

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.105/Kol/2021
Assessment Year: 2012-13**

Aim Credit Capital Pvt. Ltd. Room No. 3, Purnima Complex Vill-Maheshwaripur, PS Salboni, P.O. Syedpur, Paschim Midnapore, West Bengal-721147. (PAN: AACCA2464R)	Vs.	Income Tax Officer, Ward- 4(3), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Ankit Jalan, Advocate

Respondent by : Shri Bonnine Debarma, JCIT

Date of Hearing : 25.01.2024

Date of Pronouncement : 08.03.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld.CIT(A)-13, Kolkata dated 03.03.2020 passed against the assessment order by ITO, Ward-4(3), Kolkata u/s.144(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 29.03.2015 for AY 2012-13.

2. Appeal of the assessee is delayed by 325 days for which defect was pointed out by the Registry. In response to the defect notice, assessee filed its reply dated 24.04.2021 wherein it was submitted that the period of delay is covered by the Pandemic of Covid 2019. The appeal was filed on 24.03.2021. Thus, the period from March 2020 upto the date of filing of appeal is covered by the decision of Hon'ble Supreme Court. This period has been excluded by the Hon'ble

Supreme Court in the case of *suo moto* Writ Petition (C) No. 3 of 2020 dated 10.01.2022 by which the period from 15.03.2020 to 28.02.2022 has been directed to be excluded for the purpose of limitation. Vide this order a further period of 90 days has been granted for providing the limitation from 01.03.2022. Accordingly, we condone the delay and proceed to admit the appeal for hearing.

3. Brief facts of the case are that assessee filed its return of income reporting at nil income with carried forward loss of Rs.3,98,529/-. In the course of assessment, Ld. AO noted about an outstanding amount of Rs.71,61,000/- towards advance received/sundry creditors for which the assessee could not give the details as to PAN and address in respect of this amount. He also observed that there is no confirmation of the advance and when and how it was taken by the assessee. Further, assessee failed to produce books of accounts in the course of assessment and, therefore, identity of the parties from whom this advance amount of Rs.71,61,000/- was received could not be established. Owing to the inability of the assessee to produce the lenders and give their details, Ld. AO arrived at the conclusion that since the lenders are unfriendly, the assessee is not likely to honour or repay the said liability. Accordingly, the assessment was completed by making an addition of Rs.71,61,000/- to the total income of the assessee. The said assessment was completed u/s. 144 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A).

3.1. In para 3.1 of the first appellate order, Ld. CIT(A) gave his observation and decision. He noted in that several opportunities were given to the assessee fixing the date of hearing. However, inspite of several opportunities assessee did not avail the same and did not make any submission to substantiate the grounds raised in the appeal filed by it. The said para is extracted as under:

"1 Ground of appeal No. 1 to 4: Grounds of appeal no. 1 to 8 have been taken up together. Notices u/s. 250 of the Income Tax Act, 1961 were issued on 10.11.2016, 06.01.2017, 22.08.2019, 18.09.2019, 23.01.2020, and 21.02.2020 fixing the dates of hearing on 12.12.2016, 08.02.2017, 02.09.2019, 30.09.2019, 04.02.2020 and 03.03.2020 respectively.

In spite of reasonable opportunities provided to the assessee, he has not availed them. In similar circumstances Hon'ble Supreme Court in the case of CIT vs. B. Bhattacharjee & Another (118 ITR 461 at page 477-78) held that:

"The appeal does not mean, mere filing of the memo of appeal but effectively pursuing the same. So by respectfully following the view taken in the cases cited supra, we dismiss this appeal filed by the assessee for non-prosecution. In the result, the appeal of the assessee is dismissed."

3.2. The first appeal by the assessee was thus, dismissed and the addition so made was confirmed. Aggrieved, assessee is in appeal before the Tribunal.

4. Present appeal filed by the assessee is delayed by 325 days as stated above which has been condoned. Before us, Ld. Counsel for the assessee submitted that the amount of Rs.71,61,000/- represents the advance received by the assessee in the earlier years. These advances were not of the current year but were carried forward from earlier years. According to the Ld. Counsel, assessee had entered into a business deal for purchase of 651,000 number of shares of one company called Surya Sponge Iron Ltd. from four different individuals. According to the Ld. Counsel, this amount of Rs.71,61,000/- from the four persons was never received by the assessee during the year under consideration. He stated that there was no payment made to these persons and neither any sums were received from these persons. A mere journal entry was passed for recording transaction for the purchase of shares. He submitted that the shares were entered into the books during the year through journal entry which was

subsequently reversed in the subsequent year. Ld. Counsel submitted the reason for reversal in the subsequent assessment year was that the above persons were not proper holders of shares of Surya Sponge Iron Ltd. because of which the transaction for transfer of shares were cancelled and hence, the journal entry passed in the impugned assessment year was reversed in the subsequent assessment year.

5. Per contra, Ld. Sr. DR submitted that it is a case of bogus entry entered into by the assessee in its books of account without any basis of actual transaction of transfer of shares undertaken as narrated by the Ld. Counsel. This is a case of window dressing of the books of account by passing journal entry in one year and subsequently reversing it another year and, therefore, addition made by the Ld. AO is justified.

6. We have heard the rival contentions and perused the material available on record. It is a fact on record and as submitted by the Ld. Counsel that a journal entry has been passed by the assessee in the books of account to record transaction of transfer of shares. Assessee has furnished its audited financial statement for the year under consideration and for the preceding year to demonstrate that this amount pertains to the earlier years. We have gone through the audited financial statements for both the years. On perusal of the same, from nowhere it is discernible about the receipt of this amount from the four persons as claimed by the assessee. There is nothing on record to substantiate the claim made by the assessee from the submissions made by the Ld. Counsel about the details of the four parties,

correctly detailing the transaction. We fail to understand as to how can there be receipt of advance by the assessee shown as a credit balance when the assessee had entered into a business deal for purchase of 651000 number of shares of Surya Sponge Iron Ltd. from four individuals whereby the assessee was required to make the payment for the said purchase. Furthermore, nothing is on record to demonstrate execution of the actual transaction of shares supported with the necessary regulatory compliances. Assessee has entered shares into its books of account by merely passing the journal entries. Moreover, in the subsequent year, this entry has been reversed without any substantive and corroborative documentary evidence by a casual statement that the four persons were not proper holders of share of Surya Sponge Iron Pvt. Ltd. and, therefore, the transaction was cancelled. Admittedly, there is a credit entry in the books of account of the assessee in the year under consideration. It is incumbent on the assessee to explain its nature and source to the satisfaction of the Assessing Officer. We are in agreement with the submission made by the Ld. Sr. DR according to which it is a case of bogus entry. From the facts of the case, material placed on record and the discussion made above, we do not find any substance in the submissions made by the assessee. We uphold the findings given by the Ld. AO and sustain the addition so made. Accordingly, grounds taken by the assessee are dismissed.

7. In the result, appeal of the assessee is dismissed.

Order is pronounced in the open court on 8th March, 2024.

Sd/-

(Sanjay Garg)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 8th March, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A)-13, Kolkata
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata