

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**SHRI SANJAY GARG, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 1761/Kol/2024
Assessment Year: 2013-14
&
I.T.A. No. 1762/Kol/2024
Assessment Year: 2014-15**

Ashok Kumar Bhotika,
97 Park Street, 4th Floor,
Kolkata - 700016
[PAN: ADIPB6106F] **Appellant**

vs.

I.T.O., Ward-32(1), Kolkata,
10, Sir William Jones Sarani,
Middleton Row,
Kolkata - 700071 **Respondent**

Appearances by:

Assessee represented by : Miraj D Shah, AR
Department represented by : P.P. Barman, Addl.CIT, Sr. DR

Date of concluding the hearing : 24.10.2024
Date of pronouncing the order : 19.11.2024

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. This is a batch of two appeals pertaining to Assessment Years 2013-14 and 2014-15. Since the major issue pertaining to unsecured loan is relevant for both the assessment years under consideration, hence these appeals are being adjudicated through a single order.

1.1 The present appeals arise from first appellate authority orders u/s 250 of the Income Tax Act, 1961 (hereafter 'Act') dated 31.07.2024 (A.Y. 2013-14) and dated 09.08.2024 (A.Y. 2014-15).

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2. In this case the Ld. AO passed an order u/s 143(3) r.w. 147 of the Act dated 18.12.2018. Though this order an amount of Rs. 40,00,000/- has been added u/s 68 of the Act as an allegedly unverified loan taken from one M/s S.K. Stock Dealers Pvt. Ltd. The said addition was made on account of the fact that the Ld. AO conducted some enquiries and could not find the loan creditor at the address supplied by the assessee.

2.1 The appellant could not succeed before the Ld. CIT(A) also and has thus approached the ITAT with as many as 16 grounds which may be summarized issue-wise as under:

- (i) The application of section 68 of the Act on the amount of Rs. 40,00,000/- has been assailed on the ground of perversity
- (ii) The re-opening of the case u/s 147 of the Act has been challenged, both on the grounds of non-application of mind and as being based on allegedly dubious facts.
- (iii) Denial of opportunity to examine the material available with the Ld. AO, on the basis of which the adverse view has been taken, has also been pleaded.
- (iv) Charging of interest u/s 234 A/B/C/D of the Act has been protested.

2.2 Before us, the Ld. AR argued, with the help of a paper book, that the Ld. AO adopted the impugned figure of addition in a whimsical manner and emphasised that the actual transactions' details were as under:

- (i) For A.Y. 2012-13 - a loan of Rs. 30,00,000/- was taken, with part of it being repaid. The resultant balance on 31.03.2012 was only Rs 16,67,326. These figures were tallied with documents available in the paper book.
- (ii) For A.Y. 2013-14 Rs. 25,00,000/- was accepted from M/s S.K. Stock Dealers Pvt. Ltd and Rs. 5,00,000/- was repaid out of this. Finally, a closing balance of Rs. 30,92,054/- remained as on 31.03.2013.

(iii) This loan was repaid entirely in June, 2015. Also, interest was paid (with TDS deduction) on this loan.

The Ld. AR took us through various documents in the paper book, in support of his contentions that the loan transaction was genuine and undertaken on account of commercial expediency. Also, it was emphasized that the impugned figure was arrived at by the Ld. AO in an ad-hoc manner as it is not in conformity with the accounts, even when all of those details were presented before the Ld. AO. It has also been averred that the assessee filed I.T. Returns copy, necessary confirmations, bank details, audited accounts of the creditor, rent agreement for the creditor's office, utility bills copy, company resolution etc. to prove the genuineness of the said transaction. On the question of availability of creditor on a given address, it has been stated that the said transaction happened in 2013 with the said loan being squared off in June, 2015, and if the said creditor was not found on the given address 3-4 years after this transaction, then it cannot be held against the assessee. It has also been stated that any material on the basis of which any adverse view was taken, was never shared with the assessee, nor was any opportunity given to enable a cross-examination of witnesses. In this manner the Ld. AR proposed that the genuineness of the transaction was well proved inspite of the fact that the assessee was denied access to allegedly incriminating material and statements of witnesses.

2.3 The Ld. DR relied on the orders of authorities below on this issue.

3. We have carefully considered the detailed agreement of the Ld. AR and the averments of the Ld. DR. We have also gone through the documents placed before us. We are considerably persuaded by the Ld. AR's reliance on a number of authorities to establish that the provisions of section 68 of the Act have been erroneously applied, in as much as there is infirmity in the orders of authorities below due to denial of principles of natural justice and that there is an inherent lack of application of mind to

the facts of the loan amount. It is seen that the assessee has discharged his onus at every step, while the Ld. AO has fallen in error in resorting to un-substantiated assumptions. This addition is accordingly deleted.

3.1 Since the impugned amount has been allowed as relief, the grounds pertaining to re-opening are not adjudicated. Also, the grounds pertaining to the charging of interest would be consequential to the decision rendered for the main grounds of addition.

4. In result, this appeal is allowed.

ITA No. 1762/Kol/2024 (A.Y. 2014-15)

5. In this matter, the following issues have been raised as grievance through as many as 10 grounds of appeal:

- (i) Rs. 4,20,000/- claimed as interest on unsecured loan (dealt with in A.Y. 2013-14), disallowed by the Ld. AO.
- (ii) Rs. 11,525/- disallowed on account of section 14A of the Act r.w. Rule 8D of the I.T. Rules, 1962.
- (iii) Denial of opportunity to rebut the statements and material used by the Ld. AO, against the assessee.
- (iv) Charging of interest u/s 234A/B/C/D of the Act.

5.1 Before us the Ld. AR stated that the interest amount added in this year pertained to the loan accepted by the assessee and dealt with in the immediately preceding year. Regarding the addition of Rs. 11,525/- u/s 14A of the Act, it has been averred that it is in clear from the income computation that exempt income from dividend was Rs. 4,717 and exempt long term capital gain was Rs. 1,078 (total Rs. 5,795). The Ld. AR pointed out from the copies of accounts filed in the paper-book that no expenses were claimed in the earning of this income. The Ld. AR pointed out that some small items like postage misc. items, etc. have been claimed at Rs. 917/- and bank charges at Rs. 2,997/-. It has been averred that for earning exempt income no direct expenses have been incurred.

5.2 The Ld. DR relied on the orders of authorities below.

5.3 We have carefully considered the arguments, a plain reading of section 14A of the Act reveals that it does not specifically speak of direct or indirect expenses relevant for earning exempt income. Thus, the alternative contention of the Ld. AR that in any case the disallowance cannot exceed the quantum of exempt income, is acceptable. Accordingly, the disallowance is restricted to Rs. 5,795/- only, with consequential relief.

5.4 Since the main addition in A.Y. 2013-14 on account of unsecured loan (Rs. 40 lacs) has been deleted, hence the addition on account of interest paid this year is also deleted.

5.5 The charge of interest u/s 234A/B/C/D is consequential.

6. In result, the appeal is partly allowed.

7. In the result, ITA 1761 is allowed and ITA 1762 is partly allowed.

Order pronounced in the court on 19.11.2024.

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 19.11.2024
AK, PS

Copy of the order forwarded to:

1. Ashok Kumar Bhotia
2. I.T.O., Ward-32(1), Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches