

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 841/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2009-10)

KLT Agro Foods Ltd. B-1/1 Mayur MA Krupa CHSL, Shimpoli Road, R.D Borivali (W) Mumbai 400092	बनाम/ v.	DCIT 9(2) R.No. 218, 2 nd Floor Aaykar Bhavan, M.K. Road Mumbai 400020
स्थायी लेखा सं./PAN : AAAC3894Q		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:		Hemant Bahedia
Revenue by :		Shri Rajesh Kumar Yadav

सुनवाई की तारीख / **Date of Hearing** : 18.09.2017

घोषणा की तारीख / **Date of Pronouncement** : 28.09.2017

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 841/Mum/2013, is directed against the appellate order dated 17.10.2012 passed by learned Commissioner of Income Tax (Appeals)-20, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2009-10, appellate proceedings had arisen before learned CIT(A) from the assessment order dated 22.12.2011 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

"Part II: GROUNDS OF APPEAL

The grounds of appeal are:-

- *The "Ld. DYCIIT" has erred in making additions of Rs. 22,47,378/- u/s. 41 (1) giving reasons that trading liability is not payable.*
- *The "Learned DYCIIT" has erred in making additions of Rs. 16,60,000/- on account of Unexplained cash credit (unsecured loans)."*

3. The brief facts of the case are that that assessee during the subject year under consideration has not carried out any business activity . It was observed by the A.O that assessee has shown liability outstanding for payments over a period of time in respect of following parties:

S.No.	Name of the Party	Amount
1.	M/s. J P Steel	45000
2.	M/s. Metcraft Engg. Corpn	403208
3.	M/s. Metffrom Corpn	10227
4.	Ms/. Prefab Dwelling Pvt. Ltd	195378
5.	M/s. Thakkarson Roll Forming P. Ltd.	894706
6.	M/s. Thakkarson Auto Ancillary (I) Ltd.	7816454
7.	M/s. Truoyru Traders P. Ltd	200000
8.	Sundry Creditors	1770318
	Total	11335291

The A.O asked the assessee to explain as to why the same should not be added to income of the assessee by invoking provisions of Section 41(1) of the Act . The assessee in response submitted confirmation letters from M/s. Prefab Dwelling (I) Ltd., M/s. Thakkarsons Roll Forming P. Ltd., M/s. KLT Automobiles & Tubular Products Ltd. and M/s. Tripuri Traders P. Ltd., while in respect of others outstanding , the assessee submitted that assessee is yet to receive confirmation letters from the other creditors . It was submitted that the liability has not ceased to exist which also continues to exists in the books of accounts and same is payable on demand . The assessee prayed that no addition should be made to the income of the assessee u/s. 41 (1) of the Act. The A.O rejected the contentions of the assessee as assessee failed to give cogent reasons as to why sundry creditors are outstanding for

payment for long time and almost stagnant. It was observed by the AO that the assessee has not even submitted any details as to the nature of said creditors . It was observed by the AO that there was no business transaction since last so many year as the balances continued to remain stagnant and assessee is not able to contact creditors for confirmation . The A.O concluded that these liabilities no longer exists to be paid and hence the addition were made by the AO u/s. 41(1) of the Act to the tune of Rs. 22,47,378/- as the assessee failed to prove genuineness of these creditors , vide assessment order dated 22-12-2011 passed by the AO u/s 143(3), which additions were later confirmed by learned CIT(A) in the first appeal and the assessee appeal on this issue was dismissed by learned CIT(A), vide appellate order dated 17-10-2012.

4. Aggrieved by the appellate order dated 17-10-2012 passed by the learned CIT(A), the assessee carried this matter in appeal before the tribunal and assessee's counsel has expressed his inability to confirm whether the said amount of Rs.22,47,378/- payable by the assessee was on account of trading or business liability and also has expressed his inability to produce confirmations or get the transactions verified .

5. The Ld. D.R on the other hand submitted that the assessee has miserably failed to prove that these amounts were still payable to these creditors . The assessee has also failed to prove business nexus of these old transactions with these creditors as the balance is stagnant for last so many years. It was also submitted that the assessee has not carried out business during the subject year under consideration. It was prayed that the addition may be confirmed as was done by the AO and later confirmed by learned CIT(A).

6. We have considered rival contentions and also perused the material on record . We have observed that the assessee has not carried out any business activity during the year under consideration which is an admitted and undisputed fact between rival parties. The assessee has outstanding creditors reflected of Rs. 1.13 crores as per details with AO as at 31st March, 2009 of which additions were made to the tune of Rs. 22,47,378/- by the AO u/s 41(1) as the assessee has not been able to prove the nature of these creditors which were stagnant for last so many years nor the genuineness of the transactions was proved . The assessee could not produce confirmation

from these parties nor the assessee could prove that these liabilities are existing to be payable and has not ceased to exist. The assessee counsel has also expressed the assessee's inability to produce any further documents etc., with respect to these creditors for proving genuineness and bona fide of these creditors and also to establish nexus with the business transactions of the assessee. Hence, in view of the inability of the assessee in proving that the liability of Rs. 22,47,378/- is still existing to be payable to the creditors as at 31st March, 2009 and the status quo as was there before the authorities below is still existing even before us as to the contentions of the assessee with no changes in factual matrix, we are not inclined to interfere with the concurrent findings of the authorities below as it could not be shown by the assessee that the said finding of lower authorities was perverse or requires our interference due to any special circumstances or changed facts before the tribunal. The assessee did not file loan confirmations even before us nor explained the nature of these creditors and their nexus with business of the assessee even before us. Thus, the appeal of the assessee with regard to this issue stands dismissed. The assessee fails on this ground. We order accordingly.

7. Second issue is with regard to the unsecured loans of Rs. 16,60,000/- appearing in the balance sheet as at 31st March, 2009. The assessee was asked by the AO to furnish confirmation of loans and prove authenticity and genuineness of these lenders. The assessee could not file loan confirmations and assessee also could not discharge the burden as cast u/s. 68 of the Act. The assessee also did not furnish current address of these lenders. The AO made additions of Rs. 16,60,000/- u/s. 68 of the Act vide assessment order dated 22-12-2011 passed u/s 143(3). The assessee filed first appeal before the learned CIT-A and made following contentions:-

“ The appellant company has taken loan from Late Mr. Kishore Thakkar of Rs.16,60,000/-. However, during the course of assessment proceedings, the appellant could not get the confirmations from the party since the person who has given the loan has died. However, appellant has got the confirmations from his legal heir Mr. Sushila K. Thakkar, who has, confirmed that the amount is still outstanding and payable to her. We are enclosing herewith the copy of confirmation for your reference in Annexure III. We need to submit that the above loan taken was genuine and hence additions made by the Ld. DCIT be deleted.”

The Ld. CIT(A) directed the A.O to re-verify whether the said loans pertains to financial year under consideration or to an earlier years, by holding as under:-

“4.3 I have considered the findings of the A.O. and rival submission of the AR, carefully. I find that appellant has failed to furnish necessary evidences before the A.O. of the unsecured loan of RS.16,60,000/-. If loan was taken from one Mr. Kishore L. Thakkar who died on 29-10-2004, as per the submission of the Ld. AR. It means this loan is not of this year. However, the confirmation of Mrs. Sushila K. Thakkar claimed to be legal heir is found unbelievable, because on computer print outs some signature has been obtained without any full address of Mrs. Sushila K. Thakkar. Further, there is no evidence on record to show that she is the only legal heir for confirming such loan. It is also not clear that such Loan pertains to this financial year. If this is not the loan of F.Y. 2008-09, A.Y. 2009-10, such addition cannot be made u/s 68 in this year but such addition can be made in the year in which such loan was taken. Appellant has not clarified the exact date of loan whereas as per reference it was taken by one Mr. Kishore Laxmidas Thakkar, who expired on 29-10-2004. If he had given such loan, definitely it would be in earlier year. Further, A.O. has not made any addition u/s 41, hence it is in the nature of justice to direct the A.O. to reverify and see whether loan pertains to this F.Y. If so, this addition so made should be taken as confirmed. If not, and if such loan pertains to earlier period, then such addition is required to be deleted in this year and in that situation AO shall be at his liberty to take appropriate action in corresponding year.”

8. Aggrieved by the appellate order of learned CIT(A) , the assessee has come in appeal before the tribunal. Ld. A.R submitted that the opening balance and closing balance of the loan was same as per audited Balance Sheet as at 31-03-2008 and 31-03-2009 and no loan were raised during the year under consideration and hence addition could not be made in this year u/s. 68 of the Act, he drew or attention to page 13 of the paper book wherein audited Balance Sheet/schedule 2 of the assessee is placed. Ld. D.R on the other hand submitted that learned CIT(A) has already directed A.O to reverify whether the said loans pertained to earlier years . It was submitted by learned DR that it is not known how the assessee is prejudiced by the directions of learned CIT(A) to the AO to reverify contentions of the assessee. On being asked by the bench , Ld. A.R submitted that the assessee has no objection if this plea of the assessee that it has not accepted any loan during the subject year under consideration can be verified by the A.O and hence it was prayed that no addition can be made u/s. 68 of the Act.

9. We have considered rival contentions and we have perused the material on record . We have gone through the assessee's audited Balance sheet as at 31-03-2009 and 31-03-2008 which is filed as part of the paper book at page no. 13(schedule2 to balance sheet is details of unsecured loans from shareholders). We have observed that the assessee has raised loans from share holders of Rs. 16,60,000/- where in the balance as 31st March, 2008 and 31st March, 2009 was constant at Rs. 16,60,000/- and there is no change in the balances of unsecured loan during the year under consideration. Hence, prima facie we are in agreement that there is no movement in the said unsecured loans from shareholder which remained stagnant during the year at Rs.16,60,000/-. However, this contention of the assessee require verification of the books of accounts of the assessee by the AO to see any movement during the year which can be verified only after going through the books of accounts and may not be discernible from the face of the Balance Sheet and hence we are inclined to restore this matter/issue to the file of the A.O for necessary verifications and de-novo determination of the issue on merits in accordance with law after verification of books of accounts. Needless to say proper and adequate opportunity of being heard shall be provided to the assessee by the A.O in accordance with principles of natural justice in accordance law in de-novo proceedings. We order accordingly.

10. In the result, appeal of the assessee in ITA No. 841/Mum/2013 for assessment year 2009-10 is partly allowed for statistical purposes.

Order pronounced in the open court on 28.09.2017

आदेश की घोषणा खुले न्यायालय में दिनांक: 28.09.2017 को की गई।

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 28.09.2017

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, E
6. Master File

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BY ORDER

**DY/ASSTT. REGISTRAR
ITAT, MUMBAI**