

**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. 5592/MUM/2011
Assessment Year: 2007-08**

M/s Vesta Building
Products P. Ltd. 3rd floor,
Nandavan Kala Nagar,
Bandra (E), Mumbai-
400051.

PAN No. AABCV8118L

Appellant

DCIT-10(1)
Mumbai.

Vs.

Respondent

Assessee by : Mr. M. Subramanian, AR
Revenue by : Mr. Rajesh Yadav, DR

Date of Hearing : 10/04/2018
Date of pronouncement: 27/06/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2007-08. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-29, 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 appeals read as under:

1. On the facts and in the circumstances of the case the AO erred in disallowing bad debts of Rs.4,00,872/- and further CIT(A) erred in confirming the said disallowance of Rs.4,00,872/-.
2. The AO further erred on the facts and in the circumstances of the case in making additions of Rs.94,72,889/- as unexplained cash credit u/s 68 and the CIT(A) further erred in confirming the said addition on appeal.
3. The AO erred in disallowing Rs.1,05,852/- out of salary paid being in excess over last year.
4. The AO further erred on the facts and in the circumstances of case in making disallowance u/s 40(a)(ia) of the Act.

3. We begin with the 1st ground of appeal. The assessee-company is engaged in the business of manufacturing, exporting, importing, processing and dealing in building materials. During the course of assessment proceedings, the Assessing Officer (AO) found that an amount of Rs.4,00,872/- has been debited in the profit and loss account, as accounts written off. In this regard, the assessee filed before the AO a list of names and amounts without explaining the nature of the said amounts and the reasons for writing off the same. The AO came to a finding that the assessee failed to satisfy the conditions laid down u/s 36(2) as it failed to prove that the amount was ever included in its income and also that the said amount, if in the nature of debt, was actually written off in the books. Therefore, the AO made a disallowance of Rs.4,00,872/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) has stated at para 3.3 of his order

dated 03.09.2010 that even in the appellate proceedings before him, the assessee failed to file the details called for by the AO. Therefore, the Ld. CIT(A) agreed with the reasons given by the AO and confirmed the disallowance of Rs.4,00,872/- made by the AO.

5. Before us, the Ld. counsel of the assessee submits that the Ld. CIT(A) failed to appreciate that the bad debts of Rs.4,00,872/- were written off by the assessee in the normal course of business and thus it is allowable u/s 36 of the Act. It is stated by him that the matter may be restored to the file by the AO for verification.

6. On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A) and submits that the assessee failed to file the details before the AO and CIT(A). It is also submitted by him that as the conditions laid down in section 36(2) have not been fulfilled by the assessee, the order passed by the Ld. CIT(A) should be sustained.

7. We have heard the rival submissions and perused the relevant materials on record. There is no dispute that the amount of any bad debt or part thereof, which has been written off as irrecoverable in the accounts of the assessee for the previous year, shall be allowed as a deduction subject to the provisions of section 36(2) which delineates that such part or part thereof must have been taken into account in computing the income of the assessee of the previous year or of an earlier previous year. We find that the assessee could not file the details/documents on the above aspect either before the AO or the Ld.

CIT(A). In view of the above, we uphold the order of the Ld. CIT(A) and dismiss the 1st ground of appeal.

8. Now we turn to the 2nd ground of appeal. During the course of assessment proceedings, the AO found the following difference while comparing the ledger extracts with the balance sheet as on 31.03.2007

Name	B/s amount	Ledger amount	Addition during the year
Rahul Sankhe	5335743	6715743	1825000
Shirish K. Sankhe	3564742	9164742	7647889
Total			9472889

The AO noted that the closing balances in the ledger account of Mr. Rahul Sankhe and Mr. Shirish K. Sankhe amounted to Rs.67,15,743/- and Rs.91,64,742/- respectively as on 31.03.2007, much more than the amounts appearing in the balance sheet. As the assessee failed to file the explanation or reconciliation of the above differences, the AO made an addition of Rs.94,72,889/- u/s 68 of the Act.

9. In the appellate order dated 03.09.2010, the Ld. CIT(A) has mentioned that the assessee tried to explain the difference by stating that due to clerical error, the amounts were posted in some different ledger account. Also the assessee submitted before him that it had submitted the ledger accounts of Rashmi Sankhe, Shirish Sankhe and Rahul Sankhe to the AO vide letter dated 19.11.2009 and further submitted bank statements and ITR return copy of Rahul Sankhe vide

letter dated 25.11.2009. However, the Ld. CIT(A) was not convinced with the above explanation of the assessee and upheld the addition of Rs.94,72,889/- made by the AO u/s 68 of the Act.

10. Before us, the Ld. counsel of the assessee submits that the assessee had received Rs.18,25,000/- from Mr. Rahul Sankhe and Rs.76,74,889/- from Mr. Shirish Sankhe as loans during the year. Shri Shirish Sankhe had given loan of Rs.56,00,000/- from his bank account. He had also repaid to the bank Rs.20,74,889/- being loan taken by the assessee-company. The amount of Rs.4,25,000/- and Rs.20,74,889/- were being shown as loans received from Mr. Rahul Sankhe and Mr. Shirish Sankhe respectively. However, the amounts of Rs.14,00,000/- received from Mr. Rahul Sankhe and Rs.56,00,000/- received from Mr. Shirish Sankhe were reflected in the ledger account of Mrs. Rashmi Sankhe due to clerical error. It is submitted by the Ld. counsel that the amount of Rs.70,00,000/- (out of loan of Rs.94,72,889/- received from the shareholders) was erroneously shown as loan from Mrs. Rashmi Sankhe (Director of the company) due to clerical error. Thus it is stated by him that this accounting error does not have any effect on the total income of the company.

11. On the other hand, the Ld. DR submits that as the assessee failed to file the explanation and reconciliation of the amount appearing in the ledger account and balance sheet, the Ld. CIT(A) has rightly confirmed the addition of Rs.94,72,889/- made by the AO u/s 68.

12. We have heard the rival submissions and perused the relevant materials on record. It is well-settled that in order to discharge the onus u/s 68, the assessee must prove the following:

- (i) the identity of the creditor,
- (ii) the capacity of the creditor to advance money, and
- (iii) the genuineness of the transaction.

After the assessee has adduced evidence to establish *prima facie* the aforesaid, the onus shifts to the department.

We find that in the instant case the matter could not be examined from the above angle by the AO as well as the Ld. CIT(A) because the assessee failed to file the complete details before them. In view of the above facts, 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 keeping in mind our observation hereinbefore regarding the discharge of onus u/s 68 of the Act. We direct the assessee to file the relevant documents/evidence before the AO. Needless to say, the AO would give reasonable opportunity of being heard to the assessee before finalizing the assessment.

Thus the 2nd ground of appeal is allowed for statistical purposes.

13. We find that the 3rd ground of appeal was not there in the grounds of appeal filed by the assessee before the Ld. CIT(A). Also the Ld. counsel submitted that he would not like to press the 3rd and 4th ground of appeal. Consequently, the 3rd and 4th grounds of appeal are dismissed.

14. In the result, the appeal is partly allowed.

Order pronounced in the open Court 27/06/2018.

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

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

Dated: 27/06/2018
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