

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता**

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

**Before Shri Sanjay Garg, Judicial Member and Rajesh Kumar, Accountant Member**

**I.T.A No.865/Kol/2023  
Assessment Year: 2013-14**

**Satya Kinkar Roy.....Appellant  
C/o S. N. Ghosh & Associates, Advocates  
2, Garstin Place, 2<sup>nd</sup> Floor, Suite No.203,  
Off Hare Street, Kol-1.  
[PAN: AHAPR7203H]**

**vs.**

**ACIT, Circle-23(1), Hooghly.....Respondent**

**Appearances by:**

Shri Somnath Ghosh, AR, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 13, 2024

Date of pronouncing the order : September 11, 2024

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 22.06.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee through his grounds of appeal has agitated against the validity of reopening of assessment u/s 147 of the Act as well as the validity of the impugned addition of Rs.48,76,881/- made by the Assessing Officer on account of failure of the assessee to reconcile the figures in respect of amount received as incentives and discounts.

3. Initially, the case of the assessee was selected for scrutiny assessment proceedings u/s 143(3) of the Act. The basic reason for

selection for scrutiny was much amount of sundry creditors. After verification of the sundry creditors from whom third party verifications were made and considering the explanations, return of income of the assessee was accepted by the Assessing Officer. Thereafter, the assessment in the case of the assessee was reopened u/s 147 of the Act. During the assessment proceedings, the Assessing Officer noticed that it was found from the details as filed during the course of assessment proceedings u/s 143(3) of the Act that the assessee had received incentives and discounts of Rs.50,13,542/- from different parties. However, the assessee in the Profit & Loss A/c has shown receipt of incentives and discounts at Rs.1,49,947/- only leaving the difference of Rs.48,63,595/-. The Assessing Officer, therefore, during the reassessment proceedings, called for the assessee to file reconciliation. The assessee filed reconciliation. The assessee further explained that out of incentives and discounts received of Rs.50,13,542/-, an amount of Rs.48,63,595/- was further passed on to the customers and that it was noted in the books of account as 'discount allowed and freight received and allowed'. The Assessing Officer, however, did not get satisfied with the above submissions of the assessee and pointed out that the assessee had not booked discounts and incentives received and discounts and incentives passed on to its clients in the audited books of account. He, therefore, held that the reconciliation/explanations given by the assessee cannot be given credence and made the impugned additions.

4. The ld. CIT(A) confirmed the addition so made by the Assessing Officer.

5. We have heard the rival contentions and gone through the record. The first and foremost issue raised by the ld. counsel for the assessee is regarding the validity of reopening of the assessment. He has shown

from the record that despite the assessee demanded the reasons recorded for escapement of income, however, no reason was supplied to the assessee. Even, bringing our attention to the impugned assessment order passed u/s 147 of the Act, the ld. counsel has demonstrated that there is not a single mention by the Assessing Officer as to why the assessment in the case of the assessee was reopened. There is no mention as to what information was received by the Assessing Officer for forming belief that the income of the assessee has escaped assessment. We note that in this case, the impugned addition has been made by the Assessing Officer on account of non-satisfaction of the Assessing Officer in respect of reconciliation of figures relating to discounts and incentives received, however, the occasion to reconcile the said figures would occur to the Assessing Officer only when he would examine the assessment records of the assessee during the reassessment proceedings. There is no mention as to why the assessment was reopened in the case of the assessee. There is no mention as to what tangible material or information has come to the knowledge of the Assessing Officer to form the belief that the income of the assessee has escaped assessment. On the other hand, the plea of the assessee has been that during the original assessment proceedings, the Assessing Officer had duly verified the sundry creditors and also duly examined this issue as the figure of sundry creditors was arrived at after adjustment of incentives and discounts received and made by the assessee. The ld. counsel has further submitted that it is the assessee, himself, who had mentioned the figure during the original assessment proceedings of incentives and discounts received of Rs.50,13,542/- and further net incentives and discounts received were mentioned at Rs.1,49,947/- after subtracting incentives and discounts allowed and freight received and allowed. That the entire figures were duly reconciled before the Assessing Officer. The

ld. counsel, in this respect, has invited our attention to page 5 of the impugned assessment order to submit that all the queries raised by the Assessing Officer, were duly replied during the assessment proceedings.

5.1 Considering the above submissions, we note that in this case, firstly the reopening of the assessment u/s 147 was bad in law as there is no mention of any information or tangible material coming to the knowledge of the Assessing Officer to form the belief that the income of the assessee has escaped assessment. Secondly, even, there is no discussion on any such issue for which the assessment was reopened. The impugned additions have been made only on the basis of reappraisal of records, which is nothing but a change of opinion. The ratio of law laid down by the Hon'ble Supreme Court in the case of 'CIT vs. Kelvinator India Ltd.' reported in (2010) 320 ITR 561 (SC) is squarely applicable to the case in hand and therefore, the reopening is held bad in law.

6. Even, on merits, the assessee has duly reconciled the difference relating to incentives and discounts received and given. The Assessing Officer has made the additions that the aforesaid entries were not booked in the Profit & Loss A/c and that only net figures of incentives and discounts received were mentioned. May it be so, however, the fact is that even the assessee has also not mentioned the alleged total amount of Rs.50,13,542/- in the Profit & Loss A/c and so as he has not mentioned the amount of incentives and discounts given to the customers. The Assessing Officer is not supposed to take up the incentives and discounts received and ignore the incentives and discounts given. Under the circumstances, the impugned addition, on merits, is also bad in law. In view of the above discussion, the appeal of

the assessee is hereby allowed and the impugned additions are ordered to be deleted.

7. In the result, the appeal of the assessee stands allowed.

***Kolkata, the 11<sup>th</sup> September, 2024.***

Sd/-  
**[Rajesh Kumar]**  
लेखा सदस्य /Accountant Member

Sd/-  
**[Sanjay Garg]**  
न्यायिक सदस्य /Judicial Member

Dated: 11.09.2024.

RS

*Copy of the order forwarded to:*

1. Satya Kinkar Roy
2. ACIT, Circle-23(1), Hooghly
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches