

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA

डॉ. मनीष बोरड, लेखा सदस्य

एवं

श्री संजय सरमा, न्यायिक सदस्य

के समक्ष

Before

Dr. Manish Borad, Accountant Member

&

Shri Sonjoy Sarma, Judicial Member

I.T.A. No.574/KOL/2024

Assessment Year: 2014-15

Sudarshan Panja
(PAN: AKBPP6220A)

.....

Appellant

Vs.

DCIT, circle-27(1), Haldia

.....

Respondent

Appearances by:

No one appeared for Appellant.

Shri Subhendu Datta, CIT, DR appeared for Respondent.

Date of concluding the hearing : 21.08.2024

Date of pronouncing the order : 29.08.2024

ORDER

Per Dr. Manish Borad, Accountant Member:

This appeal filed at the instance of the assessee pertaining to the Assessment Year (in short “AY”) 2014-15 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Ld. Commissioner of Income-tax, (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Ld. “CIT(A)”] dated 08.02.2024 arising out of the assessment order framed u/s. 263/143(3) of the Act by DCIT, Circle-27(1), Haldia dated 30.12.2019.

2. Grounds of appeal raised by the assessee read as under:

“A. For that the Learned Commissioner (Appeals) did not consider the merit, facts and documentary evidences as uploaded in Income Tax Portal in a proper and perfect perspective. He was attentive to uphold the observations and impositions made by the assessing authority in the impugned assessment order.

B. For that the appellate authority confirmed the additions made by the assessing authority in the impugned assessment order dated 30.12.2019, illegally and without recording any valid reason in the appellate order.

C. For that the appellate authority has failed to recognize the illegality committed by the assessing authority in failing to explain properly the addition of un-secured loan amount to the return income of the appellant u/s 68 of the Income Tax Act, 1961 inspite of production of all relevant documents like bank statement, Income Tax Return, confirmation certificate etc. by the lenders.

D. For that the appellate authority did not make any observation regarding appellant's grievance related to disallowance of TDS Credit for Rs.4,75,659/-. The appellant claimed in the income tax return for the relevant assessment year 2014-15, the entire T D S credit for Rs.20,70,460.00 which is reflected in Form 26AS available in Income Tax Portal. But neither the assessing authority not the appellate authority has allowed this T D S credit to the appellant which the appellant is legally entitled to receive.

E. For that the determination of interest by the assessing authority and upheld by the appellate authority is totally wrong and not tenable in the facts and circumstances of the instant case.

F. For that the purported appellate order dated 08.02.2024 is wrong, illegal, improper and as such the same is liable to be quashed at this stage.

G. For that the appellant craves leave to add, amend or alter any or any other grounds later on at the time of or before hearing of this appeal.”

3. During the course of hearing none appeared. Perusal of the record suggests that even on the last date of hearing fixed on 11.06.2024 there was no representation, we, therefore, decide to adjudicate the issues raised in this appeal in the assistance of Ld. DR and the available records.

4. Facts in brief are that the assessee is an individual and furnished return of income for AY 2014-15 on 30.11.2014 declared income of Rs.15,70,380/-. Case selected for scrutiny under CASS and assessment u/s. 143(3) of the Act completed on 21.11.2016 at an income of Rs.57,45,507/-. Thereafter, the assessment records were called for by the Ld. Pr. CIT under the revisionary powers u/s. 263 of the Act and he directed the Ld. AO to examine the issue of non-deduction of TDS on the consultancy charges and verification of interest on unsecured loan taken during the year. In compliance thereto, Ld. AO initiated the proceedings u/s. 263 r.w.s. 143(3) of the Act. But even after providing sufficient opportunity assessee failed to appear before him. Ld. AO concluded the proceedings by making disallowance u/s. 40(a)(ia) of the Act at Rs.13,04,950/- and addition u/s. 68 of the Act at Rs.21,16,248/-. Income assessed at Rs.91,67,700/-.

5. Aggrieved with the addition made by the Ld. AO, assessee filed appeal before the Ld. CIT(A). However, apart from filing of statement of facts and a brief written note assessee could not furnish further details as called for by Ld. CIT(A). However, Ld. CIT(A) based on the submissions filed by the assessee gave part relief and out of the disallowance of Rs.13,04,950/- made u/s. 40(a)(ia) of the Act the same was sustained at Rs.3,52,557/-. Similarly, for addition made u/s. 68 of the Act Ld. CIT(A) gave part relief of Rs. 55,000/- only. Aggrieved, assessee is now in appeal before this Tribunal.

6. Ld. DR vehemently argued supporting the order of the lower authorities.

7. We have heard rival submissions and perused the material placed before us. Ground Nos. (A), (B), (E), (F) and (G) are general in nature which needs no adjudication.

8. Ground No. (C) is against the addition sustained u/s. 68 of the Act. We note that the assessee has claimed to have furnished following details before the Ld. CIT(A) to explain the nature and source of the alleged sum.

"The assessee has taken interest free unsecured loan of Rs.21,16,248 /- from son, friends and relatives which are routed through bank and the same has been duly considered in books of accounts.

As per provision of section of 68 of the Income Tax Act, 1961, "the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited".

The assessee has received Rs. 21,16,248 as unsecured loan received through bank account of Petrochem Engineering Construction and recorded in books as well as reflected in Balance Sheet as at 31.03.2014 i.e. related to assessment year 2014-15. Details explanatory documents are as below:-

1. Received from Biswajit Panja amounting to Rs.17, 99,000/- having PAN APWPP9332B. Confirmation Certificate, Ledger Copy, bank statement of Petrochem Engineering Construction, Income Tax return for are enclosed and marked as Annexure D

2. Received from Gargi Panja amounting to Rs.2,30,000/- having PAN AKKPP0712A. Confirmation Certificate, Ledger Copy, bank statement of Petrochem Engineering Construction, Income Tax return for are enclosed and marked as Annexure E

3. Received from Sanatani Dutta amounting to Rs.1,37,248/- having PAN ACUPD7330G. Confirmation Certificate, Ledger Copy, bank statement of Petrochem Engineering Construction, Income Tax return for are enclosed and marked as Annexure F

4. Copy of Balance Sheet as at 31.03.2014 of Petrochem Engineering Construction is evident itself and marked as Annexure G."

9. From perusal of the above submission it transpires that for each of the parties viz., Biswajit Panja, Gargi Panja and Sanatani Dutta from which assessee took unsecured loan of Rs.17,99,000/-, Rs.2,30,000/- and Rs.1,37,248/- assessee has furnished various details including confirmation certificate, bank statement, income tax returns and details of the bank account no. of each of these persons. The finding of the Ld. CIT(A) also confirms this fact that these details have been furnished. Now, Ld. CIT(A) has not pointed out any discrepancy in these details filed by the assessee explaining the nature and source of the alleged sum. Admittedly, all the cash creditors are assessed to income tax and having their PAN. Once the assessee successfully discharged its primary onus claiming to explain the nature and source of the alleged sums then it is for the revenue authorities to record the satisfaction as to why they are not satisfied with these details and what more information is needed from the end of the assessee. In absence of any such satisfaction from the revenue authorities it has to be presumed that assessee has successfully explained the nature and source of the alleged sums. Before us, ld. DR also could not controvert the fact that assessee has furnished all these details before the Ld. CIT(A). Under these given facts and circumstances, we are inclined to hold that since assessee has filed sufficient details before Ld. CIT(A) to explain the identity and creditworthiness of the cash creditors and genuineness of the transaction, we, therefore, delete the impugned addition made u/s. 68 of the Act and allow ground No. (C) raised by the assessee.

10. As far as ground no. (D) is concerned, the only grievance of the assessee is that it has not been allowed TDS credit of Rs.4,75,659/- which is duly reflected in Form 26AS, we note that assessee raised this ground even before the Ld. CIT(A) but there is no adjudication on the same. Under the given facts and circumstances, we deem it appropriate to restore this issue to the file of the jurisdictional AO to verify the claim of TDS credit by the assessee and if the Ld. AO is satisfied that the claim of alleged TDS credit of Rs.4,75,659/- is correct and duly reflected in Form 26AS available in the income tax portal then the assessee deserves to be allowed TDS credit of Rs.4,75,659/-. Needless to mention that assessee should be given sufficient opportunity of being heard. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

11. other grounds being general in nature need no adjudication.

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

Order is pronounced in the open court on 29th August, 2024.

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Dr. Manish Borad)
Accountant Member

Kolkata Dated 29.08.2024

J.D. Sr. PS.

Copy of the order forwarded to:

1. **Appellant – Shri Sudarshan Panja, (Proprietor of Petrochem Engineering Construction), Barsundra Ishwardahajalpai, Halida, Purba Medinipur, West Bengal-721654.**
2. **Respondent – DCIT, Circle-27(1), Haldia**
3. CIT(A), NFAC, Delhi
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata