

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.241(Asr)/2016
Assessment Year:2006-07

M/s Asian Cement
Vill:- Tipri,
H.O.-Ware House, Pathankot
PAN:AAAHF8076C
(Appellant)

Vs. Addl. CIT
Pathankot

(Respondent)

Appellant by: Sh. P.N.Arora (Ld. Adv.)
Respondent by: Smt. Balwinder Kaur (Ld. DR)

Date of hearing: 30.01.2018
Date of pronouncement: 27.04.2018

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee/Appellant, on feeling aggrieved against the order dated 26.02.2016 passed by the Ld. CIT(A)-2, Amritsar, u/s 250(6) of the Income Tax Act, 1961 (hereinafter called as 'the Act').

2. The following grounds of appeal raised by the Assessee.

"1. That the Ld. CIT(A) has grossly erred in upholding the completion of Best Judgment Assessment which is against the law and the fact as the Ld. AO had no material in his possession to which such an assessment which was made in undue haste. The assessment was finalized at least nine months before the same was getting time barred.

2. That no reasonable opportunity has been provided to the assessee by the Ld. AO and the assessee is prevented by reasonable cause from providing the necessary information.

3. That the Ld. CIT(A) has wrongly sustained the addition of Rs.4,19,990/- on account of fictitious debtors namely M/s Pankaj Cement Store, M/s Sharma Traders, M/s Supreme Enterprises and M/s Varinder Dogra Power Project as the assessee had furnished complete confirmed copies of accounts of person who are regular income tax assessee and the assessee had discharged his onus by providing the complete addresses.

4. That the Ld. CIT(A) has wrongly sustained addition of unconfirmed creditors namely M/s Arora Packers amounting Rs.81,730/- and Hakim Rai Labh Singh amounting Rs.59,594/- when there are confirmed copies of account were available on records.

5. That the Ld. CIT(A) has wrongly sustained addition of Rs.91,511/- and Rs.1,04,511/- on account of M/s RKM Foods without considering the plausible explanation given by the assessee.

6. That the Ld. CIT(A) has grossly erred in not allowing deduction u/s 80IC claimed by the assessee which is against the law and the fact as the same deserves to be allowed

7. That it is prayed that the sustained addition of Rs.4,19,990/-, Rs.81,730/-, Rs.59,594/-, Rs.91,511/- and Rs.1,04,511/- and deduction u/s 80IC may please be deleted.”

3. The brief facts of the case as per the assessment order are that the that the assessee is running a cement manufacturing unit and declared the sales of Rs.1,26,41,878/- and business receipts of Rs.12,51,969/- on account of handling charges. The assessee had declared gross profit of Rs.25,63,775/- on the sale proceeds of Rs.1,26,41,878/- declared a G.P. Rate of 10.37% as against the G P rate of 5.11% in the immediately preceding year. The assessee was asked to furnish ledger account with complete names and addresses of sundry creditors and debtors shown in the balance sheet. However, the assessee did not furnish

the same. The AO referred to the audit report in form 3CB accompanying the return of income, in which the auditor has given remarks that "sundry debtors and creditors balance remain unconfirmed", therefore the AO asked the assessee to furnish the addresses of the sundry debtors and creditors as appearing in the books of account along with their copies of accounts. However, no reply was furnished by the assessee nor the books of account were produced. Accordingly, the AO treated the sundry debtors of Rs.626,026/- (out of sundry debtors shown at Rs.875,498/-) and sundry creditors amounting to Rs.359,304/- out of sundry creditors shown at Rs.546,296/- as fictitious and made the addition of Rs.626,026/- and Rs.359,304/- respectively.

4. The said assessment order was challenged by the assessee before the Ld. CIT(A), who while deleting the part, sustained addition to the extent of Rs.4,19,990/- on account of so called fictitious sundry debtors namely Sh. Pankaj Cement Store, M/s. Sharma Traders, M/s. Supreme Enterprises and Varinder Dogra Power Project.

Further, sustained addition of Rs.81,730/- and Rs.59,594/- in respect of unconfirmed creditors namely M/s Arora Packers and Sh. Hakin Rai Labh Singh respectively.

Further sustained addition of Rs.91,511/- and Rs.1,04,511/- on account of M/s RKM Foods and further disallowed the deduction u/s 80IC of the Act.

5. The assessee challenged the order passed by the Ld. CIT(A) which is impugned herein in respect of sustaining the addition of Rs.4,19,990/- qua Sh. Pankaj Cement Store, M/s. Sharma Traders, M/s. Supreme Enterprises and Varinder Dogra Power Project. It was submitted by the Ld. Counsel that no addition can be made on account of so-called fictitious sundry debtors because all these are trade debtors and the department had accepted the sales as genuine. There was no reason for making the addition on account of sundry debtors which reflects from the copies of accounts of the parties duly been filed before the Revenue Authorities below as well as available in the Paper Book and from the perusal of same, it clearly reflects that the sales were made to these parties and the sales have duly been accepted by the Department.

Further, it was also submitted that merely because there is no opening balance and non-providing PAN, should not be reasons for making the addition and in respect of Supreme Enterprises, the assessee has not only filed a Suit against him but also filed a Criminal Complaint u/s 138 of Negotiable Instruments Act. On the aforesaid reason, there was no justification in confirming the addition of Rs.4,19,990/- by the Ld. CIT(A) and hence, liable to be deleted.

In respect of sustaining the addition of Rs.1,41,324 qua Arora Packers and Hakim Rai Labh Singh, it is observed by the Ld. CIT(A) that the creditors have not brought forward balance

from the last year and the PAN and address of the said creditors were not provided. In this respect, it was submitted that Arora Packers had confirmed the said balance in the books of accounts of the appellant which reflects from the Paper Book page 12 to 17.

It was further argued that this is a trade balance and merely because PAN was not provided, is not a sufficient reason for making the said addition, hence, the addition of Rs.81,730/- in respect of Arora Packers is not at all called for.

Similarly, the copy of account of Hakim Rai Labh Singh was filed and the appellant had also confirmed the copy of account in his own books and in that eventuality there is no justification in sustaining the addition of the aforesaid amount of Rs.1,41,324.

Further, in respect of addition of Rs.1,04,511/- which was confirmed by the Ld. CIT(A) on account of M/s R.K.M. Foods. It was submitted by the Ld. Counsel that M/s R.K.M. Foods has two units and the firm has furnished copy of account in respect of Unit-II only but the AO made the addition without confronting to the assessee. The complete copies of account were duly filed where all credit entries are bank entries and those were fully explained. Thus, this addition sustained by the Worthy CIT(A) is totally unjustified, uncalled for and unwarranted to the facts and circumstances of the case.

In respect of disallowing the deduction u/s 80IB of the Act, it was submitted by the Ld. AR that assessee running a manufacturing unit of cement and claimed deduction u/s 80IB of the IT Act, 1961. The assessee meets all the conditions prescribed u/s 80IB for claiming the deduction. It is a small scale industry registered in the state of Himachal Pradesh which reflects from the application filed before the Govt. of Himachal Pradesh in respect of permanent registration as small scale industries.

6. On the contrary, the Ld. DR relied upon the order passed by the Ld. CIT(A).

7. We have gone through with the facts and circumstances of the case. In respect of ground No.1, it was submitted by the Ld. AR that the assessee is manufacturing cement and its books of account are audited and sales and purchase are not doubted, but, some of the sundry debtors have been sustained as bogus debtors by the Ld. CIT(A), however, we realized that while sustaining the addition of Rs.4,19,990/- on account of fictitious debtors namely Sh. Pankaj Cement StoreM/s. Sharma Traders, M/s. Supreme Enterprises and Varinder Dogra Power Project, the Ld. CIT(A) observed that the appellant has not furnished the PAN, addresses of the debtor as well as the confirmation of audit balance in the books of the appellant from the debtors concern, and in that eventuality the debt balance in the account of debtor remained unconfirmed/unverified.

According to us, in the instant case, the books of account are audited and sales and purchases are not doubted. Even if the sundry debtors have not confirmed balances in their account, then also the Asseeee would only a loser, therefore in our considered opinion, addition can not be sustained on account of sundry debtors, hence stands deleted.

7.1 In respect of sustaining the addition of unconfirmed creditors namely M/s Arora Packers amounting to Rs.81,730/- and Hakim Rai Labh Singh, amounting to Rs.59,594/- it was observed by the Ld. CIT(A) that the creditors have not brought forward balances from the last year and the PAN and the addresses of the said creditors were not provided. However, the said reasoning is contrary to the facts because, it reflects from the PB page 12 to 17, whereby the said balances have been confirmed in the books of the account of the appellant and in respect of Hakim Rai Labh Singh as well, the appellant has also confirmed as closing balance of Rs.59,594.71 (refer page No.80 of the Paper Book).

On the aforesaid reasoning, the addition of Rs.141,324 (Rs.81730 qua Arora Packers and Rs.59,594 qua Hakim Rai Labh Singh) cannot be sustained on the reasoning given by the CIT(A), however, for just decision of case, so as to enable proper verification of the trade balances, we feel it appropriate to remand back the issue under consideration to the file of Assessing Officer to decide afresh, in view of the submissions

made by the Ld. AR and the observation made by us in the order.

7.2 Next issue i.e. Ground No.5 of the appeal relates to the sustaining the addition of Rs.91,511/- and Rs.1,04,511/- on account of M/s R.K. Foods, as it was observed by the Ld. CIT(A) that although the appellant has confirmed credit balance in the account of R.K.M Foods in the books of account of the appellant as on 31.03.2006 which has been duly confirmed in its own books of account for Financial Year: 2005-06, however, the appellant has not furnished the PAN, Address and confirmation of credit balance in the books of the appellant from the creditor concern.

We observe that while sustaining the addition of Rs.91,511 in respect of RKM Foods, the credit balance in the account of this party in the books of account of the appellant as on 31st March, 2006 was Rs.91,511/- which has been duly confirmed by the appellant in his books of account for F.Y.: 2005-06. In respect of addition of Rs.1,04,511/- qua difference in balances as on 31-03-2006, in the accounts of the assessee and the parties . As it is the case of the Assessee that M/s R.K.M. Foods has two units and the firm has furnished copy of account in respect of Unit-II only but the AO made the addition without confronting to the assessee. The complete copies of account were duly filed where all credit entries are bank entries and those were fully explained. Considering the peculiar facts and circumstances, we set aside the addition of Rs.91,511/- and Rs.1,04,511/- and for the just

decision of the case, remand the issue under consideration also to the file of the Ld. Assessing Officer to decide afresh while taking into consideration the submissions of the Assessee and our observations made above.

7.3 Last grounds relates to not allowing deduction u/s 80IB of the Act as claimed by the assessee. We have again revisited the orders passed by the authorities below as it reflects from the order passed by the Ld. CIT(A) whereby he has observed that the assessee is an auditable one and audit report in Form 10CCB was filed along with the return of income and books of account of the Assessee were subjected to audit as required u/s 44AB of the Act. Considering the facts mentioned above, we feel it appropriate to remand the issue under consideration also to the file of the Ld. AO, who shall consider the Assessee's claim in accordance with law.

8. In the result, the appeal of the assessee is partly allowed and remaining allowed for statistical purposes.

Order pronounced in the open Court on 27.04.2018.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated:27.04.2018

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Copy of the order forwarded to:

- (1) Asian Cement, Pathankot
- (2) The Add. CIT, Pathankot
- (3) The CIT(A)-2, Amritsar
- (4) The CIT concerned.
- (5) The SR DR, I.T.A.T., Amritsar

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By order