

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No. 1179/DEL/2024
Assessment Year: 2012-13**

Khaitan Chemicals And Fertilizers Limited, Khasra no. 1441, MIN, 4B/3, Palm Drive, DLF Farms Chattarpur, New Delhi-110074. PAN: AAACK2342Q	<u>Vs</u>	DCIT, Circle-14(2), New Delhi.
APPELLANT		RESPONDENT

Assessee represented by	Shri Rajan Chopra, CA
Department represented by	Mr. Javed Akhtar, CIT(DR)
Date of hearing	24.07.2024
Date of pronouncement	24.07.2024

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi, pertaining to the assessment year 2012-13.

The assessee has raised following grounds of appeal:

“1. The order passed by the Ld. CIT (A) is bad in law, wrong on facts and against the principles of natural justice.

2. The Ld. CIT(A) has erred in passing an order u/s 250 of the Income Tax Act, 1961 by passing an ex parte order on the grounds that no response was received from the appellant company during appellate proceedings. The Ld.

CIT(A) has failed to appreciate the fact that the appellant company had duly filed the Paper Book before the Ld. CIT(A) on 03.10.2023 and pursuant to the notice dated 24.11.2023, the appellant company had requested adjournment for filing ground-wise written submissions and for filing the additional evidence but no subsequent date was intimated to the appellant company and the order was passed without giving a final notice to the appellant company.

3. The Ld. CIT(A) has erred in confirming the re-opening of the case for the Assessment Year 2012-13 u/s 147 of Income Tax Act, 1961, whereas all material facts necessary for assessment were truly and completely disclosed in the return of income filed on 29.09.2012 which was duly assessed vide order u/s 143(3) and the case of the appellant was invalidly initiated.

4. The Ld. CIT(A) in the appeal order has confirmed the addition of Rs.1,16,14,173/- and has mentioned that the appellant has not been able to produce the documents evidencing the genuineness, identity and creditworthiness of the investor i.e. M/s. Janvi Enterprises. The Ld. CIT(A) has failed to appreciate the fact that the appellant company had received money pursuant to sale of goods from M/s. Janvi Enterprises and not share application money and therefore the appeal order has been passed without correctly understanding the facts of the case.

5. The Ld. CIT(A) has erred in confirming an addition of Rs. 1,16,14,173/- to the income of the appellant company u/s 68 of the Income Tax Act towards alleged accommodation entry received from Mis. Janvi Enterprises. The Ld. CIT(A) has failed to appreciate the fact that the appellant company has made sale of refined oil to M/s. Janvi Enterprises during Financial Year 2011-12 and such sale was duly recorded in the books of accounts of the appellant company and duly offered for taxation and therefore the addition confirmed by the Ld. CIT(A) has resulted in double addition.

6. The Ld. CIT(A) has grossly ignored the fact that the Ld. AO in the assessment order has made the addition of Rs. 1,16,14,173/- towards alleged unexplained credit and has disregarded credible evidence in the form of ledger account of M/s. Janvi Enterprises and details of sales made as appearing in the books of the appellant company and also the copy of C-Form issued in the name of M/s. Janvi Enterprises evidencing that sales were made to the aforesaid party by the appellant company which was duly recorded in the books of accounts.

7. *The Ld. CIT(A) has grossly ignored the fact that the Ld. AO in the assessment order u/s 143(3)/147 has relied upon Investigation Report of ADIT (Inv.), Indore and has also relied upon the statement of Sh. Ramesh Garg and Sh. Shailendra Agarwal. However, the Ld. AO has not shared a copy of the aforesaid Investigation Report and statements of the above parties with the appellant company and also has not given an opportunity to the appellant company to cross examine Sh. Ramesh Garg and Sh. Shailendra Agarwal and therefore the Investigation Report and the Statements relied upon cannot be considered as credible evidence and are nonest in law.*

8. *The Ld. CIT(A) has erred in confirming the charging of incremental interest u/s 2348/ 234C of the Income Tax Act amounting to Rs.46,31,997/-*

2. Facts, in brief, are that for A.Y. 2012-13 the assessee company filed its return of income on 29.09.2012 at an income of Rs. 29,47,94,910/-. Assessment was completed u/s 143(3) of the Income-tax Act, 1961 (the "Act") at an income of Rs. 29,52,62,070/-. Subsequently, on receiving information from ADIT(Inv.), Unit-II, Indore, that assessee company had taken accommodation entries of Rs. 1,16,14,173/- from M/s Janvi Enterprises Ltd., the AO, after taking necessary approval, reopened the assessment u/s 147 of the Act. In response to notice issued u/s 148 of the Act the assessee filed its return of income at Rs. 29,47,94,910. Vide order dated 06.12.2019, the AO completed the assessment u/s 143(3) read with section 147 of the Act at Rs. 30,64,09,083/- by adding Rs. 1,16,14,173/- on account of unexplained credits u/s 68 of the Act. Aggrieved against it the assessee preferred appeal to the learned CIT(Appeals) who dismissed the appeal by

affirming the action of the Assessing Officer. Aggrieved against it now the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee submitted that learned CIT(A) was not justified in confirming the addition made by the AO by observing that assessee had not been able to produce documents evidencing the genuineness, identity and creditworthiness of the investor. He submitted that assessee had duly filed paper book before learned CIT(A) on 3.10.2023 and pursuant to notice dated 24.11.2023, issued by the learned CIT(A), the assessee had requested adjournment for filing ground-wise written submissions, which was not allowed and passed the impugned order ex parte to the assessee. Learned counsel submitted that learned CIT(A) in sustaining the addition in question failed to appreciate the fact that receipts were sale proceeds of refined oil sold to M/s Janvi Enterprises during F.Y. 2011-12 relevant to assessment year 2012-13. Learned counsel submitted that since the learned CIT(A) did not afford adequate opportunity to the assessee to prove its case the order of learned First Appellate Authority may be set aside and the matter may be restored to the file of learned CIT(A) for fresh adjudication on merits after affording reasonable opportunity of being heard to the assessee.

4. On the other hand, learned DR relied on the orders of authorities below.

5. We have heard rival submissions and perused the material available on record. The stand of the assessee is that the learned CIT(A) did not afford adequate opportunity to the assessee to prove its case and that in the impugned order the learned CIT(A) also did not take into consideration the paper book filed by the assessee. After taking into account the totality of facts of the present case, in order to sub serve the interests of natural justice, we hereby set aside the order of learned CIT(A) and restore the matter to the file of learned First Appellate Authority for decision afresh after affording adequate opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 24.07.2024.

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI