

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH : KOLKATA

[Before Hon’ble Shri S.S. Godara, JM & Shri M.Balaganesh, AM]

I.T.A No. 1317/Kol/2014

Assessment Year : 2010-11

ITO, Ward-12(2), Kolkata

-vs-

M/s Joita Enterprise Pvt. Ltd.

[PAN: AABCJ 2064 P]

(Appellant)

(Respondent)

For the Appellant : Shri S. Dasgupta, Addl. CIT (DR)

For the Respondent : S. Banerjee, Advocate

Date of Hearing : 19.06.2018

Date of Pronouncement : 11.07.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the Revenue arises out of the order of the Learned Commissioner of Income Tax(Appeals)-XII, Kolkata [in short the ld CIT(A)] in Appeal No. 143/XII/CIT(A)-XII/12(2)/2013-14 dated 12.03.2014 against the order passed by the ITO, Ward-12(2), Kolkata [in short the ld AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 25.03.2013 for the Assessment Year 2010-11.

2. The first issue to be decided in this appeal is as to whether the CITA was justified in deleting the addition towards sundry creditors in the sum of Rs 6,74,992/- in the facts and circumstances of the case

2.1. The brief facts of this issue are that the assessee is engaged in civil construction activities and had filed its return of income for the Asst Year 2010-11 on 4.10.2010 declaring total income of Rs 23,36,462/- after setting off the brought forward loss and unabsorbed depreciation of RS 74,73,399/- for the Asst Years 2003-04 to 2008-09. The Assessing Officer observed that there is a credit balance of sundry creditors as on 31.3.2010 against M/s Assemblage Enterprise amounting to Rs 4,39,476/- and M/s R.R.Enterprises amounting to Rs 2,35,516/- in the books of the assessee company. The Assessing Officer enquired about the veracity of the said creditors. The Assessing Officer issued notices u/s 133(6) of the Act to these two creditors which were returned back unserved by the postal department on 3.12.2012. In response thereto, the assessee replied that these creditors are brought forward from earlier years in respect of business transactions of the assessee. The assessee furnished the bill copies and ledger print outs of the aforesaid creditors from the accounting year in which transactions originated with them. The assessee also submitted that there were some disputes that had cropped with the sundry creditors relating to business transactions which had not been resolved and accordingly the outstanding amounts were not cleared by the assessee. The Assessing Officer observed that this submission of the assessee was not supported with any documentary proof regarding identity of the creditors and genuineness of the transactions. The Assessing Officer noticed from the ledger of M/s Assemblage Enterprise , that payment of Rs 2 lakhs was paid by Joy Majumdar & Co on behalf of the assessee and that no payment to the said company was made by the assessee. According to Assessing Officer, it was not explained by the assessee with supporting evidence / documents that why M/s Joy Majumder & Co has made payment on behalf of the assessee. In respect of R.R.Enterprises, no transaction was found during financial year 2009-10. In the light of the aforesaid observations, the Assessing Officer observed that the identity of the said two concerns and genuineness of the transactions were not established. Accordingly , he treated the entire amount of Rs 6,74,992/- as bogus sundry creditors and added the same to the total income of the assessee.

2.2. The assessee reiterated the same submissions before the CITA by furnishing the same documents . The CITA called for a remand report from the Assessing Officer in this regard. In the remand report, the Assessing Officer raised a new ground stating that since there is no issue regarding the identity of the creditors, that despite most of the items are taxable items, none of the bills so furnished appeared to have any VAT No. of the creditors and computation of VAT in it. It was clarified that Joy Majumder, proprietor of M/s Joy Majumder & Co is the director of Joita Enterprises P Ltd who has made some payment against his dues to the company and that the same could not be any ground for addition under the head bogus creditor. The CITA observed as under:-

- a) There is no dispute that credits appearing in the balance sheet in respect of these two parties are brought forward balances from earlier years and hence the sum of Rs 6,74,992/- cannot be added as unexplained credits u/s 68 of the Act.
- b) The Assessing Officer has not brought any material on record to bring the trading liabilities u/s 28(iv) or u/s 41(1) of the Act.
- c) The sundry creditors represented liability for purchase of building materials and those purchases forming part of the trading accounts stood accepted in the respective assessment years. The assessee had produced the bills and ledger accounts of the respective accounting years for verification.
- d) The fact that the purchases are from unregistered dealers and notices u/s 133(6) of the Act could not be served by post could not by itself disprove the identity of the creditors or genuineness of transactions.
- e) When purchases have not been doubted, there is no reason to doubt the creditors.

2.3. With these observations, the CITA deleted the addition in the sum of Rs 6,74,992/- made u/s 68 of the Act. Aggrieved, the revenue is in appeal before us.

2.4. We have heard the rival submissions. We find that the CITA had analyzed the entire issue threadbare and had given categorical findings regarding the applicability of various provisions of the Act. None of the findings of the CITA could be controverted by the revenue before us. Hence we do not find any justifiable reason to interfere with the order of the CITA in this regard. Accordingly, the Ground No. 1 raised by the revenue is dismissed.

3. The next issue to be decided in this appeal is as to whether the CITA was justified in deleting the addition towards bogus liabilities in the sum of Rs 1,18,90,627/- in the facts and circumstances of the case

3.1. The brief facts of this issue are that the Assessing Officer observed that assessee in its balance sheet as at 31.3.2010 had shown Rs 1,18,90,627/- as other liability for booking money. As the assessee did not furnish any evidence of receipt of monies towards booking advance, date of possession given to the parties from whom the booking money was received etc, the Assessing Officer treated the sum of Rs 1,18,90,627/- as bogus liability and added the same to the total income of the assessee.

3.2. The assessee contended that out of Rs 1,18,31,146/-, the amount received from Rita Das Rs 36,50,000/- and Amiya Prasad Bhattacharjee Rs 6,12,750/- totaling to Rs 42,62,750/- was added by the Assessing Officer on the basis of replies from respective buyers. Mrs Rita Das in her reply denied having made any kind of payments regarding booking of flat at Mira garden and she also added that she never purchased any flat, parking place or shop at Mira Garden and the notice of Assessing Officer u/s 133(6) of the Act was completely irrelevant to her. Copies of agreement of sale she entered into with the assessee and subsequent letters from her and her husband, bank statements highlighting the payments received from her along with a copy of General Power of Attorney duly registered with the District Sub-Registrar –II, 24 Parganas (North),

Barasat on 13.8.2012 in favour of one Sri Brajgopal Pal in respect of the above flats to negotiate with the intending purchasers and to sign, execute and enter into suitable agreement for sale with the, were submitted to Assessing Officer to substantiate the claim and to testify her as a liar could not find favour with the Assessing Officer who practically accepted the letter from Rita das without verifying the genuineness of the contentions for reasons unknown to the assessee. With respect to payment of Rs 6,12,750/- from Amiya Prasad Bhattacharjee , the Assessing Officer added the amount as income on the basis of a reply against notice u/s 133(6) of the Act wherein Sri Bhattacharjee furnished a copy of the possession letter dated 6.8.2007 from the assessee. However, Sri Bhattacharjee has not got the flat conveyed/registered in his favour and the flat is lying under its possession. A copy of letter written by Sri Bhattacharjee to the assessee expressing his inability to get it registered in his name was produced wherewith as proof to the fact that the flat is not yet conveyed and as soon as it gets conveyed, the assessee would recognize its sale and account for accordingly . With respect to balance booking money of Rs 75,68,396/- , details information with regard to present status of the prospective buyers was given. It was argued that all the necessary documents were filed during the hearing and the same were again filed before the CITA. The CITA called for a remand report in this regard. The assessee objected that the allegation of the Assessing Officer in the remand report that evidence of receipt of Rs 36,00,000/- as flat booking money from Rita Das has not been furnished was baseless. The relevant page of the paper book was drawn to the attention of the CITA wherein it was shown that the assessee has actually received the aforesaid sum from Rita Das. The entire details of flat booking money of Rs 1,18,31,146/- was duly furnished before the Assessing Officer again in the remand proceedings which were not disputed by the Assessing Officer in the remand report.

3.3. The CITA observed that the assessee had furnished proper evidences with supporting documents to prove the advance money received from Rita Das and Amiya

Prasad Bhattacharjee together with the details with names of the parties from whom remaining advances were received by the assessee. He observed that in case of builders and developers, it is normal practice to receive flat booking advances from prospective buyers. Accordingly, he observed that the identity of these parties and the receipt of advance bookings stood clearly established and accordingly deleted the addition made in the sum of Rs 1,18,31,146/-. Aggrieved, the revenue is in appeal before us.

3.4. We have heard the rival submissions. We find that the assessee had given proper documentary evidences to prove that it had received flat booking advance from Rita Das in the sum of Rs 36,50,000/- and from Amiya Prasad Bhattacharjee in the sum of Rs 6,12,750/-. We find from the list of parties reproduced in pages 8 & 9 of CITA order that assessee had duly furnished the details of other advances received in the sum of Rs 75,68,397/- towards flat booking advances from various parties together with the reason for each party duly informing the subsequent status of registration , refund of monies etc. We find that the Id CITA had categorically given a finding that the subject mentioned receipts are towards flat booking advances received from various prospective buyers which is quite natural for a developer cum builder to do so. The entire sums of Rs 1,18,31,146/- were duly identified with respective parties and hence there is no scope to doubt the identity of those parties. None of these findings were controverted by the revenue before us. However, no reply was furnished before the CITA for the remaining sum of Rs 59,481/- (1,18,90,627 – 1,18,31,146) by the assessee which was confirmed by the CITA. Hence we do not find any justifiable reason to interfere with the order of the CITA in this regard. Accordingly, the Ground No. 2 raised by the revenue is partly allowed.

4. The next issue to be decided in this appeal is as to whether the CITA was justified in deleting the addition towards unexplained cash credit in the sum of Rs 20,37,824/- in the facts and circumstances of the case

4.1. The brief facts of this issue are that the Assessing Officer noted that an amount of Rs 1,37,75,598/- was shown as loan outstanding to M/s Joy Majumder & Co., as on 31.3.2010. He further noted from the transaction statement of M/s Joy Majumder & Co., that payment of some expenses were made by the said concern and that details of the expenses which were claimed to have paid by the said concern to the tune of Rs 20,37,824/- were as under:-

Sl. No.	07.05.2009	Sundry Creditor paid to MPCC	Rs. 25,000/-
2.	20.05.2009	Sundry Creditor paid to MPCC	Rs. 25,000/-
3.	05.06.2009	Traveling Expenses	Rs. 56,900/-
4.	18.06.2009	Sundry Creditor paid to Assemble Enterprise	Rs. 50,000/-
5.	19.06.2009	Traveling Expenses	Rs.1,00,000/-
6.	30.06.2009	Sundry Creditor paid to Assemble Enterprise	Rs. 50,000/-
7.	12.07.2009	Sundry Creditor paid to Assemble Enterprise	Rs. 50,000/-
8.	08.08.2009	Repair & Maintenance charges payment	Rs. 25,000/-
9.	08.09.2009	Sundry Creditor paid to MPCC	Rs. 50,000/-
10	19.12.2009	Sundry Creditor paid to MPCC	Rs. 25,000/-
11.	29.12.2009	Sundry Creditor paid to MPCC	Rs. 25,000/-
12.	04.01.2010	Repair & Maintenance paid to M.R. Electricals	Rs. 20,000/-
13.	02.02.2010	Repair & Maintenance paid to M.R. Electricals	Rs. 10,000/-
14.	09.03.2010	Sundry Creditor paid to Assemble Enterprise	Rs. 25,000/-
15.	17.03.2010	Sundry Creditor paid to Assemble Enterprise	Rs. 25,000/-
16.	26.03.2010	Sundry creditor paid to MPCC	Rs. 25,000/-
17.	31.03.2010	Sundry creditor paid to Nivedita Electricals	Rs.5,10,000/-
18.	31.03.2010	Sundry Creditor paid to Unique Suppliers	Rs. 21,759/-
19.	31.03.2010	Payment for project work in progress	Rs.9,19,165/-
		Total	Rs.20,37,824/-

The Assessing Officer noted from the above table that the amount of Rs 9,61,759/- was claimed to have paid towards sundry creditors by M/s Joy Majumder & Co., on behalf of the assessee, whereas no such major expenses were found in the profit and loss account. The Assessing Officer further observed from the chart of sundry creditors for expenses and sundry creditors for goods that no such major payment was made as below:-

	As on 31.3.2009	As on 31.3.2010
Sundry creditors of expenses	Rs 1,58,164/-	Rs 2,18,503/-
Sundry creditors for Goods	Rs 13,71,190/-	Rs 13,29,864/-

The Assessing Officer noted that the assessee had claimed that RS 9,19,165/- was paid by M/s Joy Majumder & Co., as project work – in – progress on its behalf. It was found that no mode of payment was mentioned in respect of the said payment, only an entry was passed under the narration “project work- in – progress being contract No. 15/09/2010”. The Assessing Officer further observed that no details regarding work in progress was filed by the assessee, nor the books of accounts were produced. Considering the above facts, the Assessing Officer sought to treat the entire amount of Rs 20,37,824/- as unexplained cash credit and add the same to the total income.

4.2. The assessee explained that traveling expenses of Rs 1,56,900/- paid to Joydeep Majumder on behalf of the company was incurred on tour expenses was capitalized and added to project work in progress of Mira Garden and day to day expenses of staff and supervisors for Rs 94,002/- was debited to profit and loss account. It was explained that the payment of Rs 9,61,759/- to creditors of the company paid by Joy Majumder & Co were to M/s Assemblage Enterprise, M/s MPCC, M/s Nivedita Electricals , M/s Unique Suppliers. These payments were stated to have been made against either the outstanding in previous years or against expenses for the year under consideration. It was submitted that all those payments along with the amount of Rs 9,19,165/- was

capitalized and added to project work in progress and hence not debited to profit and loss account. The Assessing Officer on the other hand observed that the assessee did not furnish the supporting evidence, documents, books of accounts in support of its claim and accordingly added the entire amount of Rs 20,37,824/- as unexplained cash credit in the assessment.

4.3. Before the CITA, the assessee reiterated the submissions made before the Assessing Officer. More emphasis was laid on the fact that outside creditors were paid by M/s Joy Majumder & Co on behalf of the assessee . It was contended that M/s Joy Majumder & Co is the proprietorship concern of Sri Joydeep Majumder, who is also one of the director of assessee company and who has been entrusted with the work of carrying on construction of Mira Garden projects and was asked to make payments against some creditors of the assessee. All these details were duly filed before the Assessing Officer and there is absolutely no reason to doubt the veracity of the same. The assessee also referred to specific works contract bill received from M/s Joy Majumder & Co. for the construction work executed by them in connection with Mira Garden project and the assessee had credited the said bill amount of Rs 9,19,165/- to Joy Majumder & Co., which was capitalized and added to project work in progress. The entire details together with the books of accounts were indeed produced before the Assessing Officer for which evidences were submitted before the CITA and accordingly argued that it was incorrect on the part of the Assessing Officer to state that no details with documentary evidences were furnished by the assessee herein.

4.4. The CITA deleted the addition of Rs 20,37,824/- by observing as under:-

“5.6.3. Decision: I have considered the facts and material brought on record. I have also gone through the submissions as made by the appellant. The Assessing Officer has made the impugned addition of Rs. 20,37,824/- on account of unexplained cash credit on the ground that the appellant did not furnish any supporting evidence, documents, books of accounts in support of its claim. On the other hand, the submissions of the appellant is that the sum of Rs.11,18,659/- was paid to various parties by M/s. Joy Majumder & Co. on behalf of the appellant. It has further stated that payments of

liability of certain creditors, a company can also outsource fund from any other creditors M/s. Joy Majumder & Co. is the proprietorship firm of Sri Jaydeep Majumder who is also one of the directors of the appellant company has been entrusted to carried on construction of Mira Garden Projects and was asked to make payments against of some creditors of the appellant. have gone through the details of expenses claimed to have been incurred by Joy Majumdar & Co. From such details, it is apparent that the expenditure has been incurred by the said firm on behalf of the appellant company, which are regular business transactions. Therefore, there is no rhyme or reason to suggest that the credits appearing in the name of Joy Majumdar & Co. are unexplained cash credits. In this case, the identity, the credit-worthiness and genuineness of the transactions have bee established. The Assessing Officer has not brought on record to disprove the claim. Therefore, I am of the view that the addition of Rs. 20,37,824/- is unjustified and unwarranted. The same is thus directed to be deleted. This ground of appeal accordingly allowed.

4.5. Aggrieved, the revenue is in appeal before us.

4.6. We have heard the rival submissions. We find that the assessee had given proper documentary evidences to prove that it had entrusted the work of carrying on the construction of Mira Garden project to Joy Majumder & Co and that certain payments to creditors were made by them on behalf of the assessee company. It is not in dispute that M/s Joy Majumder & Co is a proprietorship concern of Sri Joydeep Majumder, who is also a director in the assessee company. Hence requesting the proprietary concern to make payments to outside creditors on behalf of the assessee company is in order. All the necessary details were indeed furnished before the Assessing Officer and the same were again furnished before the CITA. We find that the Id CITA had appreciated these evidences which were already on record. The entire sums of Rs 20,37,824/- were duly identified with respective parties and respective expenses together with the treatment given to them in the books of accounts of the assessee and hence there is no scope to doubt the veracity of the same. None of these findings were controverted by the revenue before us. Hence we do not find any justifiable reason to interfere with the order of the CITA in this regard. Accordingly, the Ground No. 3 raised by the revenue is dismissed.

5. We find that though the revenue had raised a ground that there is violation of provisions of Rule 46A of the Income Tax Rules , 1963, the Id DR before us could not draw our attention to the fresh documents that were filed by the assessee before the CITA in violation of provisions of Rule 46A of the Rules in respect of any of the additions contested before us. Accordingly, the said plea of the revenue is rejected and Ground No. 4 raised by the revenue is dismissed.

6. In the result, the appeal of the revenue is partly allowed.

Order pronounced in the Court on 11.07.2018

Sd/-

[S.S. Godara]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 11.07.2018

SB, Sr. PS

Copy of the order forwarded to:

1. ITO, Ward-12(2), Kolkata, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069.
2. M/s Joita Enterprise Pvt. Ltd., 4, Hindusthan Park, Kolkata-700029.
- 3..C.I.T(A).- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches