

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 1283/DEL/2016 ( A.Y 2012-13)**

DCIT Circle-26(1) C. R. Building I.P. Estate New Delhi <b>(APPELLANT)</b>	Vs	VNS Accessories Pvt. Ltd. A-11-12, Amrit Nagar Behind NDSE-1 New Delhi AACCV9888N <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Surender Pal, Sr. DR</b>
<b>Respondent by</b>	<b>Sh. S. K. Gupta, CA</b>

<b>Date of Hearing</b>	<b>13.02.2019</b>
<b>Date of Pronouncement</b>	<b>18.02.2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 23/12/2016 passed by CIT(A)-9, New Delhi for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

1. *"On the facts and in the circumstances of the case and in law the order passed by Ld.CIT(A) is erroneous and the learned CIT(A) has erred in deleting the addition of Rs.1,63,55,509/- made by AO on account of S. Creditors".*
2. *"On the facts and in the circumstances of the case and in law the order passed by Ld. CIT(A) is erroneous and the learned CIT(A) has erred in deleting the addition of Rs.36,37,392/- made by AO on account of claim and Discount".*
3. *"On the facts and in the circumstances of the case and in law the order*

*passed by Ld. CIT(A) is erroneous and the learned CIT(A) has erred in deleting the addition of Rs.20,83,796/- made by AO on account of capital expenditure".*

*4. "On the facts and in the circumstances of the case and in law the order passed by Ld.CIT(A) is erroneous and the learned CIT(A) has erred in deleting the addition of Rs.2,78,100/- made by AO on account of entertainment expenses".*

*5. "On the facts and in the circumstances of the case and in law the order passed by Ld.CIT(A) is erroneous and the learned CIT(A) has erred in deleting the addition of Rs.54,346/- made by AO on account of business promotion expenses".*

*The appellant craves, leave or reserving the right to amend modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

3. During the year, the assessee Company is engaged in the business of manufacturing of bags, shoes and accessories. Return declaring income of Rs.71,69,850/- was filed on 27/09/2012. The case was processed u/s 143(1) of the Act 1961. Subsequently, the case was taken up for scrutiny and notice u/s 143(2) was issued and served to the assessee. In response to the statutory notices, the AR of the assessee attended from time to time the assessment proceedings and filed some details. The Assessing Officer made addition on account of business promotion expenses amounting to Rs. 54,346/-, entertainment expenses amounting to Rs.2,78,100/-, capital expenditure charge as Revenue Expenditure amounting to Rs. 20,83,796/-, claims and discount amount to Rs. 36,37,392/- and Sundry Creditors amounting to Rs. 1,63,55,509/- treating the same as unexplained u/s 68 of the Income Tax Act, 1961.

4. Being aggrieved by the assessment order, the assessee filed appeal before

the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR submitted that as regards Ground No.1, relating to deletion of addition of Rs. 1,63,55,509/- made by the Assessing Officer on account of Sundry Creditors. The Assessing Officer has rightly made this addition as the assessee did not file the confirmation and ledger accounts of any of the Sundry Creditors during the assessment proceedings. Thus, the Ld. DR submitted that the CIT(A) has without looking into the aspect has admitted the additional evidences, despite giving proper opportunity to the assessee during the assessment proceedings by the Assessing Officer.

6. The Ld. AR submitted that the CIT(A) rightly deleted this addition of Rs. 1,63,55,509/- as the Assessing Officer in remand report called by the CIT(A) never rejected the books of accounts. The Assessing Officer also accepted the purchases of these parties and during the appellate proceedings, the assessee filed all the details relating to confirmation and ledger accounts of the Sundry Creditors along with statement of the Directors of those Companies. Thus, the Ld. AR submitted that the CIT(A) rightly deleted this addition.

7. We have heard both the parties and perused the material available on record. The CIT(A) held as under:-

*“4. Considering the submission and facts, the appellant arguments found acceptable. The appellant has submitted copies of accounts of sundry creditors and same has been sent to the AO for his comment. The AO has made objection regarding admitting of the evidences but no comments has been offered on merit. The AO has not rejected the books of accounts. The AO has accepted the purchases of these parties. So, only on the credit balance addition cannot be made. Regarding genuineness no point was raised in the assessment order. In the remand report also no point was raised regarding genuineness or correctness of trading results. Once the purchases has been accepted, then the AO is not justified to make addition on credit balance. The*

*appellant has also submitted copy of Accounts of the creditors. It was also submitted that the mostly payments have been made by account payee cheques. The appellant has also submitted that the creditors are assessed to tax and in support of it has furnished the copy of acknowledgment of return filed. The ratio laid down by the Hon'ble Delhi High Court in these decisions are squarely applicable in the instant case. So, in view of the above facts and in view of the decisions relied the addition made by the AO of amounting to Rs.1,63,55,509/- is hereby deleted and the ground of appeal is allowed."*

The CIT(A) gave the finding on the basis that the assessee submitted copy of accounts of creditors and the payments were made through account payee cheques. Besides that the CIT(A) observed that the assessee furnished the copy of acknowledgment of return filed by the creditors. But, we are of the considered opinion that the assessee has not discharged its onus regarding genuineness and creditworthiness of the transaction. During the Assessment Proceedings, the assessee did not file any details as to confirmation of the creditors as well as the relevant ledger accounts and statements of the Directors of those companies. These documents were filed before the CIT(A) upon which the CIT(A) failed to give justified reason as to how the said documents are relating to the sundry creditors. Therefore, we are of the opinion that the issue contested herein has to be remanded back to the file of the Assessing Officer to verify these documents. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No.1 of the Revenue's appeal is partly allowed for statistical purpose.

8. As regards deletion of addition to Rs. 36,37,392/- made by the Assessing Officer on account of claim and discount expenses, the Ld. DR submitted that the assessee has given the claim and discounts only to one party which is a related party and it is not an expenditure of commercial expediency. Therefore, the Ld. DR submitted that the addition was rightly made by the Assessing Officer.

9. The Ld. AR submitted that the CIT(A) has given a categorical finding while deleting the addition on account that payment in respect of claim & discount is directly related to export made to M/s Mashroom Accessories Ltd. UK, to extend of Rs. 43.50 crore and it is not a related party which was referred in the Note No. 2.29 of the audited balance sheet of the assessee which is verifiable. Thus, the Ld. AR submitted that the CIT(A) rightly deleted this addition.

10. We have heard both the parties and perused the material available on record. The CIT(A) held as under:-

*“4.2. I have considered the submission of the appellant and order of the AO and details submitted during the course of appellant proceedings. In the head claim & discount the AO made addition of Rs.36,37,392/-. The AO has made disallowance on account of the reasons that party is a related party and expenditure incurred is not for the purpose of business. Further no compliance was made of show cause notices issued in this regard. As against the appellant has submitted that the payment in respect of claim and discount is directly related to export made to M/s Mushroom accessories limited, UK to extent of Rs.43.50 crore. As regards related party the appellant has denied this fact and referred the note no. 2.29 of the audited balance sheet. The claim is verifiable from the audited accounts for which the copy has been submitted. The AO has also not doubted the genuineness of the transaction. The AO’s argument that the appellant has not made compliance of show cause notices issued. In this regard, details discussions have been made in ground no. 3 where additional evidences have been admitted. Since, the AO has not provided proper opportunities therefore, on the same reasons the details submitted, admitted under rule 46A of the I.T. Act. From the above discussion it is very clear that the above expenditure was incurred for the purpose of business. The AO has not brought out any facts which proves that expenditure claimed was not genuine or not incurred for the purpose of*

*business. So only on mere suspicion the AO is not justified to make addition in this regard. The Hon'ble Supreme Court has held in the case of Dhakeshwari Cotton Mills Ltd. Vs. CIT (1954) 26 ITR 775 that "in making an assessment under sec. 143(3), the Assessing Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or material at all. There must be something more than bare suspicion to support the assessment under sec. 143(3)."*

*So, in view of the facts discussed above, the addition made by the AO is hereby deleted. Hence, the ground of appeal is allowed."*

From the records it can be verified that the payment in respect of claim & discount is directly related to export made to M/s Mashroom Accessories Ltd. UK, to extend of Rs. 43.50 crore and is not a related party payment as referred in the Note No. 2.29 of the audited balance sheet of the assessee. Thus, the CIT(A) rightly deleted this addition. Ground No.2 of the Revenue's appeal is dismissed.

11. As regards Ground No.3, regarding deletion of the addition of Rs.20,83,766/- made by the Assessing Officer on account of capital expenditure, the Ld. DR submitted that the Assessing Officer observed that the expenditure gave enduring benefits to the assessee company and thus treated the same as capital expenditure.

12. The Ld. AR submitted that the CIT(A) has given a categorical finding that the assessee's premises were rented premises and expenditure was incurred for running business smoothly. Therefore, expenditure was related to the business activities of the assessee. Hence, the Ld. AR relied upon the order of the CIT(A).

13. We have heard both the parties and perused the material available on record. The CIT(A) held as under:-

*“5.2. The appellant has furnished the details of repairing and maintenance of Rs. 36,15,444/- out of which the expenditure incurred of Rs. 23,15,399/- was treated as capital in nature. The appellant has submitted that these expenses were in connection with rental premises. The appellant has furnished the details of these expenses. As details discussed in grounds no. 3 the details furnished is hereby admitted under Rule 46A of the IT Act. It has claimed that no new asset has come to into existence. These expenses were routine in nature and required for smooth running of business. The premises is also rented so intention of the assessee could not be to bring into existence of new asset. In this regard the Hon’ble Supreme Court and Hon’ble High Court has decided the issue in various decision as under:-*

***CIT vs. Madras Auto Service (P) Ltd. 233 ITR 468 the Apex Court***, while deciding Civil Appeal relevant for the assessment year 1968-69, observed that as revenue in nature.

***CIT v. Hi Line Pens 306 ITR 182(Del)***

*Business expenditure — repairs — current repairs — distinction — assessee incurring expenses towards repairing rented premises for its business activity — no intention of assessee to bring any new capital asset — such expenses falling within expression “repairs to premises” in section 30(a)(i) — allowable — income-tax act, 1961, s. 30(a)(i)*

***CIT v. Installment Supply 149 ITR 52(Del)***

*DEDUCTIONS — REPAIRS — TENANT OF PREMISES TAKEN ON LEASE — EXPENDITURE BY TENANT TO SUIT INCREASED OFFICE NEED, AND FOR BETTER FITTINGS AND MARBLE FLOORING AND WOOD WORK — ADVANTAGEOUS IN COMMERCIAL SENSE — ALLOWABLE AS EXPENSES TOWARDS REPAIRS EVEN IF CAPITAL IN NATURE — INCOME- TAX ACT, 1961, s. 30(a)(i), (ii)*

*From the above facts discussed and in view of the decision, it is very clear that assessee premises s rented. The expenditure were incurred for running business smoothly. So, in the above circumstances the addition made by the AO is hereby deleted. Hence, the grounds of appeal is allowed.”*

From the records it can be seen that the assessee's premises were rented premises and expenditure was incurred for running business smoothly and the same was related to the business activities of the assessee. Thus, there is no need to interfere with the findings of the CIT(A). Ground No. 3 is dismissed.

14. As regards Ground No. 4 relating to deletion of addition of Rs.2,78,100/- made by the Assessing Officer on account of entertainment expenses. The Ld. DR submitted that the Assessing Officer rightly made addition as no explanation or details were filed during the assessment proceedings.

15. The Ld. AR relied upon the order of the CIT(A).

16. We have heard both the parties and perused the material available on record. The assessee before the Appellate Authority filed all the relevant details in respect of these expenditure which was forwarded to the Assessing Officer. No discrepancy as regards the details and hence the CIT(A) has rightly deleted this addition. The CIT(A) held as under:-

*“6.1. The appellant has submitted that “the Assessing Officer has considered the above said disallowance on the ground that bills and evidence of these expenses were not furnished. In this connection, we may submit that these expenses were in connection with business activities and mainly in relation to foreign buyers. The assessee is engaged in the business of export and as a part of business and commercial expediency, visit of foreign parties is a regular feature and as such these expenses are of routine business nature. Further, the justification of these expenses is also supported from resolution of Board of Directors.*

*We are pleased to enclose the relevant details alongwith copies of the bills*

*and vouchers for your kind consideration. It may be clarified that the Assessing Officer has not allowed proper and able opportunity for submitting the relevant bills and as such adverse observation of the Assessing Officer are irrelevant and uncalled for. The Assessing Officer called for relevant details and issued show cause notice dtd. 28/2/15 which was received only on 03/03/15 and next date of hearing on 15.03/15. In the absence of proper and reasonable opportunity, it was not possible to furnish bills and vouchers in support of the above said claim during the course of assessment proceedings and as such same are being submitted as part of additional evidence.*

*Even otherwise, these expenses are supported from audited accounts and taking into consideration the fact that the total turnover of the appellant is about 48 crores and as such nominal claim to the extent of Rs. 2,78,100/- should be considered as proper and reasonable.”*

*6.2. The addition of Rs. 2,78,100/- as entertainment expenditure. The reason for addition was only not compliance of the show cause notice issued. But, now the appellant has furnished the details and same was forwarded to the AO for comments. The AO has objected admitting additional evidences. But as details discussed made in ground no. 3. the additional evidences are admitted. Since, the assessee has submitted the details during the appellate proceeding. Therefore, the addition made by the AO is hereby deleted. Hence, the grounds of appeal is allowed.”*

These expenses are supported from audited accounts. The total turnover of the assessee is about Rs. 48 crores and the CIT(A) allowed nominal claim to the extent of Rs. 2,78,100/- as proper and reasonable. There is no need to interfere with the findings of the CIT(A). Ground No. 4 is dismissed.

17. As regards Ground No.5 relating to deletion of addition of Rs.54,346/- made by the Assessing Officer on account of business, the Ld. DR relied upon the order of the Assessing Officer.

18. The Ld. AR relied upon the order of the CIT(A).

19. We have heard both the parties and perused the material available on record. The CIT(A) held in Para 7.2 as under:-

*“7.2 The appellant has submitted this expenditure was incurred for lunch. But this expenditure is not incurred in one day, so, AO’s finding that payment made in cash above Rs. 20,000/- is violation of provision of Section 40A is not admissible. During the appellate proceeding the appellant has submitted that the payment has been made for full year and each payment is less than 20,000/-. So, in view of the submission of the appellant, it is clear that there is no violation u/s 40A(3) of the IT Act. Therefore, the addition made by the AO is hereby deleted. Hence, the grounds of appeal is allowed.”*

The CIT(A) has given detailed findings and does not require any interference. Ground No. 5 is dismissed.

20. In result, appeal of the Revenue is partly allowed for statistical purpose.

**Order pronounced in the Open Court on 18<sup>th</sup> FEBRUARY, 2019.**

**Sd/-  
(R. K. PANDA)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 18/02/2019  
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	13.02.2019
Date on which the typed draft is placed before the dictating Member	13.02.2019
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	
Date on which the fair order comes back to the Sr. PS/PS	18.02.2019
Date on which the final order is uploaded on the website of ITAT	18.02.2019
Date on which the file goes to the Bench Clerk	18.02.2019
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	