

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

**ITA No. 6268/DEL/2015
[Assessment Year: 2010-11]**

ITO, Ward No.-1(3), Ghazibad	M/s Hercules Cranes Pvt. Ltd. C-113, Bulandshehr Road, Indl. Area Ghaziabad
	PAN-AABCH8964J
Appellant	Respondent

Revenue by	Smt. Rinku Singh
Assessee by	Shri Akhilesh Kumar

Date of Hearing	22/07/2019
Date of Pronouncement	24/07/2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against the order of the Ld. CIT(A)-Muzaffarnagar, dated 27/08/2015, pertaining to Assessment Year 2010-11. The grievance of the Revenue reads as under:-

- i. The Ld. CIT (A) has erred in law in deleting the addition of Rs. 98,054/- made by the AO on account of disallowance under the head advertisement expenses as the assessee failed to deduct TDS on the same as provided u/s 194J of LT. Act, 1961.*
- ii. The Ld. CIT (A) has erred in law as well as on facts in deleting the addition of Rs. 2,75,06,612/- made by the A.O. u/s 68 of LT. Act, 1961 on account of unexplained creditors as the assessee failed to prove the genuineness of transactions.*
- iii. The Ld. CIT (A) has erred in law as well as on the facts of the case in holding that no adverse inference has been drawn by the AO during the remand proceedings in respect of details/evidences furnished by the appellant whereas the AO nowhere held the creditors as genuine.*

- iv. *The Ld. CIT (A) has erred in law in ignoring the decision of Hon'ble Supreme Court in the case of M.A. Unneeri Kutti V. CIT (SLP (civil) No. 4789 of 1993) 201 ITR 23 (st.) where the Hon'ble Apex Court has clearly opined while dealing with the onus of the assessee to establish (a) proof of identity of his creditors (b) capacity of creditors to advance money and (c) genuineness of the transaction.*

2. Briefly stated the facts of the case are that the assessee declared income of Rs.NIL and book profit at Rs.2,58,609/-. The return was selected for scrutiny assessment and during the course of scrutiny assessment proceedings, the AO noticed that the assessee has paid advertisement expenses of Rs.98,054/- without deducting tax at source. The AO was of the firm belief that such expenditure cannot be allowed u/s 40(a)(ia) of the Act and made additions of Rs.98,054/-. Proceeding further, the AO noticed that the assessee has shown sundry creditors amounting to Rs.3,33,46,511/-. To verify these creditors, letters were issued to the creditors but the same were returned back as unserved. A show-cause notice was issued to the assessee intimating that these creditors are not available on the given address and required the assessee to produce the parties. In response, the assessee produced two creditors Shri Manoj Yadav, Prop. M/s Superior Power Supply Automation and Shri Anurag Ahuja, Prop, M/s Shankar Metal & Alloys. Both parties in their respective statements, on oath, confirmed the credit balance but failed to substantiate the contention by furnishing any documentary evidence. Being not convinced with the genuineness of the credits, the AO made the additions of Rs.2,75,06,612/-.

3. Aggrieved by the assessment order, the assessee carried the matter before the Ld. CIT(A) and vehemently contended that two of the creditors have confirmed transactions and yet the AO has made the additions. The Ld. CIT(A) directed the AO to

conduct enquiries in the case of sundry creditors by issuing summons to them u/s 133(6) of the Act and also to examine the genuineness of their books of accounts. The AO submitted its remand report dated 26/06/2015 and after considering the remand report, the Ld. CIT(A) deleted the additions of Rs.2,75,06,612/-.

4. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

4. The Id. DR strongly supported the findings of the AO but fairly conceded that in the remand proceedings, the AO has made necessary enquiries and has accepted the genuineness of the transactions. The relevant part of the remand report read as under:-

" ... As directed by your honour, genuineness of the transaction has been enquired and the notices U/S 131 were issued on 02-06-2015 to the following sundry creditors: .

1. Shri Anurag Ahuja, Prop. M/s Shankar Metal & Alloyes, 438, Patel Marg, Ghaziabad

2. Shri Jagdish Kumar Ahuja, Prop. M/s Shardha Steel Corporation, 438, Patel Marg, Ghaziabad

3. Sh. Manoj Yadav, Prop. M/s Superior Power Supply Automation, Plot No. 16, North Roadways Bus. Stand, Mohan Nagar, Ghaziabad.

4. Mrs Super Sparks Pvt. Ltd. 4741/23, Nehru palace, New Delhi

The statement on oath was recorded of the following sundry creditors on 08-06-2015.

1. Shri Anurag Ahuja, Prop. M/s Shankar Metal & Alloyes, 438, Patel Marg, Ghaziabad

2. Shri Jagdish Kumar Ahuja, Prop. M/s Shardha Steel Corporation, 438, Patel Marg, Ghaziabad

3. Sh. Manoj Yadav, Prop. M/s Superior Power Supply Automation, Plot No. 16, North Roadways Bus Stand, Mohan Nagar, Ghaziabad.

In this case during the course of assessment proceedings the assessee had submitted a list of sundry creditors in which sundry creditors were mentioned the name of M/s Sharda Steel Corporation, 140, Loha Mandi, Ghaziabad to whom notice U/S 131 of the I.T. Act, 1961 was issued which was received back unserved. Hence an addition of &2,08,30,609/- was made to the income of the assessee. At the appellate stage the assessee has submitted written reply in which it has been stated that "at the outset it is submitted that the actual creditor of the assessee company is M/s Shradha Steel Corporation (prop. Mr. Jagdish Ahuja) and not M/s Shardha Steel Corporation as mentioned in the list of the sundry creditors which' was due to clerical mistake." In, support of his contention'

the assessee has filed documentary evidence relating to M/s Shardha Steel Corporation, Ghaziabad, which 'are enclosed herewith for your kind perusal. .Copy of statement on oath recorded of Mr. Jagdish Kumar Ahuja are enclosed herewith for your kind perusal.

During the course of enquiry Sh. Anurag Ahuja, Prop. M/s Shankar Metal and Alloys have -submitted documentary evidence of the transactions made with the assessee company during the financial year 2009-10 relevant to assessment year 2010-11. The copies' of the documents are enclosed herewith for your kind perusal. Copy of statement on oath recorded of Sh. Anurag Ahuja, Prop. M/s Shankar Metal & Alloys are enclosed herewith for your kind perusal.

The statement was recorded of Shri Manoj Yadav, Prop. M/s Superior Power Supply Automation was recorded during the course of assessment proceedings on 22-03-2013 The copy of statement recorded is enclosed herewith for your kind perusal.' In support of the contention documents have been filed by sundry creditor which are enclosed herewith for your kind perusal.

In response to the notice U/S 131 issued to M/s Super Sparks Pvt. Ltd., 4751/23, Nehru Place, New Delhi, the said sundry creditor have not attended the proceedings. Statement on oath of the director of the company could not be recorded. The said sundry creditor having PAN AAMPY1979L nad is registered in Central Excise since 2001. The said sundry creditor has furnished copy of Audited Balance and registered with VAT etc. In support of his contention documentary evidence have been furnished. Copies of all the documents are being enclosed herewith for your kind perusal....."

3.2.4 The appellant has furnished rejoinder on the remand report of the AO which is reproduced as under.-

The submissions of the appellant on the Remand Report Dated 26.06.2015 are as under "

1. Jagdish Kumar Ahuja prop. Shradha Steel Corporation (Addition of Rs.2,08,30,609/-)

The above creditor has produced himself before the Ld. A.O. and has got recorded his statements: The transaction of the above creditor with the appellant has been verified and accepted by him. The assessment of the above creditor has been completed by the same Ld. A.O. for Assessment Year 2011-12. The various details/ documents relating to genuineness of the transactions .and the, genuine existence of the creditors have been filed by the appellant in reply June 2014 and March 2015.

On the basis of statements recorded and other documents on record, the Ld. A.O. has neither disputed the genuine existence of the creditor nor has doubted the genuineness of the transactions in his remand report dated 26. 06.2015.

In view of the above fact and other submissions on record, it is clear that the creditor Jagdish Kumar Ahuja prop. Shradha Steel Corporation is' not a bogus party but is a genuine party and therefore the addition made by the Ld. A.O. is not justified

Anurag Ahuja prop. Shanker Metal & Alloys (Addition of Rs.62,69,889/-) The above creditor has 'produced himself before the Ld. A'O. during assessment proceedings as mentioned in the assessment order and has submitted the

documents as demanded by the Ld. At). However the above statements were not available on record However the the' above creditor has produced himself again before the Ld. A.D. as mentioned in the remand report Dated 26. 06.2015 and has got recorded his statements. The transaction of the above creditor with the appellant has been verified and. accepted by him. '

On the basis of statements recorded and other documents on record, the Ld. A.O. has neither disputed the genuine existence of the creditor nor has doubted the genuineness of the transactions in his remand report dated 26. 06.2015.

In view of the above fact and other submissions on record, it is clear that the creditor Anurag Ahuja prop. Shanker Metal & Alloys is not a bogus party but is a genuine party and therefore the addition made by the Ld. A.O. is not justified

Mr. Manoj Yadav Prop Iv/IS Superior Power Supply Automation (Addition of Rs 2,62,187/-)

The Statements of the Creditor were recorded during assessment proceedings and are on record. Copy of the same has been submitted by the appellant in written submissions filed by the appellant during appeal proceedings. Other documents have also been filed in support of the genuineness of the creditor in June 2014 and reply' March 2015. .

On the basis of statements recorded and other documents on record, the Ld A.O. has neither disputed the genuine existence of the creditor nor has doubted the genuineness on the transactions in his remand report dated 26.06.2015 .

.In view of the above fact and other submissions on record, it is clear that the creditor Mr. Manoj Yadav Prop MIS Superior Power Supply Automation is not a bogus party but is a genuine party and therefore the addition made by the Ld A.O. is not justified. '

Super Spark Private Limited ,(Addition of Rs. 1,43,927/-)

The above company is 'a private Limited company duly registered under Companies Act. The Company is also registered under Central excise since 2001 and under Haryana Vat act since 1983. The above company is supplying Cabins for Cranes. The Balance sheet of the Company downloaded from the website of the Ministry of Company Affairs has been filed by the appellant. All payments to creditor are through Account payee cheque only. As the appellant is a small customer to the creditor, it was not possible for the appellant to force the creditor to appear and get the statements recorded However necessary documents for the genuine existence of the appellant and confirmation of accounts have been sent by the creditor which are on record

In view of the facts stated as above. and documents on record the Ld A.O. has neither disputed the genuine existence of the creditor nor has doubted the genuineness of the transactions of the creditor with the appellant

In view of the facts and documents on record and earlier submissions of the appellant, it is humbly prayed that the addition made by the Ld. AO be knocked off and appropriate relief be granted to the appellant...."

..

5. In the light of the remand report of the AO, we do not find any merit in the appeal of the Revenue, we accordingly confirm the findings of the Ld. CIT(A). Addition of Rs.2,75,06,612/- stands deleted.

6. In so far as, the additions of Rs.98,054/- is concerned for want of TDS, we find that the said payment was made for printing of leaflet and thus it is in the nature of purchase and VAT has been charged by the seller of the goods under Delhi VAT Act and therefore, the provisions of TDS are not applicable on such facts, no inference is called for. This ground is also dismissed.

7. In the result, appeal filed by the Revenue is dismissed.

The order is pronounced in the open court on 24/07/2019

Sd/-

[LALIET KUMAR]
JUDICIAL MEMBER

Delhi; Dated: 24/07/2019.

Shekhar, Sr. P.S

Copy forwarded to:

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

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi