

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.4201/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2012-13)

ITO 21(2)(3) Room No.105, 1 st Floor Piramal Chambers, Parel, Mumbai-400012.	बनाम/ Vs.	Shri Mohamed Anwar M. Shethwala 75-77E Shirin Mansion Compound, LJ Marg, Near Paradise Cinema, Mahim, Mumbai-16.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGPS3262A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Drop Singh Meena (Sr. AR)	
Assessee by:	Shri Bhupendra Shah	

सुनवाई की तारीख / Date of Hearing: 11/11/2019
घोषणा की तारीख /Date of Pronouncement: 27/11/2019

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 26.03.2018 passed by the Commissioner of Income Tax (Appeals) -32, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2012-13.

2. The revenue has raised the following grounds: -

- "1. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) is justified in confirming the addition of 10% of the amount of Sundry Creditors of Rs. 4,51,18,981 /- as on



31.3.2012 and deleting the balance 40% without appreciating the action of the Assessing Officer in this regard.

2. *Whether on the facts and circumstances of the case and in law, the Id CIT(A) erred in not appreciating the fact that the initial burden lies on the assessee to prove the genuineness of the purchases as held by the Hon'ble Rajasthan High Court in the case of Indian Woollen Carpet Factory.*
3. *Whether on the facts and circumstances of the case and in law, the Ld CIT(A) erred in not appreciating the fact that the Sundry Creditors who could not be verified by the Assessing Officer, even after the issue of notices u/s 133(6) of the Act (as these notices were either unserved or not replied to or where these parties were not produced by the assessee before the Assessing Officer) were correctly disallowed by the Assessing Officer and added back as assessee's income u/s 41(1) of the Income Tax Act, 1961.*
4. *"The appellant prays that the order of the Ld CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored".*
5. *"The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary"*

3. The brief facts of the case are that the assessee filed his return of income on 26.09.2012 declaring total income to the tune of Rs.5,57,920/- for the A.Y.2012-13. The return was processed u/s 143(1) of the I. T. Act, 1961. The case was selected for scrutiny through CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee is an individual and engaged in the business of Metal and Furniture Fabrication and Civil Work contracts under the name and style of Proprietary Concern M/s. Metallaire. On appraisal of the details filed, it was observed that the sundry creditors outstanding as on 31.03.2012 was of Rs.4,48,65,975/-. The corresponding period, the Sundry Debtors was Rs.1,23,08,835/-. There was wide gap between the outstanding amount of



sundry debtors and creditors in the account as on 31.03.2012. In order to verify the claim, the notices were issued to the sundry creditors u/s 133(6) of the Act. The notices were issued to the following parties: -

S. No.	Name of the Party	Amount of Credit as per book (Rs.)	Status of notice u/s 133(6)	Difference in assessee's books shown as excess
1	Ambika Enterprises	5,62,825	Notice returned	5,62,825
2	Ami Traders	1,71,30,378	Notice returned	1,71,30,378
3	Asma Engineering Work	87,756	Reply received	6,380
4	Augyasha Sales	18,05,198	Notice returned	18,05,198
5	Concepts	24,59,777	No reply received	24,59,777
6	Donnies Trading Pvt. Ltd.	10,01,094	Notice returned	10,01,094
7	Innovative Engineers	4,69,687	Reply received	0,
8	Jai Malhar Enterprises	4,80,000	Notice returned	4,80,000
9	Kotsons Impex Pvt. Ltd.	84,18,916	Notice returned	84,18,916
10	Mahasati Marbles	1,53,000	No reply received	1,53,000
11	Mahavir Sales Corporation	,23,19,910	No reply received	,23,19,910
12	Manju Enterprises	10,65,654	Notice returned	10,65,654
13	Metro Ispat Pvt. Ltd.	2,72,887	Partly stated that no transaction made with assessee	2,72,887
14	Midas Metals	1,06,913	Reply received	62,696
15	Moksha Impex	7,01,324	Notice returned	7,01,324
16	New India Security Services	2,67,000	Reply received	2,24,486
17	Noor Creation	6,15,172	No reply	6,15,172



			received	
18	Parth Steel & Engineering Co.	62,480	Notice returned	62,480
19	Perfect Metal Found	3,07,154	no transaction made with assessee	3,07,154
20	Prakash Metal Works	2,98,361	Partly stated that no transaction made with assessee	2,98,361
21	Remi Steel (India)	1,36,082	Notice returned	1,36,082
22	Rishab Sales Corporation	2,67,298	No reply received	2,67,298
23	Shashwat Metal Craft	92,411	Notice returned	92,411
24	S.M. Industries	10,84,760	Notice returned	10,84,760
25	Team Trading Est.	81,478	Notice returned	2,844
26	Tisha Enterprises	47,50,926	No reply received	47,50,926
27	Worldwide Enterprises	1,20,540	No reply received	1,20,540
	Total	4,51,18,981		

4. The notices were not served to most of the parties however some of the parties changed their address. Notice served to parties who claim that they did not do business with the assessee. In majority of the cases negative reply was received. The assessee was asked to produce the parties personally with ledger account, bank statements, residence address to prove genuineness of the claim. The assessee failed to produce the parties. No one response to the notice u/s 133(6) of the Act. Thereafter, further notice was given for the rejection of the books of account u/s 145(3) of the Act. In response to the notice, the assessee produce the copy of invoices issued against the purchases of Rs.4,69,687/- during financial year 2010-11 by



one party namely M/s. Innovative Engineers. On verification, it was found that the some of the creditors were outstanding in the books of account of the assessee since F.Y. 2006-07 onwards. In connection with the sundry creditors namely M/s. Ambika Enterprises, the liability was existing w.e.f. F.Y. 2007-08 of Rs.8,60,819/-. During the F.Y. 2011-12, the liability was Rs.5,62,825/-. In the case of Manju Enterprises, the credit liability was existing since F.Y. 2006-07 of Rs.17,51,705/-. The existing liability for the A.Y. 2011-12 was Rs.10,65,654/-. There are several other creditors still exists in the books of the assessee. Out of the total creditors of Rs.4,51,18,981/- for the A.Y.2011-12 confirmation from the creditors has been received to the extent of Rs.5,16,785/- Out of the creditors for the F.Y.2010-11 of Rs.2,77,51,872/- confirmation has been received to the extent of Rs.5,73,573/-. In the remaining cases, the party denied or reply was not filed which has been shown in the Chart: -

Name of the Party	Amount of Credit as per book (Rs.)	Status of notice u/s 133(6)	F.Y 10-11	F.Y.09-10	F.Y.08-09	F.Y.07-08	F.Y 06-07	Difference in assessee's books shown as excess
Ambika Enterprises	5,62,825	Notice returned	562825	562825	734325	860819	Nil	5,62,825
Ami Traders	1,71,30,378	Notice returned						1,71,30,378
Asma Engineering Work	87,756	Reply received						6,380
Augyasha Sales	18,05,198	Notice returned	1805198					18,05,198
Concepts	24,59,777	No reply	245977	19229				24,59,777



		received	7	13				
Donnies Trading Pvt. Ltd.	10,01,094	Notice returned						10,01,094
Innovative Engineers	4,69,687	Reply received						0,
Jai Malhar Enterprises	4,80,000	Notice returned						4,80,000
Kotsons Impex Pvt. Ltd.	84,18,916	Notice returned						84,18,916
Mahasati Marbles	1,53,000	No reply received						1,53,000
Mahavir Sales Corporation	,23,19,910	No reply received						,23,19,910
Manju Enterprises	10,65,654	Notice returned	1065654	1065654	1142654	1143383	1751705	10,65,654
Metro Ispat Pvt. Ltd.	2,72,887	Partly stated that no transaction made with assessee	1065654					2,72,887
Midas Metals	1,06,913	Reply received	49127					62,696
Moksha Impex	7,01,324	Notice returned	701324					7,01,324
New India Security Services	2,67,000	Reply received	53000					2,24,486
Noor	6,15,172	No reply	615172	61517	84717	84717	84717	6,15,172



Creation		received		2	2	2	2	
Parth Steel & Engineering Co.	62,480	Notice returned						62,480
Perfect Metal Found	3,07,154	no transaction made with assessee	307154					3,07,154
Prakash Metal Works	2,98,361	Partly stated that no transaction made with assessee	297923	296689				2,98,361
Remi Steel (India)	1,36,082	Notice returned						1,36,082
Rishab Sales Corporation	2,67,298	No reply received	267298	267298				2,67,298
Shashwat Metal Craft	92,411	Notice returned	92411					92,411
S.M. Industries	10,84,760	Notice returned	1084760					10,84,760
Team Trading Est.	81,478	Notice returned	1759	1685	1685			2,844
Tisha Enterprises	47,50,926	No reply received	4750926					47,50926
Worldwide Enterprises	1,20,540	No reply received						1,20,540
Total	4,51,18,981		28544639					



Reply received	516785		573573	1685	1685	0	0	
Net	44602196		279710 66	47305 51	30546 21	28513 74	17575 67	44399709

5. During the year under consideration, the assessee made the purchase of Rs.2,74,31,852/- and opening stock was of Rs.2,27,02,139/-. The notice u/s 133(6) of the Act was issued to the purchasers to verify the transactions. One of the seller M/s. Ambika Enterprises denied the transactions. Notice u/s 133(6) of the Act was also issued to M/s. Ujjwal Sales Corpn, Sai Enterprises, Comet Corporation, Zenit Enterprises, Ami Traders and Kaison Solution which were returned back with the address left and or not known, therefore, the purchase could not be verified. Therefore, in the said circumstances, 50% of the sundry creditors to the tune of Rs.2,25,59,490/- were treated as bogus purchase. The total income of the assessee was assessed to the tune of Rs.2,31,17,410/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

ISSUE NOS. 1 to 3

6. All the issues are inter-connected, therefore, are being taken up together for adjudication. In fact in all the issues, the revenue has challenged the allowance of disallowance of 40% of the sundry creditors in sum of Rs.4,51,18,981/-. The Ld. Representative of the revenue has argued that the CIT(A) has wrongly allowed the claim of the assessee specifically in the circumstances, when the assessee has failed to prove the claim of the sundry creditors in the relevant financial year. However, on the other hand,



the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record: -

“5. I have given my careful consideration to the rival submissions, perused the material on record and duly considered the factual matrix of the case as also the applicable legal position.

5.1 Ground No. 1 - Addition of Rs.2,25,59,490/- being 50% of the sundry creditors.

In this ground, the appellant has challenged the addition made by the AO of Rs 2,25.59,490/-, being 50% of the sundry creditors as on 31/03/2012. treating the same as bogus purchase.

At this stage. it is important to examine the provisions of section 41(1) of the Act. A plain reading of the aforesaid provisions would make it clear that before coming to the conclusion that a liability has ceased to exist or there is remission/cessation of a particular liability, the following three conditions are to be fulfilled:

a. It must be a trading liability:

b. The person showing such liability must have obtained some benefit

either in cash or in any other manner in respect of such liability and

c. Such benefit by way of cessation has accrued to the appellant in the relevant financial year.

Further, the burden is on the AO to prove that conditions of section 41(1) of the Act have been satisfied to treat a liability as an income on account of remission or cessation of liability in a particular assessment year.

In the present case, the liability shown by the appellant is no doubt a trading liability. There is also nothing to show that the creditors have written-off the liabilities in their books. Therefore, it cannot be said that any benefit on account of the liability has accrued to the appellant. The third and the most crucial condition is whether the liability has ceased to exist in the impugned assessment year. As per AO's own observation, the sundry creditors have remained outstanding for more than three years. In fact, in the course of assessment proceedings itself, the appellant has furnished evidence before the AO to demonstrate that payments have



been made to creditors subsequent to the relevant financial year through legitimate banking channels.

Also, the AO has accepted the sales of the appellant while treating the purchases as bogus. The AO stated that he has issued notices u/s 133(6) in respect of the purchases made during the year and at the end, he chose to disallow 50% of the sundry creditors as on 31.03.2012. He was therefore not clear whether this amount of Rs. 4,51,18,981/- sundry creditors included the brought forward amounts/creditors at the beginning of the financial year. On the contrary, the Ld AR has contended that the closing sundry creditor balance included the earlier amounts and the gist of the submissions is as under:

<i>Closing Balances of sundry creditors as on 31.03.2011</i>	<i>- Rs. 3,57,64,404/-</i>
<i>Purchases made during the financial year 2011-12</i>	<i>- Rs. 2,74,31,852/-</i>
<i>Payments/debits during the year 2011-12</i>	<i>Rs. 1,84,10,281/-</i>
<i>at the end of the year 2011-12</i>	<i>Rs.4,47,85,975/-</i>

From the above, it could be inferred that the closing balance of sundry creditors as at end of the year included some part of earlier balances also. Hence it is considered that the basis of the addition made has no strong footing. There is force in the arguments put forward by the Ld AO in this regard.

In view of the above stated facts and the decisions relied upon by the appellant, I am of the considered view, that the allegation made by the AO are not fully justified and hence. I confirm the addition of 10 percent and not 50 percent levied by the AO and allow the balance 40 percent. Thus, this ground of appeal is partly allowed."

7. On appraisal of the above mentioned finding, we find that the CIT(A) has decided the matter of controversy in view of the provisions u/s 41(1) of the Act. It is not in dispute that the liability exists at the relevant time. The assessee nowhere got any benefit nor liability discharged. There is no cessation of liability because liability exists in the books of account. The liability nowhere ceased to exist specifically, in the circumstances when the assessee has shown the liability in his books of account. No parameter has been given on account of disallowance of 50% of the sundry creditors. The liability was of the earlier years even if w.e.f 2006-07



onwards. No doubt, there may be some hardship to prove the claim of the assessee on account lapse of time. Since the assessee nowhere get any benefit on account of cessation liability if any, therefore, the credit amount can be said to be related to him and is not liable to be added to the income of the assessee. Anyhow, to justify the claim if any, the CIT(A) has restricted the addition to the extent of 10% of the total liability which has not been disputed by assessee. Taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, these issues are decided in favour of the assessee against the revenue.

8. In the result, the appeal filed by the revenue is hereby ordered to be dismissed.

Order pronounced in the open court on 27/11/2019.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :27/11/2019
Vijay/Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 4201/M/2018
A.Y.2012-13

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**