

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.6712/Del./2013
Assessment Year 2009-2010

M/s. Vinculum Solutions Ltd., Level-2, Elegance, Mathura Road, Jasola, New Delhi – 110 025. PAN AACCV5283D	vs.,	The ACIT, Circle-17(1), C.R. Building, New Delhi – 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri Upvan Gupta, C.A.
For Revenue :	Smt. Naina Soin Kapil, Sr. D.R.

Date of Hearing :	02.04.2019
Date of Pronouncement :	03.04.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-19, New Delhi, Dated 09th September, 2013, for the A.Y. 2009-2010.

2. The facts of the case are that assessee-company filed return of income declaring loss of Rs.2.24 crores, which was processed under section 143(1) of the Income

Tax Act, 1961. The case was selected for scrutiny assessment. During the year assessee-company is engaged in the business of providing software development and information technology enabled services. The assessee filed the details before Assessing Officer time to time. The Assessing Officer in this case issued notice under section 133(6) to 7 creditors of the assessee for confirmation of the balances. The details of the same is noted at page-2 of the assessment order, in which, the Assessing Officer noted that either the creditors have not filed any reply or the letters under section 133(6) remained undelivered, no confirmation/reply filed. Thus, the difference in the amount of sundry creditors was found in a sum of Rs.32,47,203/-.

The Assessing Officer noted that assessee has been given opportunity on various dates to reconcile the differences in the accounts of 7 creditors and to explain the reasons for non-delivery or no reply filed by the creditors. The assessee was also directed to furnish confirmation from the parties on their Letter Heads along with copy of PAN card, acknowledgement of ITR, which may prove identity of the

creditor. The Assessing Officer noted that assessee did not reconcile the differences. Therefore, Assessing Officer made addition of Rs.32,47,203/- on account of unexplained sundry creditors.

3. The assessee challenged the addition before the Ld. CIT(A) and also filed an application under Rule 46A for admission of the additional evidences. The assessee explained that in the cases of two creditors namely M/s. Tanisha Travels Tradelinks and M/s. Infor Global Solutions (I) Pvt. Ltd., the letters dated 20th December 2011 were dispatched on 22nd December 2011 and the Assessing Officer passed the assessment order on 29th December 2011. Hence no sufficient time was given to assessee to prove identity of these creditors. The remand report from the Assessing Officer was called for, in which, the Assessing Officer more or less repeated the same facts that are noted in the assessment order. In respect of these two creditors, it was also reported that the ledger account filed by the assessee of M/s. Infor Global Solutions (I) Pvt. Ltd., is not signed by the creditor, therefore, it is not a valid

confirmation. In the case of M/s. Tanisha Travels Tradelinks, the ITR acknowledgement and confirmation was provided. However, addition of Rs.2,65,865/- was made because of the differences in the amount, for which, no confirmation have been filed. In the case of Ms. Jayashree Dutta, assessee was informed that letter sent to her have returned back undelivered. The confirmation does not tally figures. The Ld. CIT(A) gone through the paper book filed by assessee in detail and noted that in cases of M/s. Tanisha Travels Tradelinks and M/s. Infor Global Solutions (I) Pvt. Ltd., there was no sufficient time to send the notice to them, therefore, additional evidence was were admitted. The Ld. CIT(A) on going through the details and remand report of the Assessing Officer as noted above, confirmed the additions in the case of these two sundry creditors. However, in the case of rest of the creditors, additional evidences were not admitted, therefore, addition was confirmed.

4. Learned Counsel for the Assessee reiterated the submission made before the authorities below and

submitted that even in the case of two creditors namely M/s. Tanisha Travels Tradelinks and M/s. Infor Global Solutions (I) Pvt. Ltd., though the Ld. CIT(A) admitted the additional evidences, but, their cases have not been decided on merits. The documentary evidences filed on record, have not been considered by the Ld. CIT(A). The Ld. CIT(A) merely going through the remand report of the Assessing Officer, confirmed the addition. He has submitted that in the case of M/s. Tanisha Travels Tradelinks, copy of the invoices were filed and in case of M/s. Infor Global Solutions (I) Pvt. Ltd., assessee filed copy of the PAN card, copy of all the invoices received and the copy of the TDS. In the case of Ms. Jayashree Dutta, copy of TDS certificate were filed. The assessee in respect of other creditors also filed the particulars of PAN, ledger account, bill, agreement, etc., which shows that creditors were genuine and in some of the cases balance were coming-up from earlier years. He has submitted that even if assessee could not file confirmation from these sundry creditors, but, sufficient material was produced on record to justify that these were unpaid

creditors to whom the assessee later on paid the amount in question through banking channel. Therefore, no addition could be made. In support of the above contention, he has relied upon decision of the Delhi High Court in the case of Devsons (P) Ltd., vs. CIT 329 ITR 483 (Del.) and Order of ITAT, Delhi Bench in the case of Smt. Sudha Loyalka vs. ITO 97 taxmann.com 303 (Delhi-Tribu.).

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that assessee has not even filed the confirmation from the creditors, therefore, addition was rightly made against the assessee.

6. We have considered the rival submissions. The Assessing Officer made the addition on account of difference in the amounts in respect of 7 creditors, details of which, are noted at page-2 of the assessment order. The Assessing Officer issued notice under section 133(6) of the Income Tax Act, 1961 to 07 creditors and noted that either no reply have been filed by them, the letters returned undelivered or no confirmation/reply have been filed. The assessee did not

file the evidences of identity of the creditors. The Ld. CIT(A), however, in the cases of two of the creditors namely M/s. Tanisha Travels Tradelinks and M/s. Infor Global Solutions (I) Pvt. Ltd., admitted the additional evidences because there was no sufficient time to reply to the notice under section 133(6) of the Act as the same were issued just prior to passing of the assessment order. These are the major amounts, on which, addition have been made. Rest of the creditors are having very small amount. The Ld. CIT(A) despite admitting the additional evidences on the same, did not pass the order on merit and merely on the basis of the remand report, confirmed the addition because the remand report says that ledger account have not been signed by the creditor or the differences is not reconciled. The Ld. CIT(A) did not pass any order on merits considering the material produced by assessee on record. Similarly, as regards the other creditors, no detailed findings have been given by Ld. CIT(A) on merits. Learned Counsel for the Assessee further submitted that sufficient documentary evidences in the form of particulars of the Investors, their PAN, ledger account,

invoices, TDS certificate etc., were produced on record, which justifies that the creditor did some services for assessee, for which, the amount in question was shown as unpaid credit in the books of account of the assessee. It also appears that Assessing Officer has not verified if there was some closing balance coming up from earlier years. According to assessee, the amount in question have been repaid by assessee in subsequent year through banking channel which fact also need verification. It, therefore, appears that the documentary evidences filed on record have not been appreciated by the authorities below and that Ld. CIT(A) did not adjudicate upon the issue on merits, therefore, the matter requires reconsideration at the level of the Assessing Officer. We, accordingly, set aside the orders of the authorities below and restore the matter in issue to the file of Assessing Officer with a direction to re-decide the issue as per Law, by giving reasonable, sufficient opportunity of being heard to the assessee. The assessee is directed to produce sufficient evidences and material on record to prove that the sundry creditors amounts were

genuine and that assessee repaid the amounts subsequently through banking channel. The Assessing Officer shall also take into consideration the decisions relied upon by the Learned Counsel for the Assessee above. In view of the above, the appeal of assessee is allowed for statistical process.

7. In the result, appeal of Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 03rd April, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "D" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches : Delhi.