

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1789/Del./2015
(ASSESSMENT YEAR : 2009-10)**

Shri Mehraj Malik, vs. ITO, Ward 1 (4),
C/o Shri Akhilesh Kumar, Advocate Ghaziabad.
Chamber No.206-207,
Ansal "Satyam", RDC Raj Nagar,
Ghaziabad.

(PAN : AJAPM0354Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Akhilesh Kumar, Advocate
Shri Vipin Garg, Advocate
REVENUE BY : Ms. Rinku Singh, Senior DR

Date of Hearing : 05.03.2019

Date of Order : 15.05.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, Shri Mehraj Malik (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 12.12.2014 passed by the Commissioner of Income-tax (Appeals), Ghaziabad qua the assessment year 2009-10 on the grounds inter alia that :-

"1. Because the order of Ld. Lower Authority is bad in law as well as is against the facts and circumstances of the case.

2. *Because learned commissioner of Income Tax erred in sustaining the addition of Rs.20,17,338/-, being cash deposited in bank, in whole disregard to the material on the -record which is not rejected with some material but merely relying on the wrong/irrelevant observations made by Ld. AO in remand proceedings like alleged SOA of earlier year is also made basis for addition in current year.*

3. *Because learned commissioner of Income Tax further erred in sustaining the said addition of Rs.20,17,338/- u/s 69 of the Act by invoking his plenary powers without appreciating the fact that onus lay for making such addition is not discharged.*

4. *Because learned commissioner of Income Tax erred in sustaining the addition of Rs.43,76,781/- , being business creditors, without appreciating the huge evidences on the record proving the credits, their repayment and acceptance in subsequent years etc. etc. merely relying on the wrong/irrelevant observations made by ld. AO in remand proceedings.*

5. *Because learned commissioner of Income Tax further erred in sustaining the said addition of Rs.43,76,481/- without appreciating the fact that neither any of evidences of assessee are found wrong nor there is any material against the assessee and addition of business creditor u/s 68 of the Act itself is wrong in the circumstances of the case.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee being an individual taxpayer filed return of income at the income of Rs.3,56,480/-, who is engaged in the trading of iron and steel in the name and style of M/s. Allien Enterprises. Balance sheet of the assessee tallies at Rs.88,28,373.67 as on 31.03.2009 showing capital amount of assessee tallies at Rs.15,61,682.14. On the turnover of Rs.1,56,63,302/-, assessee has disclosed gross profit and net profit

of Rs.9,51,196/- & Rs.3,56,480/- @ 6.07% & 2.28% respectively..

Books of account have not been produced by the assessee.

3. AO noticed that the assessee has deposited cash of Rs.20,17,338/- in his saving bank account for FY 2008-09 on different dates. On failure of the assessee to put forth the explanation, the nature and source of transaction nor the said saving bank has been shown by the assessee in the balance sheet nor in the return of income filed for AY 2009-10, AO treated the same as unexplained cash credit and made addition thereof to the total income of the assessee.

4. AO also noticed that the assessee has shown creditors of Rs.45,69,338/- as on 31.03.2009 and details thereof is as under :-

1.	<i>M/s. B.K. Trading Company</i>	<i>Rs.1,92,557/-</i>
2.	<i>M/s. ADR Steel Corporation</i>	<i>Rs.14,80,363/-</i>
3.	<i>M/s. Chaudhary Iron Traders</i>	<i>Rs.22,50,000/-</i>
4.	<i>M/s. Malik Traders</i>	<i>Rs.56,418/-</i>
5.	<i>M/s. You Like Machinery</i>	<i>Rs.5,90,000/-</i>
	<i>Total</i>	<i>Rs.45,69,338/-</i>

5. On failure of the assessee to prove the identity of the creditors, genuineness of the transaction and their creditworthiness under section 68 of the Income-tax Act, 1961 (for short 'the Act'), the AO made addition of Rs.43,76,781/- (Rs.22,50,000/- in the name of M/s. Chaudhary Iron Traders & Rs.21,26,781/- qua the

remaining unconfirmed creditors) and made addition thereof to the total income of the assessee.

6. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

7. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. Undisputedly, the assessee has not produced the books of account during the assessment proceedings. It is also not in dispute that the assessee has shown GP rate of 6.07% and NP rate of 2.28% on the gross turnover of Rs.1,56,63,302/-. It is also not in dispute that the assessee has not disclosed his saving bank account maintained with ICICI Bank wherein he has deposited an amount of Rs.20,17,338/-. It is also not in dispute that during the appellate proceedings, the Id. CIT (A) has called the remand report from the AO. It is also not in dispute that after accepting the remand report, the Id. CIT (A) has accepted the contention of the assessee that addition is not sustainable u/s 68 of the Act but confirmed the addition u/s 69 of the Act.

9. In the backdrop of the aforesaid facts and circumstances of the case, we would decide the present appeal ground-wise.

GROUND NO.1

10. Ground No.1 is general in nature, hence does not require any adjudication.

FOUNDATIONS NO.2 & 3

11. When we examine the cash deposit of Rs.20,17,338/- in the saving bank account of the assessee maintained with ICICI Bank which account has not been disclosed by the assessee in his ITR, in the light of the bank statement issued by PNB Housing Finance Ltd., it is proved that the assessee has withdrawn Rs.10,00,000/- from this account on 11.02.2008. Assessee has duly explained before Id. CIT (A), as is evident from page 7 of the impugned order, as to the cash deposits and documentary evidence in support thereof which is extracted as under :-

“Now, in support of cash deposits following documents are enclosed:

- 1. Copy of statement of affair as on 31.03.08 and of 31.03.09*
- 2. Copy of SB A/c with ICICI under question/Maharnedha bank and loan a/c with PNB of assessee*
- 3. Copy of capital account in the books of M/s ALLIEN ENT. as filed before AO*

4. *Copy of day to day running account (Drawing a/c) in the books of M/s ALLIEN ENT. showing deposits/withdrawals on day to day basis*

<i>Opg. Cash</i>	<i>6,97,388/-</i>
<i>Cash withdrawn from ICICI</i>	<i>14,90,950/-</i>
<i>Cross entry in Bank</i>	<i>30,000/-</i>
<i>Out of Firm's Drawing</i>	<i><u>20,35,000/-</u></i>
<i>Total :</i>	<i>42,53,338/-</i>

Hence, above cash of Rs.20,17,338/- is deposited out of cash available with the assessee, sources of which is summarized as above and each/every entry is verifiable.

Similarly, consumption of cash as per cash flow can also be summarized as under, though each amount is separately explained:

<i>Deposit with ICICI as above</i>	<i>20,17,338/-</i>
<i>Deposit in the Drawing a/c with Firm</i>	<i>19,35,000/-</i>
<i>Cross entry in Bank</i>	<i>30,000/-</i>
<i>Withdrawal for Exp.</i>	<i>1,45,000/-</i>
<i>Deposit with other Banks etc.</i>	<i>1,10,000/-</i>
<i>Closing cash in hand</i>	<i><u>15,000/-</u></i>
<i>Total :</i>	<i><u>42,53,338/-</u></i>

From the above, it is crystal clear that there is nothing explained about the cash deposited in the saving a/c which is added. Besides, it is also to be explained that though cash in hand in the opg. is not used in depositing with ICICI SB A/c but the reason for this cash in hand on 31.03.08 is mainly personal loan of over Rs.38 lakhs from PNB, deposited with Mahamedha Bank out of which over Rs.10 Lakhs are withdrawn in Feb.08, unused portion of which is reflected in the Opg. Statement of affair/loan a/c /said saving a/c may be verified in support of contention.”

12. When we examine the explanation given by the assessee before the Id. CIT (A), extracted above, in the light of the day-to-day cash flow statement given by the assessee, available at pages 84 to 87 of the paper book, it is proved that the assessee has duly explained the cash deposit in the bank.

13. Perusal of para 7.1 of the impugned order passed by the Id. CIT (A) also shows that the assessee has duly explained that the cash was deposited out of the firm's drawing and has submitted before the Id. CIT (A) (i) copy of statement of affairs as on 31.03.2008 and of 31.03.2009; (ii) copy of SB A/c with ICICI under question/Mahamedha Bank and loan a/c with PNB of assessee; (iii) copy of capital account in the books of M/s. Allien Ent. as filed before AO; and (iv) copy of day to day running account (Drawing a/c) in the books of M/s. Allien Ent. showing deposits/ withdrawals on day to day basis.

14. It is also the case of the assessee that he has availed of a loan of Rs.38,00,000/- from PNB Bank which is deposited with ICICI Bank out of which Rs.10,00,000/- was withdrawn and unused amount is reflected in opening statement of affairs.

15. AO filed the remand report who has rejected Statement of Affairs (SOA) read with underlined statement only on the ground that the copies of accounts / SOA filed before the Department does not match with the details furnished before PNB for loan taken in earlier year i.e. AY 2008-09. However, the Id. CIT (A) has relied upon the remand report without returning any independent findings despite the fact that the assessee has duly explained all the SOA which gets tallied with day-to-day cash flow and drawing accounts

of M/s. Allien Enterprises, available at pages 84 to 87 and 75 to 83 of the paper book.

16. Ld. DR for the Revenue contended that since the assessee has failed to produce the books of account before the AO even during the remand report, it is difficult to accept the opening balance and consequently, explanation for cash deposit also cannot be accepted.

17. We are of the considered view that when no specific entry in the SOA/cash flow statement has been disputed by the AO but based his finding on the fact that there is a difference in accounts before PNB Account filed before Department but has failed to appreciate that before PNB the statement of earlier year was filed as loan was disbursed in January 2008. So, in these circumstances, earlier year's details with subsequent years cannot be tallied in any circumstance. Consequently, grounds no.2 & 3 are determined in favour of the assessee.

GROUND NO.4 & 5

18. Undisputedly, assessee has not furnished confirmation of the sundry creditors during assessment proceedings, but he has duly supplied their address. AO issued notice u/s 133 (6) to five creditors and Income-tax Inspector was also deputed to make an enquiry and confirmation of only two creditors were received. Out

of which, AO accepted confirmation of B.K. Trading Company for Rs.1,92,557/- but rejected the confirmation of Chaudhary Iron Traders for Rs.22,50,000/- as Chaudhary Iron Traders has shown sundry debtors at Rs.nil in its return of income.

19. Assessee has duly filed confirmation of M/s. ADR Steel Corporation and M/s. You Like Machinery but confirmation from M/s. Malik Traders was not produced. Even, during remand proceedings, creditors have not appeared in person despite issuance of summons u/s 131 of the Act.

20. Ld. CIT (A) has also rejected the application filed by the assessee under Rule 46A merely on the objections raised by the AO in the remand report. The ld. AR for the assessee contended that he has duly explained the trade creditors of Rs.43,76,781/- and no addition u/s 68 of the Act is sustainable. Perusal of the impugned order passed by the ld. CIT (A) goes to show that ld. CIT (A) has confirmed the order passed by the AO without applying his independent mind and has not even entertained the additional evidence sought to be led by assessee before AO during remand proceedings. Assessee has explained the trade creditors as under :-

<i>Name</i>	<i>Amount</i>	<i>Evidences filed</i>
<i>ADR Steel Corporation</i>	<i>14,80,363/-</i>	<i>Purchase bills: PB 144-154, Confirmation: PB 93-94 Payment evidence (Bank a/c): PB 95-96 Direct confirmation: PB 265-266</i>
<i>Chaudhary Iron Traders</i>	<i>22,50,000/-</i>	<i>Purchase bills: PB 142-143 Confirmation: PB 106-108 Payment evidence (Bank a/c): PB 101-105 Direct confirmation: PB 97 -100</i>
<i>You Like Machinery</i>	<i>5,90,000/-</i>	<i>Purchase bills: PB 155-156 Confirmation: PB 109-111 Payment evidence (Bank a/c): PB 112-113 Direct confirmation: PB 262-263 <i>Note: No purchases in Current Year, only opening balance paid in subsequent years and therefore, sec. 68 does not apply.</i></i>
<i>Milk Traders</i>	<i>56,418/-</i>	<i>Purchases from party and corresponding sales stands accepted.</i>

21. When the assessee has duly brought on record the fact that the purchases are supported with invoices giving complete address/TIN/Truck number etc. along with confirmation of the trade creditors including confirmation of subsequent years with address/PAN, bank statement showing that the entire payment has been made through banking channel, the same cannot be thrown into the dustbin without passing reasoned order. The assessee has also proved on record that the same creditors have been accepted

by the Revenue in the subsequent years i.e. 2011-12 as is evident from assessment order dated 11.02.2014, available at pages 259 & 260 of the paper book. Moreover, when purchases and corresponding sales have been accepted, addition made by the AO would lead to unsustainable results.

22. So far as trade credits pertaining to Chaudhary Iron Traders is concerned, it is specifically explained by Chaudhary Iron Traders that the figures of debtors are deducted from creditors and accordingly, debtors not reflected separately in the ITR which has otherwise been confirmed by the AO with the bank account. Moreover, ledger account of Chaudhary Iron Traders, available at page 103 of the paper book, shows that all the purchases have been made through banking channel. Moreover, when purchases and sales have not been doubted by the AO/CIT(A) which are through banking channel then how the trade creditors can be doubted who have otherwise been accepted during subsequent years.

23. When books of account have been produced by the assessee during the penalty proceedings, the adverse view cannot be taken by the AO for not producing the books of account. Merely because of the fact that creditors have failed to attend the remand proceedings in person, the addition is otherwise not sustainable. So, we are of the considered view that addition made by the AO

and confirmed by the ld. CIT (A) on account of trade creditors is not sustainable. So, AO is directed to delete the same after duly verifying the documents already brought on record by the assessee, hence grounds no.4 & 5 are determined in favour of the assessee.

24. Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 16th day of May, 2019.

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

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 15th day of May, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Ghaziabad.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**