

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 928/KOL/2019
Assessment Year: 2015-16**

DCIT, Circle-13(2), Kolkata	Vs.	M/s. Singhal Brothers Pvt. Ltd. 6, Waterloo Street, R. No. 503, 5 th Floor, Kolkata-700069. (PAN: AADCS8627B)
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Praveen Kishore, CIT
Respondent by : Shri Siddharth Agarwal, AR

Date of Hearing : 24.02.2025
Date of Pronouncement : 24.02.2025

ORDER

Per Bench :

This is an appeal filed by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-5, Kolkata [hereinafter referred to as “the Ld. CIT(A)”] vide appeal no. 153/CIT(A)-5/Circle-13(2)/17-18/Kol dated 26.02.2019 passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2015-16

2. Shri Praveen Kishore, CIT appeared on behalf of the revenue and Shri Siddharth Agarwal, AR appeared on behalf of the assessee.

3. It was submitted by the Ld. CIT, DR that the assessee is wholesaler of cattle feed. The assessee possessed certain lands in Gaziabad, U.P. The assessee had sold 40 plots of the said land consisting of 4478.7 square meters for a consideration of Rs.11,94,47,000/- to 17 different persons. When the assessee was asked to prove the sales, the assessee was unable

to give substantiating evidence though the assessee had provided the names and addresses and the copies of the sale deeds. It was further submitted that the Assessing Officer had issued notice u/s. 133(6) and one of the purchasers had replied to the notice u/s. 133(6). It was submitted that though the Ld. Assessing Officer had made various reasons for the additions, on appeal before the Ld. CIT(A), the Ld. CIT(A) has granted relief to the assessee without valid grounds. It was a submission that aggrieved with the order of the Ld. CIT(A), the revenue is in appeal before the Tribunal. It was the submission of the Ld. DR that the order of the Ld. CIT(A) is liable to be reversed and the order of the Assessing Officer be restored.

4. The Ld. AR of the assessee has submitted that ten of the purchasers had confirmed the transactions. The assessee had provided the PAN Account and the Aadhar Numbers of the purchasers. The sale deeds have also been produced. The assessee had also requested the Assessing Officer to inform the assessee and the assessee would cooperate in serving notices to the purchasers. It had also not been acceded to by the Assessing Officer. It was a further submission that the Assessing Officer takes a stand that the transaction of the sale of the land itself is a benami transaction and consequently, the burden on the Assessing Officer is much more and the Assessing Officer has not discharged the burden cast upon him by his own action in claiming the transaction is a benami transaction. Therefore, the order of the Ld. CIT(A) is liable to be upheld.

5. We have considered the rival submissions. A perusal of the facts of the present case clearly shows that in the order of the Ld. CIT(A) at page 24, the Ld. CIT(A) has extracted merely five reasons for which Assessing Officer could have made the addition. However, after recording these five reasons, the Ld. CIT(A) extracts the submissions of the assessee and then proceed to deal with the case laws. The Ld. CIT(A) without discussing all the specific five reasons brought out by the Assessing Officer has blindly

without settling the facts applied the case laws. Obviously before applying case laws/decisions laying down the facts in respect of the issues in the appeal are an absolute necessity, have not been done. Obviously, the order of the Ld. CIT(A) becomes erroneous and unsubstantiated and makes it liable for setting aside. However, a perusal of the assessment order also clearly shows that the Assessing Officer at one point says only one has responded and another point of the assessment order he says another nine have responded and that the Assessing Officer drafted on a path has not taken the logical conclusion may be due to the paucity of time. The assessee has categorically mentioned in the reply as extracted by the Assessing Officer in para 4.2 that the assessee is willing to cooperate and assist the Assessing Officer in regard to the investigation of the 18 persons but admittedly no assistance has also been taken from the assessee but the non-appearance of the purchasers has been cast and doubted on the transactions of the assessee. It is also not permissible. This being so, in the interests of justice the issues in this appeal are restored to the file of the Assessing Officer for re-adjudication after granting the assessee adequate opportunity of being heard.

5. In the result, the appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court.

Sd/-
(Rakesh Mishra)
Accountant Member

Sd/-
(George Mathan)
Judicial Member

Dated: 24th February, 2025

JD, Sr. P.S.

Copy to:

1. The Appellant: DCIT, Circle-13(2), Kolkata
2. The Respondent. M/s. Singhal Brothers Pvt. Ltd.
3. CIT(A)-5, Kolkata
4. Pr. CIT
5. DR, ITAT, Kolkata Bench, Kolkata
6. Guard file.

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata