

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH "B", KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 154/Kol/2023**  
**Assessment Year : 2017-18**

Yash Engineering Pvt. Ltd.	Vs.	ITO, Ward-7(2), Kolkata
PAN: AAACY 1317 K		
Appellant		Respondent

Date of Hearing	09.08.2023
Date of Pronouncement	31.08.2023
For the Assessee	Shri Anil Kochar, Advocate
For the Revenue	Shri P.P. Barman, Addl. CIT, Sr. DR

**ORDER**

**Per Sonjoy Sarma, JM:**

This appeal of the assessee for the assessment year 2017-18 is directed against the order dated 27.12.2022 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

- 1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.*
- 2. For that the Ld. CIT (A) erred in not properly appreciating the facts of the case in a perspective manner and dismissing the same on merits on alleged grounds.*
- 3. For that the Ld. CIT (A) misconstrued the facts of the case in as much as the appellant had recovered advances made in the earlier years and not the amount which has been received as credit during the year.*
- 4. For that the Ld. CIT (A) erred in treating the amount received out of advances made in earlier years as cash credit u/s. 68 of the Act.*
- 5. For that the Ld. CIT (A) ought not to have confirmed the action of the A.O. in involving the provision of section 68 of the Act.*

6. For that the Ld. CIT (A) ought not to have confirmed the action of the A.O. in making addition of Rs.53,14,000/- u/s. 68 r.w.s. 115BBE of the Act on alleged grounds.

7. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2017-18 by declaring total income of Rs. 3,93,800/-. The return of the assessee was duly processed u/s 143(1) of the Act. Subsequent to it, the case of the assessee was selected for complete scrutiny u/s 143(3) of the Act followed by statutory notices u/s 143(2) and 142(1) of the Act. The reason for such selection of the case of the assessee under CASS was due to the abnormal increase in cash deposits during the demonetization period as compared to average rate of cash deposit during pre demonetization period. The ld. AO during proceeding gathered information that Rs. 53,14,000/- was deposited by the assessee in its bank account comprising SBNs during the demonetization period. However, the assessee while filing its return of income overlooked to mention the deposit in the specified space in the ITR. The assessee appeared in response to the statutory notice from the end of ld. AO and stated that the source of such deposit were made in the bank account comprised of refund of advance made for land and compensation received from the following parties to whom assessee made for purchase of land which were stated as under:

<i>Sl. No.</i>	<i>Name of the party</i>	<i>Amount</i>
1	<i>Sk. Aminuddin</i>	<i>Rs. 10,60,000/-</i>
2	<i>Sk. Jalaluddin</i>	<i>Rs. 15,90,000/-</i>
3	<i>Sk. Nasiruddin</i>	<i>Rs. 10,60,000/-</i>
4	<i>Sk. Sirajuddin</i>	<i>Rs. 15,90,000/-</i>

Total	Rs. 53,00,000/-
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3. However, the contention made by the assessee was turned down by the ld. AO and treated the whole amount of Rs. 53,14,000/- was deposited in its bank account by the assessee as unexplained cash credit u/s 68 of the Act and added the whole amount as undisclosed income of the assessee.

4. Dissatisfied with the above order, assessee went in appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

5. Aggrieved by the order of ld. CIT(A), assessee is in appeal before the Tribunal raising various grounds. However, the sole grievance of the assessee is that against the impugned order passed by the ld. CIT(A) by sustaining the action of the ld. AO by making addition of Rs. 53,14,000/- u/s 68 of the Act in the hands of assessee which ought to be deleted by ld. CIT(A) while passing the impugned order u/s 250 of the Act. At the time of hearing, ld. AR submitted that the assessee had got an offer to purchase a vast plot of land from five joint co-owners on the death of their father Sk. Aminuddin. The five co-owners which are comprising of Sk. Reajuddin, Sk. Jalaluddin, Sk. Nasiruddin, Sk. Sirajuddin and Sk. Aminuddin respectively. The assessee at the time of entering into an agreement for sale with five joint owners paid a sum of Rs. 50 lac as advance. However, doing so the advance of the 50 lac required to be paid by the assessee to four of the members out of five joint co-owners and assessee

made payment of advance of Rs. 50 lac to four co-owners only through RTGS as per following manner:

<i>Name</i>	<i>Amount</i>	<i>Date</i>
<i>Sk. Jalaluddin</i>	<i>Rs. 15,00,000/-</i>	<i>13.08.2011</i>
<i>Sk. Aminuddin</i>	<i>Rs. 10,00,000/-</i>	<i>13.08.2011</i>
<i>Sk. Sirajuddin</i>	<i>Rs. 15,00,000/-</i>	<i>29.08.2011</i>
<i>Sk. Nasiruddin</i>	<i>Rs. 10,00,000/-</i>	<i>29.08.2011</i>

6. In support of the claim of the assessee, the AR submitted that copy of the statement maintained with Federal Bank placed before us. The ld. AR in order to substantiate his claim furnished before us audited statement of accounts of the assessee for the F.Y. ending on 31.03.2012 by showing that the advance payments which were made by the assessee is duly recorded in its books of account and to prove the above fact by showing us at page no. 43 where the names of four owners to whom advance were made duly reflected in assessee's balance sheet. The ld. AR further contended that subsequent to such agreement for sale disputes arose between the joint owners since one of the joint owners Sk. Reajuddin was not shared the advance amount of Rs. 50 lac and due to this no final Deed of Conveyance could be finalized between the vendor and the present assessee. In order to substantiate the contention of the assessee, the ld. AR placed before us an agreement for sale dated 02.09.2011 containing the names of five joint co-owners but no amount out of advance was shared with him by the other four joint owners due to this reason one of the joint owners Sk. Reajuddin was left out of share advance amount of Rs. 50 lac and disputes arose between the co-owners which could not be settled amongst them. In the mean time, the assessee could not get the final conveyance deed for sale of land from the co-owners. Upon persistent demand made

to four joint owners by the assessee to refund its advance money since no final deed was executed by the co-owners in favour of the assessee ultimately joint owners in the month of October, 2016 refund money Rs. 50 lac and compensation of Rs. 3 lac to the assessee. The ld. AR to substantiate his argument he placed before us the ledger account at page no 36 of the paper book by showing the necessary entries was made in the books of account after realizing the above advance along with compensation from the co-owners due to non-performance of deed of conveyance by the alleged sellers. The ld. AR stated that during the assessment proceeding, the ld. AO has issued notices to the respective co-owners u/s 131 of the Act. However, upon receipt of the notices the joint owners requested for adjournment of the hearing as they were unable to attend on the date as fixed by the AO. However, in order to compliance to the notice issued by the AO u/s 131 of the Act they have submitted their PAN, statement of accounts and date of payment of advance which were placed before the AO, those are placed before us by the assessee in paper book from page no. 10 to 35 and the ld. AO has also mentioned in his order about the fact. The ld. AR further contended that as the assessee with great efforts could get back the advance money from the joint owners in cash as the dispute arose between the co-owners themselves regarding sharing of the money. Therefore such refund cannot be termed as undisclosed money in the hands of assessee as the same are duly confirmed by them who are having PAN which is appearing on their acknowledgement of their return. He further brought to our notice by inviting to the circular of the Central Board of Direct Taxes relating to the

demonetization notes where there is specific mention about this matter as under:

*“Subject: Standard Operating Procedure (SOP) to be followed by the Assessing Officers in verification of Cash Transactions relating to demonetization - Regarding -*

*Cash received from identifiable persons (with PAN)*

- 1. No additional information is required to be submitted by the person under verification as the information will be pushed to the A.O. of the identifiable persons (with PAN).*
- 2. In case the identifiable person (with PAN) does not confirm the transaction, the response will be referred back for further verification.*
- 3. In case of a gift, it may be seen whether the same is taxable in the hands of the recipient under section 56(2) of the Act.”*

7. The ld. AR accordingly prayed before this bench to delete the addition made by the AO in the hands of assessee since all the supported documents along with evidence produced by the assessee before the ld. AO as well as before the Tribunal has furnished in respect of its claim. Therefore, the impugned order passed by the ld. CIT(A) by sustaining the addition made by the AO is liable to be deleted. On the other hand, ld. DR supported the addition made by the AO and subsequently confirmed by the ld. CIT(A) in his order is a valid order.

8. We after hearing the rival submission of the parties and perused the material available on record. We find that the alleged specific notes deposit were made by the assessee to the extent of Rs. 53,14,000/- was received from various co-owners to whom advance were made for agreement of sale of land and in turn refund along with compensation has been received by the assessee from the various parties which was clearly reflected in the assessment order and in support of the same, assessee

produced all relevant documents before us at the time of hearing to substantiate its claim. Moreover, the refund of the advance made by the joint owners to the assessee were made in cash and the same were duly confirmed by the joint owners who are having PAN which is appearing on their acknowledgement of their return. In such a situation, the claim of the assessee cannot be turned down by the AO. Consequently, we direct the AO to delete the addition of Rs. 53,14,000/- in the hands of assessee. In view of the above, the impugned order passed by the ld. CIT(A) as well as the ld. AO is hereby set aside.

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

Order pronounced in the open court on 31.08.2023.

Sd/-

Sd/-

(Rajesh Kumar)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 31.08.2023  
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Yash Engineering Pvt. Ltd., 26, Strand Road, High Court, Kolkata-700 001.
2. Respondent – ITO, Ward-7(2), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata