



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

ITA no.3485/Mum./2013  
(Assessment Year : 2004-05)

Rajeshwar Prasad Dubey  
02, Sethi Mansion  
12, Kumptha Street  
Ballard Estate, Mumbai 400 001  
PAN - ACZPD9533G

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-12(1), Aayakar Bhawan  
101, M.K. Road, Mumbai

..... Respondent

Assessee by : Shri Kishore K. Poddar  
Revenue by : Shri Satya Pal Kumar

Date of Hearing - 13.08.2016

Date of Order - 26.08.2016

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Instant appeal by the assessee is directed against the order dated 8<sup>th</sup> January 2013, passed by the learned Commissioner (Appeals)-21, Mumbai, for the assessment year 2004-05. The solitary dispute in the present appeal is in relation to addition made of an amount of ₹ 5,93,000 under section 68 of the Income Tax Act, 1961 (for short "*the Act*").

2. Brief facts are, the assessee an individual is engaged in the business of transportation and custom house agent. It is stated,

assessee maintains a fleet of Trucks and Lorries which are engaged in transportation of goods belonging to his clients. For the assessment year under consideration, assessee filed his return of income on 31<sup>st</sup> October 2004, declaring total income of ₹ 82,75,090. During the assessment proceedings for the assessment year 2006-07, the Assessing Officer for verifying the genuineness of the creditors appearing in the books of account issued notices under section 133(6) of the Income Tax Act, 1961 (for short "*the Act*"). However, since such notices issued to the creditors returned back unsecured, the Assessing Officer entertaining a doubt regarding the genuineness of the creditors held that the credit amount appearing in the books of account are to be treated as income of the assessee on account of cessation of liability as per section 41(1) of the Act. Accordingly, he added back the credit appearing in the books of account to the income of the assessee on protective basis. On the basis of the assessment order passed for assessment year 2006-07, the Assessing Officer formed an opinion that the issue has to be tackled in the assessment year wherein the assessee has shown the liability. Accordingly, he re-opened the assessment for the impugned assessment year under section 147 of the Act by issuing notice under section 148 on 26<sup>th</sup> March 2009. During the re-assessment proceedings, the Assessing Officer, for verifying the genuineness of the creditors called upon the assessee to produce the ledger account, copies of bills, bank statement, in support

of his claim of credit purchases. On verifying the ledger account copy, the Assessing Officer observed that no re-payment or substantial transaction has taken place with the creditor either in the assessment year 2004-05 or even thereafter. However, in the financial year 2007-08, entire outstanding debt was re-paid through cash payment made of ₹ 15,000 to ₹ 19,500 on daily basis. These transactions were found in respect of the following two parties:-

<i>i) Jayem Retreads Pvt. Ltd.</i>	<i>₹ 52,330</i>
<i>ii) M.S. Transport</i>	<i>₹ 5,93,000</i>

3. Thus, to ascertain the genuineness of the assessee's claim, the Assessing Officer again issued notice under section 133(6) of the Act to these two parties. As observed by the Assessing Officer, no reply was received from the concerned parties. He, therefore, called upon the assessee to produce these two parties for establishing the genuineness of the claim. However, the concerned parties were not produced before the Assessing Officer. Therefore, the Assessing Officer observing that the Assessing Officer has failed to establish the identity, prove the creditworthiness of the creditors and genuineness of the transactions, the outstanding credit balances appearing in the books amounting to ₹ 6,45,330 has to be treated as unexplained cash credit under section 68 of the Act and accordingly, added back to the income

of the assessee. Being aggrieved of such addition, assessee preferred appeal before the first appellate authority.

4. The learned Commissioner (Appeals), after considering the submissions of the assessee, while confirming the addition in relation to credit of ₹ 5,93,000 in respect of M.S. Transport, however, he deleted the addition of the credit relating to Jayem Retreads Pvt. Ltd.

5. The learned Authorised Representative reiterating the submissions made before the Departmental Authorities, submitted that the assessee had a business relationship with M.S. Transport and the credit entries were part of the running account with the concerned parties, therefore, the creditors appearing in the books of account cannot be treated as cash credit. It was submitted, allegation of the Assessing Officer that identity of the creditors is not established is incorrect as the concerned creditor is an income tax assessee having PAN. He submitted, the genuineness of the creditors cannot be doubted as the assessee had re-paid the entire outstanding credit balance to the concerned party in financial year 2007-08. He submitted, even the assessee has deducted tax at source on the payments made to the concerned creditors, the benefit of which has been claimed by the creditors' hence, genuineness or creditworthiness of the creditors cannot be doubted. The learned Authorised Representative submitted, in assessment year 2006-07, when the

assessee agitated the addition made by the Assessing Officer on protective basis on the credit amount, the Tribunal while disposing of assessee's appeal has restored the issue back to the file of the Assessing Officer with a direction to verify the correct nature of the transaction as to whether these were debtors or creditors. He, therefore, submitted the issue relating to addition made under section 68, may be restored back to the file of the Assessing Officer for deciding afresh.

6. The learned Departmental Representative has no objection if the matter is restored back to the file of the Assessing Officer for deciding afresh.

7. We have considered the submissions of the parties and perused the material available on record. It is evident from the impugned assessment order that during the assessment proceedings for assessment year 2006-07, the Assessing Officer while examining the credit entries appearing in the books of account of the assessee made some enquiry and thereafter having entertained doubt regarding the genuineness of the creditors has treated the credit as income of the assessee on account of cessation of liability under section 41(1) of the Act and made addition on protective basis. On the basis of the aforesaid finding of the Assessing Officer in assessment year 2006-07, assessment for the impugned assessment year was re-opened and

credit entries appearing in the name of two parties were treated as unexplained cash credit. The first appellate authority while deleting the addition in respect of one of the creditors sustained the credit entries appearing in the name of M.S. Transport. We have noticed that the addition made on protective basis in assessment year 2006-07 also includes the credit entries shown in the name of M.S. Transport. We have also noted that the Tribunal while disposing off assessee's appeal for assessment year 2006-07 in ITA no.3854/Mum./2010, dated 27<sup>th</sup> May 2016, has restored the issue back to the file of the Assessing Officer for verifying the true nature of the transaction. The addition of sundry creditors made in the impugned assessment year being a offshoot of the additions made in assessment year 2006-07, we consider it appropriate to restore the issue back to the file of the Assessing Officer for deciding afresh in terms with the directions of the Tribunal while deciding assessee's appeal for assessment year 2006-07 as referred to above. Grounds raised are allowed for statistical purposes.

8. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open Court on 26.08.2016

**Sd/-**  
**N.K. PRADHAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 26.08.2016**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai