

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 4131/DEL/2017  
[Assessment Year: 2007-08]

Kalyan Jee Saree Waley [P] Ltd  
83-84, Sadar Bazar  
Meerut

Vs.

The JCIT  
Range - 1  
Meerut

PAN : AACCK 2651 C

[Appellant]

[Respondent]

Date of Hearing : 04.09.2018  
Date of Pronouncement : 04 .09.2018

Assessee by : Shri K.Sampath, Adv.  
Shri V. Raajakumar, Adv

Revenue by : Shri Anil Kumar Sharma, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:**

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - Aligarh dated 28.03.2017 pertaining to assessment year 2007-08.

2. The first grievance of the assessee relates to the addition of Rs. 2,28,240/- as cessation of liability u/s 41(1) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short].

3. Briefly stated, the facts of the case are that the assessee is a trader of sarees and ladies dress material. During the course of assessment proceedings notices u/s 133(6) of the Act were sent to several parties which were sundry creditors from whom raw materials were purchased by the assessee for its manufacturing and trading activities. The Assessing Officer found that in the case of M/s Hoshiar Singh Suresh Chandra Sarees Pvt Ltd. though the notice was served but there was no compliance. The assessee was confronted with the result of the enquiries made u/s 133(6) of the Act. The assessee was once again given an opportunity to produce the party alongwith confirmation to establish the veracity of the transactions made by the Assessing Officer. On receiving no plausible reply, the Assessing Officer proceeded by making addition of Rs. 2,88,240/-.

4. The assessee agitated the matter before the ld. CIT(A) and explained that from M/s Hoshiar Singh Suresh Chandra Sarees Pvt Ltd., the assessee had made purchases. Supporting bills were furnished and verified by the Assessing Officer and no discrepancy was found. It was strongly contended that merely because the assessee could not produce the person, addition cannot be made as cessation of liability u/s 41(1) of the Act.

5. Aggrieved by this, the assessee is before me. The ld. counsel for the assessee vehemently stated that the Assessing Officer made the addition by treating Rs. 2,88,240/- as bogus creditor whereas the ld. CIT(A) confirmed the addition as cessation of liability. It is the say of the ld. counsel for the assessee that by any stretch of imagination, section 41(1) does not apply on the facts of the case. The ld. counsel for the assessee further pointed out that the Assessing Officer did not point out any error or defect in the bills seized and has treated the purchases as bogus merely because the assessee could not produce the person.

6. Per contra, the ld. DR strongly supported the orders of the Assessing Officer.

8. I have carefully considered the orders of the authorities below. There is no dispute that in furtherance of its business, the assessee had made purchases from various persons. There is no denying that one of the parties, namely, M/s Hoshiar Singh Suresh Chandra Sarees Pvt Ltd. could not be produced before the Assessing Officer. At the same time, it is an undisputed fact that notice u/s 133(6) of the Act was served upon the said party. Nothing prevented the Assessing Officer to issue summons u/s 131 of the Act to the said party. Be that as it may, I fail to understand how the provisions of section 41(1) of the Act apply on the facts of the case in hand. There is no question of cessation of liability and, therefore, the ld. CIT(A) grossly erred in confirming the addition under the said section. There is no finding by the Assessing Officer that the purchases were bogus and corresponding sales are also bogus. In the absence of any corroborative evidence brought on record, I do not find any merit in the addition so made. I direct the Assessing

Officer to delete the addition of Rs. 2,88,240/- . Ground No. 1 is allowed.

9. Ground No. 2 relates to the addition of Rs. 96,758/- under various heads.

10. During the course of scrutiny assessment proceedings, the A.O was of the opinion that the supporting bills and vouchers in respect of the following expenses have not be presented:

Business Promotion expenditure	Rs	1,66,916/-
Advertisement expenditure,	Rs	2,65,823/-
Travel expenditure,	Rs	1,98,627/-
Stationary and printing	Rs	32,916/-
Shop Maintenance expenditure,	Rs	95,875/-
Misc expenditure,	Rs	39,809/-
Employee welfare expenditure,	Rs	41,483/-
Bonus expenditure,	Rs	42,000/-
Vehicle running & maintenance expenditure .	Rs	72,506/-
Refreshment expenditure,	Rs	1,16,300/-
Fall expenditure	Rs	1,89,688/-

11. The Assessing Officer was of the firm belief that the details of expenses have remained unsubstantiated. Accordingly, the Assessing Officer formed an opinion that the g.p. rate shown by the assessee is not correct. The Assessing Officer accordingly computed the g.p. rate @ 25% on total sale of Rs. 27700870/- and accordingly, g.p. was taken at Rs. 69,25,218/-. After reducing the g.p. of Rs. 48,12,487/- as shown by the assessee, the Assessing Officer made addition of Rs. 21,12,731/-.

12. Before the Id. CIT(A), the assessee contended that the details and bills of expenses were produced but the Id. CIT(A) did not buy the same to be correct. However, the Id. CIT(A) was of the opinion that for the purpose of business, certain expenses must have been incurred by the assessee. Therefore, to test the reasonableness of the expenses, the Id. CIT(A) made the following working:

Sale for A/Y 2007-08		2,77,00,870			
Sale for A/Y 2006-07		2,83,74,544			
Ratio		0.9762578			
	For AY 2007-08	For AY 2006-07	Proportionate Allowable exp.	Difference	Disallowance
Advertisement expenditure	265823	351296	342955.4613	-77132.4613	0
Travelling Expenditure	198627	284465	277711.1761	-79084.1761	0
Stationary & Printing	32916	23027	22480.28844	10435.71156	10435.71156
Business promotion	166916	157480	153741.0789	13174.92111	13174.92111
Shop Maintenance	95875	107367	104817.8716	-8942.87159	0
Misc Expenses	39809	30726	29996.49727	9812.50273	9812.50273
Staff Welfare	41483	39919	38971.23526	2511.764743	2511.764743
Refreshment	0	3337	3257.77229	-3257.77229	0
Bonus	116300	115562	112818.3043	3481.695715	3481.695715
Fall Expenses	189688	172610	168511.8595	21176.14054	21176.14054
Vehicle Running	72526	37245	36360.72189	36165.27811	36165.27811
					96758.01451

13. Accordingly, the Id. CIT(A) restricted the disallowance to Rs. 96,758/-.

14. The ld. counsel for the assessee vehemently contended that the basis on which the disallowance was confirmed by the ld. CIT(A) are not only erroneous but also illogical.

15. Per contra, the ld. DR supported the findings of the lower authorities.

16. I have carefully considered the basis of addition made by the Assessing Officer. Though the Assessing Officer has made addition taking the g.p. rate as basis, the ld. CIT(A) confirmed part disallowance on a different reasoning. The basis given by the first appellate authority is by comparing the turnover of immediately preceding assessment year with that of the year under consideration. The ratio so determined by the ld. CIT(A) does not have any strong footing. Each assessment year is a separate unit and, therefore, the basis adopted by the ld. CIT(A) is erroneous. However, even before me, the ld. counsel for the assessee fairly admitted that certain expenses are not properly supported by bills and vouchers. Therefore, in my opinion, addition of Rs. 50,000/- should meet the ends of justice. I

accordingly direct the Assessing Officer to restrict the disallowance to Rs. 50,000/-. Ground No. 2 is partly allowed.

17. In the result, the appeal filed by the assessee is partly allowed.

**The order is pronounced in the open court on 04.09.2018.**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 04<sup>th</sup> September, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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