

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

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

ITA.No.3159/Del./2016
Assessment Year 2011-2012

The Income Tax Officer, Ward-40(3), Civic Centre, New Delhi – 110 002.	vs.,	M/s. Mannat Motors (India), 22, Dudial Apartment, Pitampura, Delhi – 110 088. PAN AAEFM1539Q
(Appellant)		(Respondent)

C.O.No.81/Del./2019
Arising out of
ITA.No.3159/Del./2016 - Assessment Year 2011-2012

M/s. Mannat Motors (India), 22, Dudial Apartment, Pitampura, Delhi – 110 088. PAN AAEFM1539Q	vs.,	The Income Tax Officer, Ward-40(3), Civic Centre, New Delhi – 110 002.
(Appellant)		(Respondent)

For Revenue :	Shri P.V. Gupta, Sr. D.R.
For Assessee :	Shri Narender Chhillar And Shri Ashok Khatter, Advocates

Date of Hearing :	10.06.2019
Date of Pronouncement :	24.06.2019

ORDER**PER BHAVNESH SAINI, J.M.**

The Departmental Appeal and Cross Objection by Assessee are directed against the Order of the Ld. CIT(A)-14, New Delhi, Dated 29.03.2016, for the A.Y. 2011-2012.

2. We have heard the Learned Representatives of both the parties and perused the findings of the authorities below.

3. The Department has filed the appeal on the following grounds :

“On the facts and circumstances of the case and in law CIT(A) has erred in

- 1. Deleting the addition of Rs.82.30 lacs out of total addition of Rs.97.39 lacs made by AO on account of disallowance of Sundry Creditors as the assessee had failed to prove the genuineness, creditworthiness and identity of the creditors.*

2. *Admitting the additional evidence ignoring the report submitted by A.O., wherein he had stated that sufficient cause, which prevented assessee to file documentary evidences during assessment proceedings to prove creditors, has not been shown by him during appellate stage, which is in contravention of Rule 46A of IT Rules 1962.”*

4. The Assessee has filed the Cross Objections on the following grounds :

“1.That the CIT (A) has erred, on facts and in law, in confirming the addition amounting to Rs.15.09 lacs without appreciating that :-

(i) the Assessing Officer has added Rs.97.39 lacs under section 69A of the Income Tax Act, 1961 (“the Act”), being transactions out of the books without appreciating the fact that the said information has already been provided in the books of accounts and financial statements of the Assessee.

(ii) the CIT (A) has erred, on facts and in law, in not adjudicating the legal issue raised by the Appellant regarding non applicability of section 69A of the Act”.

5. Briefly the facts of the case are that assessee is a firm and filed return of income declaring income of Rs.4,280/-. The A.O. on perusal of the balance-sheet as on 31.03.2010 and 31.03.2011 noted the balance of sundry creditors shown to be paid of Rs.1,59,01,405/- and Rs.59,18,103/- respectively. Subsequently sundry debtors as on 31.03.2010 and 31.03.2011 shown at Rs.97,39,780/- and Rs. at NIL respectively. It seems the sundry debtors to the tune of Rs.97,39,780/- were recovered during the period 01.04.2010 to 31.03.2011. The assessee was asked to furnish list of sundry debtors recovered with name and complete address. The assessee failed to furnish the details. Hence, the genuineness and creditworthiness of sundry debtors recovered to the tune of Rs.97,39,780/- remained unverified and claim of the assessee firm was not established for recovery from sundry debtors. Subsequently

the assessee firm has also claimed that sundry creditors to the tune of Rs.99,83,302/- (Rs.1,59,01,405/- (-) Rs.59,18,103/-) were paid off during the period 01.04.2010 to 31.03.2011. During the course of assessment proceedings, the assessee was asked to furnish complete name and address of these paid off creditors and source of payment with documentary evidence. The assessee failed to furnish these documents to substantiate the above claim. The A.O. noted that as per order sheet, assessee was asked to furnish books of account i.e. Cash Book, Ledger, Bills etc. for test check. But the same have not been produced. Therefore, genuineness of sources of sundry creditors to the tune of Rs.97,39,780/- which were paid off are remained unverified. In the absence of the sources of payment, the claim of assessee of payment of Rs.99,83,302/- were paid off during the period seems out of unexplained money/undisclosed income having with the assessee during the period. The A.O, therefore, noted that it is established that assessee firm having undisclosed income out of which sundry creditors to the tune of Rs.99,83,302/-

were paid off. Hence, the addition of Rs.99,83,302/- was made in respect of unexplained/undisclosed money under section 69A of the I.T. Act to the income of the assessee firm. The A.O. however, made addition of Rs.97,39,780/- on account of unexplained sundry creditors.

6. The addition was challenged before the Ld. CIT(A). The assessee filed the written submissions along with documentary evidence to explain the source of payment to the sundry creditors. The written submissions is reproduced in the appellate order along with documents which reads as under :

“Addition on account of sundry creditors

The Ld. AO has erred in facts and in law by making an addition of Rs.97,39,780/- in respect of unexplained/undisclosed money u/s 69A of the Income Tax Act, 1961 used for making payment to creditors.

The Ld. AO has been provided with the complete reconciliation of opening and closing balances of sundry creditors and sundry debtors along with copy of

account of sundry debtors, sundry creditors and their addresses. AO has failed to issue letters/summons u/s 133(6) of the I.T.Act, 1961 for independent confirmations of these balances. During the assessment proceedings, bank account along with complete narrations has been filed with Ld. AO. The AO had been provided with confirmations from sundry creditors which have been accepted by him and not in dispute. Payment to sundry creditors even is not in dispute. Addition is in respect of unexplained/undisclosed money u/s 69A of the IT Act, 1961 which is used for making payment to creditors.

During the assessment proceedings, appellant has filed complete detail of foreign debtors recovered amounting Rs.60,30,839/- in bank along with bank realisation certificates vide letter dated 19th February 2014. Despite that Ld. AO failed to appreciate the genuineness of the source to the extent of Rs.39,67,850/- withdrawn from Bank out of foreign debtors recovered and treated the whole amount of

recoveries from debtors as unexplained/un-disclosed payment to creditors for the reasons best known to him. Your Lordship will definitely sense that recovery of foreign debtors in bank and subsequent withdrawals from bank for payment to creditors cannot be treated as unexplained/un-disclosed source by any stretch of imagination. In the remand report, Ld. AO has accepted that payments to Chauhan Gasket Industries have been made through cheques, despite that Ld. AO has not stated in remand report to give relief to appellant for the same for the reasons best known to him.

Your Lordship will appreciate the following facts:

1. Payment made to sundry creditors through account payee cheques :

Chauhan Gasket Industries Rs. 8,55,000/-

Sundermaya Sintered Products

Pvt. Ltd., Rs. 5,35,000/-.

Date wise Detail is enclosed herewith for your kind perusal (Annexure II).

2. *M/s. P.S. Sethi & Sons having credit balance of Rs.7,77,143/- as on 31.03.2010 has been paid off by return of goods amounting Rs.11,76,637/-. Hence no cash has been paid to them. So addition on account of payment through unexplained / undisclosed sources is not justified.*

3. *Foreign Debtors are recovered/received in Bank during Financial Year 2010-2011 to the extent of Rs.60,30,839/-. Date wise detail along with copy of Bank Realisation Certificates is enclosed herewith for your kind perusal (Annexure III).*

4. *Cash withdrawn from bank out of funds received from foreign debtors to pay off the sundry creditors on various dates amounting Rs.39,67,850/-. Date wise detail is enclosed herewith for your kind perusal (Annexure IV).*

5. *Cash received from M/s. P.S. Sethi & Sons amounting Rs.4,10,474/- on various dates. Date wise detail/Copy of Account/Confirmation quoting PAN enclosed herewith for your kind perusal (Annexure I).*

Apart from above complete list of debtors/advances recovered during the year along with complete addresses had already been filed during assessment proceedings/remand proceedings. Hence Ld. AO is not justified while making the addition on account of un-explained/un-disclosed source of payment. However few of the confirmations are enclosed herewith for your kind perusal as below:

Cash received from M/s. S. M. Auto Agencies 817, Chhota Bazaar, Vidya Market, Kashmiri Gate, New Delhi - 110006 amounting Rs.5,75,000/- on various dates. Date wise detail/Copy of Account/Confirmation quoting PAN enclosed herewith for your kind perusal (Annexure V).

Cash received from M/s. Amber Auto Traders C/o Mr. Mukesh Dua B-1/276, Paschim Vihar, New Delhi - 110064 amounting Rs.5,65,000/- on various dates. Date wise detail/Copy of Account/Confirmation quoting PAN enclosed herewith for your kind perusal (Annexure VI).

Cash received from M/s. Gemini Auto Traders C/o Ashok Kawatra A-4/425, Paschim Vihar, New Delhi - 110064 amounting Rs.5,55,000/- on various dates. Date wise detail/Copy of Account/Confirmation quoting PAN enclosed herewith for your kind perusal (Annexure VII).

Cash received from M/s. Oriental Auto Traders C/o 765/108, Amit motor Market, Kashmiri Gate, Delhi - 110006 amounting Rs.3,74,000/- on various dates. Date wise detail/Copy of Account/Confirmation quoting PAN enclosed herewith for your kind perusal (Annexure VIII).

Your Lordship is requested to kindly issue letters/summons u/s 133 (6) to above parties for the independent confirmations or send back it to Ld. AO for further verification of these documents.

Despite making all the efforts, appellant has not been able to arrange few of the confirmations as business of appellant has been closed down. During the captioned year due to worldwide slow down, appellant was facing acute problem of cancellation of its sale orders which consequently forced the appellant to cancel the purchase

orders and requested the suppliers to refund back the advance. Appellant had to make lot of efforts to get the refund from the suppliers thus appellant was not in cordial relations with suppliers and hence all confirmations could not be arranged. During the captioned year turnover of appellant has gone down substantially as tabulated down :

	<i>AY 2010-2011 (Amount in Rs.)</i>	<i>AY 2011-2012 (Amount in Rs.)</i>
<i>Sales</i>	<i>1,29,67,553/-</i>	<i>15,43,192/-</i>
<i>Sundry Debtors</i>	<i>97,39,780/-</i>	<i>-NIL-</i>
<i>Sundry Creditors</i>	<i>1,59,01,405/-</i>	<i>59,88,104/-</i>

From above table it is clear that the business of appellant has gone down substantially during the captioned year and as of now business of appellant has closed down completely with no turnover in FY 2014-2015 & 2015-16.

Your Lordship is requested to take kind note of the fact that the debtors/advances have been accepted by Department in earlier years hence addition on

account of its recovery in current year cannot be justified. The receipt of cash from various parties was the receipt against the opening debit balance appearing in the name of the said parties. The encashment of an asset being the opening balance of sundry debtors / advances during the year under reference has wrongly been interpreted by the Ld. AO so as to hold that the undisclosed income is introduced by the appellant in the books of account through that source. The appellant has duly explained the debit balance in the name of various parties during assessment proceedings vide copy of accounts filed before Ld. AO, which is not in dispute. In any case the encashment of already declared asset cannot be treated as the introduction of undisclosed income in the books of account as no unexplained credit is made in the books of the appellant and therefore the addition of Rs.97,39,780/- may kindly be deleted.

Moreover for making addition u/s 69 A of the Act, grounds relied upon by Ld. AO are vague and absurd. The Ld. AO has not observed the basic condition of

addition u/s 69 A i.e. "Not Recorded in the Books of Account."

Section 69 A of the Act reads as under :

*"Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article **and such money**, bullion, jewellery or valuable article **is not recorded in the books of account**, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."*

*Hence it is clear from the bare reading of section 69A of the Act that **explanation can be sought by Assessing Officer only in a case where such money, bullion, jewellery and valuable article etc.***

has not been recorded in books of account. For making addition under this section the money should not have been recorded in the books of account as contrary to the case of appellant where every single penny is properly recorded in books of account. Hence grounds of addition made by Ld. AO are vague and absurd and addition made by Ld. AO is liable to be deleted.

Moreover, the captioned addition does not find any place in section 68 even as it is well established fact that cash credits cannot be on account of trading receipts source of which has been accepted in earlier years. Receipt from Debtors/advances is a trading receipt not the cash credits in the books of the appellant. These can be treated as cash credits only in the circumstances if purchases etc. have been made out of such cash credits. Your Lordship will appreciate that the recoveries from debtors/advance have not been utilised to make purchases/expenses etc. **Instead they have been utilized to pay off old credit balances**

not claimed as expenditure anywhere in books of accounts in the captioned year.

Hon'ble Hyderabad Bench of ITAT observed in SB Steels Ltd. Versus ACIT as under :

"The AO and CIT(A) wrongly were of the opinion that cash receipts can be treated as cash credits but, trade receipts in cash are not prohibited under the law and only when payments are made in cash towards purchase there are provisions to disallow the amount. It is an established fact that only cash credits can be considered u/s 68, but, not trade receipts. In the present case, the amounts received by assessee are not cash credits but the same were recovery from the debtors/advances, which are available in the books of account. Since assessee furnished details of debtors and also the entries made in the books of account, we are of the opinion that both the AO and the CIT(A) have erred in considering recoveries from deposits as cash credits. The corresponding sales in earlier years have been accepted, as there is no dispute with reference to the entries in the books

of account in any of the earlier years. Therefore, we are of the view that the principles laid down for invoking provisions of section 68 cannot be applied to the trade recoveries made by assessee during the year.

(Copy of Judgment enclosed herewith for your kind perusal)

Hon'ble Delhi Bench of ITAT observed in ITO versus Atul Kumar Mittal as under :

“In our opinion when the debtor was considered genuine at the end of the preceding year, the receipt from the said debtor during the year under consideration cannot be treated as bogus. We therefore, are of the view that the Ld. CIT (A) has rightly deleted the addition.”

6.1. The Ld. CIT(A) referred the above written statement and documents to the A.O. for his comments and for filing the remand report. The A.O. filed the remand report and objected to the admission of additional evidences. The remand report is reproduced in the appellate

order in which the A.O. has submitted that assessee has not filed any new evidence even in the appellate proceedings, therefore, addition deserves to be upheld. The A.O. also stated that assessee in support of contention that sundry creditors were paid off out of funds realized from the debtors during the year, has filed reconciliation statement along with copy of print-out of ledger account of sundry creditors and debtors with addresses of sundry debtors and creditors which were also filed at assessment stage. It was stated that mere filing of the unconfirmed ledger account would not prove genuineness and creditworthiness of the sundry creditors and debtors. The A.O. also commented upon the export sales made by assessee firm and realization of the amount and ultimately submitted that since assessee has not filed any fresh evidence at appellate proceedings, therefore, addition may be confirmed.

6.2. The remand report filed by the A.O. was provided to the assessee for comments in which the assessee reiterated that A.O. has not commented anything on the facts and evidences submitted by the assessee vide letter

dated 26.10.2015 which reflects that A.O. has nothing to say on the issue.

6.3. The Ld. CIT(A) considering the material on record in the light of submissions of the assessee, remand report deleted addition of Rs.82,30,000/- and sustained the addition of Rs.15,09,000/-. The findings of the Ld. CIT(A) are reproduced as under :

“I have considered the findings & Remand Report of the Ld. AO, the submissions & comments on the Remand Report given by the Ld. AR of the appellant as well as the judicial pronouncements of the higher appellate authorities and the Hon’ble Courts. On perusal of records and submissions it is observed that the Ld. AR had filed documentary evidences in respect of the recovery of Bad debts, withdrawals, payment through cheques and return of goods and justified the payment made to the creditors of Rs.82.30 lacs out of the addition of Rs.97.39 lacs made by the Ld. AO. It is a fact on record that the sundry creditors and debtors were accepted by the department in earlier AYs & the

payments to the creditors during the year under consideration is from subsequent withdrawals from the bank after the/debtors recovery. But the Ld. AR has not substantiated the payment of Rs. 15.09 lacs to the creditors.

In view of the above discussion the addition of Rs.15.09 lacs is confirmed and the addition of Rs.82.30 lacs(97.39-15.09) is deleted. Hence, the grounds of appeal are partly allowed.”

7. The Revenue is in appeal challenging the deletion of substantial addition of Rs.82,30,000/- and Assessee is in Cross Objection challenging the confirmation of addition of Rs.15,09,000/-.

8. The Ld. D.R. relied upon the Order of the A.O. and submitted that assessee has not filed any evidence before A.O. to prove genuineness of the payment to the creditors. The Ld. D.R. also submitted that the Ld. CIT(A) has admitted the additional evidences in contravention of Rule 46A of the I.T. Rules.

9. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the Ld. CIT(A) and submitted that since the Ld. CIT(A) called for the remand report from the A.O. and examined the issue in the light of material on record, therefore, addition has been correctly deleted by the Ld. CIT(A). He has further submitted that Ld. CIT(A) should not have sustained even the part addition because Section 69A would not apply to the case of the assessee as all the transactions are recorded in the books of account of the assessee.

10. We have considered the rival submissions. The A.O. noted in the assessment order that there are balances of sundry creditors in preceding assessment year as well as in assessment year under appeal. It is also noted that assessee has paid substantial amount to the sundry creditors in assessment year under appeal. The A.O. also noted that assessee has sundry debtors in earlier year. It is also noted in the assessment order that assessee recovered the amounts from the sundry debtors in assessment year under appeal which was paid to the sundry creditors.

Learned Counsel for the Assessee pointed-out that in earlier years sundry debtors and creditors have not been disputed by the Revenue Department, therefore, genuineness of the transaction of earlier year cannot be disputed. There is no explanation to that effect by the Ld. D.R. Whatever transactions were conducted in earlier year could not be subject matter of dispute in assessment year under appeal. Since there were debtors in earlier years, who paid the amount to assessee in assessment year under appeal, there could not be any reason to disbelieve the explanation of assessee. The A.O. instead of considering the addition on account of payment to the sundry creditors, made the addition on account of amount received from sundry debtors. The Ld. CIT(A) in appellate proceedings forwarded the written submissions of the assessee which is supported by facts and evidences. The written submissions of the assessee is reproduced above which clearly satisfy that part of the payments have been made to the sundry creditors through account payee cheques and in other cases also no cash transactions have been conducted. The detailed

explanation of assessee was referred to the A.O. for his comments, on which, no adverse comments have been offered by the A.O. in the remand report. The assessee filed evidences to prove creditors are paid through banking channel. Debts are recovered through banking channel and cash which are recorded in books of account. Same entries are supported by confirmation of parties. Since the assessee filed complete details at assessment stage as per remand report of the A.O. as well as filed details along with evidences at appellate proceedings to explain that assessee recovered the amounts from sundry debtors and paid off to the sundry creditors, the Ld. CIT(A) in proper perspective based on evidence on record, correctly came to the finding that assessee explained payment to the creditors of Rs.82,30,000/-. The Ld. CIT(A) also gave specific finding that assessee has not been able to substantiate the payment of Rs.15,09,000/- to the creditors. Therefore, we do not find any infirmity in the Order of the Ld. CIT(A) in deleting the substantial addition and confirming part addition against the assessee. The Hon'ble Punjab & Haryana High Court in

the case of Kuldeep Industrial Corporation 209 CTR 400 observed that *“with reference to Rule-46A of the I.T. Rules, when A.O. was present before Ld. CIT(A) and did not raise any objection, Rule 46-A would not be violated.”* In the present case, the A.O. filed remand report before Ld. CIT(A) in which he has not raised any objection with regard to admission of additional evidences because according to A.O. assessee has not filed any new evidence even in appellate proceedings. The A.O. merely contended that addition on merit may be confirmed. The Ld. CIT(A), therefore, did not violate Rule 46A of I.T. Rules. Even during the course of arguments, the Ld. D.R. was not able to explain as to how Rule 46A have been violated in the present case. The Ld. CIT(A) on the basis of all the documentary evidences filed on record found that assessee has recovered the amount from the debtors and payments have been made through cheques and further made payments to the creditors of Rs.82,30,000/- have been substantiated by the assessee through evidences on record. The finding of fact recorded by the Ld. CIT(A) have not been rebutted through any evidence

or material on record. The Ld. CIT(A) was, therefore, justified in deleting the addition of Rs.82,30,000/- in the matter. However, assessee failed to substantiate the payment of Rs.15,09,000/- to the creditors, therefore, addition to that extent is correctly made by the Ld. CIT(A). Since no evidence of payment of Rs.15,09,000/- to the creditors have been produced before us also, therefore, there is no question of accepting the contention of assessee that Section 69A of the I.T. Act, 1961 would not apply in the case of the assessee. Considering the totality of the facts and circumstances of the case in the light of finding of fact recorded by the Ld. CIT(A), we do not find any infirmity in the Order of the Ld. CIT(A) in deleting the part addition and confirming the addition of Rs.15,09,000/-. We, confirm the Order of the Ld. CIT(A). Resultantly, the Departmental Appeal and Cross Objections of the Assessee are dismissed.

11. In the result, appeal of the Department and Cross Objection of the Assessee are dismissed.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 24th June, 2019

VBP/-

Copy to

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

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.