

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: Bench 'D', NEW DELHI**

**BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 3294/Del/2015
AY: 2009-10**

DCIT Circle-II, Block-B, CGO Complex, NH-IV Faridabad.	vs.	Vijay Engineering & Metal Works, Plot No. 165, Sector-24, Faridabad. AACFV6169R
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(Appellant)

(Respondent)

Appellant by : Ms. Naina Soin Kapil, Sr. DR
Respondent by : None

Date of Hearing : 24/01/2019

Date of Pronouncement: 29/01/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by revenue against order dated 16/03/15 passed by Ld. CIT (A), Faridabad for assessment year 2009-10 on following grounds of appeal:

1. *“Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right on facts and in law in deleting the addition of Rs. 59,35,878/- made by the Assessing Officer on a/c of unverified sundry creditors even when the assessee could not produce the requisite evidence during assessment proceedings as well as during remand proceedings to authenticate creditors outstanding as on 31.03.2009.*
2. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right on facts and in law in admitting the additional evidence even when on providing more than sufficient opportunities the assessee could not produce the*

- requisite evidence during assessment proceedings as well as during remand proceedings to authenticate creditors outstanding as on 31.03.2009.*
3. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right on facts and in law in not confirming the addition of Rs. 7,97,431/- made by the Assessing Officer on account of substantially high and unverified claim of telephone expense even when the bills were not produced by the assessee in support of expenses debited to P&L Account.*
 4. *The appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal.”*

Brief facts of the case are as under:

2. Assessee filed its return of income on 25/11/09. Case was processed under section 143 (1) of the Act, which was later on picked up for scrutiny. Notices under section 143 (2) was issued, followed by notice under section 142 (1) along with questionnaire. In response to statutory notices, assessee's representatives appeared before Ld.AO and filed details as called for.
3. Ld.AO observed that assessee was engaged in the business of manufacturing of auto parts. A survey under section 133A of the Act was conducted at business premises of assessee, during which assessee surrendered additional income of Rs.2,40,53,582/-. Further amount of Rs.23,06,964/- was added in P&L account, as unclaimed balances written off.
4. Ld.AO during course of survey observed that, surrender was in respect of sundry creditors, who were not included in creditors list totaling to Rs.4,50,67,865/- for assessment year 2008-09 as on 31/03/08.

4.1 Ld.AO called upon assessee to file complete details of sundry creditors, and to prove genuineness thereof. Ld. AO made addition in respect of 54 creditors, where no confirmations were filed by assessee amounting to Rs.59,35,878/-.

5. Further Ld.AO observed that assessee had paid sum of Rs.7,50,780/-, to M/s. CitiFinancial Consumer Finance India Ltd., during year under consideration. Ld.AO called upon assessee to produce evidence of TDS made on the payment made. In response to query raised, assessee submitted that, no TDS was deducted on interest paid, as these were interest payments against loan taken by assessee.

6. Ld.AO made addition in the hands of assessee by invoking section 40 (a) (ia) of the Act.

7. Further Ld.AO observed that, a sum of Rs.8,97,431/- was found debited under the head administrative expenses, in P&L account for year under consideration. Assessee was called upon to prove expenses incurred. In response, assessee filed print outs of cash book and Ledger vouchers to support certain expenses debited, but no evidence in form of bills for huge expenses claimed under the head telephones, were produced. Ld.AO accordingly made disallowance of Rs.7,97,431/-.

8. Aggrieved by addition made by Ld.AO, assessee preferred appeal before Ld.CIT (A), who partly allowed appeal of assessee.

9. Aggrieved by order of Ld. CIT (A), revenue is in appeal before us now.

10. At the outset, none appeared before us today on behalf of assessee. It is also observed that notices have been sent to address mentioned by assessee, in Form 35, filed before Ld.CIT (A) on 19/09/18 as well as, on

19/11/18. Considering smallness of case, we are inclined to dispose of appeal as under:

Ground No.1 raised by revenue is against deletion of Rs.59,35,878/- on account of sundry creditors outstanding as on 31/03/09.

11. Ld.Sr.DR placed reliance upon order of Ld.AO and submitted that no compliance to prove genuineness of sundry creditors shown outstanding as on 31/03/09 was made by assessee. She vehemently submitted that, assessee was granted sufficient opportunities before Ld.AO to file all requisite details to prove genuineness of creditors which assessee failed to discharge. She thus supported addition made by Ld. AO.

12. We have perused records placed before us and order passed by Ld. CIT (A). It is observed that before Ld. CIT (A) assessee had filed additional evidence under rule 46A with regards to unexplained sundry creditors amounting to Rs.59,35,878/-, which included confirmations of 37 creditors with their PAN and place of assessment with copies of accounts, confirmations from 17 creditors with date of payment in following years along with bank statements and copies of accounts for assessment year 2009-10 and 2010-11. Ld. CIT (A) forwarded additional evidence to Ld.AO for examination with regards to its admissibility as well as merits of addition in light of additional evidences. Ld.AO in remand report dated 05/01/15 submitted that onus was on assessee to prove the same with sufficient documentary evidence and assessee was granted sufficient opportunities in regards to the same. He thus rejected additional evidence.

13. Ld.CIT (A) upon receipt of remand report, observed that in return of income filed for assessment year 2008-09, assessee had shown 182

parties under the head sundry creditors. During survey under section 133A of the Act, assessee surrendered additional income of Rs.2,40,53,582/- for taxation, which included 7 sundry creditors amounting to Rs.1,00,33,582/-. He also observed that in return of income filed for assessment year 2009-10, said surrendered amount was shown in profit and loss account as additional income. In addition, regarding 7 sundry creditors of Rs.1,00,33,582/- assessee surrendered sum of Rs.23,06,694/- in profit and loss account, as unclaimed balances written off.

14. Post survey, Ld. AO drew a list of 54 sundry creditors in respect of which, no confirmation was filed by assessee.

15. Ld. CIT (A) observed that assessee has not only provided confirmations of sundry creditors but also has given copy of account of various sundry creditors showing payment in subsequent year. He, thus observed that assessee has shown how the amount was outstanding against sundry creditors. Ld. CIT (A) has accepted additional evidence and decided the issue as under:

“7.5 On account of the reasons mentioned earlier in the order, I have proceed to accept the additional evidence provided by the appellant in the form of confirmations and various sundry creditors. On a perusal of the said confirmations, it is revealed that the appellant has provided detailed confirmed copies of account of various sundry creditors in respect of whose outstanding balances, additions were made in the assessment order. Not only are the copies of account confirmed but the Permanent Account Number of the said creditors has also been furnished by the appellant. In addition, the appellant has also furnished copies of account of various creditors in the subsequent year from which the position regarding payment of outstanding balances gets crystal clear. On a careful examination of the subsequent years’ copy of account, it is

revealed that the appellant had made payments to these sundry creditors by cheque.”

16. We do not find any infirmity in afore stated observation and findings of Ld.CIT (A), as assessee produced informations required by Ld.AO, and therefore assessing officer could not have assumed that these creditors were no more payable by assessee. Further Ld.CIT (A) records that credit balances were in respect of parties, from whom purchases were made by assessee, or to whom payments for such expenses were due from assessee.

17. Thus in our considered opinion assessing officer cannot proceed to disallow the sundry creditors standing in the books of account of assessee under section 41 (1) of the Act. Ld. CIT (A) further records that assessee has shown copies of account of various sundry creditors where payments have been made in subsequent years.

We therefore uphold order of Ld. CIT (A) in this regard.

Accordingly this ground raised by revenue stands dismissed.

Ground No. 2 raised by revenue is on account of deletion of Rs.7,50,780/- under section 40 (a) (ia) of the Act.

18. Ld.Sr.DR placed reliance upon order passed by Ld.AO.

19. We have perused submissions advanced by assessee before Ld.CIT (A).

20. It is observed that assessee had furnished deduction certificate under section 197 (1) issued by ACIT (TDS) which states that payment of interest to CitiFinancial consumer Finance India may be made at nil rate for period between 18/08/08 to 31/03/09. In the light of afore stated certificate disallowance made by Ld.AO has been rightly deleted by Ld. CIT (A) and the same is upheld.

Accordingly ground raised by revenue stands dismissed.

Ground No. 3 raised by revenue is on account of addition restricted to 1/7TH of total telephone expenses amounting to Rs.8,97,431/-.

Ld.CIT (A) restricted disallowance to 1/7 of total expenses, as he was of the opinion that assessing officer has not been able to give any cogent reason for disallowance of Rs.7,97,431/-. He restricted disallowance looking into past history of assessment proceedings. Ld.Sr.DR could not produce anything in contrary in order to sustain addition made by Ld.AO, we therefore uphold the view of Ld. CIT (A).

Accordingly ground raised by revenue stands dismissed.

In the result appeal filed by revenue stands dismissed.

Order pronounced in the open court on 29/01/2019

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(BEENA A PILLAI)
JUDICIAL MEMBER**

Dated: 29.01.2019

*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	28/01/2019
Date on which the typed draft is placed before the dictating Member	28/01
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	29/01
Date on which the fair order comes back to the Sr. PS/PS	30/01
Date on which the final order is uploaded on the website of ITAT	30/01
Date on which the file goes to the Bench Clerk	30/01
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	