

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

**Before Shri P.M. Jagtap, Vice-President (KZ)**

**I.T.A. No. 2463/KOL/2018  
Assessment Year: 2010-2011**

**Shri Sanjay Agarwal,.....Appellant**  
**C/o. Anand Gupta & Associates,**  
**42A, C.R. Avenue, 3<sup>rd</sup> Floor, Near Yogayog Bhawan,**  
**Kolkata-700 012**  
**[PAN: AGRPA 5797 R]**  
**-Vs.-**

**Income Tax Officer,.....Respondent**  
**Ward-2(3), Siliguri,**  
**Aayakar Bhawan, Paribahan Nagar,**  
**Siliguri-734 010**

**Appearances by:**

*Shri S.M. Surana, Advocate, for the Appellant*  
*Shri Sankar Halder, JCIT, Sr. D.R., for the Respondent*

Date of concluding the hearing : April 11, 2019  
Date of pronouncing the order : June 07, 2019

**O R D E R**

**Per Shri P.M. Jagtap, Vice-President (Kolkata Zone):-**

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals), Siliguri dated 07.09.2018 and the grounds raised by the assessee therein read as under:-

*“(1) For that assessment order passed by the Id. AO is bad in law as well as on facts.*

*(2) For that Id. CIT(A) erred in confirming the assessment of cash advances received from various customers aggregating Rs.4,45,000/- as undisclosed income of the assessee, whereas the same were received in ordinary course of business and goods were actually supplied and tax invoices were issued to the customers.*

*(3) For that Id. CIT(A) erred in confirming the assessment of cash advances received from various customers aggregating Rs.4,45,000/- as undisclosed income inspite of the fact that the regular books of*

*account were maintained which were duly audited and no defect were found in such books of account.*

*(4) For that ld. CIT(A) erred in confirming in disallowance of interest Rs.64,257/- paid on housing loan.*

*(5) For that ld. CIT(A) erred in confirming in disallowance of deduction of Rs.45,111/- claimed u/s 80C whereas the same represented the principal amount of housing loan repaid during the year.*

2. Ground No. 1 raised by the assessee in this appeal is general, while Grounds No. 4 & 5 are not pressed by the ld. Counsel for the assessee at the time of hearing before the Tribunal. The same are accordingly dismissed as not pressed.

3. Grounds No. 2 & 3 involve a common issue relating to the addition of Rs.4,45,000/- made by the Assessing Officer and confirmed by the ld. CIT(Appeals) on account of cash advances received by the assessee from various customers by treating the same as unexplained.

4. The assessee in the present case is an individual, who is engaged in the business of retail trading of motor-parts and accessories under the name and style of his proprietary concern M/s. Car Decora. The return of income for the year under consideration was filed by him on 22.09.2010 declaring total income of Rs.3,47,627/-. During the course of assessment proceedings, it was found by the Assessing Officer that the assessee has received various amounts in cash in excess of Rs.20,000/- aggregating to Rs.4,45,000/-. In this regard, it was explained by the assessee that the said amounts were received by him as advances from the customers and the said advances were subsequently adjusted against the goods sold to them. Ledger accounts of the concerned parties showing the receipt of advances in cash and adjustment of the said advances against sales made subsequently were also furnished by the assessee. On perusal of the same, the Assessing Officer found that the cash advances were received by the

assessee from the customers in the month of July to October, 2010, whereas the corresponding sales were made to them in the month of March, 2011. This raised suspicion in the mind of the Assessing Officer and he required the assessee to provide the names and addresses of the concerned parties for cross verification. The assessee, however, even failed to give complete addresses of the concerned customers. It was also noticed by the Assessing Officer from the relevant invoices produced by the assessee that VAT Nos. of the customers were not mentioned in the said invoices. He accordingly held that the existence and genuineness of the concerned parties as well as the genuineness of the relevant transactions was not proved and an addition of Rs.4,45,000/- was made by him to the total income of the assessee by treating the cash advances as unexplained in the assessment completed under section 143(3) vide an order dated 28.01.2016.

5. On appeal, the Id. CIT(Appeals) confirmed the said addition made by the Assessing Officer observing that the assessee could not controvert the adverse findings of fact recorded by the Assessing Officer in the assessment order while treating the cash advances as unexplained.

6. I have heard the arguments of both the sides and also perused the relevant material available on record. In the case of Saha Enterprises – vs.- ITO cited by the Id. Counsel for the assessee, a similar issue had come for consideration before the Tribunal involving almost identical facts and while deciding the same vide its order dated 06.02.2015 passed in ITA No. 2141/KOL/2014, the Tribunal held that the advances received by the assessee being trade advances by very nature of activity of the assessee and the same having been adjusted against the sales made to the concerned parties, the said advances could not be treated as unexplained cash credit under section 68. In the case of Crystal Networks (P) Limited –vs.- CIT (ITA No. 158 of 2002 dated 29.07.2010) cited by the Id. Counsel for the assessee, trade advances given by the creditors/customers were found to be adjusted against the sale of products made by the assessee

subsequently to the concerned creditors/customers and it was held by the Hon'ble Calcutta High Court on these facts and circumstances of the case that the advances so received by the assessee could not be treated as unexplained cash credit. In my opinion, the ratio of the decision of the Coordinate Bench of this Tribunal in the case of Saha Enterprise (supra) and that of the Hon'ble Jurisdictional High Court in the case of Crystal Networks (P) Limited (supra) is squarely applicable to the facts of the present case and even the ld. D.R. has not been able to dispute this position. I, therefore, respectfully follow the said judicial pronouncements cited by the ld. Counsel for the assessee and delete the addition of Rs.4,45,000/- made by the Assessing Officer and confirmed by the ld. CIT(Appeals) on account of unexplained cash advances.

**7. In the result, the appeal of the assessee is partly allowed.**

Order pronounced in the open Court on June 07, 2019.

**Sd/-  
(P.M. Jagtap)  
Vice-President (KZ)**

***Kolkata, the 7<sup>th</sup> day of June, 2019***

*Copies to :* (1) ***Shri Sanjay Agarwal,  
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(2) ***Income Tax Officer,  
Ward-2(3), Siliguri,  
Aayakar Bhawan, Paribahan Nagar,  
Siliguri-734 010***

(3) ***Commissioner of Income Tax (Appeals), Siliguri,***

(4) ***Commissioner of Income Tax-***

(5) ***The Departmental Representative***

(6) ***Guard File***

*By order*

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

***Laha/Sr. P.S.***