

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

**Before Shri Rajesh Kumar, Accountant Member  
&  
Shri Anikesh Banerjee, Judicial Member**

**I.T.A. No. 841/KOL/2023  
Assessment Year: 2013-2014**

***Rameshwar Shaw,.....Appellant  
12/5, Musalmanpara Lane,  
Banta, Howrah-711101  
[PAN: AMAPS0893D]***

**-Vs.-**

***Income Tax Officer,.....Respondent  
Ward-48(3), Kolkata,  
3, Government Place (West),  
Kolkata-700001***

**Appearances by:**

*Shri Debabrata Ghosh, A.R., appeared on behalf of the  
assessee*

*Shri P.P. Barman, Addl. CIT, appeared on behalf of the  
Revenue*

**Date of concluding the hearing : February 12, 2024  
Date of pronouncing the order : February 12, 2024**

**O R D E R**

**Per Anikesh Banerjee, Judicial Member:-**

The instant appeal of the assessee was filed against the order of Ld. Commissioner of Income Tax (appeals), National Faceless Appeal Centre, Delhi [in brevity Ld.'CIT(A)'] dated 13.06.2023 passed u/s 250 of the Income Tax Act, 1961 (in

brevity the 'Act') for assessment year 2013-14. The impugned order was emanated from the order of the ld. Income Tax Officer, Ward-48(3), Kolkata (in brevity the 'AO') passed u/s. 144 of the Act dated 17.03.2016.

2. The assessee has taken the following grounds of appeal:

*(1) For that the Ld. CIT(A) was wrong and erroneous both on facts as well as in law in alleging that no response or submission was received for the reason that the appellant submitted written submission alongwith document on 27-03-2017, paper book on 23-02-2018, letter with regard to remand report on 22-05-2018 letter on 28-09-2018 with regard to non compliance to hearing fixed on 26-09-2018 owing to receipt of notice on 28-09-2018, letter on 31-01-2019 explaining the difficulty in complying to dated fixed on 05-02-2019.*

*(2) For that the Ld. CIT(A) ignored the documentary evidences submitted in support of grounds of appeal and passed a non-speaking and cryptic order.*

*(3) For that the ld. CIT(A) grossly violated the provisions of law as well as principle of natural justice by not allowing proper and reasonable opportunity of being heard.*

*(4) For that, Ld. CIT (A) was unjust, unfair, unreasonable and unlawful in not considering the fact that Ld. ITO had acted illegally in adding back the entire amount under the head of Sundry Creditors being a sum of Rs.20423945/- to declared income on the ground that it was found from reports that the sundry creditors were bogus.*

*(5) For that the Ld. CIT (A) failed to appreciate that the Ld. A.O. had grossly violated the principle of natural justice by not providing the copies of reports based upon which the sundry creditors were declared bogus.*

*(6) For that all the sundry creditors are genuine and the amount due to few creditors were brought down from the previous years.*

*(7) The appellant prays for relief and seeks permission to adduce fresh grounds of appeal and/or modify the same before or at the stage of hearing of the appeal.*

3. Brief facts of the case are that the assessment proceeding was initiated under section 143(2) of the Act. The notice was issued only on the issue of verification of sundry creditors. The ld. Assessing Officer issued notice under section 133(6) of the Act but the sundry creditors are remained unverified and on the basis of non-verification, the opening balance of the sundry creditors was added back, which was amounting to Rs.2,04,23,945/-. Aggrieved, the assessee filed appeal before the ld. CIT(Appeals) and ld. CIT(Appeals) after considering the remand report from the ld. Assessing Officer, rejected the grounds of assessee. The only reason of the rejection of sundry creditors was that the sundry creditors have not made any response in relation to the issuance of notice or process of verification of the Revenue. Being aggrieved to the order of ld. CIT(Appeals), the assessee filed appeal before us.

4. The ld. A.R. vehemently argued at the time of hearing before us and filed written submissions, which are kept in the record. The ld. A.R. first invited our attention that the assessee has submitted all the documents before the ld. Assessing Officer in relation to the compliance proceeding related to the assessment. The assessment was completed under section 144 of the Act but

the assessee has already filed all these documents before the ld. Assessing Officer, which is annexed at pages 81 to 183 of the paper book. The assessee is a regular return filer under VAT/CST Act bearing **VAT RC No.19693110042** and is enjoying ITC from the authority. The ld. A.R. further submitted that the ld. Assessing Officer has issued notice dated 09.03.2016, which was received by the assessee on 14.03.2016 and the date of hearing was fixed for replying on 17.03.2016. So the reasonable opportunity was denied during the course of assessment proceeding and also the notices were issued by the ld. Assessing Officer to the different sundry creditors under section 133(6) to verify the genuineness of the transaction, which was not possible to comply within the time and after the time, the reply to the notices are complied.

5. During the appellate proceedings, the assessee filed all the relevant documents, which are submitted before the ld. Assessing Officer and some documents are also reproduced before the Bench, which are as follows:-

Sl. No.	Particulars	APB Page No.
A	Written Submission	
1.	Reply of notice u/s 133(6) of Arcade Tracom Pvt. Ltd. to ITO 48(3). Ledger copy and details of Track Events of India Post	1 to 3
2.	Reply of notice u/s 133(6) of A.K. International to ITO 48(3). Ledger copy and details of Track Events of India Post.	4 to 6
3.	Reply of notice u/s 133(6) of R.S. traders to ITO 48(3). Ledger copy and details of Track Events	7 to 9

	of India Post.	
4.	Reply of notice u/s 133(6) of T.S. Enterprises to ITO 48(3). Ledger copy and details of Track Events of India Post.	10 to 12
5.	Reply of notice u/s 133(6) to ITO 48(3), copy of acknowledgement (Lokenath Enterprises)	13-14
6.	Ledger copy of Bharat Steel Industries	15
7.	Ledger copy of Vaishnab Enterprise	16
8.	Ledger copy of Royal Tube Corporation	17
9.	Reply of notice u/s 133(6) of International Pipe Fittings Company to ITO 48(3). Ledger copy and details of Track Events of India Post.	18 to 21

6. The ld. A.R. further relied on the order of this Tribunal dated 7<sup>th</sup> May, 2015 in assessee's own case in the case of **ITO, Ward-48(2) -vs.- Shri Rameshwar Shaw in ITA No. 672/KOL/2012** for A.Y. 2007-08, where the Tribunal confirmed the order of ld. CIT(Appeals) and allowed the grounds of appeal. The Revenue has filed appeal before the ITAT and ITAT passed the order in favour of the assessee. The relevant paragraph is duly reproduced as below:-

*“We heard the rival submissions and carefully considered the same. We noted that in this case the sales shown by the assessee has duly been accepted by the AO. In our opinion, the assessee cannot make the sales until and unless the purchase has been made by the assessee. The AO has not rejected he books of accounts but made the addition towards the bogus purchase. The payment has been made to these parties in the subsequent year, which has not been dispatched by the Revenue. It is not a case where the accounts has been rejected or the profit has been estimated. We, therefore, do not find that it is a fit case, which warrants our interference. We accordingly confirm the order of the CIT(A) deleting the addition”.*

7. The ld. D.R., on the other hand, vehemently argued and invited our attention in last page of the assessment order dated 17.03.2016. The relevant paragraph is reproduced as below:-

*“You are already requested to substantiate your claim regarding creditors with supporting evidence. Therefore, you are further requested to let the undersigned know why these types of transactions will not be treated as bogus transactions in you liability side, if you fails to explain the real existence & credit worthiness of the sundry creditors it will be treated as your undisclosed income and added back with your total income at the time of assessment.*

*Submit your reply before the undersigned within 2(Two) working days from the date of receipt of this letter, failing which your case will be decided without further reference to you and Rs.2,04,23,945 is added with your total income as unexplained sundry creditors.*

*Departmental Inspector also deputed for this purpose and as per the departmental inspector's report it was found that most of the creditors are not exist in the respective addresses which were provided by the assessee, few of them are M/s. R. S. Traders of 27/2, Prasun Kumar Dutta Lane, Howrah - 711102, M/s. Lokenath Enterprise, Changhuruli Village, Maju Post Office, Jagatballavpur P.S., Howrah - 711414 & M/s.Vaishanb Enterprise, BankraVimishra Para, Howrah 711403 etc.*

*Assessee failed to submit any reply of final show cause dated 09.03.2016 which was send to his registered e-mail and the case is assessed u/s 144 of the Act, 1961 with a total addition of Rs.20423945/- as bogus sundry creditors, Penalty proceedings u/s 271(1)(c) & u/s 271(1)(b) initiated separately.*

The ld. D.R. further argued that in any case there was no verification was done. The entire sundry creditors are non-

verified from the end of the Revenue. So, further investigation should be required in relation to the sundry creditors.

8. We have heard the rival contentions and perused the records placed before us. The assessee in his submission stated that the remand report which was submitted by the ld. Assessing Officer placed during that appeal proceeding. In the appellate proceeding, the remand report was accepted but there is a lack of verification. But it is a fact that lack of verification was not only the negligence of the assessee but also from the end of the Revenue. Some of the sundry creditors had duly replied through 133(6) notice before the ld. Assessing Officer, but which are taken care in the hearing before the Bench. The assessee is registered under the West Bengal VAT Act, 2003/CST Act, 1956. There is no such enquiry done by the Revenue or any negative comment was received from the indirect tax authority related to purchase of the goods. There is no such significant effort that inquiry was done from the end of the VAT Authority also. There is no discrepancy in the purchase of goods or payment. Only the opening balance was added to the total income of the assessee. We also rely on the order of the Coordinate Bench of ITAT in assessee's own case. In our considered view that the assessee is protected from the coherent evidence like that all payments, purchase bill, VAT Registration, Return of VAT Act, 2003, confirmation of parties and reply of parties in persuasion of notice U/s 133(6) of the Act. The ld. DR has agitated the point of non-verification of parties. But verification of parties not only concentrated by non-

compliance of notice U/s 133(6) or inspection conducted by the Inspector of revenue. The purchase and sales of assessee during impugned assessment year are accepted by the ld. AO. The ld. DR is not able to bring any contrary order of earlier years where the sundry creditors or purchase are rejected by the ld. AO. Only for the cross verification under section 133(6) is in dispute, cannot the good reason for rejection of sundry creditors. We find that the entire addition is unjustified considering the submission of the assessee, which were filed before both the lower authorities. We, therefore, set aside the order of ld. 1<sup>st</sup> Appellate Authority and the entire addition of Rs.2,04,23,945/- is quashed.

**9. In the result, the appeal filed by the assessee bearing ITA No. 841/KOL/2023 is allowed.**

Order pronounced in the open Court on 12/02/2024.

Sd/-

Sd/-

**Rajesh Kumar)**  
**Accountant Member**

**(Anikesh Banerjee)**  
**Judicial Member**

***Kolkata, the 12<sup>th</sup> day of February, 2024***

*Copies to :(1)Rameshwar Shaw,  
12/5, Musalmanpara Lane,  
Banta, Howrah-711101*

*(2) Income Tax Officer,  
Ward-48(3), Kolkata,  
3, Government Place (West),  
Kolkata-700001*

*(3) Commissioner of Income Tax (Appeals),  
Income Tax Department, National Faceless  
Appeal Centre (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.***