

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4108/MUM/2016  
Assessment Year: 2011-12**

ITO-20(1)(2)  
1<sup>st</sup> floor, R. No. 119,  
Piramal Chambers,  
Lalbaug, Parel,  
Mumbai-400012

Vs.

Aslam Kasam Merchant 85,  
Victoria Road Byculla,  
Mumbai-400027.

**Appellant**

**PAN No. AEFPM52720  
Respondent**

Revenue by : Ms. Pooja Swaroop, DR  
Assessee by : Mr. Subhash S. Shetty, AR

Date of Hearing : 05/04/2018  
Date of pronouncement : 26/04/2018.

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the Revenue. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-32, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal raised by the Revenue read as under:

1. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in admitting additional evidence of Rule 46A notwithstanding the facts

that the assessee has failed to submit the relevant details at the time of the assessment proceedings.

2. The appellant prays that the order of the CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored.

3. During the course of assessment proceedings, in response to a query raised by the Assessing Officer (AO), the assessee furnished the following details of creditors outstanding from Financial Year (FY) 2008-09:

	Name	Amount (Rs.)
1.	Fathima Timbers	10,00,000
2.	Yenepoya Moideen Kunhi & Co. (Mangalore)	20,00,000
	<b>Total</b>	<b>30,00,000</b>

The AO observed that the assessee had not made any transaction with the above parties during the FY 2008-09 and 2009-10. During the course of assessment proceedings, vide order sheet noting dated 13.03.2014, he asked the assessee to show cause as to why the creditors outstanding for more than three years shall not be added to the total income. The assessee neither produced any proof nor filed any explanation in this regard. Therefore, the AO made an addition of Rs.30,00,000/- as ceased liability u/s 41(1) of the Act.

Further, the AO observed that the assessee had shown unsecured loans of Rs.38,90,000/- in the balance sheet. In response to a query raised by the AO the assessee filed a list of parties from whom unsecured loans were taken. The AO issued notice u/s 133(6) to the

parties in order to verify their identity and creditworthiness. The AO did not receive any reply from them. Further, the assessee failed to submit a confirmation from the following parties:

1.	Bimal M Seth	Rs.1,40,000
2.	Narendra D. Seth	Rs.1,50,000
3.	Dhiraj N. Seth	Rs.50,000
4.	Kanchanben J. Doshi	Rs.10,00,000
5.	Mahesh J. Doshi (HUF))	Rs.6,00,000
6.	Surendra J. Doshi (HUF)	Rs.6,00,000
7.	International Steel Furniture	Rs.1,50,000
	<b>Total</b>	<b>Rs.26,90,000</b>

In absence of details and proof/confirmations, the AO made an addition of Rs.26,90,000/- as unexplained unsecured loans.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). At para 5.1 and 5.2 of his order dated 16.03.2016, the Ld. CIT(A) held :

“5.1 Ground 1: This is against the action of the AO in adding Rs.30,00,000/- on account of cessation of liabilities. The AO noticed that the appellant had payable to two parties as discussed above. He also noticed that the appellant has not transacted with these parties and has not paid them during the year. The AO therefore added the sums payable to these two parties totalling to Rs.30,00,000/- u/s 41(1). Before me, the appellant stated that the amounts of Rs.10,00,000/- and Rs.20,00,000/- due to Fathima Traders and Yenepoya

Moideen Kunhi have been repaid on 31/03/2015 and Dec 2015 onwards respectively. Towards this end he has produced the bank statement and confirmations of receipt from these two parties. I find that the sum of Rs.10,00,000/- has been paid to Fathima Traders on 31/03/2015 through RTGS and is duly reflected in the bank account of the appellant. Fathima Traders has also confirmed the receipt of this amount and has squared off the account of the appellant in its books. Similarly, in the case of Yenepoya Moideen Kunhi, I find that the appellant has paid the sum of Rs.20,00,000/- as Rs.5,00,000/- through cheque no. 135226 on 10/12/2015, Rs.5,00,000/- cheque no. 135232 on 20/12/2015, Rs.6,00,000/- cheque no 135250 on 10/01/2016 and Rs.4,00,000/- through RTGS on 22/02/2016. In the light of these facts, the action of the AO in adding these amounts as cessation of liability u/s 41(1) is unwarranted. I may also state that in this case, there is no benefit obtained by the appellant through remission or cessation of liability towards these trade payables to 2 parties. The evidence produced before me indicates that the 2 parties have in fact been chasing the appellant for the outstanding payments. The AO has not examined this at all and has simply held that merely because the appellant has not transacted with these 2 parties in the earlier two years, the liability towards them has ceased. I am afraid I cannot agree with the AO on the invocation of sec 41(1) itself. I therefore delete the addition of Rs30,00,000/- made by the AO. Ground 1 is allowed.

5.2 Ground 2: This is against the action of the AO in adding Rs.26,90,000/- on account of unsecured loans. As regards this issue is concerned, I find that the appellant has been able to produce the confirmations from the various parties before me. Most importantly, these loans added by the AO are actually opening balances as on 01/04/2010 and are not fresh loans availed during the year. On this fact alone the addition made by the AO cannot survive. In any case, the confirmations have been filed before me, I therefore delete the addition of Rs.26,90,000/- made by the AO solely on the grounds that this

amount represents the opening balances as on 01.04.2010 and not fresh loans during the year. Ground 2 is allowed.”

5. Before us, the Ld. DR submits that the assessee filed for the first time before the Ld. CIT(A) (i) the bank statement and confirmations of receipts from Fathima Timbers and Yenepoya Moideen Kunhi & Co. (Mangalore) and (ii) confirmations of loan creditors. On the basis of the above documents, the Ld. CIT(A) has deduced a conclusion. It is stated that the above documents were not filed before the AO. Thus the Ld. DR contends that the Ld. CIT(A) has violated the provisions of Rule 46A(3) by taking into account the above evidence filed by the assessee without allowing the AO a reasonable opportunity to examine the evidence.

6. On the other hand, the Ld. counsel of the assessee supports the order passed by the Ld. CIT(A).

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for decisions are given below.

In the instant case, the bank statement and confirmation of receipts from Fathima Timbers and Yenepoya Moideen Kunhi & Co. (Mangalore) were not produced by the assessee before the AO. Also confirmations from the loan creditors were not filed before the AO. This is evident from the assessment order. However, the assessee filed the above documents before the Ld. CIT(A). We find that the Ld. CIT(A) has drawn a finding on the basis of the above documents. As per Rule 46A of the Income Tax Rules 1962, the CIT(A) has to record his reasons for admitting the additional evidence and also allow to the AO an opportunity of examining the evidence or document or cross-examine

the witness produced by the appellant and also to produce new evidence on his side in rebuttal of the additional evidence produced by the appellant.

Thus, the Ld. CIT(A) has violated the provisions contained in Rule 46A(3) of the Rules.

In view of the above, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to make a *de novo* order, after giving a reasonable opportunity of being heard to the assessee. We direct the assessee to file the relevant documents/evidence before the AO.

8. In the result the appeal is allowed for statistical purposes.

**Order pronounced in the open Court on 26/04/2018.**

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 26/04/2018

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**