

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' B '**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

I.T. A. No.1309/Bang/2013
(Assessment Year : 2008-09)

Dy. Commissioner of Income Tax,
Circle 7(1), Bangalore.

.... Appellant.

Vs.

Shri S. Laxmipathy,
Prop. Industrial Packers & General Enterprises,
No.3, Muttappa Indl. Estate,
FCI Godown Road, Opp.TTK Factory,
Dooravaninagar, Bangalore-500016.
PAN AAFPL 5648G

..... Respondent.

Appellant By : Shri Numbhirajan Pillai, JCIT (D.R)
Respondent By : ; None.

Date of Hearing : 14.5.2015.
Date of Pronouncement : 10.07.2015.

O R D E R

Per Shri Jason P. Boaz, A.M. :

This appeal by Revenue is directed against the order of the Commissioner of Income Tax (Appeals), LTU, Bangalore dt.28.6.2013 for Assessment Year 2008-09. Since none was present for the assessee inspite of service of notice by RPAD on 13.4.2015, this appeal was heard with the assistance of the Id. D.R. for Revenue.

2. The facts of the case, briefly, are as under :-

2.1 The assessee, engaged in the business of design, manufacturing and supply of wooden packing boxes in his proprietary concern M/s. Industrial Packers and General Enterprise, filed his return for Assessment Year 2008-09 on 23.9.2008 declaring income of Rs.26,24,430. The case was taken up for scrutiny and the assessment was completed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dt.29.10.2010 wherein the assessee's income was determined at Rs.54,42,240 in view of an addition of Rs.28,17,810 made by the Assessing Officer under Section 41(1) of the Act on account of cessation of liability.

2.2 Aggrieved by the order of assessment dt.29.10.2010 for Assessment Year 2008-09, the assessee preferred an appeal before the CIT (Appeals), LTU, Bangalore. The learned CIT (Appeals) disposed off the appeal vide order dt.28.6.2013 allowing the assessee partial relief of Rs.;13,27,172; consequently sustaining the addition to the extent of Rs.14,90,638 (viz. Rs.28,17,810 less Rs.13,27,172).

3. Revenue being aggrieved by the order of the CIT (Appeals), LTU, Bangalore dt.28.6.2013 for Assessment Year 2008-09, has preferred this appeal raising the following grounds :-

- " 1. The order of the learned CIT (Appeals) is opposed to law and facts of the case.*
- 2. On the facts and in the circumstances of the case the learned CIT (Appeals) has erred in holding that the assessee's case to the extent of Rs.13,37,172 is evidenced as the payments were made through cheques with sufficient balance in the bank accounts and thereby considering it as explained.*
- 3. On the facts and in the circumstances of the case the learned CIT (Appeals) has not appreciated the fact that though the liability to the extent of Rs.;13,37,172 is claimed to have been paid, the assessee is continuing to show the same liability outstanding as on 31.3.2008 also. Hence, the liability shown by the assessee is incorrect and the additions made by the Assessing Officer were in order.*
- 4. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT (Appeals) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.*

5. The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above."

4. The Grounds at S.Nos.1, 4 and 5 are general in nature and therefore no adjudication is called for thereon.

5.1 In Ground Nos.2 and 3, Revenue assails the impugned order of the learned CIT (Appeals) as erroneous in accepting the assessee's explanation and granting the assessee relief to the extent of Rs.13,27,172 on the ground that payments of the same amounts were made by the assessee through cheques with sufficient balance in the bank accounts. The learned D.R. was heard in support of the grounds raised and relied on the order of the Assessing Officer on this issue. According to the learned Departmental Representative, the payments shown to have been made by cheque amounting to Rs.13,27,172 dt.31.3.2007 pertain to an earlier period and are shown to have been encashed by **M/s. Shanti Vijay Saw Mills** in this year. It is submitted that if this is so, then the Sundry Creditors balance of this party ought to have been reduced to that extent in the assessee's books. On the contrary, the assessee is continuing to reflect the same liability as outstanding on 31.3.2008 also. The learned Departmental Representative submits that in view of the above factual matrix, the learned CIT (Appeals)'s order is erroneous, requires to be reversed and the order of the Assessing Officer be restored.

5.2.1 The facts of the matter that emanate from the record are that in the course of assessment proceedings the Assessing Officer, on examination of the details furnished by the assessee, noticed that the sundry creditors in the assessee's books as on 31.3.2008 was Rs.1.72,64,552. On being required to, the assessee furnished confirmations from all sundry creditors whose balances were in excess of Rs.10,00,000; except for one creditor, namely M/s.

Shanti Vijay Saw Mills. The Assessing Officer subsequently vide letter dt.29.7.2010 called for this information from this creditor under Section 133(6) of the Act. M/s. Shanti Vijay Saw Mills furnished the confirmation along with the ledger account in their books of account, as per which the outstanding balance receivable by it from the assessee was only Rs.1,13,70,694 as against Rs.1,41,88,503 shown by the assessee as payable in his books of accounts. The Assessing Officer after examining the assessee's reply in the matter came to the view that the difference of Rs.28,17,810 (viz. Rs.1,41,88,503 less Rs.1,13,70,694) was not explained or recorded and brought the same to tax in the assessee's hands as cessation of liability while finalizing the order of assessment.

5.2.2 On appeal, the learned CIT (Appeals) after examining this issue and seeking the assessee's explanation in respect of the details obtained by the Assessing Officer under Section 133(6) of the Act come to the view that out of the amount of Rs.28,17,810, sums amounting to Rs.13,27,172 were paid by the assessee by cheques to M/s. Shanti Vijay Saw Mills and were reconciled as under to this extent :-

| Cheque No. and Date | Amount Rs. | Accounted by appellant | Accounted by M/s. Shanthi Vijaya Saw Mill | Bank Details. |
|------------------------|------------|----------------------------------|---|----------------------------------|
| 293038 Dt.31.3.2007 | 12,50,000 | 29.3.2007 relevant to FY 2006-07 | 2.7.2007 | Corporation Bank CA/01/000250 |
| 423010 Dt.31.3.2007 | 77,172 | 31.3.2007 relevant to FY 2006-07 | 3.4.2007 | Corporation Bank CC/01/060001 |

Observing that the assessee had adequate balances in his bank accounts while issuing the above two cheques, the learned CIT (Appeals) held the outstanding balances to the extent of Rs.13,27,172 stood reconciled and after granting the assessee relief to the extent confirmed

the additions in respect of the balance amount of Rs.14,90,630. In coming to this finding the learned CIT (Appeals) held as under at paras 4 & 5 of the impugned order :-

"4. I have examined the submissions as above along with the relevant bank accounts and I am satisfied that the appellant's case is evidenced to the extent of Rs.13,27,172 paid through cheques with sufficient balance in the bank accounts. Reducing the creditor's liability to this extent, therefore, was a reasonable act on the part of a prudent business man. The difference in the outstanding balances is considered to have been explained reasonably to this extent and the addition made by the Assessing Officer is to be reduced accordingly.

5. In respect of the claim of cash payments having been received by the vendor from the appellant but which has not been accounted for in the appellant's book, the AR only stated that the money receipts sent by M/s. Shanti Vijaya Saw Mill appeared to be self-generated and hence were unreliable. It was pointed out that the receipts did not carry the appellant's signature. However, the AR also clarified that he did not wish to cross-examine the creditor M/s. Shanti Vijaya Saw Mill on the difference in their books of account and that of the appellant with regard to the transactions pertaining to FY 2007-08. Considering these facts in totality, it is clear that the appellant has not been able to controvert the evidences received from the sundry creditor in respect of cash payments. This is, accordingly, held to have been made but not reflected in the appellant's ledger account. The addition to the extent of Rs.14,90,638, accordingly, is confirmed (Rs.28,17,810 - Rs.13,27,172)."

5.3.3 We have heard the learned Departmental Representative and perused and carefully considered the material on record. From an appreciation of orders of the authorities below it appears that, in the course of assessment proceedings, the Assessing Officer required the assessee to file confirmations of all sundry creditors whose outstanding credit balances in his books were in excess of Rs.10,00,000 in the period under consideration. The assessee was unable to file the confirmation for the closing sundry credit balance of Rs.1,41,88,503 appearing in his books in the name of M/s. Shanti Vijay Saw Mills and therefore the Assessing Officer then sought the said information directly from this party under Section 133(6) of the Act. M/s. Shanti Vijay Saw Mills confirmed that the amount receivable from the assessee was

Rs.1,13,70,694 and not Rs.1,41,88,503 as claimed by the assessee. On examination of the details filed, the Assessing Officer required the assessee to reconcile the difference of Rs.28,17,810 between the closing balance of sundry creditors M/s. Shanti Vijay Saw Mills in that party's books vis-à-vis that in the assessee's books of account. The Assessing Officer observes that the assessee in reply dt.12.8.2010 failed to furnish any proper explanation and filed a reconciliation statement in which the balance in the creditors books was still at Rs.1,13,70,694 and could not be reconciled with balance of Rs.1,41,88,504 as reflected in his books. Even when subsequent opportunities were provided, the assessee failed to reconcile the said differences and therefore the Assessing Officer brought the same to tax in the assessee's hands as cessation of liability.

5.3.4 We find, that in the impugned order the learned CIT (Appeals), while upholding the addition of Rs.28,17,810 to the extent of unexplained cash payments amounting to Rs.14,90,694, has granted the assessee relief of Rs.13,27,172, on account of payments made by the assessee to M/s. Shanti Vijay Saw Mills by two cheques i.e. Rs.12,50,000 and Rs.77,172 on 31.3.2007. These payments were made in the earlier assessment period ending 31.3.2007 relevant to Assessment Year 2007-08. If the learned CIT (Appeals) observation in regard of the above two payments by cheque is the correct factual position, then it naturally follows that the sundry creditors balance of M/s. Shanti Vijay Saw Mills in the assessee's books ought to have been reduced to the extent of Rs.13,27,172 as on 31.3.2007 itself even though the same may have been encashed at a later date by that sundry creditor. This, however, is not the case and we therefore do not concur with the findings of the learned CIT (Appeals) in deleting the addition

to the extent of Rs.13,27,172. In our considered view, as correctly held by the Assessing Officer, the assessee has failed to reconcile the differences in sundry creditors closing balance as on 31.3.2008 of M/s. Shanti Vijay Saw Mills which as per the assessee's books was Rs.1,41,88,504 vis-à-vis the closing balance of Rs.1,13,70,694 receivable reflected in the books of this creditor. This was the situation before the Assessing Officer, even though the assessee was afforded adequate opportunities to reconcile the same. In that factual matrix, even though the assessee claims that as on 31.3.2008, it has to pay M/s. Shanti Vijay Saw Mills Rs.1,41,89,904, the actual amount payable by the assessee as confirmed by this sundry creditor was that only Rs.1,13,70,694 was receivable by it from the assessee. This factual position, in our considered opinion, has not been controverted by the assessee, as per the material on record. It appears that the learned CIT (Appeals) allowed the assessee relief of Rs.13,27,172 on a wrong appreciation of facts which goes against the basic tenor of accounting principles. In our view, this is a case where the Assessing Officer has clearly established cessation of liability to the extent of Rs.28,17,810 which finding has not been controverted by the assessee. We consequently reverse the finding of the learned CIT (Appeals) and restore the finding of the Assessing Officer on this issue in bringing the amount of Rs.28,17,810 to tax in the assessee's hands.

6. In the result, Revenue's appeal for Assessment Year 2008-09 is allowed.

Order pronounced in the open court on 10th July, 2015.

Sd/-
(P. MADHAVI DEVI)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

*Reddy gp