

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI**

**BEFORE  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 556/Del/2017  
Asstt. Year: 2013-14

ACIT, Central Circle-18, Room No. 102, ARA Centre, Jhandewalan Extn. New Delhi.	Vs.	M/s. Cairo International, X-355, Lane No. 8 Mohalla Ram Nagar, Gandhi Nagar, New Delhi - 110 031 PAN AADFC3693A
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri I.P. Bansal, Advocate Shri Vivek Bansal, Advocate
Department by :	Shri G. Johnson, Sr. DR
Date of Hearing	30/07/2019
Date of pronouncement	18/10/2019

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal is preferred by the Department against the order dated 25.11.2016 passed by the Ld. Commissioner of Income Tax (Appeals) – 27, New Delhi {CIT (A)} and pertains to assessment year 2013-14.

2.0 The brief facts of the case are that the return of income was filed declaring income of Rs. 59,40,208/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) of the Income Tax Act, 1961 (hereinafter called 'the Act') at an income of Rs. 6,39,57,704/- after making addition of Rs. 2,21,25,000/- on account of non-submission of confirmation/s of unsecured loans, addition of Rs. 3,54,63,946/- on account of non-submission of confirmations of sundry creditors and addition of Rs. 4,28,550/- on account of disallowance of bank commission and interest on investment in Canara HSBC Life Insurance and on FDRs.

2.1 Aggrieved, the assessee had approached the Ld. First Appellate Authority who deleted all the three additions. Now, the department is before the Tribunal challenging the deletions by the Ld. CIT (A) and has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.2,21,25,000/- on account of unsecured loans u/s 68 of the Act without appreciating the facts that the assessee has failed to prove the identity, genuineness and creditworthiness of the transaction during the course of assessment proceedings. Therefore, the Ld. CIT (A) is not justified in deleting the addition.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.3,54,63,946/-*

*on account of sundry creditors without appreciating the facts that since the assessee has failed to prove the genuineness and in furnishing the complete conformations of the sundry creditors. Therefore the Ld. CIT (A) is not justified in deleting the addition.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.4,28,550/- on account of disallowance from bank commission and interest without appreciating the facts that when no business purpose could be established with regards to these transactions.*
4. *(a) The order of the CIT (Appeals) is erroneous and not tenable in law and on facts.  
(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.*

3.0 With respect to ground no. 1 pertaining to unsecured loans, the Ld. Senior Departmental Representative (Sr. DR) submitted that during the course of assessment proceedings, the assessee was not able to produce any documentary evidence to explain the unsecured loans and further that the assessee was not able to prove the identity, genuineness and creditworthiness of these transactions. It was submitted that vide question No. 11 of the notice issued u/s 142(1) of the Act and dated 22-06-2016, the Assessing Officer (AO) had required the assessee to produce the confirmation/s of the unsecured loans and a further opportunity had been given vide order sheet entry dated 20-01-

2016 whereby the assessee was required to produce the complete details of unsecured loans, confirmation/s of the parties along with their addresses, copy of ITRs, statement of affairs and bank statements, etc to prove the identity, genuineness and creditworthiness of the persons giving these unsecured loans but the assessee had failed to produce such evidence. It was submitted that the AO was right in making the additions and Ld. CIT (A) has, without appreciating the facts on record, wrongly deleted the same.

3.1 With respect to ground no. 2 pertaining to sundry creditors, the Ld. Sr. DR submitted that the assessee had not submitted the required information in respect of sundry creditors, and therefore, the addition was rightly made by the AO and Ld. CIT (A) has wrongly deleted the same.

3.2 With respect to ground no. 3 pertaining to interest, the Ld. Sr. DR placed extensive reliance on the observations and findings of the AO.

4.0.0 In response, with respect to ground no. 1, the Ld. Authorised Representative (AR) submitted that complete details of the unsecured loans were submitted and are also a part

of the assessee's paper book at pages 137 and 138 of the paper-book. It was submitted that from the said details it is clear that out of a total sum of Rs. 2,21,25,000/- pertaining to outstanding unsecured loan as on 31-03-2016, the opening balance was to the tune of Rs. 1,16,25,000/- and during the year under consideration the amount received as loan was a sum of Rs. 1,05,00,000/-. Further, our attention was drawn to the copy of audit report for the year under consideration (at pages 22 to 38 of the paper-book and details of unsecured loans received during the year incorporated in column No. 24a at page 24). The Ld. AR drew our attention to the following chart in the audit report and containing the said details:

24	a	Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted the previous year: -					
	Name of the lender or depositor	Address of the lender or depositor	PAN of the lender or depositor	Amount of loan or deposit taken or accepted	Whether the loan or deposit was squared up during the pervious year	Maximum amount outstanding in the account at any time during the previous year	Whether the loan or deposit was taken or accepted otherwise than by an account payee bank cheque or account

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							payee bank draft
	AJAY GUPTA	X-2065F RAJGARH COLONY GALI NO. 4 GANDHI NAGAR DELHI	AIQPG9296C	1500000	NO	1500000	NO
	MALA MITTAL	B-101, G-1 RAMPURI GHAZIABAD	AJPPM1462Q	2000000	NO	2000000	NO
	SANDEEP MITTAL	1/522 GALI NO. 3 FREIENDS COLONY SHAHDARA DELHI	AJQPM5439E	2000000	NO	2000000	NO
	ANAND MITTAL	522 GALI NO. 3 FREIENDS COLONY SHAHDARA DELHI	AJQPM2375K	1000000	NO	1000000	NO
	HEMANT MITTAL	H-224 OLD SEEMAPURI DELHI	AJNPM3029K	1500000	NO	1500000	NO
	LALIT AGARWAL & SONS(HUF)	X-355 LANE NO 8 MOHALLA RAM NAGAR GANDHI NAGAR DELHI-31	AAAHL0880K	2500000	NO	2500000	NO

4.0.1 The Ld. AR submitted that as can be seen from the audit report that not only the name of the persons from whom these deposits have been received is given but also their complete addresses as well as PAN has also been given and it is mentioned that all these payments have been received through the banking channels.



that the addition made in respect of unsecured loans was uncalled for.

4.0.4 It was further submitted that as far as the opening balances are concerned, the same cannot be added in view of the judgment of Hon'ble Delhi High Court in the case of CIT Vs. Usha Stud Agricultural Farms Ltd. [2008] 301 ITR 384 (Delhi) and our reference was specifically drawn to Para 8 of the said judgment.

4.1.0 Replying to the arguments of the Ld. Sr. DR with respect to Ground no. 2, the Ld. AR submitted that out of the total outstanding sundry creditors of Rs. 3,54,63,946/-, an amount of Rs. 1,05,70,246/- was the opening balance and the assessment for A.Y. 2012-13 (immediately preceding A.Y.) was framed vide order dated 27-03-2015 passed u/s 143(3) of the Act and, therefore, the addition to the extent of opening balance of Rs. 1,05,70,246/- is not maintainable.

4.1.1 It was further submitted that in so far as the remaining addition of Rs. 2,48,93,700/- (Rs. 3,54,63,946/- less Rs. 1,05,70,246/-) is concerned, the same relates to the outstanding balance in respect of the purchases made during the

year under consideration. It was submitted that the aggregate of purchases made during the year under consideration is Rs. 44,60,62,805/- and the outstanding balance against these purchases was only a sum of Rs. 3,54,63,946/- which works out to only 7.95% of the total purchases. Referring to the confirmations of the sundry creditors, the copies of which have been filed from pages 74 to 121 of the paper-book, it was submitted by the Ld. AR that in respect of each and every creditor, the confirmation was filed and it was submitted that from the confirmed copies of account it can be seen that the outstanding amount was only on account of purchases made from these parties. The Ld. AR submitted that these confirmations were filed before the AO vide letter dated 22-01-2016 and are also available at pages 71 to 133 of the paper-book.

4.1.2                   It was submitted that in view of the confirmations filed and also all the vouchers pertaining purchases etc. having been submitted before the AO, it will be incorrect to say that assessee did not submit the evidence/s.

4.1.3                   It was also submitted that it is not a case where the sundry creditors are outstanding for a long period. It was further submitted that the gross profit rate has been

accepted by the AO and books of account have not been rejected. Reference was made to the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Ritu Anurag Aggarwal [2010] 2 taxmann.com 134 (Delhi) and it was submitted that in a case where the AO did not make disallowance on account of purchases from the relevant creditors and where the trading results have not been disturbed, the Tribunal had rightly deleted the addition in respect of amount outstanding on account of unpaid price of purchases.

4.1.4 Reference was also made to the judgment of the Hon'ble Punjab & Haryana High Court in the case of Pr. CIT vs. Kulwinder Singh [2018] 99 taxmann.com 449 (Punjab & Haryana) wherein it has been held that section 68 was not attracted on the amount which represented purchases made on credits.

4.1.5 Reliance was also placed on the judgment in the case of CIT vs. Pancham Dass Jain [2006] 156 Taxman 507 (Allahabad) to contend that in a case where the assessee was maintaining regular books of account and accounts were accepted by the AO, in that case amount shown as outstanding in





the same time, the assessee has filed documentary evidence/s to prove the identity and genuineness of the creditors from whom the credits have been received during the year. They all are assessed to tax and PAN details were disclosed in the Audit report itself. The assessee has filed the copy of their ITRs as well as copy of their bank accounts. Confirmations of all these creditors have also been filed. Therefore, we are of the opinion that the Ld. CIT (A) did not commit any error in deleting this addition. Accordingly, we decline to interfere with the relief granted by the Ld. CIT (A) in this issue. This ground of the revenue is dismissed.

5.2.0                      Coming to the second issue, i.e. addition on account of sundry creditors, it is seen that the assessee had submitted the confirmations of sundry creditors to the extent of Rs. 1,96,52,805.72 before the AO vide letter dated 22-01-2016 received in the office of AO on 25-01-2016. This fact is evident from page 73 of the paper book wherein the assessee has submitted the list of confirmations filed with the letter submitted on 25-01-2016 and confirmations are filed at pages 74 to 121 of the paper-book. Therefore, before the conclusion of the assessment, the relevant evidences in respect of a sum of Rs. 1,96,52,805.72 was filed before the AO. We have also gone

through these confirmations submitted by the assessee and found that the amount outstanding is on account of opening balance and purchases made during the year.

5.2.1 It is further seen that another set of confirmations for a sum of Rs. 1,62,12,538.37 (List at page 139 and confirmations at pages 140 to 172) were filed only before the Ld. CIT (A). This fact is evident from the index of the paper-book. We have also gone through these confirmations and found that in these confirmations also, the outstanding balance is on account of opening balance as well as purchases made during the year under consideration.

5.2.2 The law is well settled that opening balance pertaining to sundry creditors cannot be added to the income of the assessee more particularly when the assessment for the immediately preceding year was framed u/s 143(3) of the Act. In the present case, it has been found that the assessment for A.Y. 2012-13 was framed u/s 143(3) vide order dated 27-03-2018 (Copy at page 134). It is also well settled that the outstanding amount in respect of purchases made during the year also cannot be added to the income of the assessee and such position of law is

laid down in the judgment of the Hon'ble Jurisdictional High Court in the case of CIT vs. Ritu Anurag Aggarwal (supra); the judgment of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Kulwinder Singh (supra); and the judgment of the Hon'ble Allahabad High Court in the case of CIT vs. Pancham Dass Jain (supra).

5.2.3           It is seen that in the present case, the AO did not disturb the trading results of the assessee and the books of account have not been rejected. The outstanding balances in respect of the purchases constitute only 7.95% of the purchases made during the year. Thus, it is a case where the genuineness of the sundry creditors cannot be doubted for the simple reason that either the outstanding balance is on account of opening balance or it is on account of purchases made during the year under consideration. Therefore, we hold that to the extent of Rs. 1,96,52,805.72, for which the confirmations were filed before the AO, the addition has been correctly deleted by the Ld. CIT (A) and we decline to interfere with such deletion. However, taking into consideration the fact that the assessee did not furnish confirmations of sundry creditors to the tune of Rs. 1,62,12,538.37 before the AO and to this extent the confirmations

were submitted only before the Ld. CIT (A), we are of the opinion that it would be just and proper to restore this remaining addition to the extent of Rs. 1,62,12,538.37 to the file of AO with the direction that from the purchase bills to be submitted by the assessee it is to be verified that the amount outstanding is only on account of purchases and also to verify from the accounts of the assessee that the opening balance is the brought forward balance. If from such verification it is found by the AO that the outstanding balance in the name of these creditors is comprising either of opening balance or of purchases made during the year or is on account of both the opening balance and purchases made during the year under consideration then no addition should be made on this account. Needless to say, the assessee will furnish before the AO the copy of list of sundry creditors placed at page 139 of the paper book and also the copies of confirmations placed at pages 140 to 173 filed along with the list to enable him to make verification as directed above. With these directions the addition to the extent of Rs. 1,62,12,538.37 is restored to the file of AO and balance addition is deleted. This ground of the revenue is partly allowed for statistical purposes.

5.3.0                      Coming to the third issue being agitated by the Department, it is seen that this addition relates to interest paid to bank on secured loans of Rs. 19,53,28,198/-. It was noticed by the AO that the assessee had invested a sum of Rs.28,73,950/- in “Canara HSBS, OBC Life Insurance” and FDR amounting to Rs. 6,97,299/-. The total amount of Rs. 35,71,249/- was considered as being invested for non-business purposes and the interest at the rate of 12% amounting to Rs. 4,28,550/- was disallowed. The Ld. CIT (A) noted that the insurance scheme launched by the bank as a joint venture with other banks and investment was in the name of partners of the assessee’s firm. The proceeds of the maturity were also deposited in the bank account of the firm and were utilized only for the purpose of business. Therefore, it has been held by the Ld. CIT (A) that such contribution was obligatory for the assessee in the course of availing loan facilities from the bank for the purpose of business only. It is observed by the Ld. CIT (A) that it was obligatory on the part of the assessee to give funds out of its capital for FDR as the assessee has been availing loan from bank. Thus, it is held by the Ld. CIT (A) that there was business purpose behind the investment and addition of Rs. 4,28,550/- was deleted. The Ld. Sr. DR has placed reliance on the

order of the AO while arguing on this ground. However, he could not point out any factual infirmity in the findings recorded by the Ld. CIT (A) while deleting the disallowance. Therefore, looking into the facts of the case and findings of fact recorded by the Ld. CIT (A), which could not be negated by the Department, we find no reason to disturb the findings of the Ld. CIT (A) on the issue. Accordingly, this ground of the revenue stands dismissed.

6.0 In the final result, the appeal of the revenue stands partly allowed for statistical purposes.

**Order pronounced in open court on 18<sup>th</sup> October, 2019.**

sd/-

**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

sd/-

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: 18/10/2019

***\*dragon\****

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi