

**THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCHES: "A" NEW DELHI]****BEFORE SHRI I. C. SUDHIR, JUDICIAL MEMBER
AND SHRI L. P. SAHU, ACCOUNTANT MEMBER****I. T. Appeal No. 3897/Del/2013
Assessment Year : 2009-10.**Asstt. Commissioner
of Income Tax,
Circle : 1, Meerut.
M e e r u t.

Vs.

M/s. Anand Tissues Ltd.,
16 km., Meerut Mawana Road,
Vill. Fitkari, Meerut.**PAN : AABCA 1790 R****(Appellant)****(Respondent)**Assessee by : Shri Sanjiv Sapra, F.C.A.; &
Shri Satish Sapra, Adv.;

Department by : Shri S. K. Jain, Sr. D. R.;

Date of Hearing : 24.05.2017

Date of Pronouncement : 31.07.2017

ORDER.**PER I. C. SUDHIR, J. M. :**

The Revenue has questioned first appellate order on the following revised grounds :-

“ 1. Whether in the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in law in deleting

the addition of Rs. 2,06,39,754/- made by the Assessing Officer on account of unexplained credit as well as cessation of liability u/s 41 of the I. T. Act, 1961, holding that Section 41 of the I. T. Act, 1961, was not applicable and ignoring that the Assessing Officer also held the sundry credits as unexplained since the assessee had failed to prove the genuineness of transaction and credit worthiness of the creditors with respect to the amounts allegedly standing in the assessee's account.

2. Whether in the facts and circumstances of the case, the Ld. CIT (Appeals) has erred in law in deleting the addition of Rs. 3,47,104/- and Rs. 4,59,670/- made by the Assessing Officer on account of unproved alleged credit balances, ignoring the fact that the assessee had failed to prove the genuineness of transactions and credit worthiness of lenders with respect to the amount allegedly standing in the assessee's account.

3. Whether in the facts and circumstances of the case, the Ld. CIT (Appeals) has erred in law in deleting the additions of Rs.1,06,02,217/- made by the Assessing Officer on account of inflated purchases, without appreciating the fact that addition was made where notices related to substantive purchases were returned back unserved.

4. Whether in the facts and circumstances of the case, the Ld. CIT (Appeals) has erred in law in deleting the addition of Rs.1,57,45,043/- made by the Assessing Officer on account of alleged

unsecured loans ignoring the fact that onus to prove the credit worthiness of lender and genuineness of transaction was entirely upon the assessee which remained totally un-discharged.

5. Whether in the facts and circumstances of the case, the Ld. CIT (Appeals) has erred in law in admitting the additional evidences, while deleting the addition made by the Assessing Officer in violation of the principles laid down as per Rules 46 A of I. T. Rules, 1962, as none of the conditions of sub clauses (a), (b), (c) and (d) of clause 1 of the Rule was satisfied. ”

2. Heard and considered the arguments advanced by the parties in view of orders of the authorities below, material available on record and the decisions relied upon.

3. The relevant facts are that the assessee company was engaged in manufacturing and sale of craft paper since October, 1994. Against the returned loss of Rs.7,69,905/- declared in the year the assessment has been framed on the income of Rs.4,70,23,903/- by making various additions / disallowances. Those additions / disallowances have been deleted by the ld. Commissioner of Income Tax (Appeals). Against this action of the ld. CIT (Appeals) the Revenue is in appeal before the Tribunal.

3.1 Ground No. 1 : It is against the deletion of addition of Rs.2,06,39,754/- (Rs.1,61,10,625/- + Rs.45,29,129/-) made by the Assessing Officer on account unexplained credits as well as cessation of liability under section 41 of the I. T. Act. The Assessing Officer made addition of Rs.1,61,10,625/- on account of sundry creditors for which neither address nor confirmed copies of accounts had been provided by the assessee and Rs.45,29,129/- was added also on account of sundry creditors which could not be verified under section 133(6) of the I. T. Act.

3.2 In support of the ground the ld. Sr. DR has basically placed reliance on the assessment order and the ld. AR has tried to justify the first appellate order while reiterating submissions made before the ld. CIT (Appeals). He submitted that a party-wise chart showing documentary evidences as submitted before the authorities below relating to addition of sundry creditors of Rs.2,06,39,754/- with reference to page numbers in paper book has been attached and marked as Annexure I. He relied upon those documentary evidences and cited the following decisions in support :-

- (i) Nathu Ram Chand Vs. CIT
49 ITR 561 (All.);
- (ii) CIT Vs. Makhni & Tyagi (P.) Ltd.
267 ITR 433 (Del.);
- (iii) EMC Works Pvt. Ltd. Vs. ITO
49 ITR 650 (All.);
- (iv) JCIT Vs. Mathura Das Ashok Kumar
101 TTJ (All.) 810;
- (v) Crystal Network Vs. CIT
353 ITR 171 (Cal.).

3.3 Having gone through the orders of the authorities below, we find that the Assessing Officer had noted total sundry creditors were of Rs.9.14 crores. Enquiry letters were addressed to 50 parties, who had credit balances outstanding at the end of the financial year. In respect of 6 such parties the Assessing Officer stated that either there was no such party/person at the address provided by the assessee or the address given was incomplete and, therefore, the enquiry letters were returned back. On this basis the Assessing Officer treated the credit balances standing in the names aggregating to Rs.45,29,129/- as

non-genuine. Thereafter, the Assessing Officer selected another 29 parties, the aggregate credit balance of which amounted to Rs.1,61,10,625/-. Against each of such parties, a remark was made by the Assessing Officer that neither their addresses nor confirmed copy of accounts were provided by the assessee. These 29 parties were also figuring in the list of 50 parties referred above. The Assessing Officer observed further that some of the creditors were long outstanding and the management had also undergone a change. He accordingly proposed to treat creditors as cessation of liability under section 41. The Assessing Officer has accordingly added Rs.2,06,39,754/- on account of non-genuine sundry creditors and cessation of liability under section 41 of the I. T. Act. After discussing the issue in detail in para Nos. 3.1 to 3.6, the ld. CIT (Appeals) has come to the following finding on the issue vide para Nos. 3.7 & 3.8 of the first appellate order :-

“ 3.7 The entire matter has been considered in detail. The manner in which the Assessing Officer proceeded with the assessment proceedings and the contents of the assessment order particularly the findings on the basis of which additions have been made to the total income, demonstrates complete lack of application of mind to the facts of the case and the relevant provisions of law and complete mismanagement in the collection, collation and analysis of the

evidences. The Assessing Officer has completely failed to appreciate that the burden to prove that credits in the books of accounts depends on the nature of transactions which give rise to such credits. In the case of creditors for purchases, there are multiple audit trails in the form of purchase bills, utilization of the purchases in production processes, sales of finished goods and payments made against such purchases particularly through banking channels. It is not mandatory that the assessee should be able to produce confirmation from the parties from whom purchases had been made as the counterparties, particularly when considerable time gap has elapsed between the transaction and the date on which the confirmation is being sought. The counter party may not cooperate in the process of obtaining such confirmations. In the case under consideration, the AO herself has noted that there was a change in management and therefore obtaining confirmations becomes all the more difficult. In any case, a confirmation or lack of it cannot be taken as a final word on the genuineness or otherwise of a transaction. In the case under consideration, overwhelming number of payments has been made through banking channels. It was the AO to conduct appropriate enquiries with regard to the destination where such cheques had been encashed. The purchase bills were available and the AO could have made field enquiries to determine the identity of the suppliers and the nature of the business being carried on by them. However, instead of undertaking a comprehensive exercise to determine the genuineness of the creditor, the AO has chosen not to exercise the powers available under the statute and instead harped repeatedly on confirmations. The relevant assessment records have also been perused and it is observed that the AO had taken the hearing only in the month of

December 2011. Despite the fact that complete details of the creditors (including PAN in large number of cases) had been filed during the assessment proceedings (a fact acknowledged in the remand proceedings), the AO has listed 29 parties in the assessment order and has brazenly stated that neither address nor confirmed copy of account had been furnished. In fact out of the 29 parties, in respect of the parties at si no 1 (Ambika Paper Machineries), si no 6 (Bihari Coal Traders) and si no 7 (DSM Sugar), the assessee had filed confirmations during the assessment proceedings as has been admitted in the remand report dated 26.03.2013. In any case, voluminous evidences, as have been discussed above, have been filed during the appeal/remand proceedings to substantiate the genuineness of the creditors. A complete summary of the details/confirmations filed in respect of the 35 creditors is enclosed at annexure A of this order. The only objection, in the final remand report, is that the confirmations had been filed by the assessee and had not been received, in certain cases, directly from the party concerned. Such objection, in view of the above discussion, is not sustainable. If indeed the Assessing Officer wanted to verify the genuineness of the creditors, the vast arsenal of powers available in the statute ought to have been fruitfully utilized. Moreover, if indeed in the opinion of the Assessing Officer, the creditors were not genuine, the entire purchases made from such creditors should have been questioned by the Assessing Officer. It is also observed that the Assessing Officer has invoked the provisions of section 41 while making the disallowances. Section 41 speaks of a case where any allowance or deduction had been made in the assessment for any year and subsequently, there was an omission or cessation of the liability, this sum will become chargeable to tax in that previous

year. In the case under consideration, the credit balances relate to the year under consideration itself.

3.8 In view of the totality of discussions above, the Assessing Officer is directed to delete the addition of Rs.1,61,10,625 & Rs.45,29,129. Ground Nos. 2 & 3 are allowed. ”

3.4 We find that the ld. CIT (Appeals) has come to the above conclusion after considering the submission of the assessee, calling remand report of the Assessing Officer on the submission of the assessee as well as rejoinder thereto obtained from the assessee. The ld. CIT (Appeals) has noted that there were over-whelming number of payments made through banking channels and thus, the Assessing Officer should have conducted appropriate enquiry with regard to the destination where such cheques had been encashed. The purchase bills were made available and the Assessing Officer could have made field enquiries to determine the identity of the suppliers and the nature of the business being carried on by them. The ld. CIT (Appeals) has noted that complete details of the creditors including PAN in large number of cases had been filed during the assessment proceedings, which has also been acknowledged by the Assessing Officer in the remand proceedings. The Assessing Officer had noted about 29 parties in the assessment order

and stated that neither address nor confirmed copy of account were furnished which fact was found contrary to the record. The ld. CIT (Appeals) has annexed with the first appellate order a complete summary of the details / confirmations filed in respect of 35 creditors filed by the assessee and marked as Annexure 'A' to the first appellate order. The ld. CIT (Appeals) has noted further that if in the opinion of the Assessing Officer the creditors were not genuine, then entire purchases made from such creditors should have been questioned by the Assessing Officer. We thus agree with the finding of the ld. CIT (Appeals) that assessee was able to discharge its primary onus to establish genuineness of the credits in question and thereafter onus was shifted upon the Assessing Officer to establish that the creditors were not genuine. The conclusion of the Assessing Officer regarding genuineness of the creditors in absence of proper enquiry cannot be held justified. The Assessing Officer was also not justified in invoking the provisions of section 41 of the Act as the same is applicable where any allowance of deduction had been made in the assessment for any year and subsequently there was an omission or cessation of the liability, the sum will become chargeable to tax in that previous year. In the present case, however, credit balances relate to the year under consideration itself. We thus find that the ld. CIT (Appeals)

was right in deleting the addition in question. The same is upheld. Ground No. 1 is accordingly rejected.

4. Ground No. 2 : It is regarding deletion of addition of Rs.3,47,104/- and Rs.4,59,670/-made in respect of certain entries appearing in the accounts of two parties i.e. Hyper Filtration and Prakash Mills Stores.

4.1 In support of the ground the ld. Sr. DR has basically placed reliance on the assessment order. The ld. AR has reiterated the submissions made before the ld. CIT (Appeals). He also tried to justify the first appellate order on the issue.

4.2 Having gone through the orders of the authorities below, we find that the Assessing Officer observed that one of the parties, in reply to the enquiry letters had stated that it had not made any transaction with the assessee company during the year under consideration. He accordingly came to the conclusion that credit in the books of accounts of the assessee against that party was not genuine and proceeded to add the same to the total income of the assessee. The contention of the assessee before the ld. CIT (Appeals) remained that the said credit

balance was related to an earlier year and was appearing as the opening balance in the accounts of that party in the books of the assessee. Confirmed profit of account showing the amount as the opening balance had been filed before the Assessing Officer. It was also submitted that payments to the parties had been made through banking channels in the subsequent year. In respect of second party, the Assessing Officer mentioned that in response to enquiry letters it had been intimated by that party that the credit balance with assessee was Rs.3,84,440/- whereas as per the books of accounts of the assessee, the credit balance was Rs.8,44,220/-. The Assessing Officer accordingly added the difference to the total income of the assessee. Before the ld. CIT (Appeals) the assessee submitted that the amount of Rs.3,84,550/- was actually the opening balance. The ld. CIT (Appeals) called for the remand report from the Assessing Officer on the above submissions of the assessee and in 2 remand reports furnished by the Assessing Officer there was no comments on the above submissions of the assessee. Under these circumstances, the ld. CIT (Appeals) observed that the addition in question was made by the Assessing Officer without any application of mind and without giving opportunity to the assessee to explain the perceived discrepancy. We thus hold that the ld. CIT

(Appeals) was justified in deleting the addition in question. The same is upheld. Ground no. 2 is accordingly rejected.

5. Ground No. 3 : It is regarding the deletion of addition of Rs.1,06,02,217/- on account of alleged inflated purchases made by the Assessing Officer.

5.1 In support of the ground, the ld. Sr. DR has placed reliance on the assessment order. The ld. AR, on the other hand, reiterated submissions made before the authorities below and tried to justify the first appellate order in this regard.

5.2 Having gone through the orders of the authorities below, we find that the Assessing Officer had made addition in question on the basis that enquiry letters in respect of the creditors had not been complied with by the parties nor the books of accounts supporting bills and vouchers were produced to show physical delivery of such sales. The Assessing Officer accordingly held that the purchases made from those parties cannot be treated as genuine. The Assessing Officer held that purchases of Rs.10,60,22,174/- shown made during the year

are inflated with a view to reduce the profits. He accordingly disallowed 10% of total purchases made during the year.

5.3 The ld. CIT (Appeals) did not agree with the findings of the Assessing Officer on the basis that the Assessing Officer at one hand was of the view that creditors were bogus, but at the same time, she wanted to hold that a portion of purchases relating to such creditors was also bogus. The ld. CIT (Appeals) observed further that the rationale of adopting a rate of 10% for this purpose can best be understood only by the Assessing Officer. The ld. CIT (Appeals) had noted further that the Assessing Officer in para No. 5.1 of the assessment order has observed that the purchases have been independently verified by three parties. The aggregate purchases from these three parties was of Rs.6,60,19,770/-. Thus, the Assessing Officer on one hand has accepted the genuineness of the purchase to this extent and on the other hand, she has proceeded to apply a hypothetical rate of 10% to the entire purchases to determine the disallowance. It is also coming out from para 5.2 of the first appellate order that in its first remand report the Assessing Officer had stated that enquiry letters were issued during the remand proceedings in 14 cases where assessee had claimed to have

made the purchases. However, confirmation of only one party was received. In the subsequent remand report it has been admitted by the Assessing Officer that confirmed copy of account of the parties had been provided and only in respect of purchases aggregating to Rs.84,30,220/- relating to three parties, the purchases had not been confirmed. As none of the said three parties figure in the list of 35 parties who credit balance was under examination during the assessment proceedings, the assessee had not obtained their confirmation. Copies of their account for the year under consideration and subsequent year were produced during the appellate proceedings and payments in respect of purchases were made from two of them were settled by banking channels and in one case by transfer entries. We find that the ld. CIT (Appeals) had sent the submission of the assessee for remand report of the Assessing Officer and after considering the same he has come to a conclusion on the issue, as discussed above to which we fully concur with as held even before the Tribunal. The ld. Sr. DR was not able to explain the rationale of adopting a rate of 10% to the entire purchases for the disallowance when the Assessing Officer was of the view that the creditors were bogus. The first appellate order is comprehensive and

reasoned one, hence we are not inclined to interfere therewith. The same is upheld. Ground No. 3 is accordingly rejected.

6. Ground No. 4 : The action of the ld. CIT (Appeals) in deleting the addition of Rs.1,57,45,043/- made on account of alleged bogus loans has been questioned.

6.1 In support of the ground, the ld. Sr. DR placed reliance on the assessment order. The ld. AR, on the other hand, tried to justify the first appellate order. The ld. AR referred to Page Nos. 363 to 396 of the paper book Vol.II bearing details of unsecured loans with names and addresses of the lenders, their PAN numbers, opening balances, fresh additions and repayment of loan, interest, TDS on interest and closing balance as outstanding on 31/3/2009 as well as confirmed copies of accounts of lenders along with their bank statements and Income Tax returns.

6.2 On perusal of the orders of the authorities below, we find that the Assessing Officer had noted that the outstanding unsecured loans at the end of the financial year was Rs.3,49,86,576/-. Out of this amount, Rs.1,92,51,513/- was related to old balances. The Assessing

Officer added the balance amount of Rs.1,57,45,043/- on account of bogus loan on the basis that assessee had failed to discharge the onus to prove the identity, creditworthiness of the parties and genuineness of the transactions. Before the ld. CIT (Appeals) the assessee contended that Assessing Officer had refused to accept the evidences which the assessee wanted to file before the Assessing Officer for establishing the genuineness of the loans. The assessee filed those evidences before the ld. CIT (Appeals) with request to admit the same under Rule 46A of I. T. Rules. The ld. CIT (Appeals) forwarded the submission of the assessee along with evidences to the Assessing Officer and after obtaining remand reports dated 30.01.2013 and 26.03.2013 and considering the same, the ld. CIT (Appeals) has given following findings on the issue :-

“ 6.2 In the assessment order, the Assessing Officer noted that the outstanding unsecured loans as at the end of the financial year was Rs 3,49,86,576. Out of the same, Rs 1,92,41,513 related to old balances. The Assessing Officer has stated that despite several opportunities, confirmations had not been filed for the fresh loans. The assessee has failed to discharge the onus to prove the identity, creditworthiness of the parties and genuineness of the transactions. Accordingly, addition was made to the total income of the assessee. In the submissions filed during the appeal proceedings, it was

submitted that evidences for establishing the genuineness of the loans had been sought to be filed during the assessment proceedings but was refused to be accepted by the AO. Therefore, the evidences were being filed a fresh and request was made for admission of such evidences under Rule 46A. In view of the manner in which this assessment was completed, discussed in detail in the preceding paragraphs, the additional evidence are admitted. The submission along with the evidences was forwarded to the AO. In the remand report dated 30.01.2013, it has been mentioned that the assessee was required to file confirmation of nine parties who had given unsecured loan during the year. However, confirmations are only filed in respect of two parties. In the rejoinder to the remand report, it has been submitted that complete details including confirmation of the parties from whom loans had been raised during the year under consideration have been filed at the appellate stage / remand proceedings. In the subsequent remand report dated 26.03.2013, it has been stated in the last paragraph that fresh loans had been raised from four parties during the year and that the assessee had filed confirmation "in respect of all the parties" but supporting document have been filed only in respect of two parties. If admittedly confirmations have been filed by these parties, merely because supporting documents (apparently such as bank statement of the party etc) had not been filed, no adverse inference can be drawn. It is for the AO to state why such confirmations are not acceptable to him. No such remarks have been made in the remand report. Further, during the subsequent appeal proceedings, it was pointed out that supporting documents had been actually furnished in cases of seven parties. Moreover, the perusal of the accounts of

these parties shows that the payments / loans have been received through banking channels. 'Under the circumstances, the assessee has clearly discharged the burden of proof by prima facie establishing the genuineness of the loans. Unless, the Assessing Officer brings any material to the contrary, the genuineness of such loans cannot be doubted. No such material has been brought on record, either during the assessment or during the remand proceedings. In this context, reference is made to the decision of the honourable Supreme Court of India in the case of Orissa Corporation (P) Ltd (159 ITR 78). In this case, it has been held that where an assessee had furnished names and addresses of the creditors and it was also in the knowledge of the Department that such creditors were income tax assesseees, the onus lies on the revenue to find out the creditworthiness of such creditors. The assessee would be treated as having discharged the burden and such a conclusion could not be said to be unreasonable, perverse or based on no evidence. References also made to the decision of the Delhi High Court in the case of Oasis Hospitalies (333 ITR 119) which held that when money is received by check and is transmitted through banking or other indisputable channels, the genuineness of the transaction would be proved. In view of the above, the Assessing Officer is directed to delete the addition of Rs.1,57,45,043. "

6.3 We find that the ld. CIT (Appeals) has given relief considering the remand reports of the Assessing Officer wherein it was reported that during the year fresh loan was raised from four parties and the

assessee had filed confirmation in respect of all the parties, but supporting documents were filed only in respect of two parties. The ld. CIT (Appeals) was of the view that admittedly when confirmations were filed by these parties, merely because supporting documents, such as bank statement of the parties etc., had not been filed, no adverse inference can be drawn. The Assessing Officer had not commented as to why the confirmations containing the details of the creditors filed by the assessee were not acceptable to him. It is an established position of law that in case of creditors, the initial onus lies upon the assessee to establish identity and creditworthiness of the parties and genuineness of the transaction. If initial onus is discharged by the assessee, by filing primary documents to establish the genuineness of the claim then onus shifts upon the Assessing Officer to disprove those evidences after examining the same. In absence of such efforts, addition made by the Assessing Officer cannot be sustained. The ld. CIT (Appeals) has thus rightly deleted the addition, with the observations discussed by him in the aforesaid referred paragraph. The same is upheld.

7. Ground No. 5 : In this ground the Revenue has questioned action of the ld. CIT (Appeals) in admitting the additional evidences in

violation of principles laid down under Rule 46A of I. T. Rules, 1962. In support of this ground, the ld. Sr. DR reiterated the contents of the ground. The ld. AR, on the other hand, submitted that it is not clear as to what additional evidence allegedly filed by the assessee before the ld. CIT (Appeals) is being objected to. From the application under Rule 46A filed before the ld. CIT (Appeals), a copy whereof has been made available at page Nos. 355 and 356 of the paper book Vol.I, it is clear that the assessee was prevented by sufficient cause from producing such additional evidence during the course of assessment proceedings, relevant to the grounds of appeal. When all the documents filed before the ld. CIT (Appeals) along with written submissions were forwarded to the Assessing Officer for remand report, on which the Assessing Officer did submit remand reports and the assessee's rejoinder to such remand report was also forwarded to Assessing Officer on which he provided his further comments, it could not be said that the ld. CIT (Appeals) had not given an opportunity to the Assessing Officer before admitting fresh evidence, if any. In support, he placed reliance on the decision of Delhi Bench of the Tribunal in the case of ACIT Vs. Chitra Prakashan (India) Pvt. Ltd., ITA. 5097/Del/2012 (assessment year 2009-10) pronounced on 30.10.2015.

7.1 Having gone through the first appellate order on the issue, we find substance in the above submission of the ld. AR that Assessing Officer was given sufficient opportunity by the ld. CIT (Appeals) to give his comments on the documents filed along with the written submissions by the assessee and assessee was also given opportunity to react with those remand reports and the rejoinder thereto filed by the assessee was also forwarded to the Assessing Officer for his report and thereafter only the ld. CIT (Appeals) has admitted those additional evidences filed before him. We thus do not find any violation of principles laid down under Rule 46A of I. T. Rules, 1962, as alleged by the Revenue in the ground under consideration. Ground No. 5 is accordingly rejected.

8. In result, appeal is dismissed.

9. The order is pronounced in the Open Court on : 31st July, 2017.

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(I. C. SUDHIR)
JUDICIAL MEMBER

Dated : the 31st July, 2017.

MEHTA

Copy of the Order forwarded to:-

1. Appellant;
2. Respondent;
3. CIT;
4. CIT (Appeals);
5. DR, ITAT, ND.

BY ORDER

ASSISTANT REGISTRAR

	Date
Draft dictated on	31.07.2017
Draft placed before author	31.07.2017
Draft proposed & placed before the second member	
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Approved Draft comes to the Sr.PS/PS	
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File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	

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