

आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 1504/Kol/2024
Assessment Year: 2015-16

M/s K B Developers (PAN: AAIFK 5844 N)	Vs.	DCIT, Circle-43, Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	26.09.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	09.10.2024
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, A.R
For the Respondent/ राजस्व की ओर से	Smt. Ranu Biswas, Addl. CIT, Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-Addl/JCIT(A), Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 21.06.2024 for the AY 2015-16.

2. The only issue raised by the assessee is against the order of Ld. CIT(A) confirming the addition of Rs. 2,00,000/- as made by the AO in respect of sundry creditor u/s 68 of the Act.

3. Facts in brief are that the assessee filed belated return of income on 17.03.2016 declaring loss of Rs. 12,25,793/-. The case of the assessee was processed u/s 143(1) and thereafter selected for limited scrutiny through CASS for three reasons namely; i) Sundry Creditors, ii) Investment in unlisted equities and iii) Low Income and high loans / advance/investments. Accordingly, notices were issued and served on the assessee. The AO observed from the final accounts of the assessee that the assessee has provided professional fees of Rs. 5,00,000/- during the year and opening balance outstanding of Rs. 5,40,000/-, the total payable comes to Rs. 10,40,000/-. The AO further noted that Rs. 7,00,000/- was paid during the year and thus closing balance as shown at Rs. 3,40,000/- whereas the assessee declared the liability of Rs. 5,40,000/-. According to AO, the difference between opening and closing balance comes to Rs. 2,00,000/- and accordingly the same was added to the income of the assessee u/s 68 of the Act which has also been confirmed by the Ld. CIT(A) for the same reason.

4. After hearing the rival contentions and perusing the material on record, we note that the AO has added Rs. 2,00,000/- in respect of sundry creditor M/s B J Law Offices LLP which according to him is the difference between balance shown by the party and the assessee in its books of accounts. Accordingly, the same was added u/s 68 of the Act as unexplained cash credit. The contention before us is that when the expenses for professional fee were not in dispute and was duly allowed in the earlier assessment year as well as in the current assessment year, the sundry creditors in respect of such expenses could not be disallowed and added to the income as unexplained cash credit. The assessee relied on the decision of Co-ordinate Bench in the case of Tajrul Seikh vs. PCIT in ITA No. 349/Kol/2021 for AY 2016-17 dated 15.12.2021 wherein the Co-ordinate Bench has decided that where there was no case for disallowance for corresponding purchase, no addition could be made u/s 68 inasmuch as it is not in

dispute that the sundry creditors' outstanding related to purchases and the trading results were accepted by the AO. The operative part is reproduced as under:

"5. We have heard both the parties and perused the records. In order to examine whether the Ld. PCIT had successfully invoked the revisional jurisdiction u/s 263 of the Act or not, we have to examine whether the issue in respect of sundry creditors has been enquired/examined by the A.O and if has done so then whether he has taken a plausible view on the issue or not. We note that the Ld. PCIT has reproduced the notice of A.O u/s 142(1) dated 15.05.2018 wherein Item No.(f) the A.O had called for list of names and address of the sundry creditors for the A.Y 2015-16 along with other details as indicated by the CASS and since we have to examine only this issue i.e. sundry creditors, we confine ourselves to this relevant issue only. We note that the A.O has recorded in the assessment order that the Ld. AR of the assessee has appeared before him and filed the assessee's financials including the Profit & Loss A/c, Balance Sheet and books of accounts. And in respect of large amount of sundry creditors shown by the assessee, the A.O after having examined the details collected of sundry creditors, has accepted the version/explanation of the assessee that the sundry creditors to the tune of Rs.1,86,05,800/- was existing in liability side of balance sheet because the assessee being a labour supplier contractor after having got this contract which fetched him Rs.2,73,08,300/- and the cost of labour supply to him for this contract being Rs.2,62,24,786/- which inter-alia includes (i) outstanding machinery rent of Rs.9,55,800/- (ii) outstanding labour payment of Rs.1,74,85,000/- and (iii) outstanding salary payment of Rs.1,65,000/- and this amount (Rs.1,86,05,800/-) would be disbursed/discharged when the assessee receives the payment due from the principal which is shown as sundry debtors to the tune of Rs.1,71,81,900/- along with security deposit of Rs.16,60,500/- (which is shown in the right hand side of the balance sheet). These facts are discernible from the perusal of page 17 of paper-book wherein the Profit & Loss A/c and balance sheet has been placed. The Ld. AR also drew our attention to the labour account of sundry creditors from 01.04.2015 to 31.03.2016 at pages 27 to 32 of paper-book; and details of sundry creditors' accounts from 01.04.2015 to 31.03.2016 at pages 33 to 36 of paper-book. He has also drew our attention to the ledger account at pages 37 to 39 which figures tallies with the figures reflected in the balance sheet in respect of sundry creditors as well as sundry debtors. According to the Ld. AR, the action of the A.O to have accepted the contention of the assessee after perusal of the records is a plausible view because even the Ld. PCIT has not found any fault with the gross receipt which the assessee has shown in its Profit & Loss A/c which is Rs.2.73 crores and has not disturbed the cost of contract to the tune of Rs.2.62 crores. So the gross receipts and cost/expense of assessee has been accepted by even the Ld. PCIT. So if the Ld. PCIT had to question the sundry creditors then he could have done so only after disturbing/rejecting the audited books of account. So when the Ld. PCIT has not found any fault on the part of A.O accepting the gross receipt as well as the cost incurred by the assessee, the Ld. PCIT could not have found fault with the sundry creditors. For such a proposition, the Ld. AR cited the ratio of the Hon'ble Delhi High Court in the case of CIT vs. Ritu Anurag Aggarwal in ITA No.325 of 2008 dated 22.07.2009 wherein the A.O had held after the notices issued to the sundry creditors (in that case) under section 133(6) of the Act got returned "unserved" with the remark 'not known'. So the, A.O in that case concluded that the assessee has failed to discharge its onus to prove the capacity of the creditors and genuineness of the transaction and made additions. This action of the A.O was reversed by the ITAT by observing that "This is a case, where the books are not out-rightly rejected, there is no adverse inference drawn regarding quantum of purchases or sales and even the purchase accounts of the sundry creditors have not been disturbed. The assessee maintained regular books of account including stock register which also has not been negated. The Assessing Officer had not disallowed the purchases from those creditors nor the trading results were disturbed". After this observation, the ITAT held that since the sales, purchases as well as gross profits as disclosed by the assessee

have been accepted by the A.O then the sundry creditors cannot be added u/s 68 by holding it as bogus. This action of the ITAT has been upheld by the Hon'ble Delhi High Court wherein the Hon'ble Delhi High Court observed as under:

"...Proceeding on this basis, the ITAT observed that the sales, purchases as well as gross profits as disclosed by the assessee have been accepted by the Assessing Officer. Once this is accepted, we are of the opinion that the approach of the ITAT was correct inasmuch as the Assessing Officer did not consider this aspect while making additions of the sundry creditors under section 68 of the Income Tax Act. As there was no case for disallowance for responding purchases, no addition could be made under section 68 inasmuch as it is not in dispute that the creditors' outstanding related to purchases and the trading results were accepted by the Assessing Officer."

Therefore, according to the Ld. AR in view of the ratio laid down by the Hon'ble Delhi High Court in the present case when the A.O has accepted the gross receipt from labour supply contract and the cost/expense incurred by the assessee, then after making enquiry and after hearing the explanation, the A.O accepted the claim of the assessee regarding the sundry creditors, which action of A.O in the facts and circumstances of the case discussed supra is a plausible view which is in consonance with the view of the Hon'ble High Court. According to Ld. AR, it is not the case of the PCIT that the sundry creditors are bogus and if that is so, the Ld. PCIT should have directed the books of accounts of the assessee to be rejected. By not directing so, the Ld. PCIT has accepted the gross receipt of Rs.2.73 crores and cost of Rs.2.62 crores while doubting the sundry creditors without even doubting the sundry debtors of like amount. So therefore, according to the Ld. AR the action of the A.O to have accepted the explanation given by the assessee after going through the ledgers of the sundry creditors and sundry debtors as well as the balance sheet as well as profit & loss filed by the assessee is a plausible view, so the Ld. PCIT ought not to have interfered with it. We find force in the submissions of Shri S.M. Surana. We find from the discussion supra and after going through the records especially the details of sundry creditors and sundry debtors, we are of considered opinion that the A.O has taken a plausible view in the facts and circumstances of the case. And at any rate the action of the A.O in the given facts cannot be held to be unsustainable in law. So, therefore, the action of the A.O in not drawing any adverse inference in respect of sundry creditors in the give facts should not have been interfered by Ld. PCIT exercising his revisional jurisdiction u/s 263 of the Act. Therefore, the action of the Ld. PCIT to interdict when the AO has discharged his duty as an investigator as well as that of the adjudicator as discussed above. Since the AO's action on the facts as discussed (supra) is a plausible view, we find merit in the appeal of the assessee and we are inclined to hold that the impugned action of the Ld. PCIT is without jurisdiction and therefore null in the eyes of law so quashed.

6. In the result, the appeal of the assessee is allowed."

We therefore, respectfully following the above decision hold that the sundry creditor disallowed by the AO by accepting corresponding expenses is incorrect and the addition u/s 68 of the Act on account of sundry creditor is unsustainable in law and accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

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

Order is pronounced in the open court on 9th October, 2024

Sd/-

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 9th October, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s K B Developers, Room No. 49, 203, Maharshi Debendra Road, Barabazar, Kolkata-700007.
2. Respondent – DCIT, Circle-43, Kolkata
3. Ld. CIT(A)- Addl/JCIT(A)-Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata