

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री राकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. Nos.: 1587 & 1588/KOL/2024
Assessment Years: 2017-18 & 2018-19

Mina Pradhan (Appellant)	Vs.	ITO, Ward-42(4), Kolkata (Respondent)
PAN: BDRPP7332M		

Appearances:

Assessee represented by : Anil Kochar & Aryan Kochar, Adv.

Department represented by : Gautam Patra, Sr. DR.

Date of concluding the hearing : November 21st, 2024

Date of pronouncing the order : November 27th, 2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

The captioned appeals filed by the assessee are against separate orders of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Id. 'CIT(A)'] for AY 2017-18 and AY 2018-19 dated 25.06.2024. As the issues in both the appeals are common, they are being decided vide this common order for the sake of convenience and brevity.

2. The grounds of appeal raised by the assessee are reproduced as under:

I. I.T.A. No. 1587/KOL/2024; AY 2017-18:

“1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that on facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in sustaining the order passed by the A.O. u/s 143(3) of the Act without appreciating that assumptions of jurisdiction u/s 148 by the A.O. was in violation of mandatory jurisdictional conditions stipulated under the Act.

3. For that the CIT (A) erred in confirming addition of Rs.34,59,840/- u/s 69C of the Act on account of alleged bogus purchases made from M/s Sakaar Infra Nirman Pvt. Ltd.

4. For that the CIT (A) erred in not accepting that the sales made to M/s Sakaar Infra Nirman Pvt. Ltd. were merely accommodation entries and that no actual sales or purchases were ever effected.

5. For that the CIT (A) ought to have accepted that the sales made to M/s Sakaar Infra Nirman Pvt. Ltd. were only accommodation entries for earning commission @ 1%.

6. For that the CIT (A) erred in confirming addition made u/s 69C of the Act as because Sec.69C of the Act deals with unexplained expenditure which is not applicable in the instant case as because sales had been made to M/s Sakaar Infra Nirman Pvt. Ltd.

7. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

II. I.T.A. No. 1588/KOL/2024; AY 2018-19:

“1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that on facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in sustaining the order passed by the A.O. u/s 143(3) of the Act without appreciating the fact that assumptions of jurisdiction u/s 148 by the A.O. was in violation of mandatory jurisdictional conditions stipulated under the Act.



3. For that the CIT (A) erred in confirming addition of Rs.48,41,226/- u/s 69C of the Act on account of alleged bogus purchases made from M/s Sakaar Infra Nirman Pvt. Ltd.
4. For that the CIT (A) erred in not accepting the contention of the appellant that no sales/purchases had been effected by the appellant during the year.
5. For that the CIT (A) erred in confirming the addition made u/s 69C of the Act as because Sec.69C of the Act deals with unexplained expenditure which is not applicable in the instant case as because no sales/purchases had been made to/from M/s Sakaar Infra Nirman Pvt. Ltd.
6. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

3.1. We will take up appeal for AY 2017-18 as the lead case as the same was argued before the Bench. Rival contentions were heard and the submissions made have been examined. The assessee has raised as many as 7 grounds of appeal. However, they all relate to the addition of Rs. 34,59,840/- made u/s 69C of the Act on account of alleged bogus purchases from M/s. Saakar Infra Nirman Pvt. Ltd. (in short ‘SINPL’). The ld. AR drew our attention to paras 1 & 3.4.2 of the assessment order which are reproduced as under:

“1. Brief facts of the case:- Information has been received from the Assistant Commissioner of Income tax, Central Circle-1 (3), Ahmedabad vide letter No.ACIT/CC-1(3)/AHD/sharing of info/sadbhav Gr/2019-20 dated 01.06.2020 that incriminating documents of cash loans given/received, unaccounted income and expenses, cash receipts and payments were found in case of M/s Saakar Infra Nirman Pvt ltd .It is also found that the assessee has booked some expenses at the fag end of the FY 2016-17. It has been gathered that SINPL has made payments against the purchase of machinery and parts from various entities. From investigation intelligence it has been gathered that these entities are bogus and are involved in providing bogus accommodation entry in the form of bogus sales. It has been seen from gathered documents that purchases worth Rs 34,59,840/- has been made by M/s SINPL during the FY 2016-17. The notice u/s 148 of the IT Act, 1961 was issued on 30.06.2021.

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3.4.2 As per your reply dated 24.02.2023, you have accepted that you have indulged into accommodation entries. Further, you have not raised or submitted any documentary evidences to prove that the above mentioned bogus entries transactions amounting to Rs. 34,59,840/- are genuine in nature. Hence, the above mentioned bogus purchase transactions amounting to Rs. 34,59,840/- should be treated as unexplained expenditure u/s 69C and added back to your income.”

3.2. The Assessing Officer (hereinafter referred to as ‘the ld. AO’) in para 7.2 has held that since the assessee has herself accepted that she had indulged in bogus transactions whose sole purpose was to evade taxes, therefore, a sum of Rs. 34,59,840/- was added to the income of the assessee as unexplained expenditure u/s 69C of the Act and was taxed as per Section 115BBE of the Act and penalty proceeding u/s 271AAC(1) of the Act was also initiated separately.

3.3 Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) in which one of the grounds was that application of Section 69C of the Act which pertains to unexplained expenditure was totally contrary and opposite to the facts of the case as no purchases were ever made from the party and the Ld. AO erred in not accepting that the sales made to SINPL were merely accommodation sales/bill entry and that no actual sales or purchases were ever effected. The Ld. AO ought to have accepted the sales made to SINPL as only accommodation sales bill entry for earning 1% commission. In response to the notice of hearing issued by the Ld. CIT(A), the assessee filed submission and reiterated the claim that no purchases were made but in effect only accommodation entries were provided for which a commission @ 1% ought to have been accepted. The Ld. CIT(A) confirmed the addition by giving the following finding as per para 5.2 onwards which is reproduced below:



“5.2 I have carefully gone through the grounds of appeal, facts of the case, assessment order passed by the AO and the written submission uploaded by the appellant. Information was received from the ACIT-Central Circle-1 (3), Ahmedabad that the incriminating documents of cash loan given/received, unaccounted income and expenses, cash receipt and payments were found in case of M/s Saakar Infra Nirman Pvt. Ltd. (in short SINPL). It has been gathered that SINPL has made payments against the purchase of machinery and parts from various entities. Further, on perusal of gathered documents, it is seen that purchase of Rs. 34,59,840/- has been made by M/s SINPL with the instant case for the FY 2016-17.

5.3 During the course of assessment proceedings, the appellant on 24.02.2023 filed submission and stated that “the crux of the matter is the bogus sale to the entity M/s Saakar infra-Nirman Pvt Ltd to the tune of Rs. 21069035/- during the AY 2017-18. only bogus accommodation bills amounting to Rs. 34,59,840/- was provided to M/s Saakar Infra Nirman Pvt. Ltd. ledger account copy of my proprietorship concern styled Hind agencies as is appearing in the book’s M/s Saakar infra Nirman Pvt. Ltd for the period ending on 31.03.2017 is enclosed. The said party had made payment of 1% towards service charges for providing accommodation bill, total accommodation charges received by me is Rs. 34,598/- as my income.”

5.4 Since vide “his submission dated 24.02.2023” it is admitted fact that he had indulged into accommodation entries. Subsequently, did not raise or submitted any documentary evidences to prove that- the above-mentioned bogus entries transactions amounting to Rs. 34,59,840/- are genuine in nature. Further on 01.05.2023 in reply to show cause filed submission which is reproduced as under “ You have in the show cause notice proposed to add bogus purchases transaction amounting to Rs.34,59,840/- as unexplained expenditure u/s 69C of the Inc err e Tax Act, 1961. As already mentioned in the reply dated 24.02.2023 the assesses had issued accommodation bills only without there being any actual salts or delivery of goods to M/s Sakaar Infra Nirman Pvt. Ltd. amounting to Rs.34,59,840/- . Ledger A/c copies of the same has already been submitted and as mentioned the same was merely an accommodation bill wherein no actual goods were ever sold. The assessee had earned accommodation charges of 1% on the total sales made to Sakaar Infra Nirman Pvt. Ltd. The ultimate beneficiary of this transaction is the purchaser M/s Sakaar Infra Nirman Pvt. Ltd. who has debited the said amount as per purchase in its books. The assessee has only earned the accommodation charges of 1% i.e., Rs.34,598/- and nothing else”.

5.5 Therefore, in view of the elaborate discussion/analysis and conclusion of the A.O. in the Assessment order, and in absence of documentary

evidences received from the appellant, I find no reason to interfere in the finding of the A.O. appellant has not submitted anything either during the assessment proceedings or appellate proceedings to prove that the above-mentioned bogus transaction amounting to Rs. 34,59,840/- are genuine in nature.

5.6 In view of the above discussion, I have no reasons to interfere with the conclusion of the A.O. Thus, the addition of Rs. 34,59,840/- treated as unexplained expenditure u/s 69C of the Act of the appellant is upheld and Ground no. 3, 4, 5, 6 & 7 of the appeal on this issue are dismissed.”

3.3. Before the Bench, the ld. AR submitted the copy of ledger account of SINPL for the period 05.01.2017 to 29.03.2017 in which sales of Rs. 34,59,840/- were made by voucher nos. 145, 153 & 166/16-17 and payments were also received for voucher nos. 160, 162 & 163 from 25.03.2017 to 29.03.2017. The ld. AR also drew our attention to the copy of reply sent to the Ld. AO of the NFAC, Delhi dated 01.05.2023 in which the claim of earning only accommodation charges of 1% on the total sales made to SINPL was made. During the course of hearing, the ld. AR submitted that a sum of 5% of the sales shown may be treated as the commission on total sales of Rs. 34,59,840/- as both the transactions of purchases and sales for the sales of SINPL were included in the overall turnover and were shown in the profit and loss account on the basis of which the return of income was filed. The ld. DR relied upon the order of the Ld. CIT(A) and requested the addition may be confirmed.

4. We have heard the arguments of the ld. AR and have also gone through the copy of ledger account filed. The transactions were relating to sales to SINPL and therefore, the same could not be added u/s 69C of the Act as has been erroneously done by the Ld. AO and also confirmed by the Ld. CIT(A). The provisions of Section 69C of the Act

relate to unexplained expenditure which are not recorded in the books of accounts and the same are reproduced as under:

“69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year:

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.”

4.1. Therefore, the Ld. AO was incorrect in law in applying the provisions of Section 69C of the Act on the transactions shown as sales to SINPL. The result of search itself indicated that SINPL had made payments against the purchase of machinery and parts from various entities which were bogus and were involved in providing bogus accommodation entry in the form of bogus sales. Since the purchases were made by SINPL, the disallowance, if any, should have been made in the case of SINPL. There is merit in the argument of the assessee and which is also borne out from the facts of the case that since the assessee was providing accommodation entries, only the profit element on the sale could have been added. The ld. AR was fair enough to admit that a higher amount of 5% may be treated as commission on the transactions of Rs. 34,59,840/-. Accordingly, the Ld. AO is directed to apply the profit rate of 5% on the sales shown which are admitted to be accommodation entries, which works out to Rs. 1,72,992/- and is rounded off to Rs. 1,73,000/- on the transactions of Rs. 34,59,840/- and accordingly, add the same to the income of the assessee disclosed

in the return of income in place of Rs. 34,59,840/- added u/s 69C of the Act. Accordingly, Ground nos. 3, 4, & 6 are allowed.

4.2. Ground no. 5 is also accordingly allowed, however, the commission rate of 5% is applied in place of 1% on the bogus accommodation sales bill entries instead of 1% mentioned in the ground of appeal.

4.3. Ground no. 2 relating to the assessment framed u/s 147 of the Act being totally wrong was not pressed and is accordingly dismissed as not pressed and ground nos. 1 & 7 being general in nature do not require any separate adjudication.

5. In the result, the appeal filed by the assessee for AY 2017-18 is allowed.

6. Since the facts and contentions raised for AY 2018-19 are identical, therefore, the decision of AY2017-18 mutatis mutandis is also applicable for AY 2018-19 as well. Hence, applying the findings of the AY 2017-18 in AY 2018-19, a sum of Rs. 2,42,061/-, which is rounded off to Rs. 2,42,100/-, is directed to be added to the income of the assessee in addition to the income disclosed in the return of income in place of Rs. 48,41,226/- added by the Ld. AO. Hence, Ground Nos. 3, 4 and 5 are allowed while Ground No. 2 is dismissed as not pressed. Ground Nos. 1 and 6 are general in nature and do not require any separate adjudication.

7. In the result, both the appeals filed by the assessee for AY 2017-18 and AY 2018-19 are partly allowed.

Order pronounced in the open Court on 27th November, 2024.



Sd/-

[Sanjay Garg]
Judicial Member

Dated: 27.11.2024

Bidhan (P.S.)

Sd/-

[Rakesh Mishra]
Accountant Member



Copy of the order forwarded to:

1. **Mina Pradhan, 43/2, Desh Bandhu Road, Baranagar, Kolkata, West Bengal, 700035.**
2. **ITO, Ward-42(4), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata