

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member  
And Shri Amarjit Singh, Accountant Member**

**ITA No. 1715 /Ahd/2012  
Assessment Year 2008-09**

The ACIT, Circle-5, Ahmedabad (Appellant)	Vs	R.J. Tradelinks Pvt. Ltd. B1-6-7 Modern Flats, B/H-NID, Paldi, Ahmedabad-380007 PAN: AADCR7885G (Respondent)
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**Revenue by: Shri Jagdish, CIT-D.R.  
Assessee by: Shri Aseem L. Thakkar, A.R.**

Date of hearing : 23-09-2019  
Date of pronouncement : 15-11-2019

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This revenue's appeal for A.Y. 2008-09, arises from order of the CIT(A)-XI, Ahmedabad dated 04-05-2012, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The revenue has raised following grounds of appeal:-

*“i) The Commissioner of Income tax (A) has erred in law and on facts in deleting the addition of Rs.6,75,00,000/- made u/s 68 of the Act on account of unexplained creditors even when the explanation of the Assessee that the said*

*credit pertained to M/s Radharamana Holdings Pvt Ltd in lieu of purchase of shares from them, was found to be incorrect.*

*ii) Without prejudice to the ground (i), the Commissioner of Income tax (A) has erred in law and on facts in deleting the addition of Rs.6,75,00,000/- made in respect of the ceased liability u/s 41(1) of the Act, even when the creditor, M/s Radharamana Holdings Pvt Ltd, whose name was appearing in the Balance Sheet of the Assessee, had denied having made any transaction with the Assessee implying that the liability of M/s Radharaman Holdings Pvt ltd no longer existed.*

*iii) On the facts and circumstances of the case, the Ld. Commissioner of Income tax (A) ought to have upheld the order of the Assessing Officer.*

*iv) It is, therefore, prayed that the order of the Ld. Commissioner of Income tax (A) may be set-aside and that of the Assessing Officer be restored.”*

3. The two grounds of appeal of the revenue are inter-connected to the issue of deleting the addition of Rs. 6,75,0000/- made u/s. 68 of the act on account of unexplained creditors and deleting the same addition made in respect of the ceased liability u/s. 41(1) of the, therefore, for the sake of convenience, both these grounds of appeal are adjudicated together.

4. The fact in brief is that the assessee has filed return of income declaring total income at Rs. 23,01,498/- on 6<sup>th</sup> April, 2009. The case of the assessee was subject to scrutiny assessment and notice u/s. 143(2) of the act issued on 24th Sep, 2010. At the time of assessment, the assessing officer noticed that assessee has shown an amount of Rs. 6,52,96,614/- under the head current liabilities which also included sundry creditors of Rs. 6,49,51,200/-. The assessee was asked to furnish the confirmation of the sundry creditors. The assessee has furnished copy of its account in the books of Radharaman Holding Pvt. Ltd., Chandigarh showing outstanding balance of Rs. 6,49,51,200/- as on 31<sup>st</sup> March, 2008. The assessing officer has also reproduced copy of account of the assessee in the books of the aforesaid parties as under:-

<i>Date</i>	<i>Particulars</i>	<i>Ch.No.</i>	<i>Dr.Amount</i>	<i>Cr. Amount</i>	<i>Balance.</i>
	<i>Bill No.BSE-0708151</i>		<i>4,16,28,330</i>		<i>4,16,28,330</i>
<i>01/11/2007</i>	<i>Bill No.BSE-0708152</i>		<i>2,58,71,669</i>		<i>6,75,00,000</i>
<i>02/11/2007</i>	<i>Being Amt. received</i>	<i>64794</i>		<i>10,00,000</i>	<i>6,65,00,000</i>
<i>11/02/2008</i>	<i>Being Amt. received</i>	<i>64795</i>		<i>5,00,000</i>	<i>6,60,00,000</i>
<i>14/02/2008</i>	<i>Being Amt. received</i>	<i>64797</i>		<i>3,00,000</i>	<i>6,57,00,000</i>
<i>15/02/2008</i>	<i>Being Amt. received</i>	<i>648002</i>		<i>7,48,800</i>	<i>6,49,51,200</i>
<i>31/03/2008</i>	<i>Balance C/d</i>	<i>000405</i>		<i>6,49,51,200</i>	
	<i>Carried over</i>		<i>6,75,00,000</i>	<i>6,75,00,000</i>	

The assessee has also furnished undated confirmation letter of the above party confirming the outstanding balance of Rs. 6,49,51,200/- receivable from the assessee. The assessee has furnished copies of purchase bill for purchase of 5 lac shares of Parsoli Corporation Ltd. from the Radharaman Holding Pvt. Ltd. for a sum of Rs. 6.75 crore. In the purchase bill, the PAN of the above party was shown as AILBG7832K and on verification, the assessing officer found that PAN mentioned on the bill was bogus. Therefore, the assessing officer has issued notice u/s. 133(6) of the act to M/s. Radharaman Holding Pvt. Ltd., Chandigarh. In its reply the aforesaid party has declined of having any transaction made with the assessee during the previous year relevant to the year under consideration. Therefore, the assessing officer vide letter dated 27<sup>th</sup> December, 2010 asked the assessee to explain why not sum of Rs. 6.75 crore may not be added to its income. The

assessee has explained that it has purchased five lac shares of Parsoli Corporation ltd. from Radharaman Holding Pvt. Ltd. which were duly credited in the demat account of the assessee company out of which it had already sold 4200 shares as reflected in the demat account. It was further explained that the sale consideration received on sale of aforesaid shares was also reflected in the bank statement and short term capital gain arising out of the sale of such shares amounting to Rs. 2182462/- was duly offered for taxation in the income tax return. It is further submitted that assessee has also made payment to Radharman Holding Pvt. Ltd. for purchase of the shares which was also reflected in the bank statement of the assessee company and the balance outstanding amount of Rs. 6,49,51,200/- was still payable to the said party. In order to verify the assessee's claim of having made part payment to Radharaman Holding Pvt. Ltd., the assessing officer has issued notice u/s. 133(6) to the assessee's bank and as per the information received from the Axis Bank, the assessing officer had noticed that none of the cheques were payable to M/s. Radharaman Holding Pvt. Ltd. and cheque no. 64697 was issued in the name of the assessee itself and other cheques nos. 64794 and 64795 were issued in favour of Parsoli Corporation Ltd. In view of the above, the assessing officer observed that assessee has not made any partial payment to Radharaman Holding Pvt. Ltd. The assessing officer has also observed that Radharaman Holding Pvt. Ltd. to whom the assessee has shown outstanding balance of Rs. 6,49,51,200/- payable will have an effect of cessation of liability towards assessee as the said party has denied of receiving any such amount from the assessee. In view of the above facts and circumstances, the assessing officer has treated the amount of Rs. 6.75 crore credited in the books of the assessee as income

of the assessee u/s. 68 of the act. The assessing officer has also treated the same as cessation of liability by invoking the provision of section 41(1) of the act and added the same to the total income of the assessee.

5. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee. The relevant part of the decision of Id. CIT(A) is reproduced as under:-

*“4.5 I have carefully considered the rival contentions. I have also perused the evidences furnished by the appellant during the appellate proceedings and case laws relied upon by the appellant. The contents of the remand report submitted by the A.O. is also taken into account for adjudicating this grounds of appeal. It is seen that the appellant has purchased 5 lac shares of Parsoli Corporation Ltd., for a consideration of Rs. 6,75,00,000/- during the year under consideration. As per books of accounts of the appellant these shares were purchased from M/s. Radharaman Holdings Pvt. Ltd. Out of these shares 4200 shares were sold during the year under consideration and the appellant has declared short term capital gain of Rs. 21,82,462/- on the sale of these shares. Since these shares were credited in the demat account of the appellant and part of these shares were sold through demat account, accordingly the purchase of these shares cannot be denied. To this fact the A.O. has also agreed. However, during the assessment proceedings, the A.O. had reached to a conclusion that these shares were not purchased from Radharamana Holdings Pvt. Ltd. and the credit shown in the name of Radharamana Holdings Pvt. Ltd. of Rs. 6,49,51,200/- was also found to be non-existent as M/s. Radharamana Holdings Pvt. Ltd. had denied these transactions. In view of these findings the A.O. had made disallowance of Rs. 6,75,00,000/- which corresponds to the purchase cost of 5 lac shares of Parsoli Corporation Ltd. However, during the appellate proceedings the appellant contended that these transactions were not done through Radharamana Holdings Pvt. Ltd. but 5 lac shares of M/s. Parsoli Corporation Ltd. was purchased through Parsoli Corporation Ltd., who is also a registered share broker with BSE. It was also contended that this transaction was not truthfully declared in the books of accounts as one of the directors of the appellant company is a relative of director of Parsoli Corporation Ltd., and by recording this transaction truthfully, the parties were apprehensive of action from SEBI. For this reason the name of M/s. Radharamana Holdings Pvt. Ltd., was inserted in the books of accounts.*

*4.6 During the appellate proceedings, the appellant has furnished copy of bills which evidences purchase of shares of M/s. Parsoli Corporation Ltd., from M/s. Parsoli Corporation Ltd. itself. The appellant has also filed confirmation torn Parsoli Corporation Ltd., who has confirmed that the appellant was a sundry debtor of Rs. 6,49,51,200/- as on 31/3/2008. These evidences were forwarded to the office of the A.O. and he had made necessary investigations to ascertain these facts. The A.O. had found purchase of 5 lac shares of M/s. Parsoli Corporation Ltd. from M/s. Parsoli Corporation Ltd., itself genuine. The A.O. had reached to this conclusion after taking the following facts in view:-*

*(a) In response to inquiry letters issued by the A.O. u/s.133(6) of I.T. Act, M/s. Parsoli Corporation Ltd. vide their letter dated 7/4/2012 had confirmed these transactions, M/s. Parsoli Corporation had shown M/s. R.J.Tradelinks Pvt. Ltd. as a sundry debtor of Rs.6,49,51,200/- as on 31/3/2008.*

*(b) To substantiate these transactions, M/s. Parsoli Corporation Ltd. had also sent the statement of account, extracts from books of accounts, bills of the impugned share transactions and proof of payment supported by bank statement.*

(c) The A.O. had also surfed Ministry of Corporate Affairs website and downloaded the share holding register/share holding pattern of M/s. Parsoli Corporation Ltd. In the share holding register of Parsoli Corporation Ltd., M/s\ Parsoli Corporation Ltd. has shown the appellant i.e. R.J. Tradelink Pvt. ltd. as share holder holding 5,45,400 shares.

(d) These shares were transferred through demat account and accordingly the physical presence of these shares cannot be denied.

The above facts make it abundantly clear that the appellant had purchased 5 lac shares of Parsoli Corporation Ltd. from M/s. Parsoli Corporation Ltd. itself for a consideration of Rs. 6,75,00,000/-. Once the purchase of shares for a consideration of Rs. 6,75,00,000/- is established, it will only to be appropriate and logical to allow credit of purchase of these shares to the appellant. Accordingly, I hold that the appellant had purchased 5 lac shares of Parsoli Corporation Ltd. for a consideration of Rs. 6,75,00,000/- and the appellant is entitled to claim purchase expenses against these purchases. Accordingly, addition made by the A.O. of Rs. 6,75,00,000/- is deleted.

4.7 The A.O. had also taken alternate plea that the liability shown by the appellant in the name of M/s. Radharamana Holdings Pvt. Ltd. does not exist and accordingly addition of Rs. 6,75,00,000/- be made as per the provisions of Sec.41(1) of the I.T.Act. Since the addition has been proposed as per the provisions of Sec.41(1), it will be appropriate to discuss the provisions of this section. The provisions of sec.41 (1) can be invoked, if the following conditions are fulfilled :-

(i) In the assessment of an assessee, an allowance or deduction has been made in respect of any loss, expenditure or trading liability incurred by him.

(ii) (a) Any amount is obtained in respect of such loss or expenditure, or

(b) Any benefit is obtained in respect of such trading liability by way of remission or cessation thereof.

(iii) Such amount or benefit is obtained by the assessee; and

(iv) Such amount or benefit is obtained in a subsequent year.

To invoke provisions of sec.41(1) the A.O. has to prove that any amount is obtained by the appellant in respect of such loss or expenditure or any benefit is obtained in respect of trading liability by way of remission or cessation. There is nothing on record to indicate that the appellant had obtained any benefit in respect of such trading liability by way of remission or cessation. In fact it is proved by cogent evidences that liability of Rs. 6,49,51,200/- exists as on 31/3/2008 and this liability exists in the name of M/s. Parsoli Corporation Ltd. In view of these facts, I am of the considered view that, provisions of section 41(1) cannot be invoked in this case and accordingly I do not agree with the alternate plea of the A.O.

4.8 In view of above discussion, I am of the considered view that addition of Rs. 6,75,00,000/- is not tenable and accordingly, same is hereby deleted. This ground of appeal is allowed."

6. We have heard the rival contention and perused the material on record. During the course of assessment, the assessing officer has noticed that assessee has shown outstanding liability of sundry creditors of Rs. 6,49,51,200/-. On verification, the assessing officer has noticed that assessee has shown the aforesaid amount of sundry creditors payable to Mr. Radharaman Holding Pvt. Ltd., Chandigarh from which it has purchased 5 lac shares of Parsoli Corporation Ltd. for a sum of Rs. 6.75 crore. The assessing officer has issued noticed u/s. 133(6) to the aforesaid party and the

said party has denied of having any such transaction and outstanding balance receivable from the assessee. The assessing officer has also made verification from the bank of the assessee regarding the part payment made by the assessee and noticed that assessee has issued two cheques in favour Parsoli Corporation Ltd. and one cheque was issued in the name of the assessee itself. In view of the above facts and circumstances, the assessing officer has treated an amount of Rs. 6.75 crore found credited in the books of the assessee as income of the assessee u/s. 68 of the act as the explanation offered by the assessee was not found to be correct and simultaneous treated the same as cessation of liability u/s. 41(1) of the act as M/s Radhaman Holding has denied any liability payable by the assessee. On appeal, before Id. CIT(A) the assessee has submitted additional evidence under Rule 46A of the I.T. Rule that the assessee company during the year under consideration has in fact purchased 5 lacs shares of Parsoli Corporation Ltd. through Parsoli Corporation Ltd. itself and not through the broker Radharamn Holding Pvt. Ltd. In this regard, the assessee has also submitted that the particulars of share purchased through Parsoli Corporation Ltd. is as under:-

<i>Date</i>	<i>No. of Shares</i>	<i>Bill No.</i>	<i>Amount (Rs.)</i>
27/11/2007	190000	BW/169/11038	2,70,21,857.00
27/11/2007	310000	BW/169/11038	4,04,78,143.00
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			6,75,00,000.00
			-----

The assessee has also furnished the actual bill issued by the broker viz. Parsoli Corporation Ltd. along with other evidences for purchase of Parsoli Corporation Ltd. which was off market transaction. It is also submitted that one of the directors of the assessee company was a relative of director of the company Parsoli Corporation Ltd., therefore, to avoid any action from SEBI, the transaction was shown in the name of Radharaman Pvt. Ltd. and

confirmation was also furnished in the name of Radharaman Holding Pvt. Ltd. Accordingly, the outstanding liability was shown in the name of Radharaman Holding Pvt. Ltd. instead of actual broker i.e. Parsoli Corporation Ltd. It is submitted that the correct facts were duly shown in the books of Parsoli Corporation Ltd and the assessee company was shown as debtor in the books of Parsoli Corporation Ltd. with the outstanding amount of Rs. 6,49,51,200/- after considering the part payment of Rs. 25,48,800/- made by the assessee company towards purchase of shares. In view of the above facts, the outstanding balance was wrongly shown in the name of Radharaman Pvt. Ltd. in the books of the account of the assessee company. The assessee has also submitted the duly confirmed copy of account of the assessee company from the books of Parsoli Corporation Ltd. for the year under consideration showing outstanding balance of Rs. 6,49,51,200/- in the name of the assessee company. Before the Id. CIT(A), the assessee has also submitted that because of the following reasons, the transactions cannot be considered as ingenuine:-

- “(i) The transactions are real transactions and not merely book/paper entries as alleged or assumed by the A.O.*
- (ii) The deliveries have been routed through the demat account.*
- (iii) The part payment made towards purchase of shares has been made through banking channels. Similarly, the sale consideration on sale of some of the shares has also been received through banking channels.*
- (iv) The confirmation of the ACTUAL PARTY through whom the purchase of shares of Parsoli Corporation Ltd. has been made is furnished. The name of the appellant company is thus reflected as a DEBTOR in the books of the broker company.*
- (v) Market quotations in support of price of shares on the date of purchase and sale are furnished which establishes that the transactions are within the market range.”*

It is also submitted that there is no cessation of liability u/s. 41(1) of the act since the correct position was confirmed by the Parsoli Corporation ltd. The assessee has furnished actual evidences in the name of correct party i.e.

Parsoli Corporation Ltd before CIT(A) for admitting as additional evidences under Rule 14(6A) of the I.T. rule 1961 stating that the said additional evidences were required to be admitted to decide the issue on the basis of correct fact of the case. It was also submitted that the assessing officer has made inquiry only in the last two weeks prior to the limitation period and issued a show cause to the company on the basis of denial of Radharaman Holding Pvt. Ltd. vide their rely dated 27<sup>th</sup> December, 2010. Therefore, the assessee could not place the correct facts and evidences before the assessing officer in the short available period of three days. In view of the above facts, the assessee has contended before the Id. CIT(A) that it was prevented by sufficient cause for producing the aforesaid facts and evidences before the assessing officer and requested to admit the same as per provision of rule 46 of the IT Rule 1962. Therefore, the Id. CIT(A) has admitted such evidences for the sake of substantial justice to decide the issue on merit. The Id. CIT(A) has called remand report from the assessing officer. The content of the remand report submitted by the assessing officer are elaborated at page no. 22 to 25 in the order of CIT(A). In the remand report, the assessing officer has submitted that in view of the facts and circumstances, the matter may be decided on merits as the facts during the assessment was contrary to the appellate proceedings. Considering the above facts and findings of Id. CIT(A), it is undisputed fact that assessee has purchased 5 lacs of shares of Parsoli Corporation for a consideration of Rs. 6.75 crore through Parsoli Corporation Ltd. who is also a registered share broker with the BSE and out of these shares 4200 were sold during the year under consideration and the assessee has declared short term capital gain of Rs. 21,82,462 on the sale of these shares. The Id. CIT(A) has categorically established in his findings

that these shares issued were not purchased from Radharaman Holding Pvt. Ltd. but 5 lacs shares of Parsoli Corporation Ltd. was purchased through Parsoli Corporation Ltd. and these transactions were not correctly declared in the books of account of the assessee as one of the directors of the assessee company was a relative of the director of Parsoli Corporation Ltd. for the reason of apprehension of action from SEBI. Considering the fact and circumstances, we do not find any reason to interfere in the finding of Id. CIT(A), therefore, the appeal of revenue is dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 15-11-2019

**Sd/-**  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 15/11/2019**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश क० तालम अ० षत / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलालय आधिकरण,  
अहमदाबाद