

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

Before Shri Duvvuru RL Reddy, Vice-President (KZ)

**I.T.A. No. 2236/KOL/2024
Assessment Year: 2013-2014**

Redlily Enterprises Pvt. Limited,.....Appellant
33/1, Netaji Subhas Road,
167, Marshall House, Kolkata-700001
[PAN:AABCR2177D]

-Vs.-

Income Tax Officer,.....Respondent
Ward-4(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:

Shri Narendra Kedia, Advocate, appeared on behalf of the assessee

Shri Kallol Mistry, JCIT, Sr. D.R., appeared on behalf of the Revenue

Date of concluding the hearing: February 27, 2025

Date of pronouncing the order: March 17, 2025

O R D E R

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 3rd September, 2024 passed for Assessment Year 2013-14.

2. Brief facts of the case are that the assessee is a Company, which filed its return of income for the assessment year 2013-14 declaring a loss of Rs.2,83,048/-. The case of the assessee was selected for scrutiny. The assessment under section 143(3) of the Act was completed on 29.01.2016 determining the total income at Rs.32,54,270/- on account of addition of Rs.35,27,322/- under section 14A of the Act.

3. Aggrieved by the order of ld. Assessing Officer, the assessee preferred an appeal before the ld. CIT(Appeals). The ld. CIT(Appeals) allowed the appeal of the assessee. Later on, this case was selected for reassessment under section 147 of the Income Tax Act, 1961 on the issue of escapement of income to the tune of Rs.30,00,000/-. Accordingly, notice under section 148 of the Act was issued to the assessee. In response to the notice under section 148 of the Act, the assessee-Company filed its return of income for the assessment year 2013-14 on 13.08.2020. Subsequently, statutory notice under sections 143(2) and 142(1) of the Act along with questionnaire on specific issues were issued and served on the assessee. After considering the submissions of the assessee, the ld. Assessing Officer made an addition of Rs.30,00,000/- under section 68 of the Act as unexplained cash credit for the impugned assessment year, since the assessee failed to file the relevant documents and details to prove the identity and genuineness of the transactions.

4. On being aggrieved, the assessee preferred an appeal before the ld. CIT(Appeals).

5. The Id. CIT(Appeals) has given so many opportunities to the assessee, but the assessee failed to comply with the notices issued by the Id. CIT(Appeals). Thereafter the Id. CIT(Appeals) passed an order basing on the material available on record and confirmed the addition of Rs.30,00,000/- made by the Id. Assessing Officer under section 68 of the Act as unexplained credit.

6. On being aggrieved, the assessee preferred an appeal before the ITAT and raised the following issues:-

(1) In view of the facts and circumstances of the case, and in accordance with the law, it is evident from the assessment order that the Learned Assessing Officer relied solely on information provided by the DDIT (INV) without independently reviewing the appellant's disclosure of share purchases in an earlier year. Despite the appellant having sold these shares for Rs. 30,00,000/- through a banking channel while observing all prudent norms of sale, the sale consideration was incorrectly added as income under section 68 of the Act. The Learned CIT (A) merely affirmed the actions of the AO without issuing a reasoned order and ignored the valid sale evidence submitted during assessment proceedings. This approach is unsustainable and legally untenable.

(2) Based on the facts and circumstances of the case, the appellant had purchased the shares in question in an earlier year, recording them as investments in the books of account. During the assessment year under consideration, the appellant sold these shares for Rs. 30,00,000/-. Despite the appellant providing substantial evidence, including a copy of the bill raised on the buyer, share certificates, and bank statements of both the buyer and the appellant for the relevant assessment year, the Learned Assessing Officer incorrectly invoked section 68 of the Act. This misapplication of section 68 contradicts its correct interpretation, rendering the addition void, void ab initio, and legally unsustainable.

(3) Given the facts and circumstances of the case, the equityshares in question were carried forward as

investments from the preceding financial year to the current year under appeal. The department has not raised any dispute regarding their purchase in the past, nor did the Learned Assessing Officer challenge the purchase of shares in the past, in the current assessment order. Furthermore, the Learned CIT(A) also did not question the validity of the purchase in the appeal order. Consequently, the addition under section 68 of the Act on account of the sale of these shares is unwarranted, as it contradicts the principles underlying section 68 of the Act.

7. I have heard both the sides. It was the submission of the ld. Counsel for the assessee that the ld. Assessing Officer as well as ld. CIT(Appeals) have not considered the details filed by the assessee and passed orders. He further submitted that in order to prove the genuineness of the transactions and creditworthiness of the creditors, the assessee filed a paper book before the Tribunal and pleaded to set aside the orders passed by the revenue authorities and remit the matter back to the file of ld. Assessing Officer to examine the issues afresh.

8. On the other hand, it was the submission of the ld. Departmental Representative that the ld. CIT(Appeals) has given so many opportunities to the assessee, but the assessee has not filed any documentary evidence to establish the genuineness of the transactions and identity and creditworthiness of the creditors. Therefore, the ld. CIT(Appeals) rightly dismissed the appeal filed by the assessee. He pleaded to confirm the orders passed by the Revenue Authorities.

9. I have perused the relevant material available on record. It is an admitted fact that the assessee-Company did not file its written submission before the Id. CIT(Appeals). It is also an admitted fact that now the Id. Counsel for the assessee filed the documents by way of paper book before the Tribunal to explain the genuineness of the transactions. Considering the above facts and circumstances of the case, I am of the view that it is a fit case to remit the matter back to the file of Id. Assessing Officer to examine these issues afresh after providing one more opportunity of being heard to the assessee. At the same breath, I also hereby caution the assessee to promptly co-operate with the proceedings before the Ld. Assessing Officer failing which the Ld. Assessing Officer shall be at liberty to pass appropriate order in accordance with law and merits of the case, based on the materials available on the record. Thus, the grounds raised by the assessee are allowed for statistical purposes.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 17/03/2025.

Sd/-

(Duvvuru RL Reddy)
Vice-President (KZ)

Kolkata, the 17th day of March, 2025

*Copies to :(1) Redlily Enterprises Pvt. Limited,
33/1, Netaji Subhas Road,
167, Marshall House, Kolkata-700001*

- (2) *Income Tax Officer,
Ward-4(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*
- (3) *CIT(Appeals), NFAC, Delhi;*
(4) *CIT - , Kolkata;*
(5) *The Departmental Representative;*
(6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.