

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC', NEW DELHI**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 3921/Del/2014 : Asstt. Year : 2008-09**

DCIT, Circle-9(1), New Delhi	Vs	M/s Spry Hospitality Pvt. Ltd., W-3/2, Western Avenue, Sainik Farms, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAICS3968A</b>		

**CO No. 107/Del/2015 : Asstt. Year : 2008-09**

M/s Spry Hospitality Pvt. Ltd., W-3/2, Western Avenue, Sainik Farms, New Delhi	Vs	DCIT, Circle-9(1), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAICS3968A</b>		

**Assessee by : Sh. C. S. Aggarwal, Sr. Adv.**

**Revenue by : Sh. T. Vasanthan, Sr. DR**

<b>Date of Hearing : 20.09.2017</b>	<b>Date of Pronouncement : 22.09.2017</b>
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**ORDER**

The appeal by the department and the Cross Objection by the assessee are directed against the order dated 11.04.2014 of Id. CIT(A)-XI, New Delhi

2. Following grounds have been raised in the departmental appeal:

*"1. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition made by the AO amounting to Rs.3887248/- treating it as remission or cessation of liability since the assessee did*

*not file any reason why the creditors were outstanding in its books for a long period.*

*2. The Ld. CIT(A) has erred in deleting the addition of Rs. 3 lacs made by the AO considering it to be on higher side expenses.*

*3. The appellant craves to amend, modify, alter, add or forgo any ground(s) of appeal at any time before or during the hearing of this appeal.”*

3. Vide Ground No. 1, the grievance of the department relates to the deletion of addition made by the AO treating the amount of Rs.38,87,248/- as remission or cessation of the liability and Ground No. 2, the grievance of the department relates to the deletion of addition of Rs.3,00,000/- made by the AO by considering the expenses on higher side.

4. Facts of the case in brief are that the assessee e-filed the return of income on 29.09.2008 declaring Nil income which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) on 29.06.2009. Later on, the case was selected for scrutiny. The AO during the course of assessment proceedings noticed that Sub-Schedule 7 of the balance sheet of the assessee revealed that following creditors for purchases were outstanding:

<i>1. Abrar Ahmed</i>	<i>Rs.15,37,172/-</i>
<i>2. Altaf Carpenter</i>	<i>Rs.9,84,596/-</i>
<i>3. Kushal Timber</i>	<i><u>Rs.13,65,480/-</u></i>
	<i><u>Rs.38,87,248/-</u></i>

5. The AO treated the aforesaid amount outstanding in the name of the said creditors as remission or cessation of liability and treated the same as income of the assessee u/s 41 of the Act by observing that the assessee had not filed any reason by the above creditors were outstanding in the books for a long period. The AO also noticed that the assessee had incurred expenses of Rs.6,77,116/- for earning an income of Rs.4,98,000/- which included other income of Rs.2,60,000/-. According to him, the expenses were on higher side, he made ad-hoc disallowance of Rs.3,00,000/- and made the addition.

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) and furnished the written submission which is reproduced in para 6 of the impugned order, for the cost of repetition, the same is not reproduced herein. The Id. CIT(A) also sought a remand report of the AO which has been reproduced in para 7 of the impugned order. The Id. CIT(A) also asked the assessee to file the rejoinder on the AO's remand report, the reply furnished by the assessee is reproduced in para 8 of the impugned order, for the cost of repetition, the same is not reproduced herein.

7. The Id. CIT(A) after considering the submissions & rejoinder of the assessee and the remand report of the AO, deleted the additions by observing in paras 10.1 to 11.1 of the impugned order which are reproduced verbatim as under:

*“10.1. Ground No. 2 of the appeal is against the addition of Rs.38,87,248/- on account of cessation of liability with respect to outstanding sundry creditors u/s 41 of the Act. In the remand proceedings, the AO has examined the factual position in respect of outstanding sundry creditors namely M/s Abrar Ahmed & Co. (Rs.15,37,172/-), M/s Altaf Carpenter (Rs.9,84,596/-) and M/s Kushal Timber (Rs.13,65,480/-) and these three sundry creditors have still made a claim for their outstanding dues from the appellant which the appellant has also acknowledged. Therefore, there is no question of cessation of liability u/s 41 of the Act The decision of various authorities namely M/s Expo Gas Containers Ltd vs. Department of Income Tax ITA No. 627/Mum/2011 and other decisions quoted by the appellant support the appellant's claim.*

*10.2. In view of the above, since the outstanding liability in respect of sundry creditors did not cease at the end of the financial year relevant for AY 2008-09, the AO was not justified in adding the amount of Rs.38,87,248/- treating it cessation of liability The same is directed to be deleted. Ground No. 2 of the appeal is allowed.*

*11.1 Ground No. 3 of the appeal is against the ad-hoc disallowance of Rs.3 lac made by the AO out of total expenditure of Rs.6,77,116/- claimed by the appellant It is observed that the AO made ad-hoc disallowance simply on the ground that the expenses claimed by the appellant seem to be on higher side. During the remand proceedings, the AO has verified these expenses but justified the disallowance only on the ground that purchases shown by the appellant were at Rs.46,463/- only against which huge expenses have been claimed It is observed that there are certain statutory expenses like audit fee, computer expenses, factory rent,*

*insurance and salary which the appellant has to incur even if the business carried on by it is not substantial. The AO has not claimed that the expenses shown by the appellant were incorrect or not verifiable. The only ground of disallowance that the quantum of business carried on by it is very small, does not make a justifiable ground for making ad-hoc disallowance. Therefore, the AO's action in making the disallowance of Rs.3 lac without pointing any discrepancy in the claim of expenses is not justified and the same is directed to be deleted. Ground No. 3 of the appeal is allowed.”*

8. Now the department is in appeal. The Id. DR strongly supported the order of the AO and reiterated the observations made in the assessment order dated 24.12.2010.

9. In his rival submissions the Id. Counsel for the assessee drew our attention towards para 7 of the impugned order wherein the remand report furnished by the AO had been reproduced and stated that the CA of the creditors to whom notices u/s 133(6) of the Act were issued by the AO, confirmed the outstanding balance and filed the copy of ledger account and affidavit, and also stated that the assessee company on regular basis had given assurance to the creditors that the balance would be settled in near future. He, further submitted that when the AO himself in the remand report admitted that liability was still outstanding, there was no occasion to make the addition considering the genuine liability as cessation of liability. As regards to the ad-hoc addition of Rs.3,00,000/- made by the AO out of the expenses, the Id. Counsel for the assessee

submitted that majority of the expenses were related to certain statutory expenses like audit fees, factory rent, insurance and salary etc. which had to be incurred even if the business carried on by the assessee was not substantial. Therefore, the disallowance made by the AO without pointing out any discrepancy was not justified and the Id. CIT(A) rightly deleted the same.

10. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the AO in his remand report dated 20.01.2014 stated as under:

*“In its submission before the Ld. CIT(A) the assessee rebutted the observation of the AO. In order to verify the claim of the assessee this office issues notices u/s 133(6) to the above said three outstanding Sundry Creditors of the assessee. The creditors through their CA Sh. Darpan Gupta filed replies to this office along with the copy of ledger account and affidavit stating that... I confirm the aforesaid balance is still due by confirming ledger account statement of mine in the books of the aforesaid company. The CA of the creditors also submitted that "the efforts steadily been made to settle the balance due to them although due to heavy business losses incurred to the company, the company is not in position to square off the balance at this stage. The balance has been confirmed by the assessee company on regular basis and assurance has been given to the creditors that the balance will be settled in near future and the assessee did not give up its claim.”*

11. From the above submission in the remand report of the AO, it is clear that the CA of the creditors in response to the notice issued by the AO u/s 133(6) of the Act clearly stated by furnishing the copy of ledger account and affidavit that the balance mentioned by the AO were still outstanding and that the assessee had given assurance to those creditors that the balance would be settled in near future and the creditors did not give up their claims. Therefore, the liability was in existence and there was no cessation of liability u/s 41(1) of the Act. In that view of the matter I am of the confirmed view that the Id. CIT(A) rightly deleted the addition of Rs.38,87,248/- made by the AO.

12. As regards to the another ad-hoc addition of Rs.3,00,000/-, it is noticed that the AO could not controvert this contention of the assessee that the expenses were mainly related to the various statutory expenses like audit fee, rent of the factory, insurance and salary etc. The AO did not point out any discrepancy in the expenses incurred by the assessee during the course of regular business and merely on this basis that the purchases shown by the assessee were meager, the disallowance cannot be made out of the expenses which were incurred during the regular course of the business. I, therefore, do not see any valid ground to interfere with the findings of the Id. CIT(A) on this issue.

13. As regard to the Cross Objection of the assessee is concerned, since the appeal of the department is dismissed in the former part of this

order. Therefore, the Cross Objection becomes infructuous, since no specific relief is sought by the assessee.

14. In the result, the appeal filed by the department and the Cross Objection of the assessee are dismissed.

(Order Pronounced in the Court on 22/09/2017)

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 22/09/2017**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**