

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH ' A '**

**BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

I.T. A. No.486/Bang/2016  
(Assessment Year : 2006-07)

Asst. Commissioner of Income Tax,  
Circle 6 (2)(1), Bangalore.

.... Appellant.

Vs.

Smt. H.R. Vishala,  
Prop. Usha Timbers,  
No.14, 1<sup>st</sup> Main, West of Chord Road,  
Bangalore.

..... Respondent.

I.T. A. No.772/Bang/2016  
(Assessment Year : 2006-07)

Smt. H.R. Vishala,  
Prop. Usha Timbers, West of Chord Road,  
Bangalore.

.... Appellant.

Vs.

Income Tax Officer,  
Ward 8(3), Bangalore.

.....Respondent.

Assessee By : Shri B.R. Ramesh, JCIT (D.R)  
Revenue By : Shri H. Guruswamy, ITP.

Date of Hearing : 26.04.2018.

Date of Pronouncement : 02.05.2018.

**O R D E R****Per Shri Jason P Boaz, A.M. :**

These are cross appeals by the assessee and revenue, directed against the order of the Commissioner of Income Tax (Appeals) – 6, Bangalore dt.27.1.2016 for Assessment Year 2006-07.

2. Briefly stated, the fact software the case are as under :

2.1 The assessee, Propx. M/s. Usha Timbers, filed return of income for Assessment Year 2006-07 on 31.10.2006 declaring income of Rs.5,00,540. Pursuant to a survey under Section 133A of the Income Tax Act, 1961 (in short 'the Act') conducted at the assessee's premises on 14.3.2007, the case was taken up for scrutiny. The assessment was concluded under Section 143(3) of the Act vide order dt.29.12.2008 wherein the assessee's income was determined at Rs.62,46,840 in view of the following additions / disallowances :-

- |   |               |
|---|---------------|
| (i) Addition out of advances received against sales : | Rs.31,45,000. |
| (ii) Disallowance u/s.40A(3) :                        | Rs.1,10,032.  |
| (iii) Telephone charges :                             | Rs.32,365.    |
| (iv) Plaining charges :                               | Rs.1,20,000.  |
| (v) Sundry Creditors u/s.68 of the Act :              | Rs.23,39,000. |

2.2 Aggrieved by the order of assessment dt.29.12.2008 for Assessment Year 2006-07, the assessee filed an appeal before the CIT (Appeals) – 6, Bangalore. The learned CIT (Appeals) disposed off the

assessee's appeal vide the impugned order dt.27.1.2016, allowing the assessee partial relief.

3. Both the assessee and revenue, being aggrieved by the order of the CIT (Appeals) – 6, Bangalore dt.27.1.2016, have filed cross appeals. These appeals will be disposed off in seriatum hereunder.

**Revenue's Appeal in ITA No.486/Bang/2016 for A.Y. 2006-07.**

4. When the appeal was taken up for hearing Ld. Counsel for the Assessee pointed out to the Ld. DR that tax effect involved in this appeal was less than Rs.10 lakhs for the impugned assessment year as the addition deleted by the CIT (Appeals) which is the subject matter of appeal is an addition amounting to Rs.31,45,000 and therefore by virtue of CBDT Circular No.21/2015, dt.10.12.2015, is below the limits laid down for filing appeals before this Tribunal.

5. Ld. DR has not disputed the tax effect being below Rs.10 lakhs in the issue involved in the revenue's appeal.

6. We have perused the impugned order and heard the contentions. The relevant paras 3, 4 & 10 of the CBDT Circular No.21/2015 (supra) are extracted hereunder :

“3. Henceforth, appeals/SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:—

<i>S.No.</i>	<i>Appeals in Income-tax matters</i>	<i>Monetary Limit (in Rs.)</i>
1.	Before Appellate Tribunal	10,00,000/-

2.	Before High Court	20,00,000/-
3.	Before Supreme Court	25,00,000/-

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case

4. *For this purpose, "tax effect" means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as "disputed issues"). However the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.*

10. *This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/Tribunals. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed."*

7. The tax effect on the issues that is disputed by the Revenue is less than Rs.10 lakhs for the impugned assessment year 2006-07. Constitutional validity of any provisions of the Act or Rules or the legality or vires of any Board order, Notification, Instruction or Circular was not

an issue before the lower authorities. The addition giving rise to the appeals does not relate to any undisclosed foreign assets / bank accounts. Thus we find that CBDT's Circular No.21/ 2015 (supra) is squarely applicable in this case. In view of the tax effect of the issue in appeal, i.e. addition of Rs.31,45,000, is less than Rs.10 lakhs and in view of CBDT Circular No.21/2015 dt.10.12.2015, Revenue's appeal is not maintainable and is dismissed in limine.

8. In the result, the appeal of Revenue is dismissed as not maintainable.

**Assessee's Appeal in ITA No.772/Bang/2016 – A.Y.2006-07.**

9.1 In this appeal, the assessee has raised the following grounds :

1. The Appellate order dated 27-01-2016 passed by the Ld. CIT(A),, Bangalore-6, is opposed to law, facts of the case in so far as it is against to the Appellant.
2. The Ld. CIT(A),Bangalore-6 has erred in confirming the addition of Rs. 5,75,000/- payable to Smt. B.C. Veena from whom the amount was borrowed in the year 2002-03 and the same was shown as credit liability payable as on 31-03-2006.
3. The Ld. CIT(A),, Bangalore-6 ought not to have held that the credit brought forward credit liability of Rs. 5,75,000/- was no longer payable without appreciating the fact that there was neither any remission or cessation of the liability .

5. The appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.

For these and other grounds that may be urged at the time of hearing, it is respectfully prayed that your Hon'ble Authority be pleased to pass orders deleting the additions of Rs. 5,75,00/- confirmed by the Learned CIT(A), Bangalore-6 and further be pleased to pass such other orders granting such other relief that your Hon'ble Authority may deem fit in the interest of justice and equity.

9.2.1 The only issue of dispute for consideration before us, as per the grounds raised ((supra), is the addition of an amount of Rs.5,75,000 being a liability payable to Smt. B.C. Veena. According to the learned Authorised Representative for the assessee, the assessee had taken the loan from the creditor Smt. B.C. Veena in the year 2002-03 and the same was reflected as payable in the assessee's Balance Sheet in the year under consideration; a fact acknowledged and noted by the Assessing Officer at page 4 of the order of assessment. In these factual circumstances, it is contended that both the Assessing Officer and the learned CIT (Appeals) erred in holding that the said liability was no longer payable and bringing the same to tax in her hands.

9.2.2 The learned Authorised Representative submitted that the aforesaid amount of Rs.5,75,000 credit liability payable to Smt. B.C. Veena as reflected in the assessee's books of account was an enforceable claim since there was neither remission or cessation of this liability in Assessment Year 2006-07. In support of this proposition, the learned

Authorised Representative placed reliance on the decision of the Hon'ble Apex Court in the case of CIT Vs. Sugauli Sugar Works Pvt. Ltd. (1998) 236 ITR 518 (SC). It is contended that since the creditor has neither remitted this liability nor was there cessation as the liability was still payable by the assessee as on 31.3.2006, the authorities below were not justified in holding that the said credit liability was not payable.

9.2.2 The learned Authorised Representative submitted that as per section 68 of the Act, credit found in the books of account maintained by the assessee would be deemed to be the income of that previous year, if the assessee either fails to offer any explanation or the explanation offered by the assessee was not found to be satisfactory. It is contended that in the case on hand the Assessing Officer at page 4 of the impugned order of assessment has admitted to the fact that the assessee had taken the loan from Smt. B.C. Veena in the F.Y. 2002-03 relevant to the Assessment Year 2003-04. Therefore, if the explanation of the assessee was not found to be satisfactory, then the said addition under Section 68 ought to have been considered for Assessment Year 2003-04 and not for Assessment Year 2006-07, as has been done, since during the year this period the liability payable to the sundry creditor, Smt.B.C. Veena was only a brought forward outstanding balance payable and not a credit that was found recorded in the year under consideration. In this context, the learned Authorised Representative for the assessee placed reliance on the decision of Sri Baladin Ram V CIT (1969) 71 ITR 67 (SC) . Reliance was also placed on the decision of the Hon'ble Karnataka High Court in

the case of CIT V N.L Satyanarayana Setty (1981) 129 ITR 226 (Kar) to support the contention that since the assessee has admittedly taken the loan from Smt. B.C. Veena in the F.Y. 2002-03, the said amount cannot be exigible to tax in the assessee's hands under Section 68 of the Act for Assessment Year 2006-07.

9.3 Per contra, the learned Departmental Representative placed reliance on the findings rendered by the authorities below.

9.4.1 We have heard the rival contentions, perused and carefully considered the material on record, including the judicial pronouncements cited. The facts of the matter, that emerge from a perusal of the material on record, establish that admittedly there is no dispute with respect to the fact that the assessee took a loan of Rs.5,75,000 from Smt. B.C. Veena in the F.Y. 2002-03 relevant to Assessment Year 2003-04 and the same appeared in the assessee's books of account / Balance Sheet as an outstanding carry forward sundry creditor balance payable to Smt. B.C. Veena as on 31.3.2006. These facts are not disputed by the authorities below.

9.4.2 In these factual circumstances, as laid out above, we find merit in the contentions of the assessee that, the sundry creditor carry forward balance of Rs.5,75,000 payable to Smt. B.C. Veena as on 31.3.2006 as per

the assessee's books of account was an enforceable claim since there was neither remission nor cessation of this liability in the year under consideration i.e. A.Y. 2006-07. The views to the contrary held by the Assessing Officer / CIT (Appeals) in the impugned orders, are both unjustified and untenable in the light of decisions of the Hon'ble Apex Court in CIT V Sugauli Sugar Works Pvt. Ltd. (1999) 236 ITR 518 (SC) and Baladin Ram V CIT (1969) 71 ITR 67.

9.4.3 In the impugned order of assessment for Assessment Year 2006-07, at page 6 thereof, just prior to the computation of the assessee's total income, the Assessing Officer holding that the assessee has not discharged its onus of proving the credits, treated the same as unexplained cash credits and brought, inter alia, the loan amount of Rs.5,75,000 payable to Smt. B.C.Veena to tax in the assessee's hands under Section 68 of the Act. On a plain reading of Sec. 68 of the Act, it is clear that any credit found in the books of account maintained by the assessee would be deemed to be income of that previous year, if the assessee either fails to offer any explanation or the explanation offered by the assessee was not found to be satisfactory. As already mentioned earlier, there is no dispute by the authorities below that this loan was taken by the assessee from Smt. B.C. Veena in the F.Y. 2002-03 relevant to Assessment Year 2003-04. Therefore, in our considered view, the authorities below erred in treating this amount of Rs.5.75 lakhs, an unexplained cash credit under Section 68 of the Act exigible to tax in the year under consideration i.e. 2006-07, when the same was actually

brought forward outstanding sundry creditor balance payable to Smt. B.C. Veena and not a credit pertaining to the year under consideration. In coming to this view, we drew support from the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. N.L. Satyanarayana Setty (supra).

9.4.4 In the light of the discussions of the factual and legal matrix of the case, as discussed in para 9.1 to 9.4.3 of this order (supra) and respectfully following the aforesaid judicial pronouncements of the Hon'ble Apex Court (supra) and the Hon'ble Karnataka High Court (supra), we find merit in the contentions of the assessee that the authorities below erred in holding that the outstanding loan of Rs.5.75 lakhs payable by the assessee to Smt. B.C. Veena, as reflected in the books of account as on 31.3.2006, was exigible to tax in the assessee's hand as unexplained cash credit under Section 68 of the Act in Assessment Year 2006-07. We hold that in the case on hand, on the issue before us, there was neither any cessation / remission of the said liability for invocation of Sec. 41(1) of the Act nor could the same be held as unexplained cash credit under Section 68 of the Act to be treated as income of the assessee exigible to tax in the year under consideration. We therefore delete the addition of Rs.5,75,000 made by the Assessing Officer under Section 68 of the Act. Consequently, the grounds raised by the assessee in this regard are allowed.

10. In the result, the assessee's appeal for Assessment Year 2006-07 is allowed.

11. To sum up, the assessee's appeal for Assessment Year 2006-07 is allowed and Revenue's cross appeal is dismissed.

Order pronounced in the open court on the 2nd day of May,2018.

**Sd/-**  
**(N.V. VASUDEVAN)**  
**Judicial Member**

**Sd/-**  
**(JASON P BOAZ)**  
**Accountant Member**

Bangalore,  
Dt.02.05.2018.

\*Reddy gp

Copy to :

1	Appellant	4	CIT(A)
2	Respondent	5	DR. ITAT, Bangalore
3	CIT	6	Guard File

Senior Private Secretary  
Income Tax Appellate Tribunal  
Bangalore.