

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.233/Ind/2017
Assessment Year 2012-13

Income Tax Officer 5(1), Ujjain	Vs.	Kishore Hariram Paryani (HUF). 33, Sarvodaya Nagar, Indore
(Revenue)		(Respondent)
PAN No.AAEHP3319M		

ITA No.234/Ind/2017
Assessment Year 2012-13

Income Tax Officer 5(1), Ujjain	Vs.	Shri Prince Paryani, 33, Sarvodaya Nagar, Indore
(Revenue)		(Respondent)
PAN No AMYPP0336J		

Revenue by	Shri Lalchand, CIT & Shri R.S. Ambedkar, Sr.DR
Assessee by	Shri S.S. Deshpande, CA
Date of Hearing	03.12.2018
Date of Pronouncement	06.12.2018

ORDER

PER MANISH BORAD, AM.

The above captioned two appeals are filed at the instance of Revenue pertaining to Assessment Year 2012-13 and are directed against the orders of Ld. Commissioner of Income Tax (Appeals)-II

(in short 'Ld.CIT(A)'), Indore dated 16.12.2016 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 27.03.2015 framed by ITO-5(1), Indore.

2. Revenue has raised following grounds of appeal;

I.T.A. No.233/Ind/2017

1. *Whether in the facts and circumstances of the case Ld. CIT(A) was justified restricting the addition of Rs.2,39,33,988/- to 23,573/- in respect of sundry creditors.*

2. *Whether in the facts and circumstances of the case Ld. CIT(A) was justified in deleting the addition of Rs.68,28,938/-.*

3. *Whether in the facts and circumstances of the case Ld. CIT(A) was justified in accepting additional evidence and explanations of assessee without following Rule 16A and not calling for remand report of the AO in respect of issues at ground No.1 and 2.*

4. *Whether in the facts and circumstances of the case Ld. CIT(A) was justified in deleting the addition made on account of profit estimated by A.O.*

I.T.A. No.234/Ind/2017

1. *Whether in the facts and circumstances of the case Ld. CIT(A) was justified in deleting the addition of Rs.2,83,24,079 on account of creditors.*

2. *Whether in the facts and circumstances of the case Ld. CIT(A) was justified in deleting the addition of Rs.38,49,923/- on account of creditors.*

3. Whether in the facts and circumstances of the case Ld. CIT(A) was justified in not allowing the provision of Rule 46A and not calling for remand report of the AO before relying on addition evidences produced for creditors.

4. Whether in the facts and circumstances of the case Ld. CIT(A) was justified in deleting the addition made on account of profit estimated by A.O.

3. As the issues raised in both the appeals are common they are heard together for sake of convenience and brevity.

4. We will first take up I.T.A. No.233/Ind/2017 in the case of Shri Kishore Hariram Paryani (HUF).

5. The brief facts of the case as culled out from the records are that the assessee is a HUF and derives income from trading of automotive batteries in the name of Hari Sons. The return of income was filed on 29.09.2012 declaring total income of Rs.9,63,920/-. The case was selected for scrutiny through CASS and notice u/s 143(2) and 142(1) were duly served upon the assessee. The assessment was completed u/s 143(3) at Rs.3,45,12,926/- after making various additions of Rs.3,13,12,926/-and also estimating business profit at

Rs.32,00,000/- as against income of Rs.9,63,920/- declared by the assessee by rejecting book results.

6. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and partly succeeded.

7. Now aggrieved with the finds of Ld.CIT(A) revenue is in appeal before the Tribunal.

8. Ld. Departmental Representative vehemently argued supporting the finding of Ld. A.O.

9. Per contra Ld. Counsel for the assessee relied on the findings of Ld.CIT(A) and also mentioned that the alleged additions made by the Ld. A.O for unexplained sundry creditors were not justified as the information necessary to verify the balances of sundry creditors was called for by the Ld. A.O himself by issuing notice u/s 133(6) of the Act to which the alleged creditors directly furnished the confirmation of accounts Ld. A.O and there was no mismatch of balance except for petty amount of commission.

10. We have heard rival contentions and perused the records placed before us. We will first take up Revenue's Ground No.1 in

respect of Shri Kishore Hariram Paryani (HUF) for Assessment Year 2012-13 which reads as follows;

1. Whether in the facts and circumstances of the case Ld. CIT(A) was justified restricting the addition of Rs.2,39,33,988/- to 23,573/- in respect of sundry creditors.

11. We find that the Ld.CIT(A) restricted the addition to Rs.23,573/- as against the addition of Rs.2,39,33,988/- in respect of unexplained sundry creditors by giving a detailed finding of facts in the following manner;

“5. This ground of appeal is against the addition of Rs.2,39,32,988/on account of M/ s Shivalik Vyapar Pvt Ltd. I have gone through the assessment order and the reasons for making the additions. The AO has made the addition at page 2 para 5 on the ground that the assessee has not furnished confirmation from the creditor, M/ s Shivalik Vyapar Pvt. Ltd. Therefore, credits in its name amounting to Rs. 2,39,33,988/- have been added to the total income u/s 68.

It has been submitted by the appellant that he had filed the copy of account of M/ s Shivalik Vyapar Pvt. Ltd. The AO in para 2 of the Assessment Order has mentioned, that he had called the information u/ s 133(6) and the appellant had furnished three separate accounts showing three different balances. It has been submitted by the appellant that the party had sent three accounts, one in respect of the consignment sales, the another in respect of the purchases made from the assessee and the third account in the name of Harison Investor Pvt. Ltd., Mumbai. It has been further stated that in the ledger account of

Hari Sons Secunderbad, a debit balance has been shown at Rs. 2,39,10,415/- whereas as per assessee's Balance Sheet there is a credit balance of Rs.2,39,33,988/-. It has been submitted that the difference is in respect of some commission charged by the appellant which has not been acknowledged by the other party. It was further claimed by the appellant that since, the AO had himself called the confirmation directly from the party and the account tallied with the appellant's account except the difference of commission, the remark that the confirmation has not been filed is contrary to the facts of the case. I have examined these facts carefully and find that the claim made by the appellant is correct to the extent that there is only a minor difference of Rs.23,573/-. Based on the complete analysis of the facts of the case, I hereby restrict the addition to Rs.23,573/- This ground of appeal is partly allowed.

12. From perusal of the above findings of Ld.CIT(A) as well as the findings of Ld. A.O we observe that information u/s 133(6) of the Act was called by Ld.A.O himself from the alleged creditor Shivalik Vyapar Pvt. Ltd to which reply was received along with three separate amounts out of which in one of the account namely M/s Harisons debit balance was shown at Rs.2,39,10,415/- whereas in the assessee's books of accounts the balance has been shown at Rs.2,39,33,988/-. This fact has been well noted by the Ld.A.O himself in the assessment order. It seems that due to inadvertence he mentioned in para 5 of the assessment order that the

confirmation of account has not been received from Shivalik Vyapar Pvt. Ltd and due to this mistake on the part of the Ld.A.O addition of Rs.2,39,33,988/- was made. Ld. CIT(A) rightly appreciated the facts coming to the conclusion that there was only a difference of Rs.23,573/- which was on account of difference of commission and apart from this there was no other difference in the account balance with the sundry Creditor Shivalik Vyapar Pvt. Ltd. We therefore in the given facts and circumstances of the case find no infirmity in the findings of Ld.CIT(A) and the same needs to be confirmed. We accordingly dismiss revenue's Ground No.1.

13. Now we take up Ground No.2 which reads as follows;

2. Whether in the facts and circumstances of the case Ld. CIT(A) was justified in deleting the addition of Rs.68,28,938/-.

14. The alleged addition of Rs.68,28,938/- was made by Ld.A.O on observing that as per the confirmation of account received from M/s Shivalik Vyapar Pvt. Ltd there was a closing balance at Rs.68,28,938/- whereas NIL balance was appearing in the balance sheet of the assessee.

15. We find that Ld.CIT(A) deleted the addition of Rs.68,28,938/- observing as follows;

“6. This ground of appeal is against the addition of Rs.68,28,938/- for the difference in the sale account of Shivalik Vyapar Pvt. Ltd. I have gone through the assessment order as well as the reasons for making the additions. The AO has made the addition of Rs. 68,28,938/- on the ground that there is a difference in the sale account of Shivalik. The appellant's relevant submission in this regard IS being reproduced as below:-

"We are also selling the goods to Shivalik and a separate account is maintained for the sale by the assessee and also by Shivalik For the sales, the assessee supplies the goods against the LC The assessee raises the bill in their name against the LC and it receives bill to bill payment through bank against the LC Thus, no balance is shown by the assessee. While confirming the account, M/ s Shivalik has at the end of the year, credited an amount of Rs. 68,28, 938/ - by a journal entry by debiting it to BOB LC account which is a balance payable by them to the bank and has shown the closing balance of Rs. 68,28,938/-. They have also filed the copy of the BOB LC account showing the said debit by crediting it to the assessee's account. Thus, even in their account there is no balance and the amount outstanding is towards the LC payment due to the bank in respect of payments made to the assessee through LC It is thus submitted that there is no difference in this account and the addition so made deserves to be deleted."

6.1 After a detailed examination of the facts as stated by the appellant and the relevant supporting documents so produced, I am inclined to

agree with the submission of the appellant and find. that there is no difference in the two accounts which calls for the addition and therefore, I delete this addition. This ground of appeal is allowed”.

16. Ld. CIT(A) deleted this addition after detailed examination of the fact that the alleged balance was on account of Bank of Baroda LC which was issued by M/s Shivalik Vyapar Pvt. Ltd for purchasing goods from the assessee and the alleged amount is merely a journal entry through which the alleged amount has been credited in the books of M/s Shivalik Vyapar Pvt. Ltd and corresponding debit to Bank of Baroda LC account which is balance payable by M/s Shivalik Vyapar Pvt. Ltd to the bank. In fact there is no balance amount receivable by the assessee from M/s Shivalik Vyapar Pvt. Ltd.

17. The above findings of Ld. CIT(A) has not been controverted by Ld. Departmental Representative and the fact emanating out of this finding are duly verifiable with the copy of ledger account placed at paper book page 33 to 37. We therefore in the given facts and circumstances of the case find no inconsistency in the findings of Ld.CIT(A) deleting the addition of Rs.68,28,938/-. Ground No.2 of the revenue stands dismissed.

18. Now we take up Ground No.3 which reads as follows;

“3. Whether in the facts and circumstances of the case Ld. CIT(A) was justified in accepting additional evidence and explanations of assessee without following Rule 16A and not calling for remand report of the AO in respect of issues at ground No.1 and 2”.

19. Ground No.3 raised by the revenue is against the admission of additional evidence without following rule 46A of the I.T Act and not calling for remand report of the A.O needs to be dismissed in the given facts where it is proved beyond doubt that all the necessary details were directly called for by Ld.A.O from the alleged sundry creditors by issuing notice u/s 133(6) of the Act which were duly complied. We accordingly dismiss Ground No.3 of revenue's appeal.

20. Ground No.4 is general in nature which needs no adjudication and we accordingly dismiss the same.

21. Now we take up I.T.A. No.234/Ind/2017 in the case of Shri Prince Paryani wherein similar types of grounds have been taken. Both the parties have accepted before us that the facts and the issues remains the same in the case of Shri Prince Paryani similar to those dealt by us in the case of Kishore Hariram Paryani (HUF) (ITA No.233/Ind/2013). We will first take up Ground No.1 which reads as follows;

1. *Whether in the facts and circumstances of the case Ld. CIT(A) was justified in deleting the addition of Rs.2,83,24,079 on account of creditors.*
22. There seems to be a typographical error in the ground raised by revenue as the correct figure of addition relating to alleged sundry creditors M/s. SVPL is Rs.2,44,74,156/-.
23. We find that Ld.CIT(A) gave similar finding of fact observing that there was no mismatch of balance between the balance shown in the books of the assessee vis-à-vis the balance shown by M/s Shivalik Vyapar Pvt. Ltd observing as follows;

“Ground no.2

4. This ground of appeal IS against the addition of Rs.2,44,74,156/- on account of M/ s Shivalik Vyapar Pvt. Ltd and.Rs.28,49,923j- from other creditors. I have gone through the assessment order and the reasons for making the additions. The AO has made the addition at page 3 para 5 on the ground that the books of accounts were not produced and the appellant had not furnished confirmations from the creditors. Therefore, the total credits amounting to Rs.2,83,24;079/ -nave been added- to the Total "Income u/s 68.

4.1 It has been submitted by the appellant that he had filed the copy of account of M/ s Shivalik Vyapar Pvt. Ltd. The AO in para 2 of the Assessment Order has mentioned, that he had called the information u/s 133(6) and the appellant had furnished three separate accounts showing three different balances. It has been submitted by the appellant

that the party had sent three accounts, one in respect of the consignment sales,' another in respect of the purchases made from the appellant and the third account in the name of BOB LC account. It has been further stated that in the ledger account of Dhruv Enterprises, a debit balance has been shown at Rs.1 ,20,46,385/ - whereas as per appellant's Balance Sheet there is a credit balance of Rs.2,44,74,156/-.

4.2 It has been submitted that the AO has made the comparison of two different accounts. The AO has compared the consignment account which is for sale with an another account which was for purchase. Thus, it has been argued by the appellant that the comparison itself was wrong. The consignment account shows the balance of Rs.2,44,74,154/- which tallied with the amount shown in the Balance Sheet by the appellant. It was further claimed by the appellant that since the AO had himself called the confirmation directly from the party and the account tallied with the appellant's account, the remark that the confirmation has not been filed is contrary to the facts of the case. I have examined these facts carefully alongwith the thorough scrutiny of the supporting documents so filed by the appellant and find that the claim made by the appellant is correct. Based on the detailed examination of the facts of the case, I hereby delete the addition of Rs..2,44,74,156 / -. This ground of appeal is allowed”.

24. The above finding of fact given by Ld.CIT(A) has not been controverted by Ld. Departmental Representative and it is duly discernable from the records that Ld. A.O though was having necessary conformation of account received from M/s. Shivalik Vyapar Pvt. Ltd in his records called by him under the information u/s 136(6) of the Act, but it seems that due to inadvertence he

ignored the same which lead to the alleged addition, which has been rightly deleted by Ld.CIT(A). No interference is therefore called for in the finding of Ld.CIT(A) deleting the addition of Rs.2,44,74,156/-. We accordingly dismiss Ground No.1 raised by the Revenue.

25. Now we will take up Ground No.2 which reads as follows;

2. Whether in the facts and circumstances of the case Ld. CIT(A) was justified in deleting the addition of Rs.38,49,923/- on account of creditors.

26. Brief facts relating to the case is that Ld. A.O made addition by rejecting the book results and adding the amount standing due payable to the following sundry creditors u/s 68 of the Act;

1. Cosmos International	Rs.26,18,280/-
2. Harisons	Rs. 8,84,643/-
3. Mahalaxmi Enterprise	Rs. 2,10,120/-
4. Pooja Industries	Rs. 64,260/-
5. R.K. Enterprises	Rs. 72,620/-
6. Shivalik Vyapoar Pvt. Ltd	<u>Rs.2,44,74,156/-</u>
Total	Rs.2,83,24,079/-

27. We have heard rival contentions and perused the records placed before us.

28. We find that the above said addition of Rs.38,49,923/- made by Ld.A.O u/s 68 of the Act in respect of unexplained five sundry creditors has been deleted by Ld.CIT(A) by making detailed examination of the facts observing as follows;

“Ground no.3

5. This ground of appeal is against the addition of Rs.38,49,923/u/ s 68 in five accounts without ascertaining the facts. I have gone through the assessment order as well as the reasons for making the additions. The appellant's relevant submission in this regard is being reproduced as below:-

"Regarding the other creditors, it is submitted that the copies of confirmations are attached herewith. In the next year the payments have been made through banking channel. The assessee has purchased goods from them and are reflected in the books of accounts. In case of one of the creditors M/ s Harisons of Rs. 8,84,643/-, the said assessee is assessed with the same AO and their Balance Sheet shows the amount towards the assessee. .Since, -the additions have been made on mere conjectures and surmises and wrong assumption of facts, the addition deserves to be deleted."

5.1 After a detailed examination of the facts as stated by the appellant and the relevant supporting documents so produced, I am inclined to agree with the submission of the appellant and find that there is no difference in the accounts which calls for the addition and therefore, I delete this addition. This ground of appeal is allowed.”

29. We further find that confirmation of amounts of all the alleged five creditors have been examined by the first appellate authority and there is no dispute to the fact that the payment to these creditors have been made through proper banking channel in the succeeding financial year. No interference is therefore called for in the finding of Ld.CIT(A) deleting the addition of Rs.38,49,923/- and the same is upheld. We accordingly dismiss Ground No.2 raised by the revenue.

30. Ground No.3 raised by the revenue challenging the admission of additional evidence and not calling for remand report stands dismissed in view of our finding given in the case of Shri Kishore Hariram Paryani HUF adjudicating similar type of Ground No.3 raised in that appeal. We accordingly dismiss Ground No.3 raised by the revenue.

31. Ground No.4 is general in nature which needs no adjudication.

32. In the result both the appeals of the revenue vide ITA No.233/Ind/2017 in the case of Shri Kishore Hariram Paryani HUF and ITA No.234/Ind/2017 in the case of Shri Prince Paryani for Assessment Year 2012-13 stands dismissed.

The order pronounced in the open Court on 06.12.2018.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 06 December, 2018

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore