

IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND SHRI B.R. BASKARAN, ACCOUNTANT MEMBE

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|---------------------------|
| ITA No.3125/Bang/2018     |
| Assessment year : 2015-16 |

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| M/s. K N R Roofing Pvt. Ltd.,<br>P 58, KIADB Industrial Area,<br>2 <sup>nd</sup> Phase, Antharasanahalli,<br>Tumkur – 572 106.<br><b>PAN: AADCK 7823M</b> | Vs. | The Assistant Commissioner of<br>Income Tax,<br>Circle 1,<br>Tumkur. |
| APPELLANT   |     | RESPONDENT   |

|               |   |  |
|---------------|---|--|
| Appellant by  | : | Shri Sandeep C., CA                                    |
| Respondent by | : | Dr. P.V. Pradeep Kumar, Addl.CIT(DR)(ITAT), Bengaluru. |

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|-----------------------|---|------------|
| Date of hearing       | : | 05.09.2019 |
| Date of Pronouncement | : | 20.09.2019 |

**ORDER**

*Per N V Vasudevan, Vice President*

This appeal by the assessee is against the order dated 24.09.2018 of the CIT(Appeals)-7, Bengaluru, relating to assessment year 2015-16.

2. The assessee is a company engaged in the business of manufacturing and trading of roofing sheets, roofing accessories and turbo ventilators. For the AY 2-15-16, the assessee filed a return of income declaring a loss of Rs.30,58,063. In the course of assessment proceedings u/s. 143(3) of the Income-Tax Act, 1961 [“the Act”], the AO noticed that there were creditors in the balance sheet and these creditors represented purchases on credit by the Assessee to the tune of Rs.28,37,588. Under Section 68 of the Act, any sum credited in the books of taxpayer in any

financial year shall be treated as shall be treated as income of taxpayer during such financial year if the taxpayer offers no explanation about the nature and source of such credit; or Explanation offered by taxpayer about the nature and source of such credit is not satisfactory in the opinion of assessing officer. Such credit is referred to as unexplained cash credit.

3. The AO called upon the assessee to furnish details viz., name, PAN, address and amount outstanding as on 31.3.2015 of each of the creditors and also to provide confirmations from the creditors. The AO has referred to the fact that the assessee was given opportunities in this regard on 3 occasions, but he assessee did not utilise the opportunity. Since the assessment was getting time barred, the AO proceeded to hold that creditors for purchases of Rs.28,38,588 was unexplained and accordingly treated the same as unexplained cash credit u/s. 68 of the Act and added the same to the total income of assessee.

4. The AO also held that since the addition was made u/s. 68 of the Act, the assessee will not be entitled to set off the current year's loss against income which is taxed u/s. 68 of the Act in view of the provisions of the section 115BBE(2) of the Act. Section 115BBE was substituted by the Taxation Laws 2<sup>nd</sup> Amendment Act, 2016 w.e.f. 1.4.2017, which provides that no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to an assessee in computing income which is added u/s. 68 of the Act. Accordingly, the AO refused to allow set off of current year's loss against the income added u/s. 68 of the Act.

5. Before the CIT(Appeals), the assessee made two submissions, viz., out of the sum of Rs.28,37,588 added as unexplained credits on account of purchases, many purchases were opening balance of the earlier assessment year and therefore the opening balance of earlier assessment years cannot be added as income u/s. 68 of the Act because under Sec.68

of the Act applies only to any sum credited in the books of taxpayer in any financial year. Since the opening balance is not a sum credited in the books of taxpayer during the previous year, Sec.68 will not apply to such opening balance. A sum of Rs.14,92,988 out of the sum of Rs.28,37,588 added by the AO was claimed as opening balance as on 31.3.2015 and therefore cannot be considered as credit entry in the books of account of the previous year relevant to AY 2015-16. The assessee in this regard sought to file ledger account of the various sundry creditors for purchases. Apart from the above submissions, the assessee also submitted that there were certain errors in the credit balances shown in the books of account which were inadvertent errors and if those errors are considered, then there would be no addition that would remain for consideration. In this regard, the assessee filed the following additional evidence before the CIT(A):-

1. Ledger extract of Landmark Fasteners Pvt.Ltd.
2. Ledger extract of Siddaramaiah- Bheemsandra TMK
3. Ledger extract of Siddaramaiah - Tiptur
4. Invoice copy of Siddaramaiah - Tiptur
5. Ledger extract of Shiva Shankaraiah - Masti Gondanahalli
6. Ledger extract of Shivashankar Turuvekere TMK
7. Invoice copy of Shiva Shankaraiah - Masti Gondanahalli
8. Ledger extract of Anand Hardware- Madhugiri
9. Ledger extract of Anand Traders TMK
10. Invoice copy of Anand Traders
11. Ledger extract of Kantharaj Lakshmipura Madhugiri Tmk
12. Ledger extract of V P Kantharaju - Voddagere
13. Invoice copy of V P Kantharaju - Voddagere
14. Ledger extract of Harish - Mahadeva Halli
15. Ledger extract of Harish - Tumkur
16. Invoice copy of Harish
17. Ledger extract of Sagar Industries - Anthrasana Halli
18. Ledger extract of Yogesh - Antharasanahalli TMK
19. Invoice copy of Yogesh Sagar Industries
20. Ledger extract of Yes Builders - Kyathsandra
21. Ledger extract of Dayanandha - Tumkur
22. Invoice copy of Dayanand

23. Ledger extract of Krishna Murthy - DM Palya
24. Ledger extract of Krishna Murthy TMK
25. Invoice copy of Krishna Murthy
26. Ledger extract of Ralco Steel Private Ltd
27. Ledger extract of Steel Sun
28. Ledger extract of Sedvik Industries
29. Ledger extract of Sanjay- Pacific Perti Prod & Service Pvt Ltd
30. Ledger extract of M S Traders
31. Ledger extract of Win Matrix
32. Ledger extract of JSW Steel Ltd
33. Ledger extract of Sree Jee Enterprises
34. Ledger extract of Sree Manjunatha Hardware & Steels
35. Ledger extract of Gangees International Pvt Ltd
36. Ledger extract of Lssar Steel Ltd
37. Ledger extract of Ideal Fiber Glass
38. Ledger extract of Krishna Fab Tech

6. The assessee filed an application before the CIT(Appeals) for accepting the aforesaid documents as additional evidence. The assessee submitted that it had discontinued its business operations in June, 2015 and therefore could not file confirmation letters from the creditors in the course of assessment proceedings. Even before the CIT(Appeals), the assessee expressed inability to file confirmation from the parties, but submitted that ledger extracts of the sundry creditors and debtors would prove the errors in the closing balances in the sundry creditors account, which will have a bearing on the quantum of addition to be made.

7. The assessee prayed that the documents which are sought to be filed before the CIT(Appeals) should be admitted as additional evidence to enable proper disposal of appeal and in the interest of justice.

8. The CIT(Appeals), however, refused to accept the additional evidence as in the opinion of the CIT(A), the assessee cannot seek to file additional evidence in the appellate proceedings as a matter of right and has to satisfy the conditions laid down in Rule 46A of the I.T. Rules, 1963

[the Rules] for admission of additional evidence. The CIT(Appeals) accordingly confirmed the order of the AO. On the issue of set off of current year business loss, against income added u/s. 68, by relying on the provisions of section 115BBE(2) of the Act, the CIT(Appeals) held that though substituted provisions of section 115BBE are applicable only w.e.f. 1.4.2017, these provisions are clarificatory in nature and therefore applicable for AY 2014-15 also.

9. Aggrieved by the order of CIT(Appeals), the assessee has preferred the present appeal before the Tribunal.

10. We have heard the rival submissions. The Id. counsel for the assessee reiterated the submissions made before the CIT(Appeals). The Id. DR relied on the order of CIT(Appeals).

11. We have considered the rival submissions. We are of the view that u/s. 68 of the Act, it is only the credit entry appearing in the books of account of an assessee for the relevant previous year, that can be treated as unexplained cash credit in the absence of proper explanation by the assessee. Therefore, the opening balances cannot be added u/s. 68 of the Act.

12. The additional evidence sought to be filed by the Assessee before CIT(A) was to prove its case that opening balances cannot be added and also to explain the correct quantum of credit purchases during the relevant previous year. Rule 46A of the Income Tax Rules, 1962 (Rules) reads thus:

**Production of additional evidence before the [Deputy Commissioner (Appeals)] [and Commissioner (Appeals)].**

**46A.** (1) The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the

evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—

- (a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] ; or
- (c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or
- (d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) records in writing the reasons for its admission.

(3) The Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity—

- (a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or
- (b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]

13. Though the assessee did not file ledger accounts to prove the quantum of opening balance appearing in the various creditors account, the same ought to have been looked into by the CIT(Appeals), in exercise of powers under Rule 46A(4) of the Rules. It is always open to the

CIT(Appeals) to confront the material in the form of additional evidence to the AO and then take a decision on the stand taken by the assessee before the CIT(Appeals). We are also of the view that the closure of business of assessee in June, 2015 was a sufficient cause for non-production of evidence before the AO and therefore the CIT(Appeals) ought to have admitted additional evidence in terms of Rule 46A(1)(c) of the Rules. The same reason would hold good for the assessee's claim with regard to discrepancies in the closing balance of sundry creditors as shown by the assessee in the books of account. We are therefore of the view that the additional evidence sought to be filed by the assessee ought to have been admitted for adjudication by the CIT(Appeals). We therefore set aside the order of CIT(Appeals) and remand the issue to the AO for fresh consideration with regard to the issue of addition u/s. 68 of the Act. The AO will consider the additional evidence filed by the assessee before the CIT(Appeals) and after giving opportunity of being heard to the assessee, decide the addition u/s. 68 of the Act afresh in accordance with the law.

14. As far as the refusal of the AO to allow set off of current year business loss against income added u/s. 68 of the Act by relying on the provisions of section 115BBE(2) of the Act which was inserted by the Finance Act, 2016 w.e.f. 1.4.2017, it is not in dispute before us that the CBDT in Circular No.11 of 2019 dated 19.6.2019 clarified that the amendment sought to be relied upon by the AO is applicable only prospectively and therefore not applicable to AY 2015-16. Hence even in the event of addition being made u/s. 68 in the set aside proceedings, the assessee should be given the benefit of set off of current year's business loss against the addition u/s. 68 of the Act. We hold accordingly.

15. In the result, the appeal by the assessee is partly allowed.

Pronounced in the open court on this 20<sup>th</sup> day of September, 2019.

Sd/-

Sd/-

( B R BASKARAN )  
ACCOUNTANT MEMBER

( N.V. VASUDEVAN )  
VICE PRESIDENT

Bangalore,

Dated, the 20<sup>th</sup> September, 2019.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore.