

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : G : NEW DELHI

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

ITA No.2792/Del/2019
Assessment Year: 2015-16

Sunny Chemicals Pvt. Ltd.,
C-151, Preet Vihar, East Delhi,
New Delhi.

Vs ITO,
Ward-24(3),
New Delhi.

PAN: AAACS6603C

(Appellant)

(Respondent)

Assessee by	:	Shri S.K. Gupta, CA
Revenue by	:	Shri N.K. Bansal, Sr. DR
Date of Hearing	:	01.05.2019
Date of Pronouncement	:	03.05.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 24th January, 2019 of the CIT(A)-8, New Delhi, relating to assessment year 2015-16.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of trading in all types of chemicals. It filed its return of income on 30th September, 2015 declaring the total income of Rs.20,55,130/-. The case was selected for limited scrutiny on the issue of unsecured loans from persons who have not filed their returns of income. In response to the statutory notices issued u/s 143(2) and

142(1) of the Act, there was no compliance from the side of the assessee. The Assessing Officer, during the course of assessment proceedings noted that the parties from whom unsecured loans have been taken by the assessee, but, no satisfactory details were filed are as under:-

Party Name	Loan taken during the year
N.S. Enterprises	Rs.17,61,680/-
Rama Krishna Traders	Rs.31,16,536/-
Swastik International	Rs.66,65,259/-
Total	Rs.1,15,43,475/-

3. According to the Assessing Officer, the assessee only filed the ledgers of parties from whom loan has been taken. According to him, as per the provisions of section 68 of the IT Act, the onus is on the assessee to prove the identity of the creditors, their credit worthiness and the genuineness of the transactions. Mere furnishing of ledger confirmation will not absolve the assessee of the onus cast on it as per the provisions of section 68 of the IT Act. He further noted that the notices issued u/s 133(6) of the Act to the parties for verification of the genuineness of the transactions also could not be complied with by the said parties. In view of the above and in the absence of any satisfactory explanation given by the assessee about the nature and source of the sum of Rs.1,15,43,475/- credited in the books of account of the assessee, the Assessing Officer made the addition of the same u/s 68 of the Act to the income of the assessee.

4. Before the CIT(A), the assessee filed a voluminous paper book in the shape of additional evidences to substantiate that these are not unsecured loans but trade credits. However, in the absence of proper application for admission of the additional evidences under Rule 46A of the IT Rules, 1962, the CIT(A) rejected those additional evidences. So far as the merit of the case is concerned, he noted that despite various opportunities afforded to the assessee, the necessary details were not filed. The assessee had not proved the credit worthiness of all the three lenders upto the satisfaction of the Assessing Officer as well as him. Therefore, the assessee failed to discharge the onus cast on it. He accordingly dismissed the appeal filed before him.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The ld. counsel for the assessee, referring to the schedule of sundry creditors appearing at page 47 of the paper book drew the attention of the bench to the list of nine sundry creditors the total of which comes to Rs.18,14,37,542.73. Referring to the said list, he submitted that the three parties mentioned by the Assessing Officer appears in the said list. Thus, these are all trade creditors and not loan creditors as mentioned by the Assessing Officer. Referring to the Tax Audit Report furnished by the auditors, the ld. counsel for the assessee drew the attention of the Bench to clause 31(a) according to which the assessee has taken unsecured loan only from M/s Dev Chemicals amounting to Rs Rs.98,44,000/- during the year and, therefore, there was no question taking any loan from the above three parties as mentioned by the

Assessing Officer. He further submitted that when the case was selected for limited scrutiny for the purpose of verification of the unsecured loans from persons who have not filed their return of income, the Assessing Officer has exceeded the jurisdiction by verifying the trade creditors and making addition u/s 68 of the Act which is against the Circular issued by the CBDT. For converting the limited scrutiny to full scrutiny, the Assessing Officer has to take the permission of the CIT or Pr. CIT which he has not done. In any case, he submitted that the lower authorities have not properly appreciated the facts and have made the addition which is not sustainable under the law.

7. The Id. DR, on the other hand, heavily relied on the order of the CIT(A). He submitted that despite repeated opportunities granted by the Assessing Officer, the assessee failed to discharge the onus cast on it by proving the identity and credit worthiness of the loan creditors and the genuineness of the transactions. There is no bar on the assessee for taking unsecured loan from trade creditors also. Since the assessee failed to discharge the onus cast on it, the addition made by the Assessing Officer and sustained by the CIT(A) should be upheld.

8. We have considered the rival arguments made by both the sides and perused the relevant material available on record. We find the Assessing Officer made addition of Rs.1,15,43,475/- to the total income of the assessee on the ground that the assessee has taken unsecured loan from three parties, but, could not explain to his satisfaction in terms of the provisions of section 68 of the Act. We find the assessee filed certain

additional evidences before the CIT(A), but, in the absence of proper application in terms of rule 46A of the IT Rules, the Id.CIT(A) rejected the additional evidences filed before him. So far as the merit of the case is concerned, he also upheld the addition made by the Assessing Officer on the ground that the assessee failed to discharge the onus cast on it in respect of the three loan creditors. It is the submission of the Id. counsel of the assessee that these are not loan creditors, but, trade creditors which is verifiable from the audited accounts filed before the Assessing Officer. A perusal of the balance sheet as well as the schedules annexed to the balance sheet shows that the three parties from whom the assessee had taken unsecured loan as alleged by the Assessing Officer, in fact, appears in the list of trade creditors. The Note No.4 – Current liabilities shows ‘Trade Payables’ at Rs.18,14,37,542.73. The Clause No.31(a) of the Tax Audit Report shows that the assessee has taken unsecured loan of only Rs.98,44,000/- from M/s Dev Chemicals. The list of sundry creditors appearing at page 47 shows the list of nine persons the total of which comes to Rs.18,14,37,542.73 which tallies with the trade payables. However, a perusal of page 40 of the paper book containing the list of unsecured loans shows the name of the alleged three persons. Therefore, this requires a deep verification at the level of the Assessing Officer regarding the above parties as to whether these are trade creditors or loan creditors. Since the assessee had not filed the requisite details before the Assessing Officer despite repeated opportunities granted and also considering the fact that the various additional evidences filed by the assessee were rejected by the CIT(A) due to non-submission of formal request as per Rule 46A of the IT Rules, 1962

therefore, considering the totality of the facts and circumstances of the case and in the interest of justice, we deem it appropriate to restore the issue to the file of the Assessing Officer with a direction to grant one more opportunity to the assessee to substantiate his case that these are trade creditors and not loan creditors. The assessee is also hereby directed to appear before the Assessing Officer and file the requisite details to substantiate its case failing which the Assessing Officer is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 03.05.2019.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 3rd May, 2019

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi