

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

**BEFORE SH. H. S. SIDHU, JUDICIAL MEMBER
AND
SH. R. K. PANDA, ACCOUNTANT MEMBER**

ITA No.1258/Del/2016
Assessment Year: 2012-13

DCIT, Circle – 10 (1) New Delhi	Vs	M/s. GGC Constructions Pvt. Ltd., D-4, Panchsheel Enclave, New Delhi-110017 PAN No. AACCG3719P
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Surender Pal, Sr. DR
Respondent by	Sh. Rajeev Saxena, Advocate Sh. Shyam Sunder, Advocate

Date of hearing:	28/05/2019
Date of Pronouncement:	30/07/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the revenue is directed against the order dated 29.12.2015 of the CIT(A)-4, New Delhi relating to A. Y. 2012-13.

2. The ground of appeal No.1 by the revenue reads as under :-

“1. Whether on the facts and circumstances of the case and in law Ld. CIT(A) is correct in deleting the disallowance made

by the AO on account of set off of the losses claimed by assessee without filing revised return ignoring the ratio decidendi of the case of Goetze India Ltd. that the assessee cannot claim for deduction otherwise by filing a revised return.”

3. Facts of the case, in brief, are that the assessee is a company and is engaged in the business of builders and civil contractors, share trading on MCS and NSE. It filed its return of income on 16.08.2012 declaring total income of Rs.35,61,030/-. During the course of assessment proceedings, the assessee company filed written reply on 24.11.2014 stating that business loss of Futures and Options was not claimed in the original return. Therefore, the revised computation of income reducing the taxable income from 35,61,034/- to 18,04,306/- was filed. The assessee company was required to show cause as to how the loss of Futures & Options by way of filing revised computation is allowable. In compliance thereto the AR of the assessee company repeated the same reply as filed on 24.11.2014. The Assessing Officer referred to the decision of Hon'ble Supreme Court in the case of Goetze India Ltd. Vs. CIT [284 ITR 223] and held that the deduction could not be made without a valid revised return. Since in the instant case the return has not been revised within the meaning of section 139 (5) of the IT Act, 1961 therefore, he rejected the claim of the assessee company.

4. In appeal the Ld. CIT(A) allowed the claim of the assessee by observing as under :-

“5. The Ground No. 1 is general in nature. The Ground No. 2, I find that the only reason given **by** the AO was by referring the judgment of the Apex Court in the case of **Goetze India Ltd. 284 ITR 223 (SC)**. The AO did not comment upon the submissions of the assessee on revised computation of income. The AR also referred to the audited accounts in which specifically this **loss** was set off. At time of computation of taxable income, the error made in the return was rectified by filing revised computation of income. Once it was found that error was made by the assessee, the AO himself could rectify the same by computing the correct income of the assessee. In the present case, the assessee had highlighted the same during the assessment proceedings and AO once found the error, should not take shelter of decision in 289 ITR 223 (SC). After going through the decision of the Hon'ble Supreme Court which was several times discussed by various High Courts including Jurisdictional High Court in the decisions cited before me and also gone through by me, I find that the Hon'ble Supreme Court as also interpreted by the various High Courts that the assessee is not entitled for any new claim without filing revised return. However, in the instant case, there is no fresh claim as assessee himself declared the same in the audited accounts and claimed the loss. The assessee is not well versed of the tax provisions and has to be dependent on the professionals for the same. The error made at the time of filing return was rectified later during the assessment proceedings by filing revised computation of income, which is required to be accepted. I therefore hold that the loss incurred by the assessee of Rs. 17,20,728/- on account of futures and options is directed to off against the business profits. Thus Ground No. 2 is allowed.”

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

6. We have heard the rival arguments made by both the sides and perused the material available on record. We find the assessee during the course of assessment proceedings had filed a revised computation of income reducing taxable income from Rs.35,61,030/- to Rs.18.40,306/-. We find the Assessing Officer rejected the claim of the assessee on the ground that the loss on Futures and Options cannot be claimed by filing a revised computation since assessee has not filed a revised return within the meaning of section 139 (5) and, therefore, following the decision of Hon'ble Supreme Court in the case of Goetz India Limited (supra), he rejected the claim. We find the Ld. CIT(A) following the decision of Hon'ble Supreme Court in the same case allowed the loss claimed by the assessee to be set off against the business profit. We do not find any infirmity in the order of the Ld. CIT(A) in allowing the claim of the assessee on account of loss of future and option by filing a revised computation during the assessment proceedings instead of filing a revised return of income. The Hon'ble Bombay High Court in the case of CIT Vs. Pruthvi Brokers and Shareholders Pvt. Ltd. reported in 349 ITR 336 has held that the appellate authorities have power to consider a claim not made in the return of income. While doing so, the Hon'ble High court has relied on various decisions including the decision of Hon'ble Supreme Court in the case of

Goetze (India) Ltd. Vs. CIT reported in 284 ITR 323 and the decision of Hon'ble Delhi High Court in the case of CIT Vs. Jai Parabolic Springs Ltd. (2008) reported in 306 ITR 42. It has been held by the Hon'ble Delhi High Court in the case of Jai Parabolic Springs Ltd. (supra) that the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra) has made it clear that the decision was limited to the power of the assessing authority to entertain a claim for deduction otherwise than by a revised return and did not impinge on the powers of the appellate authority. It has been held by the Hon'ble Delhi High Court that there was no prohibition on the powers of the Tribunal to entertain an additional ground which according to the Tribunal arose in the matter and for the just decision of the case. In view of the above discussion and in view of the reasons given by the CIT(A) we do not find any infirmity in his order in directing the Assessing Officer to delete the disallowance on account of set off of the losses claimed by the assessee without filing a revised return. The ground raised by the revenue is accordingly dismissed.

7. The ground of appeal No.2 by the revenue reads as under :-

“2. Whether on the facts and circumstances of the case and in law Ld. CIT(A) is correct in deleting the addition made by AO on account of bogus expenses claimed of Rs.4,83,89,009/- by the assessee without appreciating the fact that the assessee during the assessment proceedings failed to prove the identity, credit worthiness and genuiness of the transaction.”

8. The facts of the case, in brief, are that during the year under reference, the assessee company disclosed revenue from operation at Rs.7,78,00,000/- and cost of material consumed at Rs.5,45,36,447/-. The Assessing Officer asked the assessee company to furnish details of material used with supporting vouchers. In compliance thereto, the assessee filed statement showing details of construction material purchased during the year. The Assessing Officer asked the assessee to produce the vouchers of the expenses but the assessee furnished only 8 to 10 vouchers. The Assessing Officer observed from the above details that the amount of Rs. 5,45,36,447/- has been worked out by making entries of amazing figures and in these items no amount for construction either through contractor or on his own is appearing which according to him clearly establishes the fact that the amount claimed on account of construction material is not supported by any voucher. He observed from the list of sundry creditors that sundry creditors of Rs.433,89,009/- has been shown payable without indicating any particular party to whom this amount is payable. He, therefore, asked the assessee to produce the bills for purchase of material. In compliance thereto, the assessee company filed bills in the name of Shiv Stone Crushing Company, Shiv Stone Company, Shiv Building Material Centre, Minlus Hi-Tech Builders, Aggarwal and Company, Tech Solutions, Vishnu Timber and Plywood company, A. K. Electrical Works and Narayan Furniture.

10. The Assessing Office on perusal of the bills noted that the bills have been prepared just to create documentary evidence. He observed a particular feature that is noticeable is numbering of these bills. Numbering on these bills has been stamped separately just to show that the bills are actual. He, therefore, issued notices u/s 133(6) to these parties. In most of the cases notices were received back with remarks "*no such party exists*". The notices were received back in the case of Shiv Store Company, Narayan Furniture, A. K. Electrical Works and Aggarwal and Company. In 3 cases, replies were received from the parties stating that they didn't know any company namely GGC Construction and stated that their name and addresses has been copied just to create documentary evidence.

11. The Assessing Officer, therefore, held that the assessee company has copied their bills and there is huge difference between the original bill issued by M/s Vishnu Timber and two bills prepared by the assessee company itself. The two bills prepared in the name of Vishnu Timber and plywood Company are not recorded in the books of M/s Vishnu Timber and Plywood Company and actual bill issued by M/s Vishnu Timber and Plywood Company is not appearing in the books of assessee company. He, therefore, confronted the assessee with the above noted fact and asked the assessee to produce all the bills of material purchased as it has been established that the expenses on account of Construction material has been claimed without

supporting evidence. The assessee company was also required to file confirmation of static creditors appearing without any name. Rejecting the various explanations given by the assessee and observing that copies of bills furnished by the company are found to be bogus, the Assessing Officer made addition of Rs.4,33,89,009/- to the total income of the assessee as bogus expenses claimed which was shown as payable without any details.

12. In appeal the Ld. CIT(A) deleted the addition made by the Assessing Officer by observing as under :-

“6. Ground No. 3 - After going through the submissions of the assessee and clarifications sought by me on the queries raised, I find that the assessing officer has disallowed almost whole of the expenses by giving flimsy grounds on the basis of enquiry made by him from some of the creditors who denied any sale to the assessee. I find from the order sheet submitted before me which was obtained after inspection that assessing officer has not asked any single query from the assessee on the enquires made by him or on denial by those creditors. The written submissions and paper book consisting of various documents, submissions dated 13.03.2015 filed before the AO, were also filed before me. After going through the assessment order, I find that the AO did not refer to these submissions. In the reply to the queries raised by me, the AR submitted before me the certified true copy of the submission dated 13.03.2015 as annexure-2.

I find that apart from the aforementioned documents, annexure-1 was also filed which is an application dated 05.06.2015 i.e. rectification application u/s 154/155 highlighting the error made in the order of assessment by wrongly mentioning the addition of Rs. 4,83,89,009/- instead of Rs. 4,33,89,009/-. A typographical error of 8 was made instead of 3 in recording the figures in the order of assessment.

Thus the whole issue in the ground of appeal relates to addition of Rs. 4,33,89,009/- as against Rs. 4,83,89,009/-. The mistake apparent from record was required to be rectified but it seems no rectification order has been passed. I find that the AO did not give any calculation for arriving at the figure of 4,83,89,009/- while at various places he referred to the figure of Rs. 4,33,89,009;- . Thus the addition of Rs. 50,00,000/- is frivolous and required to be deleted at the outset due to typographical errors.

After going through the assessment order, I find that the whole discussion made by the AO for making this huge addition of Rs.4,33,89,009/- (wrongly mentioned as Rs. 4,83,89,009/-) was about not finding confirmation from the creditors and accordingly he made the additions u/s 41 of the IT Act by referring to the creditors of Rs.5,83,86,165/- out of which sundry creditors of Rs. 4,33,89,009/- were expenses on account of purchase of material to that extent has been claimed excessively. The assessing officer arrived at this conclusion on the ground that out of the bills sought by him of various parties namely, Shiv Stone Crushing Co., Shiv Stone Company, Shiv Building Material Center, Nimbus Hi-Tech Builders (wrongly mentioned as Minlus instead of Nimbus), Aggarwal & Co., Tech Solutions. Vishnu

Timber and Plywood Company. A.K. Electrical Works, Narain Furnitures, (scanned Copy of bills have been reproduced in the order of assessment), some of the parties namely Shiv Building Material, Vishnu Timber and Plywood have denied some of their bills which were not tallying from their books of accounts. These bills amounted Rs. 29,04,916/- only as against the total expenditure claimed by the assessee of Rs. 5,45,36,447/- of the material consumed. The assessing officer has referred to these discrepancies but has disallowed Rs. 4,33,89,009/-. The AO also referred to certain notices sent by him to some of these creditors which were received back. On these reasons, the AO disallowed Rs. 4,33,89,009/- which is not understandable. The AO did not examine the accounts submitted before him and which was explained by way of various charts. One of the charts i.e. GP chart provide the analysis of various properties sold from FY 2009-10 to 2013-14 against which total cost incurred ranges from 78% to 98%. Except two properties, the percentage of cost of construction ranges between 87% to 92% in all these years. The GP rate of each property is also more or less 8% to 13% except the aforesaid two properties. The AO in this year did not accept whole of the expenditure relating to the cost of the construction claimed by the assessee against the sale of the three properties merely because some of the creditors have denied the transactions. I find that during the course of the assessment proceeding, no opportunity was provided to the assessee to counter the version of these creditors and also opportunity to cross examine these parties. Thus the evidence relied upon at the back of the assessee for making the addition was against the principles of the natural justice and cannot be accepted.

Before me the AR highlighted various documents filed before the AO which were not taken note of in the order of assessment. These

documents include collaboration agreement and settlement agreement between the owners of J-174 Saket New Delhi and assessee. The agreement to build this property was made on 06.05.2010 with Shri. Ram Kishan Singh and after the disputes between these parties, later on settlement agreement was signed by the assessee with Shri. Raghuwinder Singh Director of Asra Buildtech Pvt. Ltd. This property was purchased by the assessee from one Shri. Ram Kishan Singh by registered sale deed dated 17.10.2011 after the collaboration agreement but later on due to disputes assessee has agreement for settlement agreement before the Hon'ble Delhi High Court. The assessee company has paid Rs. 2 crore for buying this property and incurred huge expenditure in construction as depicted in WIP chart filed before the AO and also before me from AY 2009-10 to 2013-14. From perusal of these charts, it can be easily be seen that the expenditure incurred for purchase of the property and construction cost have been separately depicted. The construction cost is only claimed by the assessee against the property sold during that year while the remaining cost of construction is declared in the WIP. The property J-174 was purchased in FY 2010-11 by incurring purchase cost of Rs. 2.2 Crore and cost of construction in FY 2010-11 amounted to Rs. 37,47,310/-and whole of the amount have been depicted in the closing WIP as the property was not sold. In subsequent year, again, cost of construction was incurred of Rs. 52,85,490/- and closing WIP as on 31.03.2012 was declared at Rs. 2,90,32,800/-. This amount is also declared even in FY 2013-14 due to disputes. There was no construction activities in FY 2012-13 and 2013- 14. This clearly shows that there was a dispute between the owners of J-174 due to which construction was stopped. The other properties as shown in these charts were build and cost of construction was claimed only in

the year property was sold. This method of accounting is regularly followed by the assessee. The explanation of the AR found to be convincing due to disputes with the owners of J-174, some of the parties denied who supplied material for construction of J- 174. The AR furnished before me ledger accounts of J-174 building material which includes both these parties i.e. M/s Vishnu Timber and Shiv Building Material as on 31.03.2012. It is not understood that Vishnu Timber has accepted the bills of Rs. 2,48,294/- while other bills were not accepted by them. It means this creditor is genuine though due to some reasons best known to him, he denied some of the bills. Another creditor Shiv Building Material Centra has supplied POP material and finishing paneling etc. It is very well known that POP workers are normally laborers/ mistries and don't maintain books of accounts due to which they did not accept their bills before the merely by denial of these two creditors which are both related to construction of J-174, whole of the expenditure was disallowed, is highly arbitrary and without application of mind. The AO did not understand that the building cannot be constructed without the building material and assessee is claiming cost of construction only at the time of sale of properties. During the year, three properties were sold, i.e. 2, Uday Park which was purchased in FY 2010-11 and purchase cost and construction was shown during the FY 2010-11 under closing WIP at Rs. 2.30 crores. During the Year, construction cost was incurred on this property of Rs. 1,77,76,458/- and after the property is sold, the closing WIP was declared at Rs. 2,03,29,172/-. Second property i.e. F-12, Geetanjali was purchased in FY 2009-10 and after incurring cost of construction in FY 2009-10 and 2010-11 as on 31.03.2011 amounted to Rs. 1,56,96,614/- which is shown as opening WIP in FY 2011-12. Since this property was totally sold, the closing WIP is NIL

and cost of construction incurred during this year of Rs. 1,33,40,890/- was claimed against the sale of this property. Likewise, the third property i.e A-6/18, Vasant Vihar was continuing from earlier years and closing WIP as on 2009-10 was declared of Rs. 1,31,56,093/-. Since this property was partly sold in FY 2010-11 closing WIP was declared at Rs. 48,93,327/- as on 31.03.2011 which is continued in the year in question and cost of construction incurred of Rs. 1,66,39,900/- was claimed against the sale of this property. This shows that the AO though accepted the books of accounts of earlier years, and GP on sale of those properties in earlier years, yet he is denying the expenses incurred during the year. The AO has failed to understand the book results declared from year to year and accepted by him, the whole of the expenditure incurred cannot be disallowed merely because of dispute with owner of J-174.

The AO further failed to look into the list of the sundry creditors submitted by the assessee of Rs. 5,83,86,166/- clearly mentioning the names of all the parties. The finding of the AO that sundry creditors of Rs. 4,33,89,009/- have been shown payable without indicating any particular party is factually incorrect, as the assessee has submitted before him the complete list of sundry creditors. During the course of hearing specific query was raised by me for submitting the latest position of these creditors.

The AR of the assessee submitted the list of sundry creditors as on which amounted to Rs, 2,04,63,291/-. These sundry creditors were reduced. From the perusal of the WIP chart, I find that there was not much construction activity during the FY 2012-13 and 2013-14. The assessee company has cleared the outstanding of the sundry creditors except creditors relating to construction of J-174, Saket, New Delhi. This

was mainly because the settlement agreement was not fully implemented by the owners of the J-174, Saket, New Delhi. A bank statement sought by me clearly shows that payments were made through account payee cheques to most of these creditors in subsequent years. This shows that outstanding sundry creditors relate to the construction business of the assessee. Merely because some of the creditors were outstanding, and payment is not made, these creditors cannot be treated as bogus. I therefore delete the addition of Rs. 4,33,89,009/-. Ground no. 3 is allowed.

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

14. The Ld. DR strongly relied on the order of the Assessing Officer. He submitted that when the Assessing Officer has given categorical finding that the sundry creditors are bogus which are outstanding on the last day of the accounting year, therefore, the Ld. CIT(A) was not justified in deleting the addition. He accordingly submitted that the order of the CIT(A) being contrary to facts and law should be set aside and the order of the Assessing Officer be restored.

15. The Ld. Counsel for the assessee on the other hand strongly relied on the order of the CIT(A). He filed a detailed written synopsis according to which the assessee company is engaged in the business of Civil construction since 2004 and takes contracts for construction of building and after construction hands over the

floor agreed with the owner. After selling the remaining floors, it earns profit or / loss. The cost of construction is borne by the assessee company and till the floor is handed over and sold the same is kept under work in progress because of non completion of construction. This method is being followed from several years i.e. since assessment year 2006-07. Referring to paper book pages 84 to 91 he submitted that one of the agreement called as collaboration agreement was made between the owners of J-174, Saket, New Delhi on 6th May 2010. As per terms and conditions the owners have agreed to deliver the ownership transfer rights of entire third floor along with one servant quarter with common toilet on top terrace and two car parking in the stilt area in consideration of construction of a building by the assessee company. The assessee company was entitled to sell the third floor etc. on its own to subsequent buyer. The assessee company was asked to bear the full cost of construction and to pay Rs 10 lacs non refundable and contractual amount of Rs 501acs and to construct entire basement, entire ground floor, stilt, entire 1st, 2nd and 3rd floor as per Annexure enclosed.

15.1 Referring to pages 93 of the paper book he submitted that assessee company has paid Rs. 2.22 crs. initially instead of 501acs however Rs 221acs was returned subsequently for the full satisfaction of the owners and they can look into the quality of material on their own and clear the bills accordingly which are required to be submitted to the assessee so that it can claim

against the income declared after completion of the building and against the receipts of sale of 3rd floor which is to be handed over to the assessee. Subsequently vide sale deed dated 17/10/2011 the owner has sold-the entire property except third floor to his son Sh. Raghuvinder Singh.

Referring to pages 110 to 127 of the paper book he submitted that the owners of J-174, Saket, New Delhi who have formed a company named ASRA Buildtech Pvt Ltd who was managing the construction on their own and represented by the sons of the owner Sh. Ram Kishan Singh with whom collaboration agreement was made. The father Sh. Ram Kishan Singh was totally ignored and the whole charge has been taken by his son Raghuvinder Singh. The dispute occurred as they were not handing over the possession of third floor and also not clearing the bills relating to construction of building due to which sundry creditors were outstanding in the books of assessee company in the separate head "J-174 Building Material". Ledger accounts of various parties relating to this account are also placed at **PB 112-117** along with bills at **PB-118 to 127**.

15.2 Referring to pages 94 & 95 of the paper book he submitted that the Hon'ble High Court has directed to settle the dispute before mediation and conciliation center Delhi High Court which was made on 10/01/2014 by which M/s ASRA Buildtech Pvt Ltd was asked to return Rs. 2 crores and they were also directed to pay Rs 2 crores as full and final settlement of all

the disputes to the assessee company towards construction of building except third floor. Subsequently vide order dated 24/04/2014 the Hon'ble High Court passed the order after this settlement and both the parties were directed to be bound by the terms of settlement (**PB 102-103**). The ASRA Buildtech Pvt Ltd filed CC(P)/49/2014 due to remaining disputes which was settled subsequently vide order dated 29/01/2016 in connection with 3rd floor by which all the accounts were settled but due to prolonged litigation with them assessee company has not written off the accounts and the balances of the parties relating to building material which were written off now on 31/01/2019 after 3 years of final settlement.

15.3 He submitted that assessing officer has neither raised any query during the assessment proceedings nor informed about the enquiry made by him. The AR however understood the intention of the AO and so has filed detailed reply explaining on the revised claimed computation for claiming loss to be set off against business income, note on construction business and outstanding sundry creditors explaining disputes with owners of J-174 and sundry creditors to whom nothing was paid and also retracted on the surrender made by presuming static creditors whose outstanding balance was already cleared and some of them have already been written off in AY 2015-16 along with various charts and documents, orders of High Court etc.

15.4 He submitted that AO did not refer to all these documents and made the disallowance / additions of all the expenditure and an addition of Rs 4,83,89,009/- has been made. The AO refers to various enquires made by him and pasted in the assessment order various bills and hurriedly made the addition of Rs 4,83,89,009/- instead of sundry creditors mentioned in the order of Rs 4,33,89,009/- without explaining the difference which is clearly evident from the assessment order itself.

15.5 He submitted that the Ld. CIT (A) examined each and every document and found that all the documents were already in the assessment record. The CIT (A) has appreciated the orders of the settlement agreement and the Hon'ble Delhi High Court by which Rs 2 crores was returned and the huge expenditure was incurred as depicted in work in progress (WIP) charts from AY 2009-10 to 2013-14 by which the expenditure incurred for purchase and construction of the property has been separately depicted. The construction cost is only claimed by the assessee against the property sold during that year and the remaining cost of construction is declared in the closing WIP. The property J-174 was purchased in FY 2010-11 by incurring purchase cost of 2.2 crores and cost of construction amounting to Rs 37,47,310/- was depicted in closing WIP of FY 2010-11, subsequent cost of construction was incurred of Rs 52,85,490/- due to which WIP as on 31/03/2012 was declared at Rs 2,90,32,800/- in connection with J-174. There was no construction due to dispute

subsequently in FY 2012-13 and 2013-14 and so the same WIP was continued.

15.6 He submitted that the AO who has made the addition of Rs 4,83,89,009/- on the ground of denial of certain bills by various parties which related to J-174 and after finding the detailed explanation and ledgers accounts, he opted not to refer all the facts and circumstances which were looked into thoroughly by the Ld. CIT(A) who has noticed that all the parties who have denied the bills were relating to J-174 building material only. Most of the creditors have partly accepted and denied bills partly but all work relating to building material of J-174 only.

15.7 He submitted that CIT(A) has rightly examined in different context that GP rate declared by the assessee company was accepted and construction cost ranges between 87% to 92% except few properties and so GP rate of each property is also more or less 8% to 13% except two properties. The addition was deleted after noticing that AO though accepted the books of accounts of earlier years and GP for the sale of those properties in earlier years yet he is denying expense incurred during the year. The Ld. CIT(A) has found that whole of the expenditure was disallowed merely because of denial of some of the sundry creditors because of disputes with owners of J-174. The AO did not look into the disputes which were settled upto Delhi Court. The CIT(A) has called the details during the course of appellate

proceedings of payments made in subsequent years relating to sundry creditors and it was explained that almost all the creditors except J-174 were cleared except few outstanding which were mainly relating to J-174.

15.8 He submitted that even these creditors were written off after the period of 3 years after the final settlement on 29/01/2016 and the entries were made on 31/01/2019 of sundry creditors. The CIT(A) has noticed all these accounts and thereafter deleted the addition. He accordingly submitted that the ground of the revenue is also not tenable as the AO before filing the appeal has not examined his own assessment record and the relevant evidence placed before him. In fact during the course of assessment proceedings as evident from the order sheet, he has not raised any query or provided any material to counter by the assessee. Such evidence relied upon by the AO for making addition/ disallowance which was not provided to the assessee cannot be made basis as held by the Hon'ble Supreme Court in the case of Andaman Timber Industries vs. CCE. He also relied on various decisions.

16. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We find the Assessing Officer on the basis of information obtained from various parties u/s.

133 (6) of the IT Act, 1961 observed that an amount of Rs.4,83,89,009/- has been shown as payable without any details which according to him are bogus expenses on account of purchase of material to inflate the expenditure and reduce the profit. He therefore, made addition of Rs.4,83,89,009/-. We find the Ld. CIT(A) deleted the addition, the reasons for which have already been reproduced in the preceding paragraph. It is the submission of the Ld. DR that the order of the CIT(A) is contrary to evidence regarding the huge bogus outstanding expenses shown as payable on account of purchase of material. It is the submission of the Ld. Counsel for the assessee that the Ld. CIT(A) while deleting the addition has given valid reasons and therefore, the same is justified and ground raised by the revenue should be dismissed.

17. We find the Assessing Officer at various places in the Assessment order has given different figures of outstanding sundry creditors. Although his intention was for addition of Rs.4,33,89,009/-, however, the Assessing Officer has made addition of Rs.4,83,89,009/- and the Ld. CIT(A) deleted the excess addition of Rs.50 lacs i.e. considering Rs.4,33,89,009/- as the correct figure. We, therefore, do not find any infirmity in the order of the CIT(A) deleting the addition to the extent of Rs.50 lacs which is a typographical error that has crept in the order of the Assessing Officer.

18. Now, so far as the addition of Rs.4,33,89,009/- is concerned, the very basis of the addition is that certain bills/ vouchers produced by the assessee during the course of assessment proceedings were found to be bogus. Further the notices issued u/s.133 (6) were either returned unserved or where in some cases replies were received, the concerned parties have denied to have supplied any such material to the assessee. Since an amount of Rs.4,33,89,009/- was shown as payable the Assessing Officer made addition of the same as bogus outstanding. We find the Ld. Counsel for the assessee demonstrated before us that the bills and vouchers, which were referred to by the Assessing Officer, relate to the property relating to J-174 only. He has also filed the relevant documents to show that there was some dispute relating to the said property / project and the matter was ultimately travelled up to the Hon'ble Delhi High Court where it was settled. We find creditors except the creditors relating to property bearing No. J-174 were cleared subsequently. Even the creditors relating to property J-174 were written off after the period of 3 years after the final settlement on 29.01.2016. While we cannot accept the order of the CIT(A) in toto deleting the entire addition, however, from the various details furnished by the assessee we find the expenditure claimed by the assessee as work in progress in respect of a project J-174 is only Rs.52,85,490/-. We further find the assessee in the subsequent years has also written off this amount alongwith other outstanding creditors. Under these circumstances we are of the

considered opinion that out of the total disallowance of Rs.4,33,89,009/- only the amount of Rs.52,85,490/-relating to the project J-174 is doubtful and the balance amount should not have been added by the Assessing Officer especially when the assessee has made payments against the sundry creditors in the subsequent years or has offered to tax the same in the return of income of subsequent years. We, therefore, uphold the order of the CIT(A) to the extent of Rs.3,81,03,519/- (i.e. Rs.4,33,89,009-52,85,490).

19. So far as the amount of Rs.52,85,490/- relating to the project J-174 is concerned, it is the submission of the Ld. Counsel for the assessee that assessee has declared this amount in financial year 2018-19 as income i.e. assessment year 2019-20 after court matter was settled. We, therefore, deem it proper to restore this issue to the file of the Assessing Officer for the limited purpose of verification of the property in dispute i.e.J-174, the outcome of the court case, the settlement arrived at by the assessee and subsequent offer of the assessee for taxation during financial year 2018-19. The Assessing Officer shall decide the issue of allowability of Rs.52,85,490/- as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The ground raised by the revenue on this issue is accordingly partly allowed for statistical purpose.

20. The ground of appeal No.3 by the revenue reads as under :-

“3. Whether on the facts and circumstances of the case and in law Ld. CIT(A) is correct in deleting the addition made by AO on account of cessation of liability u/s. 41 (1) of the IT Act without appreciating the fact that the assessee during the assessment proceedings, itself had surrendered the said income.”

21. Facts of the case, in brief, are that during the assessment proceedings, the Assessing Officer asked the assessee to file confirmation of creditors shown without name and addresses. In compliance thereto the assessee vide letter filed the list of such creditors and agreed for an addition of Rs. 70,79,504/- stating as under;

"In order to buy peace from Income Tax Department and avoid prolonged litigation, we hereby offering for taxation amount as static Creditors as per statement enclosed under the head income from other sources. (Annexure-XI) provided penalty under section 271(l)(c) is not initiated. The amount of static creditors is Rs. 70,79,504/-."

21.1 The Assessing Officer accordingly made addition of the same to the total income of the assessee u/s.41 (1) of the IT Act, 1961. He however, has not discussed anything about the subsequent letters of the assessee retracting from the surrender.

22. In appeal the Ld. CIT(A) deleted addition by observing as under :-

7. "Ground No. 4, the AO has made the addition of Rs. 70,79,504/- by referring to earlier letter surrendering the income, but has ignored the subsequent submissions filed before him. By this submission, assessee has not only retracted from the surrender but also filed detailed explanation that creditors were not static as some of the creditors in subsequent period were cleared/squared up/adjusted or written off. List of sundry creditors was filed in which no such creditor was continued during FY 2014- 15. A copy of the letter dated 13.03.2015 duly certified by the AO in which the list of sundry creditors was filed. And before me a separate list of these sundry creditors of Rs. 70,79,504/- was filed showing that out of these creditors to the tune of Rs. 16,62,575/- were already written off and assessee had declared the same as income in FY 2014-15 and creditors to the tune of Rs. 37,42,070/- were relating to building material of J-174 and were duly transferred in that head. This property is still disputed and no expenditure is claimed during the year as this amount continued from earlier year was declared under WIP. Rs. 16,84 700/-. It relates to advances given to Kitchen Appliances suppliers i.e. Pantaloon Retail Ltd. and so already adjusted against those advances. All these details were filed before the AO and all the ledger accounts were produced before him as noticed by the AO at para 2 of the assessment order. The AO did not mention any discrepancy in the books of the accounts nor he commented in respect of these creditors except recording the surrender of Income. Since the surrender was already retracted and AO was fully aware about the same and ignored the subsequent letter, I don't find any reason to sustain such addition. The AO has failed to appreciate the submissions as well

as the relevant details filed before him. Once it is found that the creditors are not static and mistake committed by AR before the AO was rectified subsequently, the AO was duty bound to look into those submissions before making addition in respect of the aforesaid creditors. In fact, assessee has already declared some of these creditors as income by writing off the same or adjusted against the advances and the remaining were still continued under WIP due to dispute with the owners of J- 174, Saket, New Delhi. I therefore delete the addition of Rs. 70,79,504/- and Ground No. 4 is allowed.”

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

24. The DR heavily relied on the order of the Assessing Officer.

25. The Ld. Counsel for the assessee on the other hand while supporting the order of the CIT(A) submitted that the assessee had retracted from the surrender so made earlier before the Assessing Officer himself and has infact filed detailed explanation that creditors were not static since some of the creditors were cleared / squaredup / written off in subsequent period. He submitted that the provisions of section 41 (1) are not applicable to the facts of the present case. He accordingly submitted that since the Ld. CIT(A) has given valid reasons, therefore, the same being in order should be upheld and the ground raised by the revenue should be dismissed.

26. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer made addition of Rs.70,79,504/- being the static creditors on the ground that the assessee has offered the same for taxation during the course of assessment proceedings. We find the Ld. CIT(A) deleted the addition on the ground that assessee in the subsequent letter to the Assessing Officer has not only retracted from the surrender but also had filed detailed explanation that the creditors were not static since some of the creditors in subsequent period were squad off / either paid off or written off on account of building material of J-174 project. Since the assessee had already retracted from the surrender made before the Assessing Officer and the Assessing Officer is fully aware of the same, therefore, ignoring such letter of retraction the Assessing Officer could not have made the addition on account of static creditors by invoking the provisions of section 41 (1). Since the order of the CIT(A) on this issue is based on facts and the order is a reasoned one and since the Ld. DR could not bring any material to take a contrary view than the view taken by the CIT(A) on this issue, therefore, we do not find any infirmity in the order of the CIT(A) on this issue and accordingly uphold the same. The ground raised by the revenue is accordingly dismissed.

27. In the result, the appeal filed by the revenue is partly allowed for statistical purpose.

Order pronounced in the open court on 30.07.2019.

Sd/-
(H. S. SIDHU)
JUDICIAL MEMBER

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 30.07.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	30.07.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	