

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.2201/Chny/2017

(निर्धारण वर्ष / Assessment Year: 2007-08)

M/s. R.V. Steels Pvt. Ltd., 108, Mahatma Gandhi Road, Nungambakkam, Chennai – 34.	Vs	The ACIT, Central Circle III(3), Chennai – 34.
PAN: AAACR2457B		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Sital Kumar Jain, CA
प्रत्यर्थी की ओर से/Respondent by	:	Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of hearing	:	13.06.2018
घोषणा की तारीख/Date of Pronouncement	:	13.08.2018

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

This appeal by the assessee is directed against the order passed by the learned Commissioner of Income Tax(Appeals)-19, Chennai, dated 22.06.2017 in ITA No.118/09-10 for the assessment year 2007-08 passed U/s. 250(6) r.w.s. 143(3) of the Act.

2. The assessee has raised two similar grounds in its appeal and they are briefly stated herein below for adjudication:-

(i) The Ld.CIT(A) has erred in confirming the addition made by the Ld.AO invoking the provisions of Section 41(1) of the Act, amounting to Rs.25,35,827/- sic., Rs.25,32,827/- towards unexplained credit standing in the name of M/s. Kalindi Industries.

(ii) The Ld.CIT(A) has erred in confirming the addition made by the Ld.AO invoking the provisions of Section 41(1) of the Act, amounting to amounting to Rs.31,75,900/- towards unexplained credit standing in the name of M/s. Neha Steels.

3. The brief facts of the case are that the assessee is a private limited company engaged in the business of manufacture of steel ingots and CTD bars filed its return of income for the assessment year 2007-08 on 10.09.2008 declaring loss of Rs.2,28,11,310/-. Notice U/s. 143(2) of the Act was issued and finally assessment order U/s.143(3) of the Act was passed on 29.12.2009 wherein the Ld.AO made several additions amongst which are the additions related to unexplained credit standing in the name of M/s. Kalindi Industries and

M/s. Neha Steels amounting to Rs.25,32,827/- & Rs.31,75,900/- respectively.

4. During the assessment proceedings, the Ld.AO had issued letters to the sundry creditors M/s. Kalindi Industries & M/s. Neha Industries for confirming their credit balances in the books of the assessee amounting to Rs.25,32,827 & Rs.31,75,900/- respectively. The letter addressed to M/s.Kalindi Industries was returned stating that no such address exist and the letter issued to M/s. Neha Steels was returned stating refused to accept. Since the assessee did not furnish sufficient materials to establish the genuineness of the sundry creditors, the Ld.AO added the same to the income of the assessee under the head unexplained credit. On appeal before the Ld.CIT(A), the assessee had explained that in the case of both the above sundry creditors additions were made in the assessment years 2004-05 and 2005-06 which was subsequently deleted by the Tribunal vide order dated 26.11.2010 in ITA No.2358/Mds/2007 and order dated 13.09.2013 in ITA No.1303/Mds/2013 by holding as under:-

- a) All the advances were received through cheques.
- b) The assessee provided the complete names and addresses of the parties.

- c) These were running transactions between the seller and the customer.

However the Ld.CIT(A) confirmed the additions by observing as under:-

“9. The order of the ITAT is examined. IT is noted that the assessee had not produced any confirmation from M/s. Kalindi Industries during verification for the AY 2004-05 also. The said credit entry continues to be in the books of the assessee on 31.3.2007. IT is the responsibility of the assessee to explain any credit entry in its books of accounts. The assessee should also provide proof that the liability claimed has not ceased to have existed as on the balance sheet date. The assessee has failed to discharge the onus cast upon it. The assessee cannot be allowed to continue a bogus credit entry for ever under the guise that is an old credit entry. Merely because of the cheque transaction, the trade credit amount will not stand explained for that year or for all future years. Moreover, the assessee has claimed it to be a trade creditor and not a loan creditor. In reply, the assessee has only stated that the provisions of section 41(1) are not applicable to the facts of the case. Whereas, the liabilities which have ceased to have existed in the case of trade creditors can as well be brought to tax u/s.41(1). This issue is similar to allowing purchase advances written off as bad debts. Reliance is placed on the judicial decisions in Mysore Sugar Co. Ltd (46 ITR 649 SC), B.D. Bharucha (65 ITR 403 SC) and Dhanalakshmi Corporation (46 ITR 1031 Madras) for this corollary. Reliance is also placed on the judicial decisions in Kamal Basha (316 ITR 58 Madras), Palkhi Investments and Trading Co P Ltd (288 CTR 473 Bombay), Suresh Kumar T Jain (128 ITD 74 Bangalore) and Asht Lakshmi Diamond and Jewellery (154 ITR 688 Mumbai) in support of bringing the amounts for taxation u/s 41(1). The outstanding credit amount of Rs.25,32,827 as on 31.3.2007 is sustained to be brought to taxation u/s.41(1) as liability which has ceased to have existed.

11. The explanation filed by the assessee is examined. This issue is similar to the earlier issue discussed in para 9 above. Considering the same, the amount of Rs.31,75,900 is sustained to be brought to taxation u/s.41(1) of the IT Act.”

5. Before us the Ld.AR argued vehemently by reiterating the submission made before the Ld.CIT(A) and the Ld.DR argued in support of the order of the Ld.CIT(A) as well as the Ld.AO.

6. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case it is evident that the assessee had not substantiated the genuineness of its sundry creditors with any tangent materials. Just because the Tribunal in the earlier years had held the same sundry creditors to be genuine, it does not mean that they are genuine for the relevant assessment year also. In every assessment year the transactions has to be established to be genuine by substantiating with cogent evidence. In the relevant case before us the assessee has not produced any convincing documents to support its case neither before the Ld.AO nor before the Ld.CIT(A). Even before us at this stage, the assessee has not brought out any cogent evidence to establish the genuineness of the creditors. Therefore in this situation, we do not find any merit in the case of the assessee. Hence we do not have any other option but to confirm the orders of the Ld.Revenue Authorities. Accordingly we hereby sustain the additions made by

the Ld.Revenue Authorities amounting to Rs.25,32,827/- & Rs.31,75,900/- under the head unexplained credit.

7. In the result appeal of the assessee is dismissed.

Order pronounced on the 13th August, 2018 at Chennai.

Sd/-
(धुव्वुरु आर.एल रेड्डी)
(Duvvuru RL Reddy)
न्यायिक सदस्य /Judicial Member

Sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 13th August, 2018

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |