

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C' : NEW DELHI**

**BEFORE SHRI R.S. SYAL, AM & MS SUCHITRA KAMBLE, JM**

**ITA No.3381/Del/2011  
Assessment Year : 2008-09**

**ITO,  
Ward-2,  
Sonapat.**

**Vs. Inderjeet Kaur,  
Prop. M/s Babbar Jewelers,  
76, Jamaipura,  
Sonapat.**

**PAN: ABOPK6571H**

(Appellant)

(Respondent)

Appellant by : Ms Anima Barnwal, Sr. DR  
Respondent by : Shri K. Sampath, Advocate

Date of hearing : 23.10.2015  
Date of pronouncement : 23.10.2015

**ORDER**

**PER R.S. SYAL, AM:**

This appeal by the Revenue is directed against the order passed by the CIT(A) on 18.04.2011 in relation to the assessment year 2008-09.

2. The first ground is against the deletion of addition of Rs.40,25,234/- made by the AO on account of `Sundry creditors`.

3. Briefly stated, the facts of the case are that the assessee is engaged in the business of purchase and sale of gold jewellery. Sundry creditors to the tune of Rs.40,20,234/- were shown in the accounts. On being called upon to furnish their details, the assessee submitted the details, which have been reproduced on pages 5 and 6 of the assessment order. The assessee stated that these were not the creditors in the strict sense, but, the customers who sold their old ornaments. In support of the genuineness of these credits, the assessee submitted that the jewellery purchased from them was sold to her sole customer, namely, M/s Nikki Jewellers House, from whom the payment was stuck up. The assessee submitted that the amount was received from M/s Nikki Jewellers House and then paid to these customers in the immediately succeeding year. The AO has recorded that despite giving adequate opportunity to produce these creditors, the

assessee could produce only three persons, namely, Smt. Murti Devi, Smt. Joginder Kaur and Shri Satpal, whose statements were recorded on different dates. The AO noticed that they were persons of no means and, hence, the assessee's contention of having purchased gold jewellery from them, was not acceptable. Resultantly, he made addition of the said sum which came to be deleted in the first appeal.

4. We have heard the rival submissions and perused the relevant material on record. It is an admitted position that the assessee sold the jewellery purchased from these persons to M/s Nikki Jewellers House, from whom payment was delayed. On receipt of the amount from M/s Nikki Jewellers House, the assessee immediately settled the accounts of these customers. The Id. CIT(A) has recorded that all the sundry creditors were produced before the AO on 7.10.2010, but, they were sent back by the Officer on the pretext that his health did not permit to take statement of more than two persons in a single day. Shri Darshan Singh, husband of the

assessee stated these facts on affidavit before the Id. first appellate authority. A copy of such affidavit is available on record which divulges that all the creditors were taken to the office of the AO in pursuance of his directions, on 7.10.2010, but the Officer refused to examine them. The Id. DR has not controverted these findings recorded in the impugned order with any cogent material. The three persons who were examined by the AO duly admitted that they had sold their jewellery to the assessee. The AO has doubted the genuineness of transactions with them by holding that they were persons of no means. When we peruse the details of amounts appearing against these persons, it is found that the same ranged between Rs.1 lac to Rs.2 lac. The fact that confirmation from all the creditors were filed along with the affidavit filed by the assessee's husband averring their production before the AO who refused to examine and other attending circumstances go to prove the genuineness of the transactions of purchase of gold jewellery by the assessee from them. Immediate payment could not be made to these persons because the receipt from M/s Nikki Jewellers

House, the sole buyer of the assessee, was held up. Considering the entirety of the facts under consideration, we are of the considered opinion that the Id. CIT(A) was justified in deleting this addition. This ground is not allowed.

5. Ground No.2 is against the deletion of addition of Rs.14,19,200/- (correct amount given in the revised grounds) on account of unsecured loans. The facts apropos this ground are that the assessee had shown unsecured loans amounting to Rs.14.19 lac from friends and relatives. On being called upon to produce these persons, the assessee submitted that a sum of Rs.11,14,926/- represented brought forward unsecured loans and only a sum of Rs.3,04,270/- was on account of transaction undertaken during the year with Smt. Amarjeet Kaur, who sold jewellery to the assessee for which confirmation was filed. The AO observed that in the return of income for the A.Y. 2007-08, there was no balance of unsecured loans. He, therefore, made addition of Rs.14,19,200/-, which came to be deleted in the first appeal.

6. Having heard the rival submissions and perused the relevant material on record, we find that there cannot be any addition under section 68 in respect of brought forward balances. Section 68 contemplates the addition in respect of amounts received during the year which are not properly explained by the assessee to the satisfaction of the AO. Here is a case in which the assessee contended before the AO that a sum of Rs.11.14 lac represented brought forward balances, but, the AO did not find any closing balances of unsecured loans in the return for the immediately preceding year. The Id. AR did not readily have the balance sheet of the preceding year to amplify his contention about such brought forward balances. In our considered opinion, this fact is of utmost importance which requires examination at the AO's end. We, therefore, set aside the impugned order and send the matter back to the file of AO for deciding this issue afresh as per law, after allowing a reasonable opportunity of being heard to the assessee. In case it is found that unsecured loans amounting to

Rs.11,14,926/- were brought forward balances from the last year, then, no addition should be made for this amount in the current year. In the otherwise situation, the AO is free to examine the genuineness of these credits as per law. While examining this issue of the opening balances, the AO will also examine the assessee's contention about the sale of jewellery by Smt. Amarjeet Kaur during the year for a sum of Rs.3.04 lac. This ground is, therefore, allowed for statistical purposes.

7. The last effective ground is against the deletion of addition of Rs.3 lac on account of excessive salary paid to employees and Rs.63,000/- on account of salary payable for the month of March, 2008. The assessee debited a sum of Rs.7,56,000/- as salary paid to the persons whose names have been incorporated on page 9 of the assessment order. In addition to that, the assessee claimed deduction for a sum of Rs.2,00,000 paid to outside 'karigars'. The assessee also created a provision of Rs.63,000/- towards salary payable at the end of the year. The AO required the assessee to

produce the persons to whom such salary of Rs.7,56,000/- was paid and also the persons to whom a sum of Rs.2 lac was paid. In the absence of the production of such employees/karigars, the AO made an *ad hoc* disallowance of Rs.3 lac on account of excessive salary paid to its employees and outside '*karigars*'. He further made disallowance of Rs.63,000/- representing provision for salary payable for the month of March, 2008. The Id. CIT(A) deleted the additions. The Revenue is aggrieved against the deletion of this addition.

8. After considering the rival submissions and perusing the relevant material on record, we observe that the assessee paid a salary of Rs.7.56 lac to its employees and Rs.2 lac to outside '*karigars*.' The assessee furnished person-wise details to whom salary payments were made and also payment to '*karigars*.' The assessee expressed inability to produce these persons because the business itself was closed down on 27.7.2009 and, thereafter, it was difficult to locate them. In our considered opinion, the amount of salary paid to the assessee's employees and charges to outside

'karigars' is reasonable in the facts and circumstances of the instant case as the further corroboration by producing them for personal examination was not possible due to the closure of business. As such, the *ad hoc* disallowance of Rs.3 lac made by the AO is held to be rightly deleted. As regards the remaining amount of Rs.63,000/-, we find that this was a provision created by the assessee towards salary for March, 2008 which was paid in April, 2008, which does not require disallowance. We, therefore, uphold the impugned order on this count. This ground fails.

9. In the result, the appeal is partly allowed for statistical purposes. stand dismissed.

Decision pronounced in the open Court on 23rd Oct., 2015.

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Sd/-

**(R.S. SYAL)**  
**ACCOUNTANT MEMBER**

Dated, 23<sup>rd</sup> October, 2015.

dk

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

Assistant Registrar