

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

I.T.As. No.3588/DEL/2015  
Assessment Years: 2008-09

ITO, Ward-38(2), New Delhi	v.	Shri Prem Kumar & Sons (HUF), A-1/1, Prashant Vihar Rohini, Delhi.
TAN/PAN: AAAHP 5990A		
(Appellant)		(Respondent)

CO No.188/DEL/2018  
Assessment Years: 2008-09

Shri Prem Kumar & Sons (HUF), A-1/1, Prashant Vihar Rohini, Delhi.	v.	ITO, Ward-38(2), New Delhi
TAN/PAN: AAAHP 5990A		
(Appellant)		(Respondent)

Appellant by:	Shri Praveen Kumar, Sr.D.R.		
Respondent by:	Shri Sachin Kumar, CA		
Date of hearing:	17	01	2019
Date of pronouncement:	28	02	2019

**ORDER**

**Per AMIT SHUKLA JM:**

The aforesaid appeal has been filed by the Revenue and Cross Objection by the Assessee against impugned order dated 23.03.2015, passed by Ld. Commissioner of Income Tax (Appeals)-13, New Delhi for the assessment passed u/s.143(3) for the Assessment Year 2008-09. In the grounds of appeal,

the Revenue has challenged the deletion of Rs.67,46,400/- on account of addition made on account of sundry creditors treated as bogus purchases and also addition of Rs.11,70,000/- on account of loan.

2. The facts in brief are that assessee is engaged in the business of trading of Menthol and Mentha oil under the name and style of M/s. Rajhans Enterprises. Ld. Assessing Officer during the course of assessment proceedings noted that assessee had shown unsecured loan of Rs.25,80,815/- and sundry creditors to the tune of Rs.67,70,580/-. The assessee was required to provide the name and address of the loan creditors and sundry creditors. In response, the assessee submitted the details and the addresses. The Assessing Officer issued notices u/s. 133(6) to sundry creditors, most of them according to the Assessing Officer returned undelivered or remained non-complied with. He also issued summons u/s.131 to the persons who had given unsecured loan to the assessee. However according to the Assessing Officer none attended in response. Accordingly, he treated all the sundry creditors as unexplained or bogus credits and added the same. The details of the sundry creditors as well as findings for confirming the same read as under:

“The status of the notices issued u/s 133(6) to Sundry Creditors of the assessee can be summarized as follows:-

S. No.	Name of the Sundry Creditors	Amount on 31/3/8	Date of issue of notice u/s 133(6)	Date for reply	Delivery Status	Reply Status	Amount
1	Prakash Chemical	24,180.00	16-12-2010	20-12-2010	Delivered	Received	24,180.00
2	M.K.S. Aromatics	47,88,280.00	16-12-2010	20-12-2010	Delivered	No Reply	N.A.

3	Tirath Singh	3,02,400.00	16-12-2010	20-12-2010	Returned	N.A.	N.A.
4	Kamal Singh	2,01,600.00	16-12-2010	20-12-2010	Delivered	No Reply	N.A.
5	Balbir Singh	2,01,320.00	16-12-2010	20-12-2010	Delivered	No Reply	N.A.
6	Parmjeet Singh	4,17,600.00	16-12-2010	20-12-2010	Delivered	No Reply	N.A.
7	Gurdev Singh	3,13,200.00	16-12-2010	20-12-2010	Returned	N.A.	N.A.
8	Harprit Singh	5,22,000.00	16-12-2010	20-12-2010	Delivered	No Reply	N.A.
	<b>TOTAL</b>	<b>67,70,580.00</b>					

*It can be observed from the above summary, that only one of the sundry creditor, with balance of mere Rs 24,180/- out of total Sundry Creditors of Rs 67,70,580/- replied and confirmed the balance as claimed by the assessee. None of the remaining sundry creditors confirmed their balances. It was also noted that a few notices issued u/s 133(6) to unsecured creditors returned undelivered and the AR also never provided any new address or any other justification for the non-delivery of the notices inspite of being specifically asked for the same. During the entire assessment proceeding, the AR could not produce any of the sundry creditors. Therefore, the identity, credit worthiness and genuineness of the unsecured creditors remained unverified. More so, the sundry creditors of the assessee also remained unconfirmed and their authenticity also remained unproven. (The balances of Sundry Creditors to whom Notice u/s 133(6) were issued and the same could not be verified amounting to Rs 67,46,400/- (Rs 67,70,580-24,180=67,46,400) is, therefore, taken as bogus purchase/ credits and added to the income of the assessee.*

*[Addition: 67,46,400/-]*"

3. Similarly, with regard to the unsecured loans, AO held that assessee has received fresh loans from two parties namely, Sunita Verma of Rs.10,70,000/- and Manisha Gupta of Rs.1 lac, aggregating to Rs.11,70,000/- and added the same on the ground that none appeared in response to summons u/s.131 and assessee has also could not produce

these creditors and therefore genuineness of the loan and creditworthiness cannot be examined.

4. Before the Id. CIT (A), the assessee submitted that, confirmation letter from all the creditors were submitted during the assessment proceedings along with complete books of account. The assessee also clarified that assessee had running account with these parties and in case of three parties assessee had given detail explanation. The relevant submission of the assessee before CIT(A) reads as under:

*“It is submitted that aforesaid addition includes Rs. 3,02,400/- of Gur Tirath Singh; Rs.2,01,600/- of Kamal Singh; and Rs.2,01,320/- of Balbir Singh. It is further submitted that perusal of their ledger account (pages 23-25) clearly shows the balance outstanding as on 31-03-2008 in respect of Gur Tirath Singh and Kamal Singh are the same as on 31-03-2007 and in respect of Balbir Singh the balance outstanding as on 31-03-2008 was out of the balance payable as on 31-03-2007.*

*It is, therefore, submitted that any addition in respect of the said three creditors cannot be made in the year under consideration.*

*i. It is submitted that only two notices of Gur Tirath Singh and Gurdev Singh were received back, as has been admitted vide para 3 (AO page 2) in the table.*

*ii. It is submitted that the notices u/s 133(6) of the Act were issued on 16-12-2010 (pages 11-12) and it is pertinent to mention that there is no order sheet entry showing that the notices issued u/s 133(6) of the Act were received back and the date on which the notices were purportedly received back is not known.*

*iii. It is submitted that after 16-12-2010, when the notices were issued; only one hearing took place on 27-12-2010 (pages 11-12) and on that date any question particularly regarding creditors was*

*not raised by the Id. ITO.*

*iv. It is submitted that during the course of assessment proceedings the Id. ITO neither informed the Assessee that any notice u/s 133(6) of the Act sent to the creditors has been returned back; nor directed the Assessee to provide new address or justification for the non-delivery of notices.*

*v. It is further submitted that there is no change in the address of Gur Tirath Singh and Gurdev Singh.*

*Regarding the observation of the Ld. ITO that none of the creditor confirmed their balance; it is submitted as under:*

*i. The notices u/s 133(6) of the Act were issued on 16-12-2010 (pages 11-12) directing the sundry creditors to submit the reply by 20-12-2010 and therefore, the time allowed by the Id. ITO to the creditors for submitting the reply, by any stretch of imagination, cannot be said to be reasonable, particularly having regard to the fact that most of the creditors were outstation, and 19-12-2010 being Sunday was holiday; thus, the creditors could not submit the reply to the Ld. ITO.*

*ii. It is further submitted that the Assessee vide letter dated 04-10-2010 (pages 15-17) filed confirmation of M/s MKS Aromatics (pages 19), giving complete address and PAN, which has the highest and large balance.*

*iii. It is submitted that the Id. ITO tried to obtain confirmations directly from the creditors, but non receipt of such confirmations was never informed to the Assessee.*

*iv. It is also submitted that copy of account as appearing in the books of the Assessee duly confirmed by the creditors, namely Harprit Singh (pages 27).”*

*Gurdev Singh (pages 29) and Parmjeet Singh (pages 31) along with their identity card issued by Election Commission of India are placed in the paper book and the same may kindly be admitted as*

*additional evidence, as non receipt of such confirmations was never informed to the Assessee.”*

5. Ld. CIT (A) after considering the entire material on record and submission made by the assessee, noted that in case of one of the major creditor, in M.K.S. Aromatics having credit balance of Rs.47,88,280/- was a regular supplier and in response to the notice u/s.133(6) they have given the confirmation letter directly to the Assessing Officer, hence same cannot be considered as bogus purchases. Similarly, in the accounts of three parties he noted that the opening balance are outstanding and there is no transaction during this year, and therefore, these three accounts of sundry creditors cannot be considered as bogus during the relevant assessment year. In case of other parties also he has examined each and every bill and has given following finding of fact:-

*“The reason given by AO and the submission of the appellant are considered. The relevant ledger account and financial statements are also examined. It is seen that the creditor M.K.S. Aromatics having credit balance of Rs.47,88,280/- is a regular supplier where notice u/s 133(6) issued by AO was served who has given the confirmation letter also. Thus, this amount should not be considered as bogus purchases. In the accounts of Sh. Tirath Singh / (Rs.3,02,400/-), Kamal Singh (Rs.2,01,800/-) and Balbir Singh (Rs.2,01,320/-), only the opening balances are outstanding. There is no transaction during this year. In view of this, these three accounts of sundry creditors also should not be considered as bogus during the relevant assessment year. Regarding credit amount in the name of Parmjeet Singh, Gurudev Singh and*

*Harpreet Singh, the AO mentioned that, in two cases notices were delivered but no reply filed. Only in case of Gurudev Singh the notice was returned. It can be seen that these three suppliers are based in Jalandhar, Punjab and hence notices issued on 16.12.2010 cannot be considered for assessment passed on 27.12,2010. The AO picked up the enquiry at the end of the limitation period for time baring assessment and cannot expect the appellant to fulfill all the queries at a time. The AO also never confronted the appellant that confirmations from the three creditors of Jalandhar have not been received. It is held in the case of Eland International Pvt. Ltd. vs. DCIT (2009) 26 DTR 113 (Del.) that, "If sales have been effected out of purchase made from these parties, then, it cannot be said that the purchase were bogus". The AO did not make any concerted effort to find out the bogus purchases. The addition cannot be made in summery manner where just because some confirmations were not received, entire credit entries should be considered as bogus purchase/credits. In view of this, the addition made is deleted and the ground of appeal is allowed."*

6. Similarly with regard to unsecured loan, the assessee submitted that confirmation of these parties along with complete details and addresses were filed during the course of assessment proceedings along with PAN, etc. It was further submitted that Sunita Verma was a member of HUF and wife of Karta HUF and loan was given through account payee through regular banking channel credited in the bank account of the assessee. It was further clarified that Assessing Officer never directed the assessee to produce the person from whom such loan was received which is evident from the order sheet entry of the Assessing Officer and he has even not mention the date on which perpetuated directions were

issued. Assessing Officer had issued summons on 21.12.2010 to produce the creditors on 24.12.2012, therefore, time allowed was very less. Based on these facts and material on record, Id. CIT (A) has deleted the addition after observing and holding as under:

*“6.3 The reason given by AO and the submission of the appellant are considered. The basis of additions made by AO is that the creditors did not comply with the summons and the appellant failed to produce the persons before him. However, as submitted, the summons were issued on 21.12.2010 asking the creditors to produce by 24.12.2010. This, short span of time is unreasonable to comply with the legal. The appellant also provided confirmation letters, PAN and Income Tax particulars of the creditors to the AO. Moreover, the major creditor Sunita Verma is the wife of the Karta of appellant HUF. Thus, there is no doubt about the identity of the creditors. The Assessing Officer did not make any further enquiry to establish his findings that the transactions are not genuine and the creditworthiness of the creditors are doubtful. In view of this, the addition made is deleted.”*

7. After considering the rival submissions and on perusal of the relevant findings given in the impugned orders, we find that Id. Assessing Officer has treated the purchases made by the assessee from various parties appearing as sundry creditors as bogus purchases. It is a matter of fact that in case of one of the creditor, namely, M.K.S, Aromatics which was having credit balance of Rs.47,88,000/- was a regular supplier and has directly confirmed to the Assessing Officer in response to the notice u/s.133(6). Besides that, three parties, namely, Tirath Singh (Rs.3,02,400/-); Kamal Singh

(Rs.2,01,600/-); and Balbir Singh (Rs.2,01,320/-) were opening balances and no transaction was carried out during this year, therefore, these sundry creditors cannot be treated as bogus purchases for the relevant assessment year. Further, it is a matter of fact that notices u/s. 133(6) were issued on 16.12.2010 to submit their reply on 20.12.2010 and since more of the creditors were out station therefore, they could not respond. The Ld. Assessing Officer has also not confronted the fact that the three creditors have not filed their confirmation independently despite the assessee has filed the confirmation copy of account before the Assessing Officer. Under these circumstances, we do not find any reason to deviate from the finding of the ld. CIT (A) and same is confirmed.

8. With regard to unsecured loan also, we find that these loans have been received through account payee cheque and also their confirmation letters were filed along with PAN and income details. One of the major creditor who has given sum of Rs.10,70,000/-, was wife of the Karta of the HUF and entire transactions have been supported by all the documents, proving the identity, creditworthiness and genuineness. No other material has been brought on record by the Assessing Officer to show that all these documents filed by the assessee do not substantiate the genuineness of the loan. Accordingly, the order of the ld. CIT (A) is affirmed.

9. In the result, the appeal of the Revenue is dismissed.

10. At the time of hearing, ld. counsel submitted that grounds raised in Cross Objection are purely legal ground and same can be treated as infructuous being not pressed. Accordingly, Cross Objection is dismissed as infructuous.

11. In the result, the appeal of the Revenue as well as the Cross Objection of the Assessee is dismissed.

**Order pronounced in the open Court on 28<sup>th</sup> February, 2018.**

Sd/-  
**[O.P. KANT]**

**ACCOUNTANT MEMBER**

DATED: 28<sup>th</sup> February, 2018

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**