

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'एच', मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "H", MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री जी. मंजूनाथ, लेखा सदस्य, के समक्ष

**Before Shri JOGINDER SINGH, Judicial Member, and
Shri G. MANJUNATHA, Accountant Member**

**ITA NO.6171/Mum/2016
Assessment Year: 2000-01**

Anjani Agrico Implements Pvt. Ltd. 302, Standard House, 83, M.K. Road, Mumbai-400002	बनाम/ Vs.	Income Tax Officer, Ward-2(1)(1), Aayakar Bhavan, M.K. Road, Mumbai-400020
(निर्धारिती / Assessee)		(राजस्व / Revenue)
P.A. No.AABCA1949A		

निर्धारिती की ओर से / Assessee by	Shri Sashank Dundu
राजस्व की ओर से / Revenue by	Shri Ram Tiwari-DR

सुनवाई की तारीख / Date of Hearing :	04/06/2018
घोषणा की तारीख/ Date of Pronouncement	04/06/2018

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 29/07/2016 of the Ld. First Appellate Authority, Mumbai, confirming the penalty of Rs.21,50,000/- imposed under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter the Act) on the addition of Rs.55,71,480/- made under section 68 of the Act.

2. During hearing, the Ld. counsel for the assessee, Shri Sashank Dundu, contended that the quantum on the basis of which penalty was imposed has been deleted by the Tribunal vide order dated 19/08/2016 (ITA No.7556/Mum2012). This factual matrix was not controverted by Ld. DR, Shri Ram Tiwari.

2.1. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the relevant portion from the aforesaid order of the Tribunal dated 19/08/2016 for ready reference and analysis:-

“The captioned appeal filed by the assessee pertaining to assessment year 2000-01 is directed against an order passed by CIT(A)-4, Mumbai dated 11/10/2012, which in turn arises out of an order passed by the Assessing Officer under section 143(3) r.w.s. 254 of the Income Tax Act, 1961 (in short ‘the Act’) dated 29/12/2011.

2. Initially, the assessee has raised multiple Grounds of appeal in memo of appeal, but subsequently, it has filed revised Grounds of appeal, which read as under:-

“ 1. The learned CIT(A) failed to appreciate that increase in sundry creditors of Rs.55,71,480/- being expenditure INCURRED in earlier years by tenants namely Mr. Suresh Chandra Taparia and Smt. Srikanta Devi Taparia on behalf of Assessee Company without appreciating that Assessee had discharged its onus u/s 68 and hence addition of Rs.55,71,480/- u/s.68 may be deleted.

2. The Appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal.”

3. Apart therefrom, assessee has also filed an Additional Ground of appeal, which reads as under:-

“1. The learned CIT(A) failed to appreciate that increase in sundry creditors of Rs.55,71,480/- being expenditure incurred in earlier years by tenants namely Mr. Suresh Chandra Taparia and Smt. Srikanta Devi Taparia on behalf of the Assessee Company cannot be added under section 68 as non ‘sum’ is credited in Assessee books of accounts as required by S.68.

2. The appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal.”

3.1 In support of its admission, it has been canvassed that it is a legal ground and is permissible to be raised following the ratio of the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Company vs. CIT, 229 ITR 383(SC).

4. The solitary dispute in this appeal relates to the action of the income tax authorities in holding that a sum of Rs.55,71,480/- representing increase in sundry creditors as at

the end of the year was an unexplained cash credit, within the meaning of section 68 of the Act.

4.1 A brief background of the dispute can be summarized as follows. The appellant is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of investments. It filed a return of income for assessment year 2000-01 on 31/10/2001 declaring a loss of Rs.47,403/- and in an ex-parte assessment made under section 144 of the Act on 29/01/2004, the total income was assessed at Rs.65,95,690/-. In such assessment increase in the sundry creditors of Rs.55,71,480/- was held to be an unexplained credit under section 68 of the Act. When such assessment was carried in appeal before CIT(A), the assessee submitted that the increased balance of sundry creditors represented amount due to two of its tenants, namely, Shri. Suresh Chandra Taparia and Smt. Srikanta Devi Taparia to whom assessee had given its flat at Benhor apartments, Mumbai on rent. The aforesaid increase reflected amount credited to Shri Suresh Chandra Taparia - Rs.33,11,052/- and Smt. Srikanta Devi Taparia -Rs.32,23,184/- for the expenses incurred by them on the civil renovation work of the flat rented out. Before CIT(A), assessee filed details like confirmations, Board resolutions, balance sheet and income returns of such sundry creditors, etc. in support of the credits in question. After obtaining a remand report from the Assessing Officer, the CIT(A) deleted the addition, which was carried in appeal before the Tribunal by the Revenue. The Tribunal vide its order dated 9/2/2011 noticed that adequate opportunity was

not allowed by the CIT(A) to the Assessing Officer to examine the details filed by the assessee and, therefore, the matter was restored back to the file of the Assessing Officer for a fresh decision. Following the said direction of the Tribunal the Assessing Officer has passed the impugned order, whereby the amount credited to the two creditors, namely Shri. Suresh Chandra Taparia and Smt. Srikanta Devi Taparia amounting to Rs.55,71,480/- has been held to be unexplained under section 68 of the Act.

4.2 Before CIT(A), assessee pointed out that the nature and source of the impugned credits was duly explained on the basis of the material and evidence available before the Assessing Officer. It was asserted that letters from the aforesaid creditors, income tax returns, balance sheet reflecting amounts due to them from the assessee company, their confirmation letters and their statement of accounts showing details of the payees with cheque numbers and amount of expenditure incurred by them for renovation of the aforesaid flat, etc., completely explained the credits in terms of section 68 of the Act. The assessee also pointed out that in response to notices issued by the Assessing Officer under section 133(6) of the Act the two creditors appeared and confirmed the transactions. The CIT(A) has duly noted the submissions put forth by the assessee but he has ultimately observed that the impugned credit entries in the books of account could not be satisfactorily explained and hence, upheld the addition made under section 68 of the Act. As per the CIT(A), the copies of bank account of the creditors was not available which could

prove the capacity of the two creditors. Against such a decision of the CIT(A), assessee is in further appeal before the Tribunal.

5. Before us, the Ld. Representative for the assessee vehemently pointed out that the details submitted by the assessee clearly established the identity and creditworthiness of the creditors as also the genuineness of the transactions. In this context, assessee pointed out that the various details submitted in support of the impugned credit show that the same reflected only increase in the balance of the creditors and was on account of expenses incurred by the creditors on repairs of the premises during the period 1992-93 to 1996-97. In particular, attention was invited to the following details placed in the Paper Book to justify the nature and source of the credits:-

i.	Details of Sundry creditors as on 31/3/2000
ii.	Details of Sundry Creditors as on 31/3/1999
iii.	Balance Sheet of the Company as on 31/3/2000
iv.	Copy of Board resolution of the Board of Directors
v.	Copy of letter by Shri Suresh Chandra Taparia dt.4/11/2011
vi.	Copy of Statement of Account submitted by Shri Suresh Chandra Taparia
vii.	Copy of letter dt. 8/7/1999 submitted by Shri Suresh Chandra Taparia
viii.	Copy of Balance confirmation by Shri Suresh Chandra Taparia
ix.	Copy of I.T Acknowledgement of Shri Suresh Taparia for the A.Y 1999-2000
x.	Copy of Balance sheet of Shri Suresh Taparia as on 31/3/1999.
xi.	Copy of by Smt. Srikanta Devi Taparia dt. 4/11/2011
xii.	Copy of statement of Account submitted by Smt. Srikanta Devi Taparia
xiii.	Copy of letter dt.8/7/1999 submitted by Smt.Srikanta Devi Taparia
xiv.	Copy of Balance confirmation by Smt. Srikanta Devi Taparia
xv.	Copy of I.T. Acknowledgement of Smt. Srikanta Devei

	Taparia for the A.Y 1999-2000.
xvi.	Copy of Balance Sheet of Smt.Srikanta Devi Taparaia as on 31/3/1999.

6. On the other hand, the Ld. Departmental Representative pointed out that in the present case, the CIT(A) has clearly established that the clinching evidence in the shape of the bank accounts of the creditors through which the expenses have been incurred; and, the relevant bills of the repair expenses etc. were not produced and, therefore, the impugned credits could not be considered as explained within the meaning of section 68 of the Act.

7. We have carefully considered the rival submissions. In the present case, the controversy revolves around the provisions of section 68 of the Act, which has been invoked by the Assessing Officer to treat a sum of Rs.55,71,480/- as an unexplained cash credit. Section 68 of the Act, prescribes that where any sum is found credited in the books of an assessee for any previous year and assessee offers no explanation about the nature and source thereof or the explanation offered by him is not found satisfactory by the Assessing Officer, then the sum so credited may be charged to income tax as income of the relevant previous year. Quite clearly, section 68 of the Act empowers the Assessing Officer to call upon the assessee to explain the nature and source of any sum found credited in the books. It is quite well settled that the onus cast upon the assessee under section 68 of the Act can be discharged if an assessee is able to identify the creditor, establish the creditworthiness of the creditor and the genuineness of the transaction. In the

instant case, assessee company had rented its premises to Shri. Suresh Chandra Taparia and Smt. Srikanta Devi Taparia. During the year under consideration, the Assessing Officer noticed an increase in the amounts credited to the accounts of the sundry creditors by a sum of Rs.55,71,480/-. It was explained by the assessee that the two tenants had incurred expenses on civil renovation work of the property during the financial years 1992-93 to 1996-97. The assessee had explained that initially it did not accept the claims as the parties were not paying rents, but later on accepted the aforesaid claims in terms of its Board of Directors resolution dated 18/02/2000. The assessee had explained before the lower authorities that in pursuance to such resolution, it capitalized the aforesaid amount incurred by the aforesaid two creditors by debiting it to the 'building account' and crediting the same to the accounts of the two creditors, Shri. Suresh Chandra Taparia and Smt. Srikanta Devi Taparia. In support, assessee furnished a copy of the communication of the two creditors, copies of which have been placed in the Paper Book at pages 41 - 42 and 55-56. In terms of such communication, the two creditors have explained to the Assessing Officer the details of expenditure incurred on civil renovation work on the tenanted property during the period 1/4/1993 to 31/3/1997. The said correspondence also details the payment made through cheques and the names of the recipients of the cheques. The creditors had also furnished copies of the balance sheet and the income tax returns for the assessment year 1999-2000, showing the

amounts as advanced against the tenanted property. The copies of income tax return for assessment years 2009-10 and 2010-11 have also been placed before the Assessing Officer. Be that as it may, the material on record also suggests that in the impugned proceedings when the Assessing Officer issued notices under section 133(6) of the Act, the two creditors duly confirmed the genuineness of the transactions.

7.1 The stand of the Revenue is that the creditors could not furnish copies of their respective bank statements, which reflected payments made by them towards the renovation expenses of the tenanted property. The aforesaid objection has been the basis for the CIT(A) as well as the Assessing Officer to treat the aforesaid credits as unexplained within the meaning of section 68 of the Act. In our considered opinion, from the material and evidence on record, the complete details of the impugned credits was made available to the Assessing Officer. The two creditors responded to the enquiries carried out by the Assessing Officer and confirmed the transactions. There is no material led by the Revenue to show that any of the evidences produced before him was wrong or otherwise not credible. The explanations furnished by the assessee, as also by the two creditors have been merely disbelieved and it is not a case where any of the evidence has been found to be false or untrue. Factually speaking, in the present case, the assessee company has completely discharged the initial burden cast on it to explain the nature and source of the credits. The

arrangement between assessee and its tenants by way of the tenancy agreement, copy of which has been placed in the Paper Book pages 75 to 79 was also before the Assessing Officer. The onus that is cast under section 68 of the Act is not static, inasmuch as it shifts to the Revenue depending on the material and evidence led by the assessee at a given stage. The Assessing Officer had before him the averments of the sundry creditors, the income tax details of the sundry creditors, the balance sheets of the two creditors which showed the amount in question, etc. By merely pointing out that further evidence in the shape of bank account of the creditors was not available, does not distract from the fact that whatever evidence that was on record before the Assessing Officer has not been found untrue or false by him. Therefore, in so far as the assessee is concerned, it has completely discharged its onus of explaining the nature and source of the credits in question and such explanation stood corroborated by the two creditors. Considering the entirety of circumstances, in our view, the Assessing Officer has merely proceeded to disbelieve the evidence led by the assessee and not made any effort to establish any falsity or untruth in the same. Therefore, under these circumstances, in our view, the Assessing Officer was wrong in holding that the explanation rendered by the assessee was not satisfactory within the meaning of section 68 of the Act. Thus we set-aside the order of the CIT(A) and direct the Assessing Officer to delete the addition of Rs.55,71,480/- made under section 68 of the Act.

8. In the result, the appeal of the assessee is allowed, as above.”

2.2. We find that the Ld. Assessing Officer made addition under section 68 of the Act with respect to unexplained cash credit under the head income from other sources and consequently imposed penalty under section 271(1)(c) of the Act. The Tribunal vide aforesaid order dated 19/08/2016 found the explanation of the assessee to be satisfactory and held that the assessee discharged the onus explaining the nature and source of such credits in question and such explanation stood corroborated by two creditors and finally directed the Assessing Officer to delete the addition of Rs.55,71,480/- made under section 68 of the Act. Since, the addition on the basis of which penalty was imposed remained no more in existence, the penalty will not survive. Our view find support from the decision in *K.C. Builders vs ACIT* (2004) 265 ITR 562 (SC) and the ratio laid down in *CIT vs S.P. Viz*, 176 ITR 76 (Patna). Even otherwise, when the quantum addition is deleted, there remains no basis at all for levying the penalty for concealment or furnishing inaccurate particulars, because, of its own, the penalty cannot stand on its legs when

addition on the basis of which the penalty was imposed remains no more in existence. Thus, we direct the Ld. Assessing Officer to delete the penalty.

Finally, the appeal of the assessee is allowed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 04/06/2018.

Sd/-

(G. Manjunatha)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 04/06/2018

Shekhar, P.S.नि.स.,

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त,(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai