest. We note that the AO has not pointed out any defect in the evidences furnished by the assessee while the notices issued u/s 133(6) of the Act to loan creditors were duly replied. This is not the case of the Revenue that the lenders did not have creditworthiness to give loans as they did not own funds on the date of giving loans but we note that sufficient funds were available with them. We note that the AO has merely made the addition on the ground that the summons were not complied with. In our opinion the addition cannot be made for mere non-compliance of the summons issued by the AO u/s 131 of the Act to the lenders. The case of the assessee finds support from several decisions namely i) *Crystal Networks Pvt. Ltd. vs. CIT in ITA 158 of 2002* dated 29.07.2010, ii) *ITO vs. Cygnus Developers (I) Pvt. Ltd. in ITA No. 282/Kol/2012* dated 02.03.2016 iii) *M/s Lucky Agencies Pvt. Ltd. vs. ITO in ITA NO. 2501/Kol/2019* dated 23.02.2023 as discussed below:

a) The case of the assessee is also squarely covered by the decisions of Hon'ble Calcutta High Court in the case of *Crystal Networks Pvt. Ltd. vs. CIT 353 ITR 171 (Cal)* wherein it has held that where all the evidences were filed by the assessee proving the identity and creditworthiness of the loan transactions, the fact that summon issued were returned un-served or no body complied with them is of little significance to prove the genuineness of the

transactions and identity and creditworthiness of the creditors.  
The relevant portion of the decision is extracted below:

*“We find considerable force of the submissions of the learned Counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the Ld. CIT(A) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the product of the assessee or note. When it was found by the Ld. CIT(A) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact findings. Indeed the Tribunal did not really touch the aforesaid fact finding of the Ld. CIT(A) as rightly pointed out by the learned counsel. The Supreme Court has already stated as to what should be the duty of the learned Tribunal to decide in this situation. In the said judgment noted by us at page 463, the Supreme Court has observed as follows:*

*“The Income-Tax Appellate Tribunals performs a judicial function under the Indian Income-tax Act. It is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the by the assessee and the Commissioner, in the light of the evidence and the relevant law.”*

*The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its findings on all contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. It is also ruled in the said judgment at page 465 that if the Tribunal does not discharge the duty in the manner as above then it shall be assumed the judgment of the Tribunal suffers from manifest infirmity.*

*Taking inspiration from the Supreme Court observation we are constrained to hold in this matter that the Tribunal has not*

*adjudicated upon the case of the assessee in the light of the evidence as found by the Ld. CIT(A). We also found no single word has been spared to up set the fact finding of the Ld. CIT(A) that there are materials to show the cash credit was received from various persons and supply as against cash credit also made.*

*Hence, the judgment and order of the Tribunal is not sustainable. Accordingly, the same is set aside. We restore the judgment and order of the Ld. CIT(A). The appeal is allowed.”*

b) The case of is also covered by the decision of the coordinate bench by *ITO Vs M/s Cygnus Developers India Pvt. Ltd. (ITA No. 282/Kol/2012)* the operative part whereof is extracted below:

*“8. We have heard the submissions of the learned D.R, who relied on the order of AO. The learned counsel for the assessee relied on the order of Ld. CIT(A) and further drew our attention to the decision of Hon’ble Allahabad High Court in the case of CIT vs. Raj Kumar Agarwal vide ITA No. 179/2008 dated 17.11.2009 wherein the Hon’ble Allahabad High Court took a view that non-production of the director of a Public Limited Company which is regularly assessed to Income tax having PAN, on the ground that the identity of the investor is not proved cannot be sustained. Attention was also to the similar ruling of the ITAT Kolkata bench in the case of ITO vs. Devinder Singh Shant in ITA No. 208/Kol/2009 vide order dated 17.04.2009.*

*9. We have considered the rival submissions. We are of the view that order of Ld. CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the revenue that the revenue disputed only the proof of identity of share holder. In this regard it is seen that for AY 2004-05 Shree Shyam Trexim Pvt. Ltd. was assessed by ITO, Ward-9(4), Kolkata and the order of assessment u/s 143(3) dated 25.01.2006 is placed in the paper book. Similarly Navalco Commodities Pvt. Ltd. was assessed to tax u/s 143(3) for AY 2005-06 by ITO, Ward-9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd. was assessed to tax for AY 2005-06 by the very same ITO, Ward-9(3), Kolkata assessing the assessee. In the light of the above factual position which is not disputed by the revenue, it cannot be said that the identity of the share applicants remained not proved by the assessee. The decision of the Hon’ble Allahabad High Court as well as ITAT, Kolkata Bench on which reliance was placed by the learned counsel for the assessee also*

*supports the view that for non-production of directors of the investor company for examination by the AO it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold the order of Ld. CIT(A) and dismiss the appeal of the revenue.”*

10.1 In the instant case before us also, the assessee has furnished all the evidences proving identity and creditworthiness of the investors and genuineness of the transactions but AO has not commented on these evidences filed by the assessee. Besides all the investors have also furnished complete details/evidences before the AO which proved the identity, creditworthiness of investors and genuineness of the transactions. Under these facts and circumstances and considering underlying facts in the light of ratio laid down in the decisions as discussed above , we are inclined to set aside the order of Ld. CIT(A) by allowing ground nos. 7, 8 and 9 the appeal of the assessee.

11. In the result the appeal of the assessee is allowed.

***Kolkata, the 31<sup>st</sup> August, 2023.***

*Sd/-*

[Sonjoy Sarma]  
Judicial Member

*Sd/-*

[Rajesh Kumar]  
Accountant Member

Dated: 31.08.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. M/s. M. Kantilal & Co., 72, Canning Street, Kolkata-700 001.**
- 2. ITO, Ward-36(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata