

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. C. M. Garg, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 393/Del/2016 : Asstt. Year: 2008-09

Sh. Pradeep Sawhney, D-5, Malka Ganj, Delhi-110007 (APPELLANT)	Vs	Income Tax Officer, Ward-20(3), New Delhi-110002 (RESPONDENT)
PAN No. AAHPS3661E		

**Assessee by : Sh. Gautam Jain, Adv.
Revenue by : Sh. Kanv Bali, Sr. DR**

Date of Hearing: 16.02.2023

Date of Pronouncement: 12.05.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by assessee against the order of Id. CIT(A)-12, New Delhi dated 26.11.2015.

2. Following grounds have been raised by the assessee:

"1. That the learned Commissioner of Income Tax (Appeals)-XII ['CIT(A)'] erred in upholding the disallowance made by learned Assessing Officer ('AO') for non-providing confirmations of outstanding balances of sundry creditors amounting to Rs.1,08,82,873/-.

2. That the Id. CIT(A) erred in upholding disallowance made by AO on account of advances received from customers amounting to Rs.2,63,142/-.

3. That the Id. CIT(A) erred in upholding disallowance made by AO on account of car expenses and

depreciating amounting to Rs.29,729/- by holding the same to be personal expenses."

Sundry Creditors:

3. For the sake of completeness and ready reference, the entire order of the Assessing Officer pertaining to addition made on account of sundry creditors is as under:

"As per balance sheet, the assessee has shown creditors of Rs.1,54,67,677/-. AR of the assessee was asked to file confirmation from all 35 creditors as shown in the balance sheet. AR of the assessee filed confirmation from only 7 creditors, total amount for which confirmation has filed is only Rs.45,84,804/-. No confirmation has filed for the balance amount of Rs.1,08,82,873/- by the assessee during the course of assessment proceedings. However, notice u/s 133(6) of the Income Tax Act, 1961 was also issued to some of the parties but the same were received back. Hence, the balance amount for which confirmation has not received/filed is hereby added back to the declared income of the assessee."

4. Aggrieved, the assessee filed appeal before the Id. CIT(A).

5. The Id. CIT(A) examined the issue at length in detail and confirmed the addition made by the AO.

6. During the hearing before us, the Id. AR, Sh. Gautam Jain vehemently argued that the sundry creditors were the purchases of earlier years and, if at all, they are treated to be taxable incomes, they should have been taxed in the earlier years. It was argued that having accepted the purchases and the trading results as genuine in the earlier years, the revenue cannot choose to tax the amount in the subsequent years. It was argued that being the old creditors, the assessee could not

get the confirmations owing to absence of business transactions in the subsequent years. It was argued that the revenue could not discharge its onus of proving the creditors as bogus and no notices u/s 131 inspite of the request of the assessee were issued to the parties. It was argued that assessee cannot be prejudiced if the parties do not comply to the notices issued by the revenue and it is for the revenue to take necessary action for non-compliance. The Id. AR relied on the orders of ITAT in the case of ACIT Vs. Foot Mart Retail India Pvt. Ltd. in ITA No. 4278/Del/2019, order dated 31.05.2022, Sudha Loyalka vs. ITO in ITA No. 399/Del/2017, Indersons Leathers (P) Ltd. vs. Addl. CIT Jalandhar 114 ITD 242 (Amritsar), CIT vs. Smt. Sita Devi Juneja 325 ITR 593 (P & H), Kaps Advertising vs. ITO 11 ITR (T) 113 (Del), Pr. CIT vs. Matruprasad C Pandey 377 ITR 363 (Guj) and CIT vs. Alvares & Thomas 394 ITR 647 (Kar).

7. On the other hand, the Id. DR relied upon the order of the Id. CIT(A).

8. Heard the arguments of both the parties and perused the material available on record.

9. We find that Assessing Officer has made an addition of Rs.1,08,82,873/- on account of Sundry Creditors as Appellant could not get the confirmation of the parties. Appellant has submitted that he could not obtain the confirmation as they are very old creditors.

10. The Appellant has submitted the list of Sundry Creditors disallowed before the Id. CIT(A) which is as under:

Sr. No.	Particulars	Since		Amount (Rs.)
1	Panac Intl.	01/04/1995	365,560.00	365,560.00
2	Sagar Rubber	01/04/2001	381,000.00	381,000.00
3	Castrol Auto	01/04/2002	266,172.00	
4	Chine Chine Plastic Co.	01/04/2002	283,075.00	
5	Sai Enterprises	01/04/2002	74,415.00	
6	S Chand & Company	01/04/2002	335,813.00	959,475.00
7	Bhalla Industry	01/04/2003	113,805.75	
8	Bhaarat Rubber Product	01/04/2003	625,441.00	
9	Chaudhary & Sons	01/04/2003	835,447.00	
10	Jyoti Industries	01/04/2003	904,477.00	
11	Rishab Agencies	01/04/2003	875,547.00	
12	S.C. Industries	01/04/2003	725,844.00	
13	Uniturn Industries	01/04/2003	834,457.00	4,915,018.75
14	V.K. Auto Industries	01/04/2004	310,530.00	
15	Auto Link Industries	01/04/2004	377,900.00	
16	Neelam Auto Parts	01/04/2004	270,000.00	
17	Neelkant Trading Co.	01/04/2004	213,972.00	
18	Sanjay Engg. Works	01/04/2004	446,575.50	1,618,977.50
19	Bhalla Auto Mfg. Co.	01/04/2005	42,350.00	
20	Bhushan Auto Industry	01/04/2005	329,510.00	371,860.00
21	BKG Auto Intl.	01/04/2006	33,200.00	
22	Chauhan Gasket	01/04/2006	37,700.00	
23	Omega Brass Industries	01/04/2006	665,325.00	
24	Raj Auto Enterprises	01/04/2006	90,000.00	
25	Saini Electricals	01/04/2006	1,184,850.0	
26	United World Wide Heig	01/04/2006	63,532.00	2,074,607.00
27	Amit Saree Palance	01/04/2007	151,875.00	
28	Rangoli Collection	01/04/2007	44,500.00	196,375.00
				10,882,873.25

11. The Id. CIT(A) has gone through each and every creditor and held that bills of Dhian Singh Dalip Singh for purchase of Kattha, Dry Daste, of Rawal Trade Linkers for purchase of clothes which however is doing business in bearings, of Krishna Creations for purchase of sarees, of Riya Impex International for purchase of Dry waste, Supari, Tobacco, Kattha etc. of Sh. Jagadamba Store for purchase Dry waste, of Radhika Fashion for purchase of Saree, of Inder Electricals for purchase of electrical items etc. Appellant has claimed to have purchases of sarees, Fabric, Cloth, Supari, Kattha, Dry Daste, Chewing

Tobacco & Biri as per the order sheet dated 30.01.2014 of the Id. CIT(A). It was held that none of these parties are among the list of creditors on whose account additions have been made by AO. The Id. CIT(A) held that from perusal of bills for current year i.e. bills of Rangoli Collection and Amit Saree Palace, it is seen that these bills are for purchase of sarees and clothes whereas the Appellant is a trader in electricals and motor parts items. The Appellant has further stated that he was not able to produce confirmation as none of these parties are giving confirmation because he had stopped transactions with them. The Id. CIT(A) held that these creditors are not genuine as he did not have these confirmation with him when he had entered into transaction with these parties neither he has tried to obtain the confirmation. Therefore, Id. CIT (A) held it is apparent that liabilities on account of creditors appearing in the books of Appellant have ceased to exist as the parties are not acknowledging their dues from the Appellant and, therefore, in view of Explanation 1 to Section 41(1), there is cessation of liability by the concerned parties.

12. Two issues arise out of the facts of this case.

1. Whether revenue can bring the expenditure incurred in the earlier years to be taxed in the subsequent years?
2. Whether the revenue unilaterally deem the liabilities ceased as time went by?

13. In the background of the specific facts of the case, we have examined provisions of the Act and the judicial pronouncements on this issue.

14. Section 41(1)(1) reads as under:

"Section 41(1) (1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,—

(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

(b) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred Judgment dt.11.3.2019 in TCA No.302 / 2008 West Asia Exports & Imports (P) Ltd. v. ACIT 23 / 38 by the first-mentioned person or some benefit in respect of the trading liability referred to in clause

(a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year. Explanation 1 For the purposes of this sub-section, the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof" shall include the remission or cessation of any liability by a unilateral act by the first mentioned person under clause (a) or the successor in business under clause (b) of that sub- section by way of writing off such liability in his accounts."

15. The Hon'ble Karnataka High Court in the case of M/s Southern India Plywood Company Vs. ACIT in ITA No. 180 of 2002 has examined the similar issue,

"Whether the authorities were justified in making an addition of Rs.13,03,008/- as unproved creditors when the same had been accepted for the previous years.

16. The Hon'ble Court held that,

"Mr. Sheshachala contends even though the Assessing Officer had accepted the written off income period for the previous year admitting the credit entries shown by the assessee, there was no bar for the Assessing Officer to find out whether such entries were found to be correct or not by calling upon the assessee as well as the creditors of the assessee to show whether such transactions are really in existence. On enquiry, it was disclosed to the Officer that the amount of Rs. 13,03,008/- was not the real credits. Therefore, the Assessing Officer was justified in treating the same as unproved credits. In the circumstances, he requests this court to dismiss the appeal.

10. So far as the last question of law is concerned, we are of the opinion that the Assessing Officer has a right to inquire about the correctness of the entry shown by the assessee. Even if the Assessing Officer had accepted the credit entries shown by the assessee for the previous assessing years, there is no prohibition for the Assessing Officer to call upon the assessee to prove the existence of such credit and to confirm whether the credit shown in the entries are really in existence or not. When the Assessing Officer has found that such entries are incorrect, when an opportunity was given to the assessee to prove such entries, when the assessee has failed to prove the same inspite of giving an opportunity for the Assessing Officer, we are of the opinion that all authorities were justified in holding that the amount of Rs. 13,03,008/- as an unproved credit. In the circumstances, we have to answer the question No.3 against the assessee."

17. Further, the Hon'ble Madras High Court in the case of M/s West Asia Exports & Imports (P) Ltd. Vs. ACIT in Tax Case Appeal No. 302 of 2008 on the similar issue held as under:

"11. On the other hand, the learned Senior Standing Counsel for the Revenue, Mr. M. Swaminathan, contended that the significant difference in Judgment dt.11.3.2019 in TCA No.302 / 2008 West Asia Exports & Imports (P) Ltd. v. ACIT 12 / 38 facts, in the present case, is that the entire business of the Assessee, namely the timber business, for which the said trade liabilities were incurred by the Assessee, had been closed by the Assessee about ten years back prior to the present Assessment Year 2003-04 in hand and not only none of the creditors had made any claim from the Assessee with regard to the said dues, but the Assessee also failed to produce the confirmations from these creditors and that the Assessee had changed its business of sending of persons to Gulf countries, which was entirely a different business altogether and in the absence of any continuity of the debt or continued business relationship with those creditors, there was no question of treating the said trade liabilities as perennial and indefinitely continuing forever and for all practical purposes, the liability of the Assessee to pay off those Sundry Creditors, who were suppliers to his timber business, had ceased and therefore, the authorities were justified in bringing the said amount of liability to tax under Section 41(1) of the Act. He submitted that mere book entries in the Balance Sheet or keeping such credit entries alive in the Balance Sheet of the Assessee, even for a different business, could not indefinitely postpone the applicability of Section 41(1) of the Act.

.....

13. *In Commissioner of Income Tax v. T.V. Sundaram Iyengar & Sons Ltd. [(1996) 222 ITR 344 (SC)], the case before the Supreme Court was just contra and interesting. The Assessee had received certain deposits from customers in the course of carrying on its business, which were originally treated as capital receipts. Since those credit balances were not claimed by the customers or creditors, the Assessee transferred it to its profit and loss accounts. However, it did not offer the same for taxation as its total income. The Assessing Officer held that the Assessee got the said*

surplus as a result of trade transaction and the said amounts credited to profit and loss account had a character of income and therefore, held that such amount were taxable in the hands of the Assessee. The Supreme Court finally upheld such taxability in the hands of the Assessee, applying the principles laid down by Lord Atkinson, J and held that even though the money were received by the Assessee as deposit was of capital nature at that point of time, but by the efflux of time, the money has become the Assessee's own money and the claims of the customers had become time barred and the Assessee itself had treated the money as its own money and credited the same to its profit and loss account and therefore, it was liable to be taxed in the hands of the Assessee. The following observations in paragraphs 22 and 23 of the Supreme Court are quoted below for ready reference, Judgment dt.11.3.2019 in TCA NO.302 / 2008 West Asia Exports & Imports (P) Ltd. v. ACIT 14 / 38 22. The principle laid down by Atkinson, J. applies in full force to the facts of this case. If a common sense view of the matter is taken, the assessee, because of the trading operation, had become richer by the amount which it transferred to its profit and loss account. The moneys had arisen out of ordinary trading transactions. Although the amounts received originally was not of income nature, the amounts remained with the assessee for a long period unclaimed by the trade parties. By lapse of time, the claim of the deposit became time barred and the amount attained a totally different quality. It became a definite trade surplus. Atkinson, J. pointed out that in Morley's case (supra) no trading asset was created. Mere change of method of book-keeping had taken place. But, where a new asset came into being automatically by operation of law, common sense demanded that the amount should be entered in the profit and loss account for the year and be treated as taxable income. In other words, the principle appears to be that if an amount is received in course of trading transaction, even though it is not taxable in the year of receipt as being of revenue character, the amount changes its character when the amount becomes the assessee's own money because of limitation or by any other statutory or contractual right. When such a thing happens, common sense demands that the amount should be treated as income of the assessee."

18. The Hon'ble High Court has also referred to the judgment of Hon'ble Karnataka High Court in the case of CIT Vs. Alvares & Thomas (supra) which was relied upon by the Id. AR.

19. Further, the Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. Rajasthan Golden Transport Company [(2001) 249 ITR 723 (Del.)], the Division Bench of Delhi High Court held that mere fact that some party had unilaterally written back the said amount to profit and loss account did not amount to remission or cessation of liability and therefore, such income could not be treated as assessable under Section 41(1) of the Act, but where an amount is received in the course of trading transaction, even though it was not taxable in the year of receipt, the amount changes its character when it becomes Assessee's own money because of its limitation by any such statutory or contractual right and thus, such amount in question has to be treated as Assessee's income under Section 41(1) of the Act.

20. The Delhi High court relied upon the decision of Supreme Court in T.V. Sundaram Iyengar (supra).

21. In the Nedungadi Bank Ltd. v. K.P. Madhavankutty AIR 2000 SC 839 the Hon'ble Supreme Court held that even though under the Act no period of limitation has been prescribed, a stale dispute one where the employee approaches the forum under the Act after an inordinate delay cannot be entertained and adjudicated.

22. Having examined the judgments and the provisions of the Act, we hold that the revenue can bring the expenditure incurred in the earlier years to be taxed in the subsequent years if it is proved that the expenditure incurred was bogus and the revenue can deem the liabilities ceased as time went by taking into consideration, the period of non-payment of dues and the intention to pay the dues.

23. Having examined the expenses payable and the detailed order of the Id. CIT(A) how the expenses are not found to be genuine, we hold that the expenses which have not been paid for the last six years and the expenses which have been incurred for Amit Saree and Rangoli Collection pertaining to F.Y. 2007-08 and all other expenses wherein not even a single creditor had demanded the money back nor the assessee made any attempt to repay the same. The Id. CIT(A) has correctly examined the invoices, period and purpose. Hence, keeping in view, the totality of the facts and circumstances of the case, we decline to interfere with the order of the Id. CIT(A).

24. In the result, the appeal of the assessee is dismissed
Order Pronounced in the Open Court on 12/05/2023.

Sd/-

(C. M. Garg)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 12/05/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR