

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI K. NARSIMHA CHARY, JUDICIAL MEMBER**

**I.T.A.No. 1416/Del/2016
[Assessment Year: 2008-09]**

Shri Vijay Kumar Ahuja, BFH-72, Shalimar Bagh, Delhi-110088 PAN-AAFPA3625G	vs	Income Tax Officer, Ward-19(1), New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Anil Jain, Adv
Respondent by	Ms. Ashima Neb, Sr.DR
Date of Hearing	09.09.2019
Date of Pronouncement	30.09.2019

ORDER

PER K. NARSIMHA CHARY, J.M.

Aggrieved by the order dated 18.11.2015 in Appeal No. 287/10-11 for assessment year 2008-09 passed by the Id. Commissioner of Income Tax (Appeals)-12, New Delhi (for short "learned CIT(A)"), one Shri Vijay Kumar Ahuja (the assessee) filed this appeal on the following grounds:-

- i. The Ld. CIT(A) has erred in upholding the addition of Rs. 10,60,647/- made by Ld. Assessing Officer on account of Sundry Creditors of the Appellant out of addition of Rs. 84,84,177/- made by the AO.*

- ii. The order of the Ld. CIT(A) is against law and facts of the case.*
- iii. The appellant craves the right to add, amend or withdraw any grounds of appeal at the time of hearing.*

2. Brief facts of the case in so far as the issue relating to the addition made on account of Sundry Creditors is concerned, Id. Assessing Officer added a some of Rs. 84,84,177/- on the ground that the assessee failed to submit any details relating to the Sundry Creditors except the name. According to the learned Assessing Officer no details of addresses nor confirmations were filed in spite of the repeated opportunities afforded to the assessees.

3. However, Id. CIT(A) sought a remand report and the Id. Assessing Officer. Ld. Assessing Officer in the remand report recommended that the submissions of the assessee accepted to the extent of Rs. 65,93,207/- in respect of which he obtained the confirmation of the creditors.

4. Ld. CIT(A) observed that in respect of Ruby Electrnoics, Moviebox Recorded Private Ltd., and Speed Records aggregating to Rs. 3,90,356/-, confirmations were submitted by the assessee and they were found to be in order. The Id. CIT(A) accepted the same.

5. Then what remains to be considered is the creditors to the tune of Rs. 10,60,647/-. In respect of these creditors, case of the assessee has been that these are on account of opening balances and, therefore, the same cannot be added during the year. Ld. CIT(A), however, observed that the assessee had not brought anything on

record to show that the creditors of Rs. 10,60,647/- in respect of which the assessee claims that represent opening balances were examined earlier and accepted by the department. He, therefore, by placing reliance on the decision of the Bangalore Bench of the Tribunal in Suresh Kumar T. Jain in ITA No. 667/B/2009 dated 8.1.2010 reached a conclusion that the Assessing Officer has power to examine the genuineness of brought forward creditors and if the appellant failed to establish the unclaimed balances in the name of creditors, addition can be made by Assessing Officer. On this premise, while deleting the balance credit amount, the Id. CIT(A) sustained the addition to the tune of 10,60,647/-.

6. Aggrieved by this, assessee preferred this appeal stating that the opening balances relating to transactions of some earlier years and they do not relate to the year under consideration and therefore no addition can be made basing on the opening balances. Reliance is placed on the decision reported in CIT vs. Usha Stud Agricultural Farms Limited 2008 301 ITR 384 Delhi.

7. Ld. DR placed reliance on the orders of the Id. CIT(A).

8. In view of the facts narrated above, it is clear that the only question that falls for our consideration in this matter is whether the Id. CIT(A) is justified in sustaining the addition of the amount which represents the opening credit balances appear in the account of the assessee. In Usha Stud Agricultural Farms Limited (supra) Hon'ble Jurisdictional High Court held in unequivocal terms that if the credit in questions represents the credit balance appearing in the accounts of

the assessee it does not pertain to the year under consideration and, therefore, the Assessing Officer would not be justified in making the addition under section 68 of the Act. It is, therefore, clear that if at all the sum of Rs. 10,60,647/- represents the opening credit balance in the books of accounts of the assessee which cannot be added under section 68 of the Act and has to be deleted.

9. However, this requires factual verification at the end of the learned Assessing Officer. We, therefore, set aside the impugned order to such an extent and remanded the matter back to the file of the Assessing Officer to verify whether its amount of Rs. 10,60,647/- represents the opening credit balance in the books of accounts of the assessee and if it so, to delete the same.

10. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 30th September, 2019.

Sd/-
(G.S. PANNU)
VICE PRESIDENT
Dated: 30th Sep, 2019

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

SH

Copy forwarded to:

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

By order
Assistant Registrar

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