

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.4755/Del/2018
Assessment Year: 2013-14

Naina Balsaver Ahmed,
N-69, N Block, Sainik Farms,
New Delhi.

Vs ITO,
Ward-31(4),
New Delhi.

PAN: ACHPB3033D

(Appellant)

(Respondent)

Assessee by : Dr. M.K. Bhatt, CA
Shri S.L. Anuragi, Sr. DR

Date of Hearing : 08.08.2019

Date of Pronouncement : 13.09.2019

ORDER

This appeal filed by the assessee is directed against the order dated 26th April, 2018 of the CIT(A)-11, New Delhi relating to assessment year 2013-14.

2. Facts of the case, in brief, are that the assessee is an individual and has filed his return of income on 1st August, 2013 declaring the total income at Rs.10,91,670/-. The assessee is engaged in trading of jewellery. During the course of assessment proceedings, the Assessing Officer observed from the balance sheet that the assessee has shown sundry creditors of Rs.16,93,843/-. The assessee was asked to furnish confirmation of the accounts along with copy of income-tax return of the sundry creditors, but, there was no compliance. The Assessing Officer,

therefore, issued notice u/s 133(6) to the following parties as per the addresses provided by the assessee:-

S.No.	Name of the Creditors & Addresses	Amount Outstanding
1.	M/s Ashish Gems 2445/10, Beadon Pura, Karol Bagh, Delhi.	Rs.3,41,199/-
2.	M/s Harish Kumar & Co. 1111/12, Chhatta Madan Gopal, Maliwara Chandni Chowk, Delhi.	Rs.8,57,977/-
3.	Om Shivam & Co. D-63, shree Ganesh Colony, Vijay Kunj Garden, Mahesh Nagar, Jaipur.	Rs.27,000/-
4.	Ronak Jewellers The Diamond Mall, 2678/1, Shop No.114, Gurudwara Road, Karol Bagh, N Delhi.	Rs.2,96,192/-
5.	Yashoda Jewellers 1711, S-04, IInd Floor, Renuka House, Shyam Sunder Ji Ki Gali, Jadiyahon Ka Rasta, Choura Rasta, Jaipur.	Rs.1,71,475/-

3. The Assessing Officer noted that the notices in respect of Sl. No.1, 3 and 5 above were received back with the remarks either 'Left' or 'No such firm.' Again notices in these cases were issued at the new addresses provided by the assessee which were also received back with the same remarks. So far as Ronak Jewellers at Sl. No.4 is concerned, necessary information/confirmation was received and found to be correct. So far as Sl.No.2 in the case of M/s Harish Kumar & Co. is concerned, the Assessing Officer noted that the said party, vide its reply dated 14th December, 2015 stated that there is nothing due against the assessee and the account balance as on 31.03.2013 is nil. The Assessing Officer, therefore, confronted the same to the assessee and asked him to explain the discrepancies. The assessee vide letter dated 19th February, 2016 did not file any explanation to

the query, but, changed her stand that her case falls u/s 44AD of the IT Act and, therefore, the assessee is not required to maintain any books of account where the net profit is declared equal to 8% of the total turnover or gross receipts in the previous year on account of such business. However, the Assessing Officer did not accept the above explanation of the assessee. He noted that the assessee has not filed her return of income in accordance with section 44AD. The assessee has filed her return of income in ITR-4 and filled in all relevant columns of return according to the figures shown in her balance sheet filed during the course of assessment proceedings. Rejecting the various explanations given by the assessee, the Assessing Officer made addition of Rs.13,97,651/- to the total income. The Assessing Officer also made addition of Rs.16,341/- u/s 14A to the total income and, accordingly, determined the total income at Rs.25,05,660/-. In appeal, the ld.CIT(A) confirmed the additions.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

“1. That the order of the learned Commissioner of Income Tax (Appeals), is arbitrary and bad in law.

2. That the Ld. Commissioner of Income Tax (Appeals) erred on facts and in laws by confirming the addition made by the Ld. Income Tax Officer by treating creditors as unexplained credit balance under section 68 of the Income Tax Act, despite the fact that Assessee is covered under section 44AD of Income Tax Act on presumptive basis, and not supposed to maintain books of accounts and prove the authenticity of the same.

3. That the assessee craves leave to add, alter, substitute or change any grounds of appeal.”

4.1. The assessee has also filed the following additional ground:-

"The CIT (Appeals) has erred in law and on facts, while confirming the addition of Rs.13,97,651/- outstanding as on the balance sheet date on account of sundry creditors who had failed to comply with notices issued by the AO under section 133(6) of the Income Tax Act 1961, ignoring the vital fact that respective purchases from the parties and consequent sale of the goods has been accepted along with the closing stock. "

5. Referring to the decision of the Hon'ble Supreme Court in the case of *NTPC Ltd., reported in 229 ITR 383*, the ld. counsel for the assessee submitted that since all material facts are already available on record and no new facts are required to be investigated and the ground being purely a legal one, the additional ground raised by the assessee should be admitted.

6. After hearing both the sides and perusing the record, the additional ground raised by the assessee is admitted.

7. I have considered the rival arguments advanced by both the sides and perused the orders of the Assessing Officer and the CIT(A). I have also considered the paper book filed on behalf of the assessee. I find the Assessing Officer made addition of Rs.13,97,651/- to the total income of the assessee u/s 68 of the IT Act on the ground that the various sundry creditors shown by the assessee either did not respond to the notice issued u/s 133(6) or have stated that nothing is due from the assessee. It is the case of the Assessing Officer that the sundry creditors remained unexplained and their identity, credit worthiness and genuineness remained unverified. It is the submission of the ld. counsel for the assessee that the purchases from the respective parties were accepted and the sale of the assessee

being the purchase from the above parties have not been doubted. Therefore, merely because the creditors did not respond to the notice issued u/s 133(6) or have stated to have no outstanding balance cannot make the sundry creditors unverifiable. In his alternate argument, the ld. counsel for the assessee submitted that given an opportunity, the assessee is in a position to substantiate his case before the Assessing Officer to his satisfaction. He accordingly submitted that he has no objection if the matter is restored to the file of the Assessing Officer for fresh adjudication of the issue.

8. The ld. DR, on the other hand, strongly supported the order of the Assessing Officer and the CIT(A). He submitted that the assessee should not be given any fresh innings since he could not substantiate sundry creditors either before the Assessing Officer or before the CIT(A). Further, the assessee has changed her stand before the Assessing Officer on the ground that she is to be covered u/s 44AD of the IT Act. He accordingly submitted that the ground raised by the assessee should be dismissed.

9. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one more opportunity to the assessee to substantiate her case and decide the issue as per fact and law. I hold and direct accordingly. The grounds raised by the assessee is accordingly allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 13.09.2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 13th September, 2019

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi