

IN THE INCOME TAX APPELATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 5835/DEL/2016

A.Y.: 2010-11

SURJEET KUMAR CHAWLA,
PROP. M/S CHAWLA STEELS,
BAWRI GATE,
BHIWANI
(PAN: ABVPC4924D)
(Appellant)

vs. ITO, WARD-1,
BHIWANI

(Respondent)

Assessee by : Sh. S.K. Arora, Adv.

Department by : Sh. Pradeep Singh Gautam, Sr. DR.

ORDER

This appeal filed by the Assessee is directed against the Order dated 03.8.2016 of the Ld. CIT(A), Hisar pertaining to assessment year 2010-11. The solitary issue raised in this appeal is that on the facts, law and in the circumstances of the case the order passed by the Ld. CIT(A), Hisar, Haryana is bad in law and on facts and circumstances of the case, addition on account of alleged non-

verification of creditor's balance Rs. 3,05,520/- deserves to be deleted.

2. In this appeal there is a delay of 33 days in filing the appeal before the Tribunal and in this behalf the assessee has filed the application seeking condonation of delay in filing present appeal. After perusing the application for condonation of delay, I find plausible reasons for delay of 33 days in filing the appeal before the Tribunal, hence, the delay in dispute is condoned.

3. The brief facts of the case are that assessee filed his e-return of income at Rs. 5,12,130/- on 24.9.2010. The assessee derives income from trading in Saria, Angle, grader and cement etc. in the name of M/s Chawla Steels, Bawari Gate, Bhiwani. While examining the books of account/ copy of tax audit report, the AO noticed that the assessee had shown loan amount at Rs. 500000/- credited to his capital account from Sh. Bhupender Singh Contractor and also shown Rs. 649770/- payable to Sh. Bhupinder Singh contractor as on 31.3.2010 in the Schedule-D of Sundry creditors of the balance sheet. The assessee had submitted copies of accounts of Sh. Bhupender Singh for the FYrs 2008-09, 2009-10, 2010-11 & 2011-12 as appearing in the assessee's books of accounts without confirmation from Sh. Bhupender Singh Contractor as mentioned at page no. 3-4 of the impugned order. The AO observed that the opening balance of Rs. 16,29,100/- of the assessee in his books of accounts was not accepted by Sh. Bhupender Singh Contractor. He admitted to only Rs. 7,84,850/- as opening balance as on 1.4.2009. During the year under assessment, closing credit balance as on 31.3.2010 shown by the assessee at Rs. 6,49,770/- was denied by Sh. Bhupender Singh

Contractor. It was therefore held by the AO that the assessee had already paid the amount of Rs. 3,05,520/- in cash, to Sh. Bhupender Singh as per his statement. The AO held that the assessee had shown fictitious liability to the extent of Rs. 3,05,520/- in the name of Sh. Bhupeinder Singh contractor in his books of accounts, as on 31.3.2010. Since, excess of assets over liabilities constitute income, therefore, Rs. 3,05,520/- was added towards the taxable income of the assessee on account of fictitious liability shown in the books of accounts and assessed the income of the assessee at Rs. 9,45,540/- vide order dated 22.3.2013 passed u/s. 143(3) of the Act. Aggrieved with the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 03.8.2016 has partly allowed the appeal of the assessee. Against the impugned order, assessee is in appeal before the Tribunal.

4. Ld. Counsel for the assessee stated that the addition in dispute was made on account of alleged non-verification of creditor's balance Rs. 3,05,520/-. It was further submitted that the reliance placed on statement of the contractor which was lack of substance and merely given on guess work and ignoring the books of accounts maintained by the assessee and explanation thereof is illegal and addition deserves to be deleted. It was further submitted that the lower authorities wrongly held that the onus for proving that the assessee had created fictitious liability in his books has been discharged by the AO and addition deserves to be deleted.

5. Ld. DR relied upon the order of the authorities below.

6. I have heard both the parties and perused the orders of the revenue authorities. I find that the assessee has contested addition of

Rs. 3,05,520/- on account of differences in balances with Sh. Bhupender Singh Contractor. It has been stated by the assessee that no such payment was actually made by the assessee. It is the duty of the assessee to prove entries in its books of accounts. Action was warranted in the hands of Bhupender Singh Contractor and not in the hands of assessee. I have carefully considered the facts of the case, it is noted that the AO had called for confirmation from Sh. Bhupender Singh-Contractor. After that, the AO summoned Sh. Bhupender Singh Contractor. His statement was recorded in the presence of the counsel of the assessee. Sh. Bhupender Singh Contractor admitted to have received the amount from the assessee. Sh. Bhupender Singh Contractor was offered for cross examination by the counsel of the assessee. During cross examination also Sh. Bhupender Singh Contractor admitted to have received cash from the assessee. This fact could not be refuted by the counsel of the assessee during cross examination. Sh. Bhupender Singh Contractor gave copies of his accounts of the assessee in his books. Detailed accounts and dates on which said amount has been received was mentioned. The onus for proving that the assessee had created fictitious liability in his books has been discharged by the AO. The assessee during the course of assessment proceedings as well as during the course of appellate proceedings has not brought any evidence to prove otherwise. The addition of Rs. 3,05,520/- as fictitious liability in the books of the assessee. Under these circumstances, Ld. CIT(A) has rightly confirmed the addition made by the AO, which does not need any interference on my part, hence, I uphold the action of the Ld. CIT(A) and reject the ground raised by the assessee.

7. In the result, the Appeal of the assessee is dismissed.
Order pronounced on 15-01-2020.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date:15/01/2020

SRB

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

Assistant Registrar, ITAT, Delhi Benches