

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 4203/Del/2018
Assessment Year: 2013-14

M/s. Pneumax Pneumatic India P. Ltd., D-82, Hosiery Complex, Phase-II Extension, Noida	Vs.	DCIT, Circle-2, Noida
PAN :AADCP4421G		
(Appellant)		(Respondent)

Appellant by	Shri S.D. Kapila, Adv.; Shri R.R. Maurya, Adv. & Shri Bhuvan Mahajan, Adv.
Respondent by	Shri Sulekha Verma, CIT(DR)

Date of hearing	05.09.2019
Date of pronouncement	26.11.2019

ORDER

PER O.P. KANT, AM:

This appeal the assessee is directed against order dated 28/03/2018 passed by the learned Commissioner of Income-tax (Appeals)-I, Noida [in short 'the Ld. CIT(A)'] for the assessment year 2013-14, raising following grounds:

1. *On the facts and in the circumstances of the case: -*

i) The Ld. CIT (Appeal) erred in law in making enhancement of income under section 251(2) of the Act on issues, which had already been investigated and found satisfactory by the Assessing Officer.

ii) The Ld. CIT (Appeal) erred in law in passing a perverse, laconic and self-contradictory order for making addition of Rs. 15,28,51,640/- (4,51,21,897+ 10,77,29,743) in utter disregard of the voluminous evidence, which was tendered to the Assessing Officer in response to his questionnaire dt 12.01.2016 and show-cause notice dt 23.02.2018 issued by the Ld. CIT(Appeal).

iii) The Ld. CIT (Appeal) erred in passing the impugned order in breach of the principles of natural justice by issuing show-cause notice dt. 23.02.2018 without conveying reason for the proposed additions and also by not considering the appellant's explanation submitted to him on 15.3.2018.

iv) The Ld. CIT (Appeal) erred in making addition of Rs. 4,51,21,897/- as unexplained "cash in hand" though it formed part of closing bank balance as reported in audited financial statements for which confirmation were duly placed on record before the Ld. CIT (Appeal) and the Assessing Officer.

2. (i) That on the facts and in circumstances of the case, the Ld. CIT (Appeal) erred in making further addition of Rs. 10,77,29,743/- by treating 50% of outstanding trade liability as per Balance Sheet of the appellant as its income.

(ii) Without prejudice, the Ld. CIT (Appeal) erred in passing a self-contradictory order by treating 50% of outstanding trade liability of the appellant as bogus though treating the foreign exchange loss on its revaluation as business expenditure.

(iii) Without prejudice, the Ld. CIT (Appeal) erred in not adjusting the opening balance of trade liabilities brought forward from 31.3.2012 included in the closing balance of trade liabilities as on 31.3.2013.

On the facts and circumstances of the case Ld. CIT (Appeal) erred in initiating penalty proceeding under section 271(l)(c) of the Act.

The appellant craves leave to amend, alter or add fresh grounds of appeal.

2. Briefly stated facts of the case are that the assessee was engaged in manufacturing and trading of pneumatic products. For the year under consideration, the assessee company claimed to have imported goods from its sister concerns and reported international transactions in the return of income filed on

30/11/2013, declaring current year loss of ₹ 26,34,469/-. In the scrutiny assessment completed on 30/03/2016 under section 143(3) of the Income-tax Act, 1961 (in short 'the Act'), the Assessing Officer made an addition of ₹ 33,93,027/- for foreign currency fluctuation expenses being on higher side and ₹ 5,45,475/- for abnormal increase in office maintenance expenses. On further appeal, the learned CIT(A) though deleted both these additions, but he enhanced the income of the assessee by way of making following two additions:

1. Addition of ₹ 10,77,29,743/- for creation of bogus liabilities of purchases from sister concerns in Italy.
2. Addition of Rs. 4,51,21,897/-for difference in cash balance available in bank as well as in books of accounts.

2.1 In the grounds of the appeal raised before the Tribunal, the assessee is aggrieved mainly by the above two additions made by the learned CIT(A). In ground No. 1(i), the assessee has challenged the order of learned CIT(A) in enhancing the income under section 251(2) of the Act. In ground No. 1(ii) and (iii), the assessee has raised the issue of breach of principle of natural justice for not considering the submission of the assessee as well as disregard of voluminous evidence tendered before the Assessing Officer. The ground No. 1(iv) relates to addition of ₹ 4,51,21,897/- for unexplained cash in hand. The ground Nos. 2(i) and 2(ii) relates to addition of ₹ 10,77,29,743/- for treating 50% of outstanding trade payable liability as bogus.

3. Before us, the Ld. counsel of the assessee filed paper-books in five volumes along with the supplementary paper-book and

submitted that ld. CIT(A) has made addition on the basis of incorrect appreciation of facts and erroneous computation of availability of the cash during financial year 2012-13 and erred in not taking into account opening balance of trade receivables and not making adjustment for other non-cash expenditures like depreciation, forex loss booked etc. The Ld. counsel submitted that the learned CIT(A) is not justified in enhancing the income of the assessee on the issues which has already been investigated by the Assessing Officer and found satisfactory by him.

4. On the merit of the addition, the Ld. counsel of the assessee referred to various pages of the paper book and submitted that the learned CIT(A) has wrongly computed availability of the cash in books of account at Rs. 2.11 crore as against availability of Rs 6.43 crores. The Ld. counsel also submitted that the learned CIT(A) is not justified in making addition for outstanding liabilities in absence of any waiver of liability in the year under consideration. He submitted that even the current liability raised in the year under consideration is a genuine one and which has been repaid by the assessee in subsequent assessment year and such remittance has been fully accepted by the Assessing Officer in subsequent assessment year under section 143 (3) orders. The written submission filed by the Ld. counsel of the assessee is reproduced as under:

“1) Comments adverse finding of CIT(A) in Paragraph 13 of the order:

A. CIT(Appeal) erroneously computes the cash availability during F.Y. 2012-13 as follows:-

		<i>Rs. in crores (rounded)</i>
<i>i)</i>	<i>Total Receipts during the year (noted 15-17 of Accounts at Pg. 74-</i>	<i>14.37</i>

	75/Vil-I)	
ii)	Cl. Bl. Of Trade Receivable on 31.03.2013	(-)6.03
	Cash available to business	8.35
iii)	Less: Cash Paid out by assessee	(-)6.23
iv)	Net cash available on 31.03.2013	2.11
v)	Cash in bank on 31.03.2013 as per Accounts	4.51

Analysis of Trade Receivables as per Accounts:

B. Correct position : as per Accounts

i)	Total receipts during F.Y. 2012-13	14.37
ii)	Add: Op. Bl. Of Trade Receivables on 01.04.2012 (+) 4.32	
iii)	Less: Cl. Bl. Of Trade Receivables on 03.03.2013 (Noe 12 to accounts at pg. 73/Vol-I) (-)1.71	(-)1.71
	Cash generated during the year	12.66
	Less: Cash Paid out*	(-)6.23
	Cash available on 31.03.2013 (subject to adjustment)	6.43

*Note:- The CIT(A) has made basic error in not taking into account the opening balance of Trade Receivables and also not making adjustment for other non cash expenditure like depreciation, forex loss booked etc.

C. Adjustments are also required to be made in respect of 'Increase/Decrease in Inventories', 'Loans & Advances', 'Other Current & Non-Current Assets' & 'Other current liabilities & provisions' (Pl. ref. Notes 4-23 of accounts at Pg. 68-80/VOL-I). The Reconciliation statement clearly shows that 'cash and cash equivalent' during the year was as on 31.3.2013 was of Rs. 6.91 crores. (Net increase in cash 2.85 Cr. + O. Pl. 4.06 Cr.) (Pg. 52/Supp. PB). (Pg. 74/Vol- I)

D. Another adverse observation of the CIT(A) is:

"There was absolutely no justification of having such huge cash in hand idle when the appellant was saddled with enormous liabilities"

Note 29 at Pg. 85/Vol.-I clarifies the reason for delay in payment to the AEs as follows:-

“The company has incurred loss of Rs.,2,403,915 (PY: Rs. 9,283,378) during the year and has accumulated losses as at March 31, 2013 of Rs. 20,839,091 9PY: Rs. 18,435,176) against the paid up capital of Rs. 17,000,000 (PY: Rs. 17,000,000) which was resulted in erosion of company net worth. The company proposes to funds its operations for the year ended March 31, 2014 primarily from the support by holding company, which will enable it to settle its obligations as and when they fall due and operate as a going concern.”

The holding Italian company provided the financial cushion to the assessee company so that it does not lack competition and is able to complete against the cheaper Chinese products.

2) Erroneous observations in paragraph 19 of CIT(A) Order:-

The Ld. CIT(A) states that the Appellant has not provided any evidence in respect of purchase of goods imported from Pneumax Spa Italy, (the parent company). This is a baseless and factually incorrect allegation.

In para 2 of his order, the AO states:

“The assessee has furnished various details during the assessment proceedings. Books of account of the assessee company were audited u/s 44AB of the I. T. Act, 1961 and copy of Audit Report was also furnished. The assessee produced complete books of accounts along with ledgers, bills & vouchers which were examined on test basis and returned back.”

(Pg. 19/AM)

a) *Copy of foreign exporeter’s Invoices along with cost sheet on sample basis (refer page 840 to 1025 on Paper book Volume-IV).*

<i>i)</i>	<i>Custom House Agent Bill,</i>
<i>ii)</i>	<i>Custom Duly challns,</i>
<i>iii)</i>	<i>Bill of Freight by shipping agent,</i>
<i>iv)</i>	<i>Custom’s Bill of entry,</i>
<i>v)</i>	<i>Foreign Consigners invoice. AE’s confirmation is at pg.411-12/Vol-II.</i>
<i>vi)</i>	<i>Statement of imports is at Pg. 1047/Vol.-V</i>
<i>vii)</i>	<i>Bank Statement & confirmation are at pg. 157-164 & 197-99/Vol-II</i>

b) *It is illogical on the part of CIT(Appeal) to allow deduction of Forex fluctuation loss booked by the assessee on the very imports, and then turn around and say no evidence of imports/ purchases*

was furnished. Acceptance of Foreign Exchange loss work-sheets by Ld. CIT (A) in para 7 of his order clearly proves that he accepted the fact that the Appellant had imported goods from Pneumax Spa Italy, which was subject to duty. These worksheets were furnished to the AO/CIT(A) as annexure to assessee's letter dt. 19.1.2016 addressed to AO (Pg. 157-62/Vol-II). It is enclosed as Annexure 2 at Pg. 20-27of this synopsis.

Appellant Company had submitted details of goods imported, Exchange Rate on the date of import and the actual payment on the goods imported and record of the exchange loss booked for the difference in exchange rate. The Consigner's invoices were duly backed with cost sheet, Bill of Entry, and Custom Duty challans. Complete details of Bank account and confirmation were also furnished to the AO.

Details of goods imported on CIF basis and Expenditure in foreign currency are given in Note 24 of the audited accounts at pg. 80/Vol-I. Also in Form 3CD u/s 44AB at Pg. 112, 131,138 & also Form 3CEB at pg. 148/Vol.-I.

3) In para 20 of his order observes that "the appellant was keeping R.s. 4,12,40,698 in its current account which is beyond comprehension ". He then holds in para 21 of the order that "from the irregularities in the conduct of business of the appellant it is clear that the appellant has been creating bogus liabilities id its books of accounts in favour of the sister concern and has been waiting for an opportune moment to remit the money to Italy"

It may be noted that the CIT(A) has not rejected the audited account u/s 145 of the Act; hut because of the way business is conducted by the assessee, he treats the outstanding liabilities as 'bogus'. He does not explain as how liabilities on account of loans & purchase of the goods imported from the AE are bogus. In this connection, attention is invited to Notes 24-28 of Accounts giving details of the impugned International Transactions. (Pg. 80-84/Vol-I). Show-cause notice u/s 251 is at Pg. 1048/Vol-V.

It may also be noted that the assessee company in response dt. 15.3.2018 to show cause notice explained to the CIT(A) as to how it discharged the outstanding liabilities of Rs. 17 crores upto 20.11.2015 in the subsequent years (Pg. 1050 at 1058/Vol- Vr. w. Pg. 684-839/Vol- V). The assessee company also furnished details and documentary evidence of the remittances made through the Banks (Pg. 684-839/Vol-IV). These remittances were fully accepted in subsequent assessment u/s 143(3) Pg. 53/Supp. PB. The parent company also did not charge interest on the outstanding payable by the assessee company.

4) *In paragraph 22 of the order the CIT (A) has held that the Appellant has incurred bogus liability in favour of sister concern and accordingly disallowed 50% amount of outstanding liability of Rs 21,54,59,486 on adhoc basis without making adjustment for 'opening liabilities' of Rs. 15.30 crores (Pg. 69/Vol-I). Ad-hoc 50% disallowance and alleging the entire sum of outstanding Trade Liability is self-contradictory.*

5) *Similarly, the ad-hoc addition of closing bank balance Rs. 4.51 crores is arbitrary and without basis."*

5. The Ld. DR, on the other hand, referred to the power of the commissioner of appeals under section 251(1) of the Act and submitted that CIT(A) has made addition in respect of the source of the income already declared by the assessee in the return of income and thus in view of the following decisions the learned CIT(A) having coterminous of the Assessing Officer, he was justified in enhancing the income :

1. *Jute Corporation of India versus CIT 187 ITR 688 (SC)*
2. *CIT Vs Nirbheram Deluram 224 ITR 610 (SC)*
3. *CIT Vs Goel Die Cast Ltd 297 ITR 72 (P & H)*

6. On the merit of the case, she submitted that in view of the computation of the cash availability and other documents in respect of opening trade receivables etc. filed by the assessee need verification at the hand of the Assessing Officer and, therefore, the matter may be restored back to the file of learned CIT(A) or to the Assessing Officer for deciding afresh.

7. We have heard the rival submission of the parties and perused the relevant material on record. As far as ground of the assessee related to challenge to the action of the learned CIT(A) in

enhancing the income of the assessee is concerned, we find that the CIT(A) issued show cause notice under section 251(2) of the Act proposing to enhance the income on the issues raised in the said notice. After considering the submission of the assessee, he rejected the objection of the assessee. The relevant part of the finding of the learned CIT(A) is reproduced as under:

“8. In the course of the adjudication of the appeal of the appellant serious discrepancies in the accounts of the appellant was noticed having serious bearing on the total income of the appellant. Therefore, a notice u/s 251(2) r/w 251 (1)(a) of I.T. Act, 1961 asked the appellant to show cause why its income liable to tax be not enhanced on the issues raised in the said notice and the appellant having received the said notice filed a written brief contesting the said notice and justifying the correctness of its financial results as disclosed by it in its return of income.

9. The appellant on the issue of the jurisdiction of this office to take up the issue of enhancement of the income liable to tax stated that this office has no jurisdiction to enhance the income of the appellant. The reliance was placed on the law laid down by the Hon'ble Apex Court in the case of “CIT Vs. Shapoorji Pallanji Mistry 44 ITR 891 SC”! and the law laid down by Hon'ble Delhi High Court in the case of “CIT Vs. Sardarilal & Co. (2001) 251 ITR 864 Delhi” and sought the filing of the notice issued to the appellant u/s 251(2) qua enhancement of its income liable to tax.

10. The reliance being placed by the appellant on the authorities of the Hon'ble Apex Court and Hon'ble Delhi High Court is of no help. The said authorities are in respect of a new source of income and not the existing source of income. The instant notice u/s 251(2) was issued in respect of the same business of the appellant which was considered by the Id. AO in the impugned assessment order. What was being asked to be explained was not the new source of income but the discrepancies notice in respect of the same source of income which was considered by the learned AO.”

8. We find that the learned CIT(A) has followed the decision of the Hon'ble Supreme Court in the case of CIT Vs Kanpur Coal

Syndicate (1964) 53 ITR 225 (SC) on this issue and Ld. counsel of the assessee could not rebut before us the finding of the learned CIT(A) on the issue. In CIT vs. Kanpur Coal Syndicate (supra) three Judge Bench of The Hon'ble Supreme Court discussed the scope of s. 31(3)(a) of the Indian IT Act, 1922, which is almost identical to s. 251(1)(a). The Hon'ble Supreme Court held as under:

"If an appeal lies, s. 31 of the Act describes the powers of the AAC in such an appeal. Under s. 31(3)(a), in disposing of such an appeal, the AAC may, in the case of an order of assessment, confirm, reduce, enhance or annul the assessment; under cl. (b) thereof he may set aside the assessment and direct the ITO to make a fresh assessment. The AAC has, therefore, plenary powers in disposing of an appeal. The scope of his power is conterminous with that of the ITO. He can do what the ITO can do and also direct him to do what he has filed to do."

8.1 We also find that Hon'ble Supreme Court on the issue of the power of learned CIT(A) in enhancing the income, in the case of Jute Corporation of India (supra), referring to the decision of the Hon'ble Supreme Court in the case of Kanpur coal syndicate (supra) has observed as under:

"The above observations are squarely applicable in the interpretation of s. 251(1)(a) of the Act. The declaration of law is clear that the power of the AAC is co-terminous with that of the ITO, and if that is so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the ITO. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise, an appellate authority while hearing the appeal against the order of a subordinate authority, has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the

subordinate authority may have in the matter. There appears to be no good reason and none was placed before us to justify curtailment of the power of the AAC in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the ITO.”

8.2 The Hon’ble Supreme Court in the case of CIT Vs Nirbheram Deluram (supra) has observed as under:

“3. Having regard to the decision in Jute Corporation of India Ltd. (supra), it must be held that the High Court was in error in holding that the appellate power conferred on the AAC under s. 251 was confined to the matter which had been considered by the ITO and the AAC exceeded his jurisdiction in making an addition of Rs. 2,30,000 on the basis of the other 10 items of hundis which had not been explained by the assessee. This means that even if question No. 2 is answered in the affirmative, questions Nos. 1 and 3 must be answered in the negative. The appeal is, therefore, allowed, the impugned judgment of the High Court in so far as it relates to question Nos. 1 and 3 is set aside and the said questions are answered in the negative, i.e., in favour of the Revenue and against the assessee. No order as to costs.”

8.3 In the case of Goel Die Cast Ltd. Vs Commissioner of Income-tax (appeals) and ANR (supra) , the Hon’ble Punjab and Haryana High Court has observed as under:

“ A perusal of the above extracted provisions of s. 251 of the Act, which defines powers of the CIT(A), it is evident that appellate authority has been given powers to confirm, reduce, enhance or annul assessment. The only pre-condition mentioned for exercising the powers to enhance the income is that the same could be done only after providing adequate opportunity of hearing to the assessee. There is no restriction under the Act that the information, which could form basis for enhancement of income, could not be sourced from the AO. The enough safeguard for exercising of such powers in the form of principle of natural justice has been provided.

6. *An identical issue was considered by a Division Bench of Kerala High Court in Popular Automobiles vs. CIT (1990) 89 CTR (Ker) 248 : (1991) 187 ITR 86 (Ker) wherein it was held as under :*

"It was contended before us that it is open to the CIT(A) to enhance the assessment suo motu. The question that was mooted was that the CIT(A) was not obliged to do so, on a motion made by the ITO in that regard. In other words, it was argued that the power vested in the CIT(A), even to enhance an assessment, is a suo motu discretionary power and the ITO has no right to demand the exercise of that power in any particular case. We see no force in this plea. In Knight vs. IRC (1974) 49 TC 179 (CA), at p. 212, Stamp L.J. said :

"The other fact which it was submitted led to the conclusion that the determination of the General Commrs. was a nullity was the fact that the Inspector of Taxes invited the General Commrs. to increase the four estimated assessments, not merely to the figure which had been agreed, but in the case of two of the years of assessment in question by treating the money in the mother's account as derived from the appellant's trade, and adduced evidence in support of the submission that they ought to be so treated. This submission is based on the provisions of s. 52(2) of the IT Act, 1952, which it is urged impliedly precludes evidence in support of an increased assessment being produced by the Inspector of Taxes : and see the observations of Lord Diplock in In re Vandervell's Trusts (1970) 46 TC 341, at p. 372 ; (1971) AC 912, at p. 942 (HL). It would be anomalous if the General Commrs., having power under s. 52(6) to make an increased assessment, had no power to admit or invite evidence adduced on behalf of the Crown, who alone would have an interest to adduce it, designed to enable the General Commrs. to exercise the power which Parliament has conferred upon them. It would also be anomalous if the Crown, adducing evidence in support of an existing assessment, was precluded by the effect of s. 52(2) from adducing evidence of the taxpayer's true income because it would thereby be adducing evidence leading to an increased assessment".

Similarly, in Way vs. Underdown (H.M. Inspector of Taxes) (1974) 49 TC 215, 231 (CA), in disposing of a petition similar to the one raised herein, Plowman J. stated as follows :

Even if it is right that the Inspector can only give reasons in support of the assessment and is not entitled to argue that it should be increased, the Commrs. undoubtedly have power under s. 52(6) to increase assessments, and it may be that the Inspector in the present case was doing no more than reminding the Commrs. what their jurisdiction was.

In the light of the above decisions, we hold that it is open to the ITO to bring to the notice of the CIT(A) any lapse or omission or error in

the assessment and invite the appellate authority to exercise the power vested in him to enhance the assessment or take other steps to undo the harm or error. It is idle to contend that though the CIT(A) can exercise the power to enhance the assessment even suo motu, such a power cannot be exercised when the occasion for the exercise of such power is on an alert made by the ITO or brought to his notice by the ITO (assessing authority). The ITO cannot prefer an appeal against his own assessment. It may be that it is open to him either to rectify the order under s. 154 of the Act or initiate proceedings for reassessment, if it is justified in law, or request the CIT to exercise his suo motu power of revision under s. 263 of the IT Act. It is also open to the ITO to point out the error or omission and request the CIT(A), before whom the appeal filed by the assessee is pending, to take reasonable steps to see that a true and proper assessment is rendered in the case. The powers aforesaid are concurrent. We hold that the ITO had locus standi or right to alert the CIT(A) and bring to his notice that s. 37(3A) of the Act is applicable in the instant case and that an enhancement in disallowance is called for on that account".

7. Keeping in view the plain language of s. 251 of the Act and the interpretation given to it by Kerala High Court in Popular Automobiles' case (supra), we are of the view that power to enhance income can be exercised by the CIT(A) even on an information furnished by the AO."

8.4 In the facts of the instant case before us, the addition has been made in respect of source of income shown in the return of income and the opportunity has been provided to the assessee by way of issue show cause notice by the learned CIT(A). In view of these facts, we do not find any violation of the principle of natural justice. In our opinion, the finding of the learned CIT(A) on the issue in dispute is well reasoned and we do not find any error in the same. Accordingly, we uphold the authority of the learned CIT(A) in enhancing the income. The grounds of appeal of the assessee in this respect are accordingly dismissed.

9. As far as issue of merit of the addition is concerned, we find the learned CIT(A) has observed as under:

“ 13. Per merits, it was found that the appellant had enormous outstanding liabilities of Rs. 15,30,51,417/- being the trade payables at the beginning of the accounting period and which increased to Rs. 21,54,59,486/- at the time of closure of the accounting period. It was seen that the appellant was not paying for its purchases and almost 60% of the purchases was kept outstanding and which cause the pile up of huge trade payables. It was further found that against the consumption of inventories of Rs.8,18,18,269/- the appellant was keeping a huge stock of inventory for Rs. 6,45,53,883/- which was almost 60% of the inventories consumed by the appellant. Likewise, out of the total receipts of Rs. 14.37,98,408/- the appellant has shown trade receivables of Rs. 6,03,17,764/- which meant A that the cash received in the business was only Rs. 8,34,80,644/-. Out of this cash received the appellant paid Rs. 6.23.41.326/- in cash. Therefore, the appellant should have with it a cash availability of Rs. 2,11,39,318/-. Further, the appellant has shown huge amount of cash available with it as cash in hand of Rs. 6,62,61,215/-. There was absolutely no justification of having such huge cash in hand idle when the appellant was saddled with enormous liabilities. The accounts submitted by the appellant with the return of income and before the Ld. AO did not explain why the appellant was having such huge cash in hand when it was having far more bigger liabilities to discharge and why the cash in hand was not utilized to discharge the liabilities of the appellant. The accounts also did not explain from where the additional cash in hand of Rs. 4,51,21,897/- in the books of accounts of the appellant when the cash available was Rs. 6,62,61,215/- against the actual cash availability as per the accounts of the appellant was only Rs. 2,11,39,318/-.

14, The Ld. Counsel for the appellant sought to explain that out of total trade payables of Rs. 21,54,59,486/- an amount of Rs. 21,22,07,061/- was pertaining to the related foreign concerned M/s Pneumax SpA Italy while the remaining was in respect of unrelated parties. A detailed break up of the outstanding of the related foreign party was also shown. It was stated that because of the tough competition given by the Chinese concerns the appellant was not able to pay to its sister concerns in Italy, It was stated that there was no irregularity in the huge outstanding of sister concern.

15. It was stated that the high quantum of inventory was kept to complete with the Chinese concern and for that reason the stock of inventories was very high. It was further stated that the nature of the business of the appellant required that large number of items were kept with the appellant as stock in trade and there was no irregularity in the same.

16. It was contested that the availability of cash with the business of the appellant as computed by this office was incorrect and the correct figures were claimed to be current account balance of Rs. 4,12,40,698/- and short term deposits of Rs. 2,50,20,517/-. It was further stated that most of the liabilities were in respect of the sister concerns of the appellant and the major part of which was subsequently discharged by the appellant.”

9.1 The assessee in its written submissions has raised the issue that opening balance of trade receivables has not been taken into account by the learned CIT(A) and also no adjustment has been made for other non-cash expenditure like depreciation, forex loss booked, etc. The learned CIT(DR) has submitted that issue needs verification at the end of lower authorities. We are in agreement with the learned DR because this is a matter of factual verification on the basis of financial statement of earlier year as well as financial statement of the year under consideration. Accordingly, we set aside the finding of the learned CIT(A) on the issue of addition of ₹ 4,51,21,897/- and restore the matter back to the file of the Ld. CIT(A) for deciding afresh after providing adequate opportunity of being heard to both the assessee as well as to the Assessing Officer. The Ground No. 1(iv) of the appeal is accordingly allowed for statistical purposes.

10. As far as the issue of addition for 50% out of trade payables is considered, the Ld. CIT(A) observed as under :

“19. Admittedly, the appellant has booked huge amount of liabilities from its sister concern, M/s Pneumax SpA Italy. The appellant has brought nothing on record to justify the incurring of such huge liabilities to its sister concern. The proof of the goods actually having been purchased by the appellant from its sister concern in Italy were not placed on record. No documentary evidence that the said goods which were shown to have been traded by the appellant from its

sister concern had actually reached this country from Italy were furnished. No details of custom duty, etc., paid were furnished either. The appellant also not brought any material on record that the liabilities were incurred from its sister concern in the exigencies of its business. Some vague arguments were advanced like tough competition by the Chinese concern. These arguments are too general in nature to support the case of the appellant.”

10.1 The Ld. counsel of the assessee submitted that no addition could be made in the year under consideration in respect of opening trade payables in absence of liability waved off by the assessee in terms of section 41(1) of the Act. In our opinion, this is settled principle and no addition can be made in respect of the trading liability of the earlier years except under section 41(1) of the Act. As far as the liability of the current year is concerned, the learned CIT(A) has observed that no documentary evidence in support of purchases from the sister concern were filed before him. Before us, the learned counsel has filed sample copy of evidence in support of import of goods from the sister concern. In our opinion, mere sample copy of documentary evidence for one transaction of import, is not sufficient to decide the issue in dispute whether the purchases in reference are bogus as held by the learned CIT(A) and the assessee should produce documentary evidence in support of all the purchases made during the year under consideration. We are of the considered opinion that this issue needs verification by the lower authorities. Accordingly, we set aside the finding of the learned CIT(A) on the issue in dispute and restore the matter back to the file of the learned CIT(A) for deciding afresh in accordance with law, after affording adequate opportunity of being heard to both the assessee as well as the

Assessing Officer. The grounds of appeal are accordingly allowed for statistical purposes.

11. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order is pronounced in the open court on 26th November, 2019.

**Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER**

**Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

Dated: 26th November, 2019.

RK/-(D.T.D.)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi