

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

आयकर अपीलीय अधीकरण, न्यायपीठ - "C" कोलकाता,

**BEFORE SHRI RAJPL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

(समक्ष श्री राजपाल यादव उपाध्यक्ष एवं श्री गिरीश अग्रवाल लेखा सदस्य)

**ITA No.621/Kol/2020
Assessment Year: 2012-13**

Assistant Commissioner of Income-tax, Kolkata.	Vs.	Shri Pradip Mullick 106/11, Hazra Road, Bhowanipur, Kolkata-700 026. (PAN: AFCPM4492B)
(Appellant)		(Respondent)

Present for:

Appellant by : Smt. Ranu Biswas, Addl. CIT, DR

Respondent by : Shri Soumitra Choudhury, Advocate

Date of Hearing : 18.08.2022

Date of Pronouncement : 07.09.2022

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the revenue is directed against the order of Ld. CIT(A)-8, Kolkata vide ITA No.70/CIT(A)-8/Kol/2015-16 dated 03.10.2019 for A.Y. 2012-13 arising out of order passed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by ITO, Ward-29(3), Kolkata dated 28.03.2015.

2. Smt. Ranu Biswas, Addl. CIT, DR appeared on behalf of the revenue and Shri Soumitra Choudhury, Advocate appeared on behalf of the assessee.

3. The present appeal of revenue is time barred by 218 days. Form 36 notes that the date of order of Ld. CIT(A) is 03.10.2019 which was received on 11.03.2020. Accordingly, the due date for filing the instant appeal was 09.05.2020. We note that the due date fell during the period of lock-down caused by the Covid 19 pandemic for which the Hon'ble Supreme Court has directed that the period from 15.03.2020 to

28.02.2022 is to be excluded for the purpose of computing the limitation period during the COVID-19 pandemic. Further, a period of 90 days is allowed after 28.02.2022 vide same order. Considering the facts and the decision of Hon'ble Supreme Court (supra), we condone the delay in filing the appeal and admit it for adjudication.

4. Ground taken by the department are reproduced as under:

"1. That on the facts and the circumstances of the case, the Ld. CIT(A) has erred in law as well as in facts in allowing the cash deposit amounting to Rs.13,77,000/- into his savings bank account in spite of the fact that the assessee did not reveal the same in the Balance Sheet during the year.

2. That on the facts and the circumstances of the case, the Ld. CIT(A) has erred in law as well as in facts by ignoring the fact that the AO had verified the sundry creditors of Rs.1,42,11,869/- during the course of assessment proceedings which was considered bogus.

3. That on facts and the circumstances of the case, the Ld. CIT(A) has erred in law as well in facts for allowing the payment of electricity charges of Rs.7,33,700/- during the year in cash in violation of section 40A(3) of the Act.

4. That on the facts and the circumstances of the case, the Ld. CIT(A) has erred in law as well as in facts for allowing an amount of Rs.99,861/- as subscriptions & donations which was not fully incurred for the purpose of the business."

5. Brief facts from records are that assessee is earning business income from his proprietorship business under the name and style of M/s. Balaram Mullic & Radha Raman Mullick which is into the manufacturing and sale of sweets and confectioneries spread over the State of West Bengal. Return of income was filed on 30.09.2012 reporting a total income of Rs.11,76,940/- which was taken up for scrutiny assessment. Statutory notices were issued and served on the assessee and were duly complied with. In the course of assessment, Ld. AO, inter alia, made additions in respect of four issues for which the revenue is in appeal before us which relates to :-

(i) deposit of cash of Rs.13,77,000/- in saving bank account with SBI, Bhowanipur, Kolkata, not disclosed in the Balance Sheet;

- (ii) Sundry creditors treated as bogus for an amount of Rs.1,42,11,869/-;
- (iii) disallowance u/s. 40A(3) for electricity charges paid to CESC in cash for more than Rs.20,000/- in a day, totaling to Rs.7,37,700/-;
- (iv) disallowance of Rs.99,861/- in respect of subscriptions and donations by treating it as not related to business but for personal in nature.

5. Aggrieved, assessee went in appeal before the Ld. CIT(A), before whom the submissions made before the AO were reiterated. The four issues are dealt hereunder at seriatim.

6. In respect of issue no. (i), it was submitted by the assessee that cash deposited in the bank account is out of sale proceeds of the proprietary business of the assessee which has been duly subjected to tax as it forms part of the business profit, assessed at Rs.10,18,949/- on a sale turnover of Rs.6,06,19,776/-. It was stated by the assessee that nature of business of the assessee is such where substantial part of his turnover comprises of sale in cash and thus, out of total turnover, cash sale amount to Rs.5,10,80,360/- and sale through banking channel amount to Rs.1,80,12,672/-. A copy of cash book of the business of assessee was furnished before the Ld. CIT(A) along with a statement of cash deposits in SBI Bank account giving date wise details of deposit in cash on seven different occasions totaling to Rs.13,77,000/- which are all mapped to the relevant pages of the cash book. The said statement of cash deposit and cash book are placed on record at pages 36 and 37 to 41 of the paper book. Thus, assessee submitted that cash deposited in State Bank of India is out of his sale which is fully verifiable from his records. In the course of appellate proceedings, assessee accepted that a mistake occurred for not including the bank account in his books of account which was a clerical mistake incurred by the Accountant. Ld. CIT(A) after perusing the

material placed on record, agreed with the contention of the assessee and by taking into consideration the nature of business of the assessee, deleted the addition in respect of deposit in cash in the saving bank account of the assessee. It may be pointed out here that the addition made by the AO is of Rs.13,77,000/- which is under appeal, however, the Ld. CIT(A) has inadvertently noted a figure of Rs.10,67,000/- for the purpose of deletion.

6.1. Before us, Ld. Counsel for the assessee referred to the same material forming part of the paper book to demonstrate that the deposit of cash in the saving bank account is duly recorded in cash book of the assessee and is out of the business turnover of the assessee for which the income has already been offered in his regular return. Ld. Sr. DR placed heavy reliance on the order of the Ld. AO and could not bring anything on record to controvert the findings given by the Ld. CIT(A). Considering the facts on record, we do not find any reason to interfere with the fact based finding given by the Ld. CIT(A) and uphold the deletion of Rs.13,70,000/-. Accordingly, this ground of appeal of revenue is dismissed.

7. In respect of issue no. (ii), assessee submitted that owing to business of manufacturing and sale of sweets and confectioneries, he has to regularly purchase different types of raw materials from different vendors for his day to day business requirement. The number of vendors are large as there are small vendors mostly supplying perishable item viz., fruits, vegetables, milk, cheese and alike which are consumed regularly in the manufacturing process. Assessee submitted in the course of assessment, list of creditors bifurcated into two parts i.e. showing creditors above Rs. 10,000/- and the other list showing creditors below Rs. 10,000/-. In the course of assessment, Ld. AO accepted the sundry creditors which were shown in the list with amounts above Rs. 10000/-, totaling to Rs.1,27,50,979/- . The other

list of sundry creditors for amount below Rs.10,000/- comprised of almost 2082 creditors, totaling to Rs.142,11,869/- which the Ld. AO held to be as bogus. In the course of First Appellate Proceedings, assessee submitted certain registers maintained in respect of these small vendors and suppliers of perishable items which were verified by the Ld. CIT(A) on sample test check basis. Assessee also placed reliance on the decision of Hon'ble High Court of Delhi in the case of CIT Vs. Ritu Anurag Aggarwal I T Appeal No. 325 of 2008 dated 22.07.2009 wherein it was observed that *".... Proceeding on this basis, the ITAT observed that the sales, purchases as well a gross profits as disclosed by the assessee have been accepted by the Assessing Officer. Once this is accepted, we are of the opinion that the approach of the ITAT was correct inasmuch as the Assessing Officer did not consider this aspect while making additions of the sundry creditors u/s. 68 of the Act. As there was no case for disallowance for responding purchases, no addition could be made under section 68 inasmuch as it is not in dispute that the creditors' outstanding related to purchases and the trading results were accepted by the Assessing Officer. As regards applicability of provisions of section 41(1), the facts clearly show that the appellant did not write back the sundry creditors to its profit and loss account. The Hon'ble Court noted that in the reported case, the assessee has not unilaterally written back the accounts of the sundry creditors in its P&L Account and thus the substantial question of law was answered in the negative and in favour of the assessee."*

7.1 Reliance was also placed on the decision of Co-ordinate Bench of ITAT, Kolkata in the case of Standard Leather Pvt. Ltd. Vs. Department of Income Tax in ITA No. 2620/Kol/2013 dated 07.09.2016 wherein it was held that *"Evidently, the creditors were held to be bogus on the ground that enquiry letters under Sec. 133(6) of the Act were received back unserved with the remarks 'not known' leaving the Assessing officer*

to conclude that the appellant has failed to discharge his onus of proving the capacity of the creditors and genuineness of the transactions. Apparently, in my opinion, the Assessing Officer has not appreciated the fact of the case in its entirety. This is a case, where the books are not rightly rejected, there is no adverse inference drawn regarding quantum of purchases or sales and even the purchase accounts of the sundry creditors have not been disturbed. The fact that the assessee maintained regular books of account including stock register is also not negated. The Assessing Officer had not disallowed the purchases from those creditors nor the trading results were disturbed.”

7.2. Considering the factual matrix of the case and the judicial precedents, the Ld. CIT(A) observed that the conclusion of AO to hold sundry creditors as bogus at the instance of report of inspector for few sample cases, was based on AO's personal belief and not by virtue of any concrete facts and evidence placed on record. Thus, he held the conclusion of the AO is based on imagination and directed to delete the addition made in this respect of Rs.1,42,11,069/-.

7.3. Before us, Ld. Counsel referred to the list of sundry creditors placed in the paper book at pages from 58 to 106 which comprises of columns containing name of the party, address, opening balance as on 01.01.2021, purchases, total credits, total payment and closing balance as on 31.03.2012. From this list, it was pointed out by the ld. Counsel that during the year assessee has made purchases amounting to Rs.3,06,74,872/- from the vendors supplying various perishable items. He also pointed out that total payment of Rs.1,84,37,031/- has been made to these vendors during the year leaving a closing balance of Rs.1,42,11,869/- which has been added by the Ld. AO as bogus creditors. He reiterated that sales, purchases and the trading results have been accepted by the Ld. AO. Also there is no cessation of liability by the assessee in respect of these creditors u/s. 41(1) of the Act. He

also pointed out that the inspector could not point out any specific vendors in his report who were not found during the inspection. Ld. Sr. DR, could not bring anything contrary to the submissions made by the Ld. Counsel and on the findings given by the Ld. CIT(A) and placed reliance on the order of the AO. From the documents placed on record, it emanates that these are all small vendors supplying perishable items viz. fruits, vegetables, milk, cheese etc. Considering the nature of expenses, trading results, sales, purchases and the gross profit, more particularly owing to the nature of business of assessee comprising of manufacturing and sale of sweets and confectionery, we do not find any reason to interfere with the decision and the findings given by the ld. CIT(A). Accordingly, the ground of appeal of the revenue is dismissed.

8. In respect of ground (iii), the issue is relating to disallowance of electricity charges by applying the provisions of section 40A(3) of the Act amounting to Rs.7,33,700/- for which payment made by the assessee in cash in excess of Rs. 20,000/- per day.

8.1. In the course of assessment proceedings, Ld. AO made this addition in violation of the provisions of section 40A(3) of the Act. In the first appellate proceeding, it was submitted by the assessee that he is in the business of manufacturing and sale of sweets and confectioneries from his own outlets. The business is carried out by him substantially in cash transactions. Assessee has paid electricity bills relating to the business to CESC who is the only agency for supplying electricity in Kolkata. It was submitted that Ld. AO has acted mechanically without applying his mind that the payments were genuine, legitimate, wholly and exclusively for the purpose of the business of the assessee and the disallowance made u/s. 40A(3) of the Act defeats the very objective of the Government for bringing this provision on the statute book as it will cause genuine hardship to the assessee. Copies of electricity bills along

with ledger of electricity charges are placed on record. Reliance was placed on the decision of Hon'ble jurisdictional High Court of Calcutta in the case of CIT Vs. Crescent Exports Syndicate in ITA No. 202 of 2008 dated 30.07.2008 wherein it was held that '*where it has been accepted expenses incurred are genuine and the AO has not disbelieved that the transaction is not genuine or it is not deposited in such a case addition u/s. 40A(3) of the Act is not warranted.*' Reliance was also placed on the decision in the case of CIT Vs. CPL Tannery (2009) 318 ITR 179 (Cal) wherein it was held that disallowance of expenditure u/s. 40A(3) is not justified where the genuineness of the transaction is not doubted. Ld. CIT(A) considering the fact on record and the binding decision of jurisdictional High Court of Calcutta (supra) deleted the addition made u/s. 40A(3) of the Act. Ld. Sr. DR relied on the order of Ld. AO.

8.2 Before us Ld. Counsel referred to the ledger account of electricity charges placed at pages 13 to 15 of the paper book wherein he pointed out that Ld. AO on a mistaken understanding has taken the total payment of various bills made on the same day as exceeding Rs. 20,000/- and thus, made the disallowance by applying section 40A(3) of the Act. He thus submitted that when each of the bill has been paid separately though paid on one day, cannot lead to a disallowance u/s. 40A(3) of the Act. Ld. Counsel also referred to the decision of Co-ordinate Bench of ITAT, Kolkata in the case of Daljit Singh Vs. ACIT in ITA No. 769/Kol/2018 dated 03.04.2019 for AY 2010-11 by stating that its findings squarely covers this issue for the present assessee.

8.3. Considering the documentary evidence placed on record in the form of ledger statement and bills for electricity charges and submission made by the Ld. Counsel, we find it proper to remit this matter back to the file of Ld. AO for the limited purpose of verification to ascertain the fact relating to each bill paid separately and accounted accordingly by

the assessee in his books of account. Based on this verification and by considering the findings given in the judicial precedents, the Ld. AO is directed to rework the disallowance, if any, u/s. 40A(3) of the Act. The assessee is also directed to furnish the relevant records and details to assist the Ld. AO in completing the verification exercise. Accordingly, this ground of appeal by the revenue is allowed for statistical purposes.

9. On the issue no. (iv) which is relating to addition made in respect of subscription and donation amounting to Rs.99,861/-, it was submitted before the Ld. CIT(A) that contributions/donations have been made to various organizations engaged in different forms of social work and deity worships. It was stated that it was incumbent upon the assessee for the smooth running of its business to make payments in the form of contributions and donations for various local, cultural events and festivities. These payments were made out of business expediency owing to the nature of business assessee is engaged in. All the documents relating to the contributions/donations made were produced before the Ld. AO which demonstrated that these are legitimate business expenses allowable u/s. 37(1) of the Act. Considering the submissions made by the assessee, ld. CIT(A) observed that in relation to have smooth business operation, assessee had to pay donation and subscriptions to various puja associations without which it would not be possible for him to maintain his business smoothly without any hindrance. Thus, he treated these expenses as part of normal business activities and allowed the claim of the assessee by deleting the addition so made. Before us, Ld. Counsel reiterated the submissions and placed reliance on the decision of Hon'ble Jurisdictional High Court of Calcutta in the case of Ravi Marketing (P) Ltd. Vs. CIT (2006) 280 ITR 519 wherein it was held that "*whether an expenditure is expedient for the purpose of business is to be looked at by the income tax authorities or the Court from the view point of the*

assessee, not from its armchair. It is not for the Court or the Income Tax Authorities to suggest or advise to presume or surmise as to the expedience.” Considering the submissions made before us, we do not find any reason to interfere with the finding given by the Id. CIT(A) and affirm the deletion made thereon . Accordingly, ground of the revenue is dismissed.

10. In the result, the appeal of the revenue is allowed in part.

Order is pronounced in the open court on 07th September, 2022

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Dated: 07.09.2022

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:.
3. CIT(A)-8, Kolkata.
4. CIT, Kolkata
5. The DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata

1. Date of dictation- 05/09/2022
2. Date on which the typed draft order is placed before the Dictating Member and Other member 06/09/2022
3. Date on which the approved order comes to the Sr. P.S./P.S. - /09/2022
4. Date on which the file goes to the Bench Clerk /09/2022
5. Date on which the file goes to the O.S.
6. Date of Dispatch of the Order.....