

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

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER
ITA.No3150/Del/2017
Assessment Year: 2012-13**

**Rupali Trade Impex P. Ltd.,
B-4, Shankar Garden,
Vikaspuri, Delhi**

vs.

**Income-tax Officer,
Ward 21(4), New Delhi**

PAN AAECR0300B

(Appellant)

(Respondent)

Appellant by: None

Respondent by: Sh. Surender Pal, Sr. Dr.

Date of hearing: 27/11/2019

Date of order : 31/12/2019

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 28/02/2017 passed by learned Commissioner of Income Tax (Appeals)-36, New Delhi ("Ld. CIT(A)"), for assessment year 2012-13, M/s Rupali Trade Impex Private Limited ("the assessee") filed this appeal.

2. Brief facts of the case are that the assessee company was engaged in the business of trading in fabric items. For the assessment year 2012-13 it had filed its return of income on 06/02/2013 declaring an income of

Rs. 15,47,16/-. Learned Assessing Officer, however, completed the assessment under section 143(3) of the Income Tax Act, 1961 (for short "the Act") by order dated 27/3/2015 at a Rs. 1,62,39,060/-after making addition on three counts, namely, Rs.1,43,48,448/-on account of m/S Mahaveer Forging P Ltd holding it to be bogus creditor because such an entity has no physical existence and not to be found in the given address and the computer generated bills in this case were untrustworthy, Rs. 2,83,988/-on account of disallowance of personal expenses and Rs.59,000/-on account of disallowance of legal and professional fee.

3. Assessee preferred an appeal before the Ld. CIT(A) and argued that the Assessing Officer failed to appreciate the fact that the office of M/s. Mahaveer Forgings was at a Chandani Chowk and located in the commercial area; that there is no way that the same can be used as a residential area; whereas the inspector had carried out local enquiry and as per his report no such party by name Mahavir Forging was operating; that it is very likely that the inspector had visited the site and enquired from the couple of people who may have no idea at all about the business etc. It was further pleaded that there is no rule that requires that the bills must not be computer-generated so as to treat them bogus. It was further argued that the material purchased during the year are duly accounted in the books of account of the assessee and the same was supported by documentary evidence, and the said material was subsequently sold by the assessee and profit was earned thereon which was offered to tax. Having accepted the sales during the year, the Assessing Officer cannot suspect the trade creditors. According to the assessee, before the Ld. CIT(A) the learned Assessing Officer was not in a

position to state which expenses were for business and which expenses were not and therefore any disallowance made by the learned Assessing Officer cannot be sustained.

4. Ld. CIT(A) appreciated all the contentions raised before her but held that such contentions have no relevancy to the issues raised by the learned Assessing Officer; and that in view of the reasons given by the learned Assessing Officer for making the additions it was for the assessee to establish the existence of Mrs Mahavir Forging private limited and the genuineness of the transaction, without which the case of the assessee cannot be accepted basing on logic and augments. Insofar as the disallowance of the expenses are concerned, Ld. CIT(A) recorded that all these expenses were made in cash and on self-made vouchers and the assessee was unable to explain as to why should the expenses be considered fully made for the business purpose. Ld. CIT(A), however, accepted the contention of the assessee in respect of the legal/professional fee to the tune of Rs. 59,000/- to the effect that such an amount was paid to two different persons and, therefore, no TDS was deducted on it. To such extent, Ld. CIT(A) granted relief to the assessee, while confirming the addition on the other two counts.

5. Aggrieved by the order of the Ld. CIT(A) sustaining the addition of Rs. 1,43,48,493/-on account of creditors and Rs.2,83,998/-on account of disallowance of personal expenses, assessee preferred this appeal before us contending that the details provided by the assessee before the Assessing Officer were genuine and all relevant details including the bills and addresses were provided to the learned Assessing Officer, but the Assessing Officer, however, could not physically verify such details and

that does not imply that the transaction was a bogus transaction and the addition could be justified on that ground. It was further contended by the assessee in the grounds of appeal, on this aspect, that the learned Assessing Officer called for and received confirmation directly from the party which precedes genuineness, and even assuming that the credit cards were bogus, it failed to acknowledge that only the profit element could be added and not the entire creditors. In the grounds of appeal it is further contended by the assessee that the disallowance of 25% of the expense on account of staff welfare, Diwali expenses etc on the ground that these were in the nature of personal expenses having no nexus with the business of the assessee is not justified and the disallowance being certain percentage of expenses carried out on ad hoc basis and without any substance or material is the result of non- application of mind and it is not justified.

6. However, when the matter is called, neither the assessee nor any authorised representative entered appearance. It could be seen from the record that the notice sent to the address given in form No. 36 is returned with the endorsement of the postal servant that the addressee left. If the assessee is available in such address, such notice should have been served on the assessee. If for any reason, the assessee is not available there, it is for the assessee to make arrangements for service of such notice by furnishing the address where the assessee would be available, or to deliver it to some authorised person, or by making request to the postal department to detain the mail till the assessee claims the same. Assessee does not seem to have adopted any of these methods. Address of the assessee is available either with the Tribunal or

with the Department, and therefore, there is no point initiating notices of the notices to the address where the assessee is not to be found. In the circumstances, we are the considered opinion that no time could be granted. Basing on the record we proceed to hear the counsel for Revenue and decide the matter on merits.

7. It is the submission of the Ld. DR that the orders of the authorities below are very detailed and reasoned ones and are self-explanatory in nature. He, therefore, placed heavy reliance on the reasoning given and conclusions reached by the authorities below.

8. We have gone through the record in the light of the submissions made on either side. Insofar as the 1st addition on account of creditors is concerned, during the scrutiny proceedings, learned Assessing Officer noticed that a credit balance of Rs. 1,43,48,493/- was shown outstanding against M/s Mahavir Forging (P) Ltd and initially the notice was returned with the endorsement of the postal servant to the effect that it was wrong address. Subsequently fresh notice under section 133(6) of the Act was issued on 20/01/2015 to which confirmation was issued. Ld. CIT(A) summarised the findings of the learned Assessing Officer for not believing the version of the assessee in respect of this creditor, and it relates it thus,-

- a) learned Assessing Officer of the creditor informed the learned Assessing Officer of the assessee that during the scrutiny of M/s Mahavir Forging Private Limited, no outstanding amount was shown against the assessee's name;
- b) the inspector of the learned Assessing Officer, after visiting the address given by the assessee, reported that there was

no such company found at the given address and no one in the vicinity was aware of it;

- c) assessee was asked to produce the party and the assessee submitted that It is not in a position to produce such party; and
- d) the letterhead of the confirmation sent by the alleged creditor had no phone numbers, no names of the signatory and even the copy of the Balance Sheet was downloaded from the ROC site and not signed by anybody.

9. Coming to the arguments before the Ld. CIT(A), it was observed by the Ld. CIT(A) that without submitting any supporting document, assessee just insisted that the creditor was genuine and that the office of the creditor could not be located by the inspector as it was in Chandani Chowk and various strange reasons were given by the assessee as to why a company cannot be located in the Chandani Chowk market. Further it was argued, as observed by the Ld. CIT(A), that the learned Assessing Officer failed to explain properly as to how the computer-generated bills could be bogus.

10. On a careful consideration of the impugned assessment order, we find that it was informed by the learned Assessing Officer of the alleged creditor while transmitting the Balance Sheet and the list of sundry creditors, that the name of the assessee was not to be found in such list. Further, the inspector who tried to locate the premises of M/s, Mahavir Forging (P) Ltd could not find such an entity at the given address. He was informed that such building was used as residence by its previous owner three years back and no company like M/s Mahavir Forgings had ever located in that premises. Further, on downloading the Balance Sheet filed with the letter from the ROC site, it was found that it was not signed by

auditor or Director of the company, leading to the inference that the assessee was misusing name of some assessee to show bogus corridor in its books of accounts.

11. There is no proper explanation from the assessee in respect of these reasons recorded by the learned Assessing Officer to draw the inference that the transaction is a bogus one. In the absence of any material touching on the aspect, we are of the considered opinion that the Ld. CIT(A) is justified in confirming the addition. There are no reasons warranting interference with the same.

12. Insofar as the 2nd addition on account of the disallowance of expenses is concerned, the impugned order speaks that the assessee was issued a number of notices, but there was no compliance with the requirement of the authorities to submit further details and the details of GP and NP ratio for 5 years. Learned Assessing Officer observed that a very shoddy and vague submission was made without furnishing such details. Ld. CIT(A) observed that without complying the requirement of the learned Assessing Officer, the assessee was raising the issue as to whether the addition should be 5% or 50% or 25%. According to her when the assessee cannot prove that the expenditure was made for business purpose, and no case was made in support of its case as to why the disallowance should not be made, the percentage of disallowance is irrelevant and in view of the decision taken by the learned Assessing Officer to disallow 25% of such expenses, she declined to interfere with it.

13. Even before us also there is no material to take a contrary view. Ld. Assessing Officer who is the first authority directly dealing with the assessee and its business details had taken a view that 25% of the expenses should be disallowed. To take any contrary view or to modify it, there shall be some material before us or some acceptable explanation from the assessee. Since the assessee had not taken sufficient precaution for prosecution of the case on merits, we find it difficult to interfere with the discretion of the learned Assessing Officer. We, therefore, uphold the same.

14. In the result, appeal of the assessee is dismissed.

Pronounced in open court on this the 31st December, 2019.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 31/12/2019
'aks'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI