

आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 737/Kol/2024
Assessment Year: 2014-15

Shelter Infra Projects Ltd. (PAN: AABCC 2304 F)	Vs.	ACIT, Circle-10(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	18.03.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	03.04.2025
For the assessee / निर्धारिती की ओर से	Shri Siddharth Agarwal, A.R
For the revenue / राजस्व की ओर से	Shri Pradip Kumar Mondal, CIT DR

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is the appeal preferred by the assessee against the order of Commissioner of Income Tax (Appeals)- NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)] dated 08.02.2024 for AY 2014-15.

2. Brief facts of the case of the assessee is that the assessee filed return of income for AY 2014-15 declaring total income of Rs. 75,77,500/-. The case was selected for scrutiny, notice u/s 143(2) was issued, the questionnaire along with statutory notices u/s 142(1) were also issued and in response to the same, the assessee company appeared

and explained the questionnaire raised by the AO. The AO passed an order u/s 143(3) of the Act treated the same of Rs. 1,06,99,857/- being purchased from various parties as a bogus expense. The AO has further disallowed a sum of Rs. 3,93,941/- u/s 36(1)(va) read with Section 2(24)(x) of the Act and further closing balance of unsecured loan of Rs. 52,53,33,819/- being added as an income as unexplained cash credit u/s 68 of the Act.

3. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) wherein also the appeal of the assessee has been partly allowed by holding that the addition on account of purchases from Md. Jahangir SK and M/s G. M Construction of Rs. 39,31,489/- and Rs. 23,74,795/- requires no interference.

Being aggrieved and dissatisfied the assessee preferred an appeal before us.

4. The Ld. Counsel of the assessee challenges the very impugned order thereby submitting that the Ld. CIT(A) was not justified in confirming the addition made by the AO on account of purchases from Md. Jahangir SK and M/s G. M. construction and further erred in confirming the amount of Rs. 52, 53,33,819/- on account of unsecured loan made by the AO instead of giving direction to exclude only the brought forward loan amount after verification. The ld. Counsel submits before us that the assessee has to give an opportunity to place its case before the AO as the order passed by the Ld. CIT(A) on this ground that no compliance was made by the assessee during the assessment proceedings. The Ld. Counsel prays that the assessee has been given an opportunity to place the additional evidence before the AO to prove his case as due to the circumstances beyond the control of the assessee, assessee could not comply the same before the AO as it has been held by the Ld. CIT(A) in its order. The Ld. Counsel draws the attention of the Tribunal of the order passed by the Ld. CIT(A) at para 5.5 as well as 6.2.

5. The Ld. D.R supports the impugned order.

6. Upon hearing the submission of the counsel for the respective parties, we have perused the order passed by the Ld. CIT(A) and find that the Ld. CIT(A) in its order has held thus:

“5. I have considered the submission of the appellant and find that the Ld. AO during the assessment proceedings provided sufficient opportunities to furnish the explanation on the inquiry conducted u/s 133(6) of the Act and gathered confirmation from one i.e. M/s Rastriya Ispat Nigam Ltd. who categorically denied of having any transaction with the appellant company. Regarding other two parties viz. Md. Jahangir SK and M/s G.M. Construction (Super Structure), in the first case notice returned unserved with the remark "insufficient address" and in the second case no reply was received till passing of the assessment order. All this event were duly communicated to the appellant by the Ld. AO for their comments/explanation. But no compliance was made by the appellant at the time of assessment proceedings. This further establishes that principle of natural justice was followed by the Ld. AO and hence claim of the appellant before me that they were provided sufficient opportunities does not hold good. Regarding denial of purchase from M/s Rastriya Ispat Nigam Ltd., the appellant before me has submitted that all the bills are in the name of CCAP Limited which is the earlier name of the appellant and it may be the party has not changed the name in their records and that was also one of the reasons in the reply to the Ld. A.O. they stated that no transactions were taken place with M/s Shelter Infra Projects Pvt. Ltd (earlier known as CCAP Limited). The appellant submitted before me that this name change of the appellant company was appraised to the Ld. A.O. during assessment proceedings. Thus, for shake of justice, I direct the AO to carry out further inquiry from M/s Rastriya Ispat Nigam Ltd. whether there was any transaction with its old name viz. CCAP Limited and in case it found in order the addition of Rs.43,93,573/- shall be allowed to that extent. Regarding, purchase from Md. Jahangir SK having address Village-Fakir Para, Post-Kanyanagar, South 24 Parganas-743398, in whose case the notice u/s 133(6) returned unserved with the remark "insufficient address" seems non-existence at the given address. Before me at the appellate stage the appellant has submitted that the account ledger along with all the bills being raised and bank statement evidencing the payment against the same of all the three parties namely, Md. Jahangir SK, M/s Rashtriya Ispat Nigam Ltd. and M/s G.M. Construction (Super Structure), claiming that the transactions are genuine. The appellant, as observed from the assessment order, however, did not submit the said documents before the Ld. AO during assessment proceedings. Further, these documents alone does not establish that the purchase were genuine when the company was required to demonstrate with other details like transportation goods, its corresponding stock, details of sales with name and address, payment received on such sales, etc. Further, documents so filed are without any cogent reason for non-filing the same during assessment stage and moreover no application under rule 46A of the I. T. Rule 1962 has also been filed to accept the additional documents so submitted before me and therefore they are not considered at this stage. Considering the discussion made above, addition on account of purchase from Md. Jahangir SK and M/s G.M. Construction (Super Structure) of Rs.39,31,489/- and Rs. 23,74,795/- requires no interference and accordingly confirm the same. The grounds of appeal are, thus, partially allowed.”

7. We have also gone through the order passed by the Ld. CIT(A) in Paragraph no. 6.3 which is reproduced herein below:

“6.3 I have considered the submission of the appellant and find that the Ld. AO during the assessment proceedings provided sufficient opportunities to the appellant to furnish the requisite details like the loan confirmation accounts from the loan creditors, their PAN's and address along with copies of their ITRs, relevant bank statements and evidence with regard to

source of fund utilized for giving the loan but no such documents were filed before him. Subsequently, a show cause dated 28.11.2016 was issued and duly served on the assessee. But no compliance was made in this regard. Thus, the Ld. AO had added the entire amount of loan shown outstanding as on 31.03.2014. It was obligatory on the part of the appellant to establish that the appellant to satisfy the three basis conditions for any amount credited in its books of account i.e. existence of the party, genuinity of transaction and their creditworthiness. However, I find from the assessment order that no such effort was taken by the appellant during the assessment proceedings mere claiming that the two concerns from who loans are taken are their sister concern does not establish the loans are genuine. Here also the documents so filed are without any cogent reason for non-filing the same during assessment stage and moreover no application under rule 46A of the I. T. Rule, 1962 has also been filed to accept the additional documents so submitted before me and therefore they are not considered at this stage. However, hold that any loan taken in the earlier year to be taxed u/s 68 of the Act in the year of acceptance, if found to be bogus and not in the subsequent year when it is carried forward.”

8. On perusal of the order as stated above it appears that CIT(A) has held that there was no strict compliance by the assessee before the AO. Before us the Ld. A.R has submitted that he has to give an opportunity to place its case before the AO with liberty to file additional evidence as the documents which ought to be filed by the assessee before the AO are the essential piece of evidence to come into just conclusion of the case.

9. Going over the order passed by the Ld. CIT(A) and for the interest of justice, we are inclined to restore the case/appeal of the assessee in the file of the AO for fresh adjudication. AO is directed to consider the evidence filed by the assessee and then pass a fresh and reasoned order. The order passed by AO confirmed by CIT(A) is here by set aside. Appeal of the assessee is remitted back to the file of AO.

In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 26th April, 2025

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 26th April, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shelter Infra Projects Ltd., C/o, Shri Subash Agarwal & associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor, Kolkata-700069
2. Respondent – ACIT, Circle-10(2), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata