

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'E', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 4307/Del/2015  
Assessment Year: 2010-11**

ACIT, Circle-2, Meerut.  <b>(Appellant)</b>	<b>vs.</b>	Sareen Sports Industries, 15, Victoria Part, Meerut. PAN- AAMFS3405J <b>(Respondent)</b>
--	------------	---

<b>Appellant by</b>	Smt. Shefali Swaroop, CIT/DR
<b>Respondent by</b>	Shri S. Krishna, Advocate

<b>Date of Hearing</b>	26.06.2018
<b>Date of Pronouncement</b>	20.07.2018

**ORDER**

**Per L.P. Sahu, A.M.:**

This is an appeal filed by the Revenue against the order of the Id. CIT(A), Meerut dated 29.04.2015 for the assessment year 2010-11 on the following grounds :

*1. Whether in the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in law in deleting the addition of Rs.9,75,15,723/- made by the A.O. on account of bogus sundry creditors in spite of the fact that the assessee failed to provide the names and complete addresses of the sundry creditors and also did not produce the copies of ledger accounts of creditors for verification of genuineness of transaction. The onus was, certainly upon the assessee to prove the credits appearing in its books which remained totally undischarged.*

*2. Whether in the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in law in deleting the addition of Rs.1,35,958/- which had been made by the A.O. on proportionate basis as interest which had not been charged on advances and loans advanced by the assessee.*

3. *Whether the Ld. CIT (A) has erred in law and facts in deleting the addition of Rs. 4,64,666/- made by the A.O. on account of unverifiable expenses without appreciating the fact that no bills and vouchers were produced by the assessee and hence, the expenditure remained unsupported and unverified.*

4. *In the facts and circumstances of the case, the Order of the Ld. Commissioner of Income Tax (A) may be set aside and that of the A.O. be restored.*

2. The brief facts of the case are that the assessee filed return on 15.10.2010 declaring income of Rs.73,61,610/-. The case was selected for scrutiny and statutory notices were issued to the assessee. During the assessment proceedings, the Assessing Officer made additions of Rs.11,90,31,978/- under various heads and assessed the total income of the assessee at Rs.12,63,93,588/-. Against the above additions, the assessee filed appeal before the ld. CIT(A) and the ld. CIT(A) partly allowed the appeal of the assessee. The Revenue is in appeal before us only on the above noted three grounds of appeal. Therefore, we are confined to above grounds taken by the Revenue.

3. Regarding the addition of Rs.9,75,15,723/- on account of bogus sundry creditors, the facts are that the assessee was engaged in the business of manufacturing and trading of Sports Goods. In the assessment proceedings, the Assessing Officer observed that the assessee firm has shown sundry creditors of Rs.19,61,04,559. In this regard, the assessee was asked to file complete name and addresses of the creditors, but the assessee filed the details of only Rs. 3,95,30,742/-. Later on, a show cause notice was issued to the assessee on 15.03.2013 for filing complete details, i.e., names, addresses and copy of ledger account of the remaining creditors of Rs.15,65,73,817/-. In response, the

assessee filed only the list of sundry creditors, but he submitted that these creditors are regular sundry creditors and no adverse inference should be drawn. The Assessing Officer observed that the assessee neither produced copy of ledger accounts of creditors for verification of genuineness of transactions nor the names and addresses of the creditors. The assessee also did not produce the books of accounts, bills and vouchers. The assessee had shown total turnover for the year under consideration of Rs.21,56,17,883/- and he doubted the huge amount of sundry creditors of Rs.19,61,04,559/- as bogus. He, further noted that in the last year ending on 31.03.2009, there were sundry creditors of only Rs.5,90,58,094/-. In view of this, the Assessing Officer treated it as unexplained and bogus creditors u/s. 68 and added Rs.9,75,15,723/-  $= (19,61,04,559 - 5,90,58,094 \text{ opening balance of sundry creditors}) = (13,70,46,465 - 3,95,30,742 = 9,75,15,723)$  to the income of the assessee.

4. The Assessing Officer further noticed that the assessee has paid interest on unsecured loan taken of Rs.58,66,517/- and has also advanced loans of Rs.14,99,059/- to others but no interest has been charged thereon. In this regard, the assessee was asked to explain the same. The assessee submitted that he had paid interest on borrowed capital but not charged interest on loans and advances. The assessee submitted that loans and advances are covered by the amount of capital, on which no interest has been charged. There was a fixed capital of Rs.50.00 lacs on which interest has been charged, but there was total capital of Rs.2,39,33,307/-. The Assessing Officer being not satisfied, calculated the proportionate interest and disallowed the interest to the tune of Rs.1,35,958/- and added the same to the total income of the assessee.

5. Further in respect of ground No.3 of the Revenue, the facts are that the Assessing Officer had made adhoc disallowance of 20% out of the following expenses :

(i). Telephone expenses	5,53,908
(ii). Sales Promotion expenses	7,91,773
(iii). Misc. expenses	2,78,715
(iv). Advertisement expenses	4,06,887
(v). Traveling expenses	2,92,048
	-----
	23,23,331
	-----

6. The Assessing Officer disallowed 20% of the above expenses, i.e., Rs.4,64,666/- by holding that the assessee did not file vouchers regarding the above expenditures. Therefore, the personal element cannot be ruled out. In appeal, the Id. CIT(A), the assessee filed additional evidences u/r 46A and a written submissions on all the additions made by the Assessing Officer. The Id. CIT(A) considered and accepted the additional evidences holding that sufficient time for producing the requisite details was not granted by the Assessing Officer. The written submissions of the assessee and additional evidences were sent to the Assessing Officer for calling remand report, which was submitted by the Assessing Officer on 11.03.2015. The assessee also filed rejoinder of the remand report. After considering the submissions and remand report and its rejoinder, the Id. CIT(A) partly allowed the appeal of the assessee. Aggrieved, the Revenue is in appeal before us on three issues as per grounds of appeal.

7. The Id. DR relying on the order of the Assessing Officer submitted that the first appellate authority has wrongly accepted the additional evidence of the assessee. The assessee was given sufficient opportunity at the assessment stage, but he did not furnish the requisite details. He further submitted that the total turnover of the assessee is 21.56 crores and odds and total sundry creditors

shown by the assessee during this year are of 19.6 crores and odds, which keeping in view the volume of turnover is prima facie very high and against the prudent decision of a businessman. Complete details of the sundry creditors were also not filed before the Assessing Officer. It was also submitted that the assessee was unable to substantiate that the advances were given without interest out of how own funds whereas the assessee is paying interest on unsecured loans and partner's capital. Therefore, the deletion of interest disallowed by the Assessing Officer has wrongly been made without considering the true facts of the case.

8. It was next contention of the ld. DR that in the original assessment proceedings, the assessee did not produce complete bills/vouchers in support of expenses incurred under various heads. The assessee is a partnership firm and hence, personal element in the expenditure could not be ruled out. The ld. CIT(A) has accepted the bills/vouchers submitted by the assessee without verifying them. Rather, the ld. CIT(A) has observed that the expenditures are reasonable keeping in view the sales declared by him.

9. On the other hand, the ld. AR relied on the order of the ld. CIT(A) and submitted that the ld. CIT(A) has rightly deleted the additions made by the Assessing Officer. In the remand report, the Assessing Officer has not made any adverse comments, but has himself accepted that the creditors have been paid by way of banking channels and no adverse remark has been found in the subsequent years. The assessee had sufficient funds on current capital account. Therefore, the proportionate interest disallowed by the Assessing Officer has rightly been deleted by the first appellate authority.

10. After hearing both the sides and perusing the entire material available on record, we observe from the orders of the authorities below that in the initial stage of assessment proceedings, the assessee had not produced books of account and bills and vouchers and other information regarding sundry creditors, but at appellate stage he had produced the same. The Id. CIT(A) also called for the remand report. The Assessing Officer issued notices u/s. 133(6) to all the creditors, whose balance was outstanding above Rs.1 lacs and most of the creditors complied with the notices so issued. The assessee has total number of creditors approximately 1700 and some of the notices returned un-served. In the remand proceedings, the assessee had provided copy of ledger accounts of those creditors, from whom the notices were returned back. The Assessing Officer in the remand proceedings found that all the creditors have their running account with the assessee and the payments have been made to them by banking channels and the assessee had also filed reconciliation statements whose balances were not tallied with the creditors' closing balances. No any adverse comments have been made by the Assessing Officer on this issue in the remand report. He stated that the detailed enquiry has been made by the Assessing Officer in subsequent assessment year 2011-12 without pointing out any discrepancies or adverse material found in the said enquiry. Therefore, in presence of all these facts, the Id. CIT(A) has rightly deleted the addition on account of bogus sundry creditors.

11. In respect of issue No. 2 regarding interest disallowed by the Assessing Officer, the Id. CIT(A) has given relief without examining availability of own funds as per the contentions of the assessee. Therefore, we think it proper to restore this issue back to the file of Assessing Officer. The assessee is directed to substantiate that the assessee had sufficient own funds for giving interest free

advances to others. Needless to say, the assessee shall be given reasonable opportunity of being heard. Accordingly, this ground is allowed for statistical purposes.

12. Regarding disallowance of 20%, we find that the ld. CIT(A) has deleted the addition without verifying the bills and vouchers submitted before him, which were not submitted before the Assessing Officer. In our opinion, unless the supporting bills and vouchers are got verified, the disallowance of expenditure cannot be fully deleted only on the reason that the expenditures claimed were in consonance with sales declared by the assessee. On the other hand, on perusal of the remand report, we find that the assessee has also incurred some of the expenditure in cash and no bills or vouchers thereof were submitted before the Assessing Officer. In the remand report, the Assessing Officer has also pointed out that self made vouchers were produced by the assessee in support of some of the expenditure. Keeping in view all these facts, in our considered opinion, it was not appropriate on the part of ld. CIT(A) to delete entire disallowance made by the Assessing Officer of the expenditure claimed by assessee. Keeping in view the aforesaid facts of the case, to our mind, it will be just and proper to restrict the disallowance to the extent of 10% of the total expenditure claimed by the assessee as against 20% disallowed by the Assessing Officer. Accordingly, this ground of appeal deserves to be partly allowed.

13. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 20<sup>TH</sup> July, 2018.

**Sd/-**  
**(Amit Shukla)**  
**Judicial member**

**Sd/-**  
**(L.P. Sahu)**  
**Accountant Member**

Dated: 20<sup>th</sup> July, 2018

*\*aks\**