

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.3182/Del./2018  
(ASSESSMENT YEAR : 2014-15)**

Sunil Kumar Garg,  
A – 128, Group Industrial Area,  
Wazirpur,  
New Delhi – 110 052.

vs.

ITO, Ward 36 (2),  
New Delhi.

**(PAN : AHBPG5469M)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri V.K. Sabharwal, Advocate  
Shri R.B. Gupta, Advocate

REVENUE BY : Ms. Indu Bala Saini, Sr. DR

Date of Hearing : 15.03.2023

Date of Order : 21.03.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of Id. CIT (Appeals)-12, New Delhi dated 12.02.2018 pertaining to the Assessment Year 2014-15.

2. The grounds of appeal taken by the assessee read as under :-

“1. That the orders passed on 29.12.2016 by the Assessing Officer as upheld by the Ld. CIT(A) vide orders dated 12.02.2018 were perverse to the law and to the fact of the case, because both of them failed to appreciate that the appellant was prevented by reasonable and sufficient cause due to his serious

illness to reconcile the difference of Rs.1,47,10,075/- appears as credit in the name of M/s Suraj Trading Co. as on 31.03.2014.

2. That the appellate order passed by the Ld. CIT(A) thereby upholding the additions of Rs.1,47,10,075/- was further not correct under the law and to the facts of the case because of rejecting the fresh evidence filed under Rule-46A(b) of the Income Tax Rules, thereby explaining the difference of Rs.1,47,10,075/- in the balance credit amount appears to be in the name of M/s Suraj Trading Co. as on 31.03.2014, only on the basis of remand report sent by the Assessing Officer without taken into consideration that the appellant was prevented by reasonable and sufficient cause to file the same before the Assessing Officer.

3. That the Ld. CIT(A) further failed to appreciate while upholding the additions or Rs.1,47,10,075/- in the hands of the appellant as recommended by the Assessing Officer without independently examination of the facts contained in the Petition filed under Rule-46A(b) of the I.T. Rules with evidence containing therein that the appellant was prevented by reasonable and sufficient cause to file the same before the Assessing Officer due to his serious illness.

4. That the appellate order passed by the Ld. CIT(A) was further perverse to the law and to the facts of the case, because of not taken into consideration that the appellant has paid to the creditors a sum of Rs.1,47,10,075/- vide cheque no. 511450 dated 19.03.2014, therefore, there was no any difference of amount if any be appears in the books of appellant as on 31.03.2014.

5. That the appellate order passed was further not correct under the law and to the facts of the case, thereby not adjudicating upon the proper evidence filed and placed upon records by the appellant under Rule-46A(b) of the I.T. Rules. thereby reconciling the difference of Rs.1.47,10.075/-, for which he has already released the payment to the creditor vide cheque no. 511450 dated 19.03.2014 which has also been confirmed by the creditor M/s Suraj Trading Co.

6. That the appellate order passed thereby upholding the additions of Rs.1,47,10,075/- in the hands of the appellant were further unconstitutional as against the law and to the facts of the case, because of not passing the speaking order on the merits of this case, as he has only relied upon the order passed by the Assessing Officer.

7. That no proper and reasonable opportunity of being heard was ever afforded by the Assessing Officer and by the Ld. CIT(A) to the appellant prior to hold the addition of Rs.1,47,10,075/- in the hands of the appellant while passing the appellate order on 12.02.2018.

8. That the Ld. CIT(A) has further failed to appreciate, that the addition made by the Assessing Officer to the tune of Rs.1,47,10,075/- u/s 41(1) of the Act, could not be justified under the law and to the facts of the case, as remission and cessation of any liability, as the appellant has already released the payment of the creditor of Rs.1,47,10,075/- vide cheque no. 511450 dated 19.03.2014, which the creditor has also confirmed.

9. That the additions made of Rs.1,47,10,075/- u/s 41(1) of the Act, by the Assessing Officer which were upheld by the Ld. CIT(A) were entirely based upon their mere presumption and guess work only, therefore, not tenable under the law and to the facts of the case.

10. That the penalty proceedings initiated u/s 271(1)(c) and interest charged u/s 234B of the Act while completing the order was further not in consonance of the illegal and impugned additions made in the hands of the appellant while finalizing the orders on 29.12.2016.”

3. Although assessee has raised various grounds, the sole issue in the appeal is addition of Rs.1,47,10,075/- under section 41 (1) of the Income-tax Act, 1961 (for short 'the Act').

4. Brief facts of the case are that from the assessment order, it is seen that the assessee is in the business of trading of menthol oil and the list of sundry creditors included an amount of Rs.2,17,85,150/- due in the name of M/s Suraj Trading Company, Gangyal, J&K. The AO required the appellant to file confirmed copy of account of this creditor along with Bank Statement which was not submitted. A notice u/s 133(6) was issued to the above creditor to verify the creditworthiness and genuineness of the transactions with the appellant. In reply to the above notice, the above creditor submitted to the AO among other details a list of Sundry Debtors. In the list of Debtors, the amount of Rs.70,75,075/- was shown outstanding in his books of account in the name of assessee's business concern M/s Shyamji Trading Co. against the amount of Rs.2,17,85,150/- claimed as creditor by the assessee in the name of the above creditor. This information showing disparity was confronted to the assessee by the AO vide show cause notice dated 30.08.2016 requiring the assessee to show cause as to why the difference amount of Rs.1,47,10,075/- should not be added to his taxable income. This show cause notice remained un-complied with and further two show cause notices dated 14.10.2016 and 21.10.2016 were issued but the assessee made no compliance of the same. The AO finally vide order sheet entry dated 30.11.2016 again specifically required the appellant to reconcile the difference but the assessee chose

not to avail of the opportunity repeatedly given by the AO. In the absence of any reconciliation being provided by the assessee between the balances appearing in the books of assessee and the creditworthiness in question, the AO considered the difference amount of Rs.1 ,47,10,075/- as the amount representing remission or cessation of trading liability u/s 41 (1) of the Act.

5. Before the Id. CIT (A), assessee submitted additional evidences & documents and wanted opportunity to be heard. However, Id. CIT (A) held that sufficient opportunity has been given to the assessee and he has not responded. So, he declined to admit the application under Rule 46A of the Income-tax Rules, 1962. The concluding part of the order of Id. CIT (A) read as under :-

“Before me during the appeal proceedings, the appellant does not dispute the fact about number of opportunities were given to him to reconcile the difference. The appellant has submitted the copies of the balance sheets of M/s Suraj Trading Company relevant to AY 2014-15 and A Y 2015-16 along with copies of ITRs for these assessment years. The appellant has explained that a cheque 0.511450 dated 19.03.2014 issued for Rs.1,47,10,075/- is returned on 02.04.2014 in the next financial year and reversal of that cheque being made in next financial year has not been taken into account by the above creditor. This non accounting of returned cheque resulted into variation in the balances of above two ledger accounts. To support above contention the con formation of the creditor relevant to next financial year is submitted in the present appeal proceedings. Since this is a fresh evidence, the appellant has filed application for admission of these evidence under rule 46A The copy of the application under rule 46A was forwarded to AO for his comment and the AO vide remand report dated 22.02.2017 has

opposed the admission of additional evidence on the ground that sufficient and specific opportunities were provided to the appellant vide show cause notices dated 05.09.2016,14.10.2016 and note sheet entry dated 20.10.2016 and again vide note sheet entry dated 03.11.2016. In view of the objection raised by the AO in the remand report, I am not inclined to accept the fresh evidence as the appellant does not dispute that sufficient opportunities by the AO were given during the assessment proceedings and there is no reason or ground for appellant preventing him from producing this explanation before the AO. Since this evidence is not accepted, I have no reason based on the material available with the AO to differ from him making addition of Rs.1,47,10,075/- u/s 41 (1) of IT Act. The above grounds of appeal are rejected.”

6. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

7. Ld. Counsel of the assessee submitted that there were some genuine reasons because of which documents and replies could not be submitted to the AO. The assessee was suffering from failure of kidney. In this regard, medical prescription has also been attached. Ld. Counsel of the assessee prayed that the matter may be remitted to Id. CIT (A) for fresh consideration in the light of the additional evidences and submissions made.

8. Per contra, Id. DR for the Revenue did not have any objection to this proposition.

9. Accordingly, in the interest of justice, we agree that there was reasonable cause of ailment that prevented the assessee to supply the documents and replies to the AO. Hence, we direct that the additional

evidences and submissions made before the Id. CIT (A) be accepted by the Id. CIT (A). After going through the submissions and additional evidences, Id. CIT (A) shall pass an order as per law. Needless to add, assessee should be granted adequate opportunity of being heard.

10. In the result, the appeal of the assessee stands allowed for statistical purposes.

**Order pronounced in the open court on this 21<sup>st</sup> day of March, 2023.**

**Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 21<sup>st</sup> day of March, 2023  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.Pr.CIT, Delhi-13, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**