

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member

ITA No. 809/Ahd/2017
Assessment Year 2012-13

Shri Mustak Alibhai Sheikh, Prop Word Marine, Old 215 Soap Factory, Nr. Patel Boarding, Alka Cinema, Bhavnagar-364001 PAN: AGBPS6536M (Appellant)	Vs	The ITO, Ward-1(1), Bhavnagar (Respondent)
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Revenue by: Shri Mudit Nagpal, Sr. D.R.
Assessee by: Shri S.N. Divetia, A.R.

Date of hearing : 25-10-2018
Date of pronouncement : 31-10-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2012-13, arises from order of the CIT(A)-6, Ahmedabad dated 22-12-2016, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The assessee has raised following grounds of appeal:-

"1.1 The order passed u/s.250 on 22.12.2016 for A.Y.2012-13 by CIT(A)-6, Ahmedabad, confirming the additions aggregating to Rs. 61,45,752/- is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the explanations furnished and the evidence produced by the appellant.

2.1 The Ld. CIT(A) has grievously erred in law and or on facts in confirming following additions/disallowances:

(i) Sundry Creditors Rs. 49,57,002/-
(ii) Advance from customers Rs. 10,00,000/-

(iii) 20% out of Indirect Expenses Rs. 1,51,750/-
(IV) Unsecured Loans Rs. 37,000/-

2.2 That in the facts and circumstances of the case as well as in law, the Id. CIT(A) has grievously erred making above said additions/disallowances.

It is therefore prayed that the aggregating to Rs. 61,45,752/- made by the AO should be deleted.”

3. The brief fact of the case is that the assessee has filed return of income declaring income of Rs. 7,29,640/- on 30th Sep, 2012. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of 9th August, 2013. During the course of appellate proceedings, the assessing officer has asked the assessee to furnish the name, address, and confirmation of account of the sundry creditors. However, the assessee has not furnished the information as sought by the assessing officer. It is also stated that on 9th Feb, 2015, a show cause notice u/s. 142(1) of the act was also issued to the assessee to furnish the detail called in respect of sundry creditors. However, it is stated that assessee has failed to make compliance to the show cause notice issued by the assessing officer. Consequently, in the absence of any verification, the assessing officer has treated the sundry creditors to the amount of Rs. 1,66,83,558/- as non-genuine and added to the total income of the assessee.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has partly allowed the appeal of the assessee. The relevant part of the decision of the Id. CIT(A) is reproduced as under:-

“5.9.4 I have given careful consideration to the facts narrated in the Assessment order and brought before me during the appellate proceedings and I am of the considered view that appellant was prevented by sufficient cause from producing the evidence within the meaning of sub clause (b) and (c) of sub Rule 1 of Rule 46A of the I.T. Rules, 1962.

5.9.5 In these circumstances, I admit the additional evidence. As the Ld. A.O. has already been given an opportunity to furnish his objections to the additional evidence and he has done so, the procedure involved as per sub rule 3 of Rule 46A has been met.

5.10 I have carefully considered the assessment order, submission of the appellant, additional evidence, remand reports and rejoinders of the appellant. The brief fact of the case is that the appellant has shown sundry creditor in the balance sheet of Rs. 1,66,83,558/-and during assessment proceedings the AO found them ingenuine. However, in the remand proceedings, the AO further verified and found sundry creditors of Rs. 1,16,35,211/- as genuine and reported that 5 creditors are bogus as under-

SN	Name	Rs.	Remarks
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1	MICT Ltd.	6,66,316	Vide it letter dtd. 22.03.2016 stated that nothing is outstanding as on 31.03.2012
2	Shree Cement Ltd.	31,71,893/-	Vide it letter dtd. 28.04.2016 stated that nothing is outstanding as on 31.03.2012
3	Kamal Trading	3,65,040/-	Ledger copy submitted. Vide it letter dtd 26.03.2016, outstanding is Nil.
4	Dhan Steel Pvt. Ltd.	76,263	Vide it letter dtd 14.04.2016 outstanding Rs. 71,655 received on 31.03.2012 and balance is Nil. The assessee was showing the liability of Rs. 76,263 which is required to be disallowed instead of Rs. 4,608/-.
5	AC Industries	10,000	Vide it letter dtd. 21.03.2016 outstanding balance is Nil as on 31.03.2012
	Total	42,89,912	

5.10.1 The appellant in the rejoinder merely submitted that if no reply was received from the creditors then the AO should not have taken adverse view and should have deputed Inspector to further probe into the matter. The contention of the appellant is absolutely vague and illogical as the AO has called for report from the above 5 lenders against whom outstanding balance of Rs. 42,89,912/- was shown however they have informed the AO that there is no outstanding dues. Besides this, during the remand proceeding six creditors of Rs. 6,67,090/- has not responded to the AO.

5.10.2 Considering the above facts, the finding of the AO in the remand report that the sundry creditors of 49,57,002/- are non genuine is upheld and accordingly disallowance on account of bogus sundry creditors is restricted to Rs. 49,57,002/- only. The AO is directed to delete the remaining addition of Rs. 1,17,26,556/-. The ground is partly allowed.”

2nd ground of appeal disallowance out of advance from customers

5. During the course of assessment proceedings, the assessing officer noticed that assessee has shown advances from customers to the amount of Rs. 44,16,538/- in the balance sheet. However, in the absence of furnishing any detail the assessing officer for want of verification has treated the same as unexplained cash credit u/s. 68 of the act and added to the total income of the assessee.

6. Aggrieved assessee filed appeal before the dl. CIT(A). The Id. CIT(A) has restricted the addition to the extent of Rs. 10 lacs. The relevant part of the decision of the Id. CIT(A) is reproduced as under:-

“6.7 I have carefully considered the assessment order, submission of the appellant, remand reports and rejoinders of the appellant. The brief facts is that the appellant shown Rs. 44,16,538/- as advance from customer in the balance sheet. The AO treated advances as unexplained cash credit u/s 68 of the IT Act. In the remand proceedings, the AO issued notices u/s. 133(6) of the Act to various parties. During the verification proceeding advances of Rs. 34,16,538/- was found genuine. However 3 parties i.e. Jenul Gafarbai Kaka of Rs. 2,00,000/-, Jeel Industries of Rs. 3,00,000/- and Royal Iron Steel Works of Rs. 5,00,000/- could not be found at the given address thus notices could not be served upon them. In the remand proceedings the appellant could not file any where about of these parties and merely submitted that the AO should have made further effort to locate these parties and Inspector should have been deputed to verify and locate these persons.

6.7.1 The contention of the appellant is vague and not acceptable as the primary onus is on the appellant to provide the basic details of the customers and to prove the genuineness of the transaction. However the appellant has miserably failed in discharging his onus therefore the AO is justified in treating the advances from above 3 customers of Rs. 10,00,000/- as unexplained. The addition on account of advance from the customer of Rs. 10,00,000/- is upheld and the balance addition of Rs. 34,16,558/- is deleted. The ground is partly allowed.”

3rd ground of appeal disallowance of 20% out of indirect expenses

7. During the course of assessment proceedings, the assessing officer has noticed that assessee has claimed indirect expenses to the amount of Rs. 11,92,179/- in the P & L a/c. However, in the absence of detail and verification, the assessing officer has disallowed 20% of such expenses to the amount of Rs. 2,38,426/-.

8. Assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has restricted the disallowance to the extent of Rs. 1,51,750/-. The relevant part of decision of Id. CIT(A) is as under:-

“7.4 I have carefully considered the assessment order, submission of the appellant, remand reports and rejoinders of the appellant. It is noted that the AO has given various opportunities to the appellant to produce the supporting document to prove the genuineness of the expenses of Rs. 1,51,750/-. However the appellant could not produce the same before the AO. The contention that these expenses relate to diesel, repairing, salary of driver and salary do not hold any merit as only those expenses which were not supported with evidence has been disallowed by the AO after providing various

opportunities to the appellant. The AO disallowance is justified and confirmed. The ground is dismissed.”

4th ground of appeal disallowance of unsecured loan

9. The assessing officer noticed that assessee has shown unsecured loan of Rs. 7,56,000/- in the balance sheet. The assessing officer has disallowed the same as unexplained cash credit u/s. 68 of the act as assessee has not explained the source of unsecured loan.

10. Aggrieved assessee has filed appeal before Id. CIT(A). The Id. CIT(A) has restricted the disallowance to the amount of Rs. 37,000/-. Relevant part of decision of Id. CIT(A) is reproduced as under:-

“8.5 I have carefully considered the assessment order, submission of the appellant, remand reports and rejoinders of the appellant. It is seen that the AO made addition of Rs. 7,56,000/- on account of unexplained unsecured loan. During the remand proceedings out of this Rs. 7,19,000/- was confirmed by Mohamad Rafiq Umarbhai however the remaining Rs 37,000/- was found bogus by the AO as the appellant could not give any where about of the lenders. Since the appellant has failed to provide the basic details of unsecured loan taken thus genuineness of the loan, identity and creditworthiness of the creditors has not been established therefore the AO is justified in disallowing the same. Accordingly addition of Rs. 37,000/- is confirmed and balance addition of Rs. 7,19,000/- is deleted. The ground is partly allowed.”

11. During the course of appellate proceedings before us, the Id. counsel has submitted paper book containing information and detail furnished before assessing officer and Id. CIT(A) during the course of assessment proceedings and appellate proceedings for the year under consideration. He has contended that Ld.CIT(A) has erred in sustaining the aforesaid additions. on the other hand Ld. DR has placed reliance on the order of the Ld. CIT(A).

12. We have heard both the sides and perused the material on record carefully. In respect of sundry creditors, it is noticed that in the remand proceedings on the basis of information and detail furnished by the assessee, the assessing officer has verified and found sundry creditors to the amount for

Rs. 1,16,35,211/- as genuine, therefore, this much addition was deleted by the Id. CIT(A). However, in respect of remaining addition of sundry creditor to the amount of Rs. 42,89,915/- we have noticed that assessing officer has made detailed verification and investigation and found that the transactions in respect of five sundry creditors as explained in the findings of the Ld.CIT(A) were not genuine as per the brief remarks of the assessing officer in respect of five sundry creditors mentioned in the finding Id. CIT(A). In the light of the above facts we are of the view that in spite of giving a number of opportunities, the assessee could not prove the genuineness of the sundry credits to the amount of Rs. 42,89,912/- and failed to controvert response of the sundry creditors in which they have stated that there was no outstanding due to the assessee. Considering the above, we do not find any merit in the appeal of the assessee on this issue, therefore, the same is dismissed.

In respect to addition of Rs. 10 lacs as advance from customers it is noticed that document/information furnished before the Id. CIT(A) were forwarded to the assessing officer who has submitted in the remand report that three parties from whom the assessee has obtained advance to the amount of Rs. 10 lacs were not found at the given addresses and notices could also not be served upon them. The assessee has failed to controvert the finding of assessing officer and also failed to prove the genuineness of these transactions. We have noticed from the paper book that the assessee has even not filed the basic detail like PAN No. and acknowledgement of return of income filed by these persons and also not informed where about of these untraceable parties. In view of the above facts, we are inclined with the decision of Id. CIT(A) on this issue therefore this ground of appeal of the assessee is dismissed.

In respect of disallowance of Rs. 1,51,750 out of indirect expenses, during the course of appellate proceedings, the Id. CIT(A) has forwarded the information provided by the assessee to the assessing officer on which the assessing officer has furnished remand report stating that evidence for expenditure of Rs. 1,51,750/- was not provided by the assessee.

However after considering the nature of expenses we restrict the disallowance to the extent of 50% of such expenses to the amount of Rs.75,875/ as the assessee could not furnish the relevant supporting material.

In respect of disallowance of Rs. 37000/- out of unsecured loan, it is noticed that during the course of remand proceeding out of total disallowance of Rs. 7,56,000/- the assessing officer has verified the unsecured loan to the extent of Rs. 7,19,000/-. It is noticed that the assessee has failed to furnish even the basic detail like PAN No. copy of bank statement and copy of acknowledgement of the these loan parties in respect of remaining amount of Rs. 37,000/-, therefore we justify the decision of Id. CIT(A) as identity, creditworthiness and genuineness of unsecured loan to the extent of Rs. 37000/- could not be proved. Accordingly we do not find any merit in the appeal of the assessee on this issue.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 31-10-2018

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 31/10/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क० तालम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलार्थ अधिकरण,
अहमदाबाद