

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 936/DEL/2015  
[A.Y 2009-10]

The Dy. C.I.T  
Circle - 4(1)  
Gurgaon.

Vs.

M/s Ushatech Constructions  
376, Sector 40, Gurgaon

PAN: AABFU 1130 A

(Applicant)

(Respondent)

Assessee By : Shri Manoj Pahwa, CA  
Department By : Shri Gurmeet Singh, Sr. DR

**Date of Hearing : 03.09.2019**  
**Date of Pronouncement : 04.09.2019**

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

This appeal by the Revenue is preferred against the order of the Commissioner of Income Tax [Appeals] - 1, Gurgaon dated 09.12.2014 pertaining to assessment year 2009-10.

2. The grievances of the Revenue read as under:

"1. On the facts and circumstances of the case, the Ld. CIT(A) has erred on fact and in law in allowing relief of Rs. 2,46,94,428/- despite the fact that the books of the assessee are not reliable and entries contained in the books of the account are not verifiable.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in fact and in law in granting the relief of Rs. 2,46,94,428/- in spite of the fact that out of 587 entries of sundry creditors, addresses are not available in 479 entries involving amount of Rs. 4,51,69,901/-.

3. On the facts and circumstances of the case, the Ld. CIT (A) has erred in fact and in law in allowing relief although the genuineness of creditors could not be verified by the A.O. in absence of address of such sundry creditors.

4. On the facts and circumstances of the case, the Ld. CIT(A) has erred in fact and in law in allowing relief on the basis of report of AO who, while submitting the remand report for 139 sundry creditors submitted that creditors for an amount of Rs. 25,55,438/- could not be verified."

3. Brief facts of the case are that the assessee is a partnership firm, engaged in the business of civil construction and related jobs. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has shown sundry creditors of Rs. 5,44,99,762/- in its balance sheet. The assessee was asked to furnish complete details of sundry creditors, PAN and complete addresses alongwith confirmations of the creditors. On receiving no plausible reply, the Assessing Officer was of the opinion that the assessee failed to discharge the onus cast upon it in proving the genuineness of the transaction in the books of the assessee. Accordingly, the Assessing Officer treated 50% of the creditors as bogus, non-existent and non-genuine and made addition of Rs. 2,72,49,866/-.

4. The assessee carried the matter before the CIT(A) and alongwith its submissions, the assessee also filed additional evidence in form of confirmations of sundry creditors. The additional evidences so filed were transmitted to the Assessing Officer for examining the merits of the addition in the light of the said additional evidences. The Assessing Officer furnished his remand report dated 14.11.2014 which read as under:

"The assessee has submitted confirmations as well as the PAN No. TIN No. of the creditors which has been duly verified as per the list attached. However, in a list of 139 creditors, total amounting to Rs. 1,14,98,705/- all could not be verified and mentioned in attached statement. The Inspector of this office was directed to make field enquiries for these 139 creditors out of these 37 sundry creditors which could not be verified are amounting to total of Rs. 25,55,438/-.

This office has established the genuineness of majority of the confirmation as the same appears to be genuine and with proper address. The confirmations of accounts attached of some of the creditors are with same opening and closing balance as on 01.04.2008 and 31.03.2009 respectively.

Generally in the construction business, all purchases done from small individual vendors or small vendors who cannot push more for their amount due and hence their payment can be delayed by big contractors.

We are of the opinion that all creditors are genuine since the assessee has provided the confirmation with PAN/TIN and

addresses except the 37 out of 139 creditors stated above whose genuineness could not be vouched and verified."

5. After considering the remand report of the Assessing Officer, the Id. CIT(A) observed that the Assessing Officer has bifurcated the sundry creditors as under:-

S.No.	Category of Sundry Creditors	Amount Outstanding as on 31.03.2009
1	Creditors with PAN/TIN with no opening balance	1.567 crores
2	Creditors without PAN/TIN having opening balance and transactions	17.64 lacs
3	Creditors without PAN/TIN having opening balance	76.67 lacs
4	Creditors having opening balance without transactions during 2008-09	1.83 crores
5	Creditors having no opening balance and not having PAN/TIN	1.15 crores

6. In the light of the admissions made by the Assessing Officer in his remand report, the CIT(A) found that only 37 sundry creditors could not be verified the amount outstanding against which stood at Rs.

25,55,438/-. In the light of detailed submissions, evidences and remand report of the Assessing Officer, the CIT(A) restricted the addition to Rs. 25,55,438/- and allowed relief of Rs. 2,46,94,428/-.

7. Before us, the ld. DR could not point out any factual error in the findings of the CIT(A).

8. The ld. AR, on the other hand, relied upon the findings of the CIT(A).

9. On perusal of the assessment order alongwith the order of the first appellate authority, we find that in the remand proceedings, the Assessing Officer examined the list of creditors alongwith additional evidences filed by the assessee and came to the conclusion that except 37 creditors, all the creditors are genuine. On such admission, the CIT(A) restricted the addition to the extent of 37 creditors amounting to Rs. 25,55,438/-. Accordingly, we do not find any error or infirmity in the findings of the CIT(A).

10. In the result, the appeal of the Revenue in ITA No. 936/DEL/2015 is dismissed.

The order is pronounced in the open court on 04.09.2019.

Sd/-

[SUCHITRA KAMBLE]  
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]  
ACCOUNTANT MEMBER

Dated: 04<sup>th</sup> September, 2019

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

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Date on which the typed draft is placed before the dictating Member	
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Date on which the approved draft comes to the Sr.PS/PS	
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