

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

ITA No.1543/Bang/2017
Assessment year :2011-12

M/s. George P Johnson Event Marketing Pvt. Ltd., (Formerly: George P Johnson Shobiz Event Marketing (P) Ltd.), Prestige Tudor Court, 40, 401, 34d Level, Lavelle Road, Bengaluru – 560 001. PAN : AABCG 4928 K	Vs.	Additional Commissioner of Income-tax, Range – 7, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Sridhar, Advocate
Revenue by	:	Shri. Sunil Kumar Agarwal, Addl. CIT

Date of hearing	:	22.10.2019
Date of Pronouncement	:	25.10.2019

ORDER

Per G. Manjunatha, Accountant Member:

This appeal filed by the assessee is directed against the order of the CIT(A)-3, Bengaluru, dated 30.04.2017 and it pertains to Assessment Year 2011-12. The assessee has raised the following grounds of appeal:-

1. *The CIT-A failed to direct the assessing officer to exercise the option u/s 131 of the I.T. Act in respect of sundry creditors to whom the notice issued u/s 133(6) was not served ever after the appellant had produced*

the payment of balance outstanding as on 31.03.2011 through banking channel.

- 2. The CIT(A) erred in confirming the balance outstanding in the sundry creditors account even though the appellant had deducted TDS in respect of all payments to the creditors including the balance outstanding as on 31.03.2011, which proves the identity of the creditors, which the CIT(A) held as not proved the identity of creditors for confirming the addition made by the assessing officer.*
- 3. The CIT(A) erred in confirming the outstanding balance as on 31.03.2011 in the case of M/s. Air State Logistics & Couriers Pvt. Ltd. on the basis of information received in response to notice u/s 133(6) without providing a copy of the confirmation / statement received from the creditor.*
- 4. The CIT(A) should have directed the assessing officer to provide an opportunity to appellant to cross examine M/s. Air State Logistics & Couriers Pvt. Ltd. even after filing the proof of payment of outstanding balance as on 31.03.2011 through banking channel as confirmed by the bank which was filed before the CIT(A).*
- 5. For these and other grounds that may be adduced at the time hearing the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered.*

2. The brief facts of the case are that the assessee is engaged in the business of event management, filed its return of income for Assessment Year 2011-12 on 18.09.2011, declaring a total income of Rs.3,28,51,870/-. The case was selected for scrutiny and during the course of assessment proceedings, the AO called upon the assessee to file confirmation letters from creditors shown in books of accounts. The AO has also simultaneously issued letters under section 133(6) of the Income Tax Act, 1961, to all creditors, but letters issued to few creditors have been returned unserved. In respect of some parties, there has been no reply even though notice was served to them. In respect of M/s. Air State Logistics & Couriers Pvt. Ltd., the creditors' responded to the notice and forwarded copy of the ledger account, as per which the balance as on

31.03.2011 was Nil. Therefore, he opined that creditors shown in books of account in respect of 10 parties as listed in para 3.1 of assessment order are not genuine and accordingly made additions of Rs.50,87,609/- to the total income of the assessee.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee submitted that it has furnished necessary evidences including identity of creditors before the AO and also filed various details to prove that purchases are in fact genuine which have arised out of normal business transactions. The assessee further stated that all the creditors have been subsequently paid through proper banking channel for which necessary certificates from the bankers have been obtained. The CIT(A), after considering relevant submissions by the assessee, deleted the additions to the extent of Rs.18,16,534/- in respect of 4 parties, however, confirmed balance additions in respect of other parties on the ground that although the assessee stated that few creditors have closed their business but could not substantiate its claim with necessary evidences. The CIT(A) further observed that even though the assessee has filed proof of payments to 6 creditors in subsequent years by cheque, but payment by cheque is not sufficient to prove identity of the creditors more particularly when those creditors have not responded to the notices issued by AO. Similarly, the learned CIT(A) has confirmed additions made towards other creditors on the ground that even though some creditors are still in business, but confirmation letters could not be furnished and accordingly sustained additions of Rs.32,71,075/- in respect of 6 creditors. Aggrieved by the CIT(A)'s order, the assessee is in appeal before us.

4. The learned AR for the assessee submitted that the learned CIT(A) has erred in confirming the additions made in respect of 6 creditors even though the assessee has filed complete address of the creditors along with PAN and TIN.

The assessee has also filed payment proof against creditors in subsequent financial years through proper banking channel. In spite of producing necessary evidences, the learned CIT(A) confirmed additions made by the AO only for the reason that no confirmation letters could be obtained from the creditors. The learned AR for the assessee, referring to paper book filed which contains evidences filed before lower authorities, submitted that it has filed complete details including bills issued by the creditors and also TDS return filed by the assessee evidencing TDS deducted on payment made to those parties. The assessee further submitted that in respect of M/s. Air State Logistics & Couriers Pvt. Ltd., although the party has responded to notice issued by AO and filed ledger account copies for the year under consideration with outstanding balance of Rs.42,99,294/-, but the AO observed that the balance at the end of the year is Nil, without considering relevant materials and also without providing opportunity to the assessee to reconcile difference in balance appearing in books of accounts of the assessee and confirmations filed by the creditors.

5. The learned DR on the other hand, strongly supporting the order of the CIT(A), submitted that the learned CIT(A) has allowed relief to the assessee wherever assessee could file confirmation letters from the creditors, but sustained additions wherever assessee could not file confirmation letters from the parties. The learned DR further submitted that no doubt the assessee had filed details of payment made to those creditors by cheque in subsequent financial years, but payment by cheque itself would not prove identity of the creditors more particularly when letters issued to those parties were returned unserved. The CIT(A), after considering relevant facts, has allowed partial relief to the assessee in respect of certain parties where assessee could explain credits with necessary evidences. Therefore, there is no reason to interfere with the order of the learned CIT(A).

6. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The AO has made additions towards sundry creditors on the ground that the assessee could not explain creditors with necessary evidence to the satisfaction of the AO nor prove genuineness of transactions. According to the AO, notices issued to few parties were returned unserved. Further, in respect of certain parties, even though notices were served, there was no response from those parties. The AO further observed that in respect of M/s. Air State Logistics & Couriers Pvt. Ltd., the party has confirmed that no amount was receivable as per the ledger accounts of the assessee as on 31.03.2011. Accordingly, he opined that creditors shown in books of accounts in respect of certain parties were not genuine and accordingly made additions under section 68 of the Income Tax Act, 1961. It is the contention of the assessee before the lower authorities that when sufficient evidences have been filed in order to prove the identity and genuineness of the activities, then no additions could be made merely for the reason that no confirmation letters has been obtained from the parties. The assessee further contended that in respect of certain parties, it could not obtain confirmation letters because those parties had closed their business as on the date of assessment proceedings. In respect of some parties, it could not obtain confirmation letters, even though they are continuing business, but sufficient evidence in the form of bills issued by them which contain PAN and TIN of the party, TDS certificate issued by the assessee evidencing deduction of tax at source on said payment and also proof of payment by cheque in subsequent financial year are filed. Similarly, in respect of M/s. Air State Logistics & Couriers Pvt. Ltd., it was the contention of the assessee that the AO has not considered ledger accounts filed by the assessee before arriving at a conclusion that there is a difference between balances shown in the books of accounts of the assessee and balance confirmed by the party.

7. Having considered arguments of both sides, we find that it is not a case of the AO that the assessee did not file any documents in respect of creditors to prove identity and genuineness of transactions. In fact, the learned CIT(A) has recorded categorical finding that the assessee has filed various details including PAN and TIN numbers of the parties. The learned CIT(A) has also recorded categorical finding that the assessee has filed proof of payment by cheque against creditors in subsequent financial years. Therefore, we are of the considered view that it is incorrect on the part of the learned AO as well as learned CIT(A) to come to the conclusion that the assessee has failed to prove identity of the creditors.

8. Coming back to genuineness of transactions. The assessee claims that before lower authorities, it has filed various evidences including bills issued by the parties which contain PAN and TIN numbers of the suppliers. The assessee further claims that it has deducted TDS on payments made to those parties and filed necessary TDS certificates before the AO as well as the CIT(A). When payments have been made through proper banking channels and also necessary TDS has been deducted on such payments, it cannot be said that the transactions between the parties are not genuine. Further, when the assessee has filed various evidences including PAN and TIN numbers of the parties to prove identity and also filed evidences of payment by cheque in subsequent years, then there is no reason for the AO to doubt identity and genuineness of transactions merely for the reason of non filing confirmation letters from the parties. Further, the assessee has explained the reasons for non-furnishing confirmation letters from few parties as per which those parties have closed their business before assessment proceedings was completed. In respect of other parties, even though it could not obtain confirmation letters, but filed all possible details including payment proof by cheque along with letters from the bankers confirming payment to the party account. Therefore, we are of the considered view that the

learned AO as well as the learned CIT(A) had erred in coming to the conclusion that the assessee had failed to file necessary evidences to prove genuineness of creditors. In so far as M/s. Air State Logistics & Couriers Pvt. Ltd., we find that the case of the AO is that there is no amount payable to the creditors as on 31.03.2011, whereas the case of the assessee is that the party has responded to the notice issued by the AO and filed ledger account as per which amount outstanding as on 31.03.2011 is Rs.42,99,294/-. We further noted that as per assessee's books of accounts, balance outstanding as on 31.03.2011 is at Rs.8,56,641/-. Even going by the details filed by the assessee, there is huge difference in balance as per books of accounts of the assessee and balance confirmed by the party. The assessee claims that there are some reconciliation issues between balance shown in books of accounts of the assessee and balance confirmed by the party for which necessary reconciliation can be filed to explain difference. Therefore, the learned AR for the assessee requested to set aside the issue to the file of the AO for further verification in light of reconciliation filed by the assessee to explain difference in balance appeared in assessee books of accounts and balance confirmed by the party. But, the fact remains that the assessee has filed certain additional evidences in form of TDS certificates and payment through cheque in subsequent financial years against those creditors. We are not sure whether these documents were placed before the AO at the time of assessment proceedings or not. Therefore, we are of the considered view that the issued needs to go back to the file of the AO for further verification in light of various evidences filed by the assessee including payment proof by cheque in subsequent financial years.

9. In view of this matter and considering facts and circumstances of the case, we are of the considered view that the issue needs to go back to the file of the AO for further verification in light of various evidences filed by the assessee including additional evidences filed in the form of TDS certificates and

payment proof by cheque in subsequent years to those creditors. Hence, we set aside the issue to the file of the AO and direct him to reconsider the issue in accordance with law, after affording opportunity of being heard to the assessee.

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

Order pronounced in the open court on this 25th day of October, 2019.

Sd/-
(N. V. VASUDEVAN)
Vice President

Sd/-
(G. MANJUNATHA)
Accountant Member

Bangalore.

Dated: 25th October, 2019.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.