

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

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

ITA No.6689/Del/2016
Assessment Year: 2013-14

ACIT, Central Circle-18, New Delhi	Vs.	M/s. Tirupati Building and Offices Pvt. Ltd., Plot No.3, District Centre, Sector-10, Dwarka, New Delhi
PAN :AACCT7060J		
(Appellant)		(Respondent)

Appellant by	Shri S.S. Rana, CIT(DR)
Respondent by	Shri Mahavir Singh, Adv.

Date of hearing	15.10.2019
Date of pronouncement	10.12.2019

ORDER

PER O.P. KANT, AM:

This appeal by the Revenue is directed against order dated 27/10/2016 passed by the learned Commissioner of Income-tax (Appeals)-27, New Delhi, [in short 'the learned CIT(A)'] for assessment year 2013-14 raising following grounds:

1. *On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law in deleting the addition of Rs.5,12,74,226/- on account of sundry creditors overlooking the fact that the assessee failed to prove the genuineness of the sundry creditors by providing the*

balance sheet, P & L Accounts, ITRs, bank statements and all the documents of the parties involved.

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.12.21.83.656/- on account of disallowance of other expenses without proper appreciation of the provisions of section 106 and 114 of the Indian Evidence Act where the onus to prove the veracity and justification of the transaction and genuineness of the creditors lies on the assessee and assessee company failed to prove the justification of these expenses and substantiate its claim with any documentary evidences.*
3. *(a) The order of the Ld.CIT(A) 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.*

2. Briefly stated facts of the case are that the assessee company filed return of income on 30/09/2013, declaring loss of ₹ 82,88,23,389/-. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued on 04/09/2014 and served, but there was no compliance from the assessee. At later stage of proceedings, the Authorised Representative of the assessee, attended and filed part submissions. Keeping in view the submissions, the Assessing Officer made following two additions/disallowances:

1. In absence of document in support of identity and genuineness of the transactions, the Sundry Creditors amounting to ₹ 5,12,74,226/- held as unexplained.
2. In absence of supporting documents/vouchers, other expenses of ₹ 12,21,83,650/- were disallowed.

3. Before the learned CIT(A), the assessee made detailed submission and documents. Relying on the submissions and documents of the assessee, the learned CIT(A) deleted both the additions in dispute. Regarding the addition of sundry creditors, the learned CIT(A) observed that the Assessing Officer has not made any enquiry in respect of the creditors from the bank or from the creditors and he has also not doubted the genuineness of the purchases from those creditors. The relevant finding of the learned CIT(A) is reproduced as under:

“6.3 I have considered the facts of the case, Assessment order, written submission of the appellant company filed during the course of appellate proceedings. I have also perused the case laws relied upon by the appellant company in support of its case. The impugned addition was made by the Assessing Officer on the ground that the appellant company did not prove the identity and genuineness of the sundry creditors. In the course of appellate proceedings, the appellant company has submitted that addition made in respect of the sundry creditors is not sustainable as the parties/creditors are the regular creditors and their genuineness and identities have already been assessed in past. Further all the payments to these creditors have been made through account payee cheques and there is no element of cash involved. The AR of the Appellant Company has also produced sample copies of ledger account and invoices during the appellants proceedings.

6.3.1 I have perused all the facts and documents submitted by the appellant company and found no deficiency in their originality. Further I have noticed that the Assessing Officer has not mentioned any section or provisions of the Income Tax Act, 1961 under which he has made such additions. The Assessment order is vague in this regard.

6.3.2 I have also noticed that the Assessing Officer has not conducted any enquiry either from the bank or from the creditors before proceeding further. All the details such as address, registration number, etc are mentioned on the invoices. The Assessing Officer could dig out all other details required in this connection from the assessment records which is already in his possession. Further the assessing officer has not doubted the

genuineness of the purchases of the appellant company. Once purchases are accepted by assessing officer, then there is no question of doubting the genuineness of the creditors.

6.3.3 Therefore, the addition made amounting to Rs. 5,12,74,226/- is not sustainable and hence the same is liable to be deleted. Ground raised in appeal is allowed.”

4. Further, the disallowance of other expenses was deleted mainly on the ground that accounts of the company were audited and expenditure were met through proper banking channel and no cash element was involved, the genuineness of the expenditure could not be doubted. The relevant finding of the learned CIT(A) is reproduced as under:

“7.3 I have considered the facts of the case, Assessment Order, written submissions of the appellant filed during the appellant proceedings. I have also perused the case laws relied upon by assessing officer and appellant in support of their views. The impugned addition was made by the Assessing Officer on the ground that the appellant company has failed to prove the justification of these expenses and substantiate the claim with any documentary evidences. I have noticed that the appellant company has provided copies of bank statements and audited accounts during the assessment proceedings to the assessing officer through which these expenses has been paid. The Assessing Officer has alleged that complete details of breakup of the expenses has not been provided to him but I have noticed that the same has already been given in the audited profit & loss account of the appellant company.

7.3.1 I have also noticed that the assessing officer has disallowed some of expenses such as power and fuel, communication expenses, etc for which no justification is required. Further from the comparison of the expenses incurred in the current year with that of previous year expenses, I have not found any major variance. It is surprising that these details are the part of audited balance sheet and profit & loss account which is on records of the assessing officer but he still overlooks the same without providing any specific findings.

7.3.2 As the accounts of the appellant company are audited accounts, the possibility of personal element in these expenses is

overruled. As the expenditures are met through proper banking channels and no cash element is present in case in hand, therefore the genuineness of these .expenditures cannot be doubted. There is no reason to disturb the operational results of the company especially when the corresponding income has been accepted by the assessing officer.

7.3.3, Accordingly, in the background of the aforesaid discussions and precedent and in the lack of any specific findings, I hold that the addition made on account of expenditure deserves to be deleted. Ground raised in appeal is allowed.”

5. Before us, the learned DR submitted that the assessee produced additional evidences before the learned CIT(A) and he has decided the appeal without providing any opportunity to the Assessing Officer to rebut those additional evidences as required under rule 46A of Income Tax rules, 1962. He also submitted that if the learned CIT(A) was of the opinion that certain inquiries were required to be made, he himself would have made those inquiries or directed to the Assessing Officer for carrying out those inquiries. According to him, the learned CIT(A) is not justified in deleting the addition in view of the decision of the Hon'ble Delhi High Court in the case of *CIT-II Vs. M/s. Jan Sampark Advertising Marketing Pvt. Ltd., passed in ITA No. 525/2014, dated 11th March, 2015*. He submitted that the matter may be restored back to the file of the Assessing Officer for deciding afresh.

6. The learned AR though relied on the order of the learned CIT(A), however, did not object for restoring the matter to the file of the ld. Assessing Officer.

7. We have heard rival submissions and perused the relevant material on record. We find that the Assessing Officer has made addition of the sundry creditors of ₹ 5,12,74,226/- and

disallowance of other expenses of ₹ 12,21,83,650/- mainly on the grounds of no details filed by the assessee. The assessee filed certain details in respect of the sundry creditors and other expenses. It is evident from the order of the learned CIT(A) that no opportunity has been provided to the Assessing Officer to rebut on the details which were filed before the learned CIT(A). In our opinion, the learned CIT(A) has not taken the details filed by the assessee before him as additional evidences and not followed the procedure laid down in Rule 46A of Income Tax Rules, 1962. Further, in view of the decision of the Hon'ble Delhi High Court in the case of *Jan Sampark Advertising and Marketing Pvt. Ltd.* (supra), if the learned CIT(A) is of the opinion that certain inquiries are required to be carried out in the facts and circumstances of the case, he should carry out those inquiries rather than deleting the addition.

8. Before us, both the parties have also agreed that issue may be decided afresh by the Assessing Officer. In view of the facts and circumstances of the case, we feel it appropriate to restore this issue to the file of the learned Assessing Officer for deciding afresh after taking into account documentary and other evidences in support of the addition of sundry creditors and disallowance of other expenses. The Assessing Officer may carry out inquiries which are required in the facts and circumstances of the case, but he should provide adequate opportunity of being heard to the assessee following principle of natural justice. The grounds of the appeal of the Revenue are accordingly allowed for statistical purposes.

9. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order is pronounced in the open court on 10th December, 2019.

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

Dated: 10th December, 2019.

RK/-(D.T.D.)

Copy forwarded to:

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

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

Asst. Registrar, ITAT, New Delhi