



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.392/LKW/2024
Assessment Year: 2016-17

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| Cane Development Council C/o Ayyubi Chambers Raniganj (U.P) | v. | The Income Tax Officer Range 3 (2) Hardoi |
| TAN/PAN:AAALC0292n | | |
| (Appellant) | | (Respondent) |

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|------------------------|----------------------------------|----|------|
| Appellant by: | Shri K. R. Rastogi, C.A. | | |
| Respondent by: | Shri Sunil Kumar Rajwanshi, D.R. | | |
| Date of hearing: | 12 | 12 | 2024 |
| Date of pronouncement: | 23 | 12 | 2024 |

ORDER

This appeal has been preferred by the assessee against the order dated 30.03.2024, passed by the Id. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi for Assessment Year 2016-17.

2. The brief facts of the case are that the assessee is a Local Authority and derives income from commission in the course of marketing of Sugar Cane, trading of Agricultural Implements, Seeds, etc. The assessee filed its return of income for the year under consideration on 11.10.2016 declaring a loss of Rs.2,01,428/-. The case of the assessee was selected for scrutiny under CASS. The Assessing Officer (AO) completed the

assessment under section 143(3) of the Income Tax Act, 1961 (hereinafter called "the Act") after making various additions and computed the income of the assessee as under:

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|---------------------------------|---------------------|
| Income returned by the assessee | : (-) Rs.2,01,428/- |
| Addition of Commission receipt | : Rs.16,58,948/- |
| Addition of cash deposits | : Rs.26,86,610/- |
| Addition of Interest Income | : Rs.28,356/- |
| Total income | : Rs.41,72,486/- |
| Rounded off | : Rs.41,72,490/- |

3. Aggrieved, the assessee preferred an appeal before the NFAC, who partly allowed the appeal of the assessee by deleting the addition of Rs.16,58,948/- made by the AO on account of Commission receipt and rest of the additions made by the AO were confirmed by him.

4. Now, the assessee has approached this Tribunal challenging the orders passed by the AO as well as the NFAC by raising the following grounds of appeal:

1. That the authorities below erred on facts and in law in confirming the addition of Rs.26,86,610/- being the amount of cash deposit in Bank Account as undisclosed income without appreciating that the amount pertains to 'Security Deposit (jamanat) received from Contractors i.r.o tender floated by the Council.

2. That the authorities below erred on facts and in law in not considering that the Council had received "security deposit" from contractors which was deposited in bank and the same was also refunded during the same year through account payee cheques due to cancellation of tenders.

3. That Authorities below erred on facts and in law in not considering that security deposit received against tender cannot be regarded undisclosed income.

4. That Authorities below erred on facts and in law in not considering that the identity of the contractors is duly verifiable and thus the security deposit received from contractors cannot constitute undisclosed income.

5. That the Ld. C.I.T.(A) erred on facts and in law in not considering that the Assessee is Fund Management Body of the State Government established by an Order passed by the Cane Commissioner, U.P., without any right of absolute ownership over the funds placed at its disposal. For the road construction and development work also belongs to the State Government as absolute owner.

6. The Ld. C.I.T. (A) did not appreciate that as per the Sugar Cane (Regulation of Supply and Purchase) Act, 1953 and the Rules made there under, the Assessee receives "contribution in the form of commission" from Sugar Mills and co-

5. The Ld. Authorized Representative for the assessee (Ld. A.R.) submitted that there is a delay of 18 days in filing the appeal before the Tribunal. He submitted that the assessee had filed an application dated 13.06.2024 for condonation of delay, duly supported by an Affidavit of the Secretary of the Cane

Development Council, stating therein that the impugned order of the NFAC was served on the email address of the local Counsel of the assessee, who was busy with the treatment of his elder Brother in Medanta Hospital, Lucknow at the relevant point of time and hence the receipt of the order on his email id could not be communicated to the assessee, resulting in delay in filing of the appeal before the Tribunal. It was prayed that the delay caused in filing the appeal was not deliberate and that it was beyond the control of the assessee, which may please be condoned and the appeal be heard on merits.

6. The Ld. Sr. D.R. had no objection to the delay being condoned.

7. In view of the prayer made by the Assessee, supported by an Affidavit and no objection by the ld. D.R., I condone the delay in filing of the appeal and admit the appeal for hearing.

8. During the course of hearing before me, the Ld. A.R. submitted that various documents relating to the transactions entered into by the assessee during the year under consideration, particularly cash deposits in the bank account of the assessee, could not be placed before the AO during the course of assessment proceedings. The Ld. A.R. furnished before me the following documents:

- i) Copy of Bank Statement with Bank of India and copy of Ledger Account of the Bank.
- ii) List of Contractors giving details of tender fees and security deposit received.
- iii) Copy of IDs, Addresses with PAN Numbers of Contractors from whom security deposits were received.
- iv) List of amounts refunded to the Contractors.

9. The Ld. A.R. submitted that these documents contain some important facts relating to the case of the assessee and prayed that the same may be admitted under Rule 29 of the I.T.A.T. Rules.

10. The Ld. Sr. D.R. had no objection to the admission of the additional evidences.

11. Having gone through the additional evidences filed before me, I am of the view that these evidences go to the very root of the matter and are germane to proper determination/assessment in the case of the Assessee. Accordingly, I admit the same.

12. The Ld. A.R. further prayed that in the interest of natural justice, the matter may be restored back the file of the AO where all the aforesaid additional evidences shall be produced

to prove the transactions entered into by the Assessee during the year under consideration.

13. The Ld. Senior D.R. had no objection to the restoration of appeal to the AO.

14. I have heard both the parties and have also perused the material on record. Looking into the facts of this case, I am of the considered view that the Assessee deserves one more opportunity to present its case and, therefore, in the interest of substantial justice, I restore this file to the Office of the AO with the direction to provide one more opportunity to the Assessee to present its case. I have already admitted the additional evidences filed by the Assessee in the form of Copy of Bank Statement with Bank of India, copy of Ledger Account of the Bank, List of Contractors giving details of tender fees and security deposit received, Copies of IDs, Addresses with PAN Numbers of Contractors from whom security deposits were received and List of amounts refunded to the Contractors, under Rule 29 of the I.T.A.T. Rules. The Assessee shall produce them before the AO during the course of set aside proceedings. I also caution the Assessee to fully comply with the directions of the AO in the set-aside proceedings when called upon to do so, failing which, the AO shall be at complete liberty to pass the order in

accordance with law, based on material available on record even if it is ex-parte qua the Assessee.

15. In the result, the appeal of the Assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 23/12/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:23/12/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar