

आयकर अपीलीय अधिकरण  
कोलकाता 'डी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'D' BENCH, KOLKATA**

श्री दुव्वुरु आरएल रेड्डी, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

श्री रकेश मिश्रा, लेखा सदस्य

के समक्ष

Before

**SHRI DUVVURU RL REDDY, VICE PRESIDENT (KZ)**

&

**SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 1410/KOL/2023**

**Assessment Year: 2013-14**

M/s. Abhiman Distributor Pvt. Ltd.	Vs.	NFAC, Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN: AAGCA1275N</b>		

**Appearances:**

**Assessee represented by** : Siddarth Jhajharia, FCA.

**Department represented by** : Amuldeep Kaur, Addl. CIT, Sr. DR.

Date of concluding the hearing : February 3<sup>rd</sup>, 2025

Date of pronouncing the order : May 2<sup>nd</sup>, 2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)- NFAC, Delhi [hereinafter referred to as Id. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2013-14 dated 17.10.2023, which has been passed against the assessment order u/s 143(3) r.w.s. 147 of the Act, dated 31.03.2022.



2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

*“1. For that the Ld. CIT(A) erred in confirming the order of the AO in adding back the normal banking transactions of debit and credit entries done in the regular course of business as unexplained cash credit u/s 68 of the I.T. Act 1961 when all the details and evidences were filed to prove the genuineness of the transactions, and the income which was earned from the transactions was duly offered for taxation at the time of filing of return but the AO to satisfy his conscience that above transactions must have some profitability and on the basis of report from Investigation wing the AO made the addition without bringing any cogent material on record.*

*2. For that the Ld. CIT(A) erred in confirming the order of the AO when the copy of approval u/s 151 of the I.T. Act 1961 was not provided to the appellant during the course of proceedings and the reasons was not properly recorded and not issued within a reasonable period of time.*

*3. For that on the facts and circumstances of the case, the Ld. CIT(A) has not given a proper opportunity of being heard before confirming the order of the AO in adding back Rs. 3,45,24,672/- which was unjustified and not in accordance with law.”*

3. Brief facts of the case as culled out from the assessment order of the Ld. AO are that the assessee company had filed the return of income for AY 2013-14 on 13.03.2014 declaring total income of Rs. 15,310/-. Credible information was received by the Ld. AO from the investigation wing of the Department that the assessee is a private limited company with Mr. Devendra Mondal and Mr. Soumitra Sinha as beneficial owners. There were credits in the Bank account with Indian Bank and all the credits were transfer transactions ranging from Rs. 3,000/- to Rs. 55,00,000/- and the same amount was transferred to another account using cheques either on the same day or the next day and there was no other transaction in the account except these transfer transactions. The bank statement of the assessee maintained with the

Indian Bank was requisitioned by the DDIT (Inv.) and a summons u/s 131 of the Act was issued to the assessee company for providing details of debit and credit entries in the bank account along with source of credit entries and details of parties. The DDIT (Inv.) was of the view that the assessee had not shown its total turnover properly and the source of Rs. 10,84,67,927/- deposited in the bank account remained unexplained. Accordingly, the Assessing Officer (hereinafter referred to as Id. 'AO') reopened the case u/s 148 of the Act and issued required notices. The relevant extract of the order of the Ld. AO containing the details of facts and the proceedings carried out during the course of assessment is as under:

*“4. On going through the details, the assessment is completed as under:*

*4.1 In this case, an information was received from the ADIT (Inv.), Unit-3(2), Kolkata, that the assessee, a private limited company, having Shri Devendra Mondal and Shri Soumitra Sinha as its beneficial owners, in its bank account No.961998719 maintain with Indian Bank, has received huge transfer transaction in round amounts ranging from Rs.3,000/- to Rs.55,00,000/-. Exact amount is transferred to another account using cheques either on the same day or the next day. There was no other transaction in the account, except these transfer transactions.*

*4.2 The Assessing Officer, after requisitioning the bank statement u/s. 131 of the Act, examined the same. Further, notice u/s 131 of the Act was also issued to the Director of the assessee calling for certain details regarding the debit and credit entries appearing in the bank account of the assessee, and the assessee's Income Tax Return, audited accounts, Balance Sheet and Profit & Loss Account for the F.Y. 2011-12 to F.Y. 2013-14. But there was no compliance from the assessee to the said summon.*

*4.3 On perusal of the details of bank statement of account No.961998719, the AO observed that there were total credits to the tune of Rs.3,43,29,890/- . Whereas, as the total sales declared by the assessee was only Rs.5,12,621/- with a Profit Before Tax of Rs.15,308/-, Thus, the AO was*



*convinced that huge funds have been credited in the bank account of the assessee M/s. Abhiman Distributors Pvt. Ltd. During the F.Y. 2012-13.*

*4.4 As per the bank statement funds to the tune of Rs.3,45,24,672/- has been credited and then debited from the assessee company's account to different entities through RTGS.*

.....

*{A list containing details of credits is mentioned in the assessment order}*

.....

*5. The assessee failed to substantiate nature of transactions along with proper evidences and the sources thereof. The primary onus is casted upon the assessee to submit reply and explanation supported by corroborative/correlative/ corresponding evidences if any. But the same was not done by the assessee. Therefore, the nature and sources of the cash credits made in the bank account amounting to Rs.3,45,24,672/- remain unexplained and proposed to be added back vide show cause notice as discussed. Section 68 is reproduced herewith.*

*Section 68 of the I.T.Act, 1961:*

*"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.*

*6. A show cause notice dated 29.03.2022 proposing the above addition of Rs.3,45,24,672/- was issued to the assessee. The assessee was required to comply by 30.03.2022. In response to the same the assessee has submitted the details in e-proceedings vide ITBA notings dated 30.03.2022 The issue has been examined again in the light of submission placed on record. It is not correct on the part of the assessee to claim that proper opportunity has not been given in the case. It is on record that notice under section 148 has been issued to the assessee on 01.05.2020 requesting the assessee to furnish ITR within 30 days from the receipt of the said notice. However the assessee has filed ITR on 18.06.2020. It is also worthwhile to mention here that the case was transferred to the undersigned on 25.01.2021 from the Jurisdictional Assessing Officer. As regards the credits appearing in the bank accounts, the assessee has taken plea that it is engaged in the finance business and the credits in the said account*



representing advances received from the parties and further paid to the others. Following is the list furnished by the assessee:

.....

{A list containing details of parties is mentioned in the assessment order}

.....

*The list has been compared with the entries appearing in the bank account. No evidence like ledger accounts of the parties have been placed on record which could justify that these were the genuine financial transactions executed by the assessee during the course of its business operation of taking advance of loans/shares and securities transactions. Right from the beginning, assessee did not bring all these facts on record and instead filed objections again and again. Why ledger accounts of the parties have not been brought on record could not be explained during the proceedings. In case, the business activities were genuine the assessee could have brought on record all these facts. It is also worthwhile to mention here that there is income of Rs.5,12,621/- only declared representing interest on loans and after claiming expenses, the net profit has been reflected at Rs. 10,577/- only. The scale of transaction as per the list reproduced above does not match with the meagre interest income declared at Rs.5,12,621/- and there is no interest expenditure claimed at all in the P & L Account. Thus keeping in view of the facts and circumstances of the case the assessee has failed to justify the transactions as mentioned above which are accordingly being added back to the total income of the assessee under section 68 of the Income tax Act, 1961 as proposed in the show cause notice issued. Along with penalty proceedings under section 271(1)(c) are being initiated for furnishing inaccurate particulars of income.”*

3.1 The credits in the bank statement are mentioned at para 4.5 and the list furnished by the assessee is mentioned at para 6 of the order of the Ld. AO. Accordingly, in the absence of any satisfactory explanation, the cash credits of Rs. 3,45,24,672/- were added to the total income of the assessee u/s 68 of the Act and the total income was assessed at Rs. 3,45,39,980/-.



4. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A). It was submitted before the Ld. CIT(A) that the assessee is a private limited company engaged in the business of investment in shares and securities and providing short term loans and advances and is in operation since 2006. During the relevant assessment year, the company had done its normal business of investment in shares and securities and loans and advances through proper banking channel. As per the details available on records, the assessee did not make any submission in the course of appellate proceedings, therefore, the order was finalized on the basis of details/evidences on records. As regards the addition of Rs. 3,45,24,672/-, the assessee submitted that these were business transactions and thus, fully explained and therefore, not liable for tax u/s 68 of the Act. It was submitted before the Ld. CIT(A) vide statement of facts that the assessee was required to furnish explanation to the show cause letter within 24 hrs and therefore, the principles of natural justice were violated. The Ld. CIT(A) considered the submissions of the assessee and found the same to be factually incorrect and has held that the Ld. AO had made impugned addition after making a detailed investigation. The relevant extracts from the assessment order were reproduced. The Ld. CIT(A) observed that the assessee had not been able to satisfactorily explain the source of credits appearing in its bank account. As regards the argument of the assessee that all transactions were through banking channels, he held that it is a settled issue that transactions through banking channels do not absolve the assessee from satisfying/establishing the three ingredients to get out of the rigors



of section 68 of the Act i.e. identity of the creditors, their creditworthiness and genuineness of the transactions. He also held that the three ingredients remained unexplained on the part of the assessee and the assessee did not furnish any documents/explanation in the course of appellate proceedings to negate the findings made in the assessment order. He relied upon the decision of the Hon'ble Gujarat High Court in the case of **M/s. Aradhana Estates Pvt. Ltd. vs DCIT [2018]** in **Special C.A. No. 21999 of 2017**, wherein the Hon'ble Court has upheld the validity of the reassessment proceedings reopened on information received from Investigation Wing and has further upheld the addition made u/s 68 of the Act and the appeal of the assessee was dismissed. In the case of **M/s. Aradhana Estates Pvt. Ltd.** (supra) the decision of the Hon'ble Supreme Court in the case of **Asstt. Commissioner of Income-tax vs. Rajesh Jhaveri Stock Brokers P. Limited**, reported in **[2007] 291 ITR 500** has also been referred along with several other cases. Thereafter, he accordingly confirmed the addition of Rs. 3,45,24,672/- u/s 68 of the Act. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival submissions were heard and the record and the paper book filed and the submissions made have been examined. It was submitted before us that the assessee had challenged the legality as well as had sought relief on the merits of the case before the Ld. CIT(A) and our attention was drawn to para 5.1 of the appeal order. It was submitted that the notice under section 148 issued for A.Y. 2013-14 was issued on 01.05.2020 and the same was barred by limitation of time as the same could have been issued only up to 31/03/2020. The Ld. DR



countered this by stating that under TOLA, extension was given and the time-limit was extended to 30/06/2021 for issue of notice under section 148 of the Act for A.Y. 2013-14. Certain directions were issued in **Union of India v. Ashish Agarwal [2022] 138 taxmann.com 64 (SC)** vide order dated 04.05.2022 and the Ld. AO had to abide by the new procedure. Apparently, the Ld. AO did not pass an order u/s 148A(d) of the Act as was required as the order of the Hon'ble Supreme Court was passed in May, 2022, by which time the assessment order had already been passed by the Ld. AO and there was no occasion for the Ld. AO to issue the notice under the new procedure.

5.1 Another argument taken by the Ld. AR was that as the return was filed on 18.06.2020, the notice under section 143(2) of the Act should have been issued within 6 months i.e. by 30.09.2020, but the same was issued on 16 December 2021 and was therefore, invalid. A copy of the same was enclosed at page 17-18 of the paper book filed before us. The Ld. DR submitted that neither the issue of validity of the notice under section 143 (2) nor relating to the approval under section 151 of the Act was raised before the Ld. CIT(A), therefore, the same were opposed to be raised before the Tribunal as the same were also not raised before the Ld. AO. Before us, it was submitted vide Ground No. 3 by the assessee that the Ld. CIT(A) had not given a proper opportunity of being heard before confirming the order of the Ld. AO in adding back Rs. 3,45,24,672/- to the total income of the assessee. Before the Ld. CIT(A), it was also contended that the Ld. AO also had not given adequate opportunity but the same was rejected. The Ld. DR made a request that the order of the Ld. CIT(A) may be confirmed.



6. We have considered the submissions made. Both during the assessment proceedings as well as the appeal proceeding there was improper representation on behalf of the assessee and the addition was confirmed. Therefore, in the interest of justice, it was considered imperative that another opportunity may be granted to the assessee to make proper representation before the Ld. CIT(A) who will also decide the legal issues raised before us. Hence the order of the Ld. CIT(A) is hereby set aside with the directions that another opportunity of being heard should be provided to the assessee and the assessee shall be at liberty to raise all legal issues raised in the appeal before us before the Ld. CIT(A). The Ld. CIT(A) shall also provide an opportunity of representing the case and to be heard to the Ld. AO as per rule 46A of the Income Tax Rules, 1962, if required, and thereafter pass an order in accordance with law. For statistical purposes, the appeal of the assessee is allowed.

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

**Order pronounced in the open Court on 2<sup>nd</sup> May, 2025.**

Sd/-

**[Duvvuru RL Reddy]**

Vice President (KZ)

Sd/-

**[Rakesh Mishra]**

Accountant Member

Dated: 02.05.2025

*Bidhan (P.S.)*



*Copy of the order forwarded to:*

1. **M/s. Abhiman Distributor Pvt. Ltd., 28/1B, Bhattacharjee Para Road, Kolkata, West Bengal, 700063.**
2. **NFAC, Delhi.**
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