

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, BANGALORE**

Before Shri Chandra Poojari, Accountant Member

ITA No.3047/Bang/2018 : Asst.Year 2010-2011

Smt.Rupasri Neelkanth Biradar, Plot No.184, KIADB Industrial Area, Kapnoor II Stage Gulbarga – 585 104. PAN : AOXPB1487M.	Vs.	The Income Tax Officer Ward 2 Gulbarga.
(Appellant)		(Respondent)

Appellant by : Smt.Prathibha, Advocate

Respondent by : Sri.Ganesh R.Ghale, Standing Council for DR

Date of Hearing : 23.01.2020	Date of Pronouncement : 28.01.2020
-------------------------------------	---

ORDER

This appeal filed by the assessee is directed against the order of the CIT(A), dated 14.08.2018. The relevant assessment year is 2010-2011.

2. The assessee has raised many grounds. The crux of the grounds is that the CIT(A) herein confirmed the addition of Rs.7,29,317 in respect of sundry creditors, without giving proper opportunity of being heard to the assessee, which is opposed to the law and principles of natural justice, and thus, the same is liable to be deleted.

2.1 There was a delay of 17 days in filing this appeal before the Tribunal. The assessee explained the delay of 17 days by a petition accompanied by an Affidavit, stating that the assessee was not keeping well on account of kidney stone and was under treatment from 02.10.2018 to 30.10.2018, during that period the assessee was not in a position to attend her day-to-day

work and consequently she had lost track of filing of appeal which is required to be filed within 60 days from the receipt of order of the CIT(A). However, the assessee was able to attend the office from 06.11.2018 and she instructed the Counsel to prepare appeal and file the same, which has resulted in the delay of 17 days in filing the appeal. Thus, she submitted that the delay was not on account negligence on her part and prayed to condone the delay.

3. After hearing both the sides and carefully considering the material on record, I am of the opinion that there is good and sufficient reason in filing the appeal belatedly by the assessee before the Tribunal as explained in the petition accompanied by the Affidavit. Accordingly, I condone the delay and admit the appeal for adjudication.

4. The facts of the case are that the assessee is a proprietor of a dal mill by name M/s.Ramlingeswar Industries. In the assessment order it was noted by the Assessing Officer that the assessee has not responded to the notices issued the course of assessment proceedings. Therefore, the A.O. proposed to complete the assessment ex-parte u/s 144 of the Act. Responding to the same, the assessee requested for one more opportunity to submit required information before the A.O. Since the assessee has not complied with the same, the A.O. completed the assessment. Interalia, the Assessing Officer has made an addition of Rs.7,29,317 towards unexplained sundry creditors. In first appeal, the CIT(A) confirmed the addition made by the Assessing Officer, by observing as under:-

“Addition on account of sundry creditors : The AO submitted that the confirmation letters were sent to the creditors and the list of where the confirmations not received or letters un-served are given. Without confirmations the AO cannot decide the genuineness of creditors. The assessee during assessment proceedings after giving plenty of opportunities has not responded. The burden of proof lies on the assessee. The assessee should respond to the notices issued and furnish relevant information. But in the case of assessee, it had not happened. The assessee submitted that last three month i.e. from the month of January to March 2013 she was sick, hence could not attend the assessment proceedings. In fact the notices were sent by the AO from the month of February 2012. The assessee was given sufficient opportunities to furnish information and objections for show cause. But the assessee had not utilized the opportunities. Hence the addition made in account of sundry creditors is upheld.”

5. Aggrieved by the orders of the Income Tax Authorities, the assessee is in appeal before the Tribunal.

6. The learned AR submitted that the Assessing Officer made the addition of Rs.3,01,200 towards unexplained credits on account of difference between the assessee's books of account and the statement of accounts filed from the concerned parties. Further, he made an addition at 20% of Rs.20,48,340 worked at Rs.4,09,668, on account of non-receipt of confirmation letters from the parties or where there was letter written by the A.O. unserved due to wrong address. Thus, he disallowed the amount of Rs.7,29,317 credit as unexplained. According to the AR, had the Assessing Officer given proper opportunity to the assessee, she could have reconciled the difference between the assessee's books of account and the parties account. Further it was submitted that the names and addresses of the sundry creditors submitted to the A.O. as per his request. If someone does not respond to the letters to the A.O., the door locked of

the persons and wrongly addressed by the AO, does not automatically prove that the entries in the books of account of the assessee were not genuine. According to the AR, the AO has not made further efforts to get the confirmation from those parties to verify whether they are staying in the address given to the A.O. He submitted that the issue may be remitted to the file of the A.O. to give the assessee to comply with the requirement so as to explain to the satisfaction of the A.O.

7. The learned Departmental Representative besides supporting the orders of the Income Tax Authorities, submitted that the confirmation letters were sent to the creditors and the list of where confirmations not received or letters unserved were given, without which the it was not possible to decide the genuineness of the creditors. Further, the assessee stated that she was sick from January to March 2013, but in fact, the notices were sent to the assessee from February 2012. Thus, the assessee has given sufficient opportunity to furnish the information called for and the assessee had not utilized the opportunities. Therefore, the addition made by the Assessing Officer is rightly confirmed by the CIT(A).

8. I have heard the rival submissions and perused the material on record. In this case the difference between the books of account furnished by the assessee and the statement furnished from the sundry creditors is Rs.7,29,317. The assessment order in this case was passed *ex parte* u/s144 of the I.T.Act. Before the CIT(A) it was submitted by the assessee that she was sick during the period from January to March

2013 and unable to attend the assessment proceedings. Further, the assessee was also not able to reconcile the assessee's books of account with the statement of accounts furnished from the sundry creditors. Before us, the learned AR relied on the order of the co-ordinate Bench of the Tribunal in the case of Smt.Nandini B.Lingegowda v. ITO [ITA No.566/Bang/2015 for Asst.Year 2009-2010 – order dated 27.04.2017], and submitted that in view of the above order of the Tribunal, the addition may be deleted. The relevant portion of the Tribunal order is reproduced below:-

“10. With regard to M/s. Colourtech Product Pvt. Ltd., appearing at page No. 62 of the compilation, we find that the creditor has confirmed that the balance outstanding as on 31.03.2009 is Rs.32,92,585.97/-. Along with the confirmations, the assessee has also filed the statement of account in the books of M/s. Colourtech Product Pvt. Ltd., and as per the books of accounts, the closing credit balance is also Rs.32,92,585.97/- against the credit balance shown in the books of the assessee of Rs. 31,91,585/-. The revenue has not brought out anything on record to disbelieve the confirmations and the statement of transactions in the books of accounts of M/s. Colourtech Product Pvt. Ltd. They are disbelieving the confirmation letters on account of slight variation in the figures. But according to us, this cannot be a ground for rejection of confirmations as it is a trade transaction.

11. With regard to outstanding balance of M/s. Orson Chemicals, our attention is invited to the confirmation letter of M/s. Orson Chemicals available at page No. 77 in which it has been mentioned that M/s. Orson Chemicals have confirmed the amount outstanding as per record is Rs.8,94,368/-, against the credit balance of Rs.8,91,368/-. Since it is a trade credit, the genuineness of credits cannot be doubted on account of slight difference. Our attention was also invited to the confirmation of M/s. S & S Polymers appearing at page No. 82 of the compilation according to which the outstanding due is Rs.3,53,123/- as on 31.03.2009. In this figure there is no difference. Since the

assessee has discharged its onus by filing the confirmation letters of all the creditors, the onus is upon the revenue to bring something on record to disbelieve the confirmation letters filed by the assessee.

12. We have carefully examined the remand report and the order of the CIT(A). We are at loss to understand as to from where the AO has picked up the figures mentioned in the remand report and cognizance of the same was taken by the CIT(A) without verifying the figures. Since the assessee has filed the confirmation letters of all the creditors and the revenue has not brought out anything on record to disbelieve the confirmation letters filed by the assessee, we find no justification in the addition made by the AO. On account of slight difference in the figures, the credit balance shown in the books of accounts of the assessee cannot be disbelieved. We therefore find no merit in the additions and we accordingly set aside the order of the CIT(A) and delete the additions. The other ground of appeal is with regard to chargeability of interest under section 234B, 234C and 234D. Since this ground is consequential in nature, it needs no independent adjudication. Accordingly, the appeal of the assessee is allowed.”

8.1 I have gone through the order of the Tribunal relied on by the AR. In that case, the assessee has filed confirmation letters and also there was small difference of amount between the assessee’s books of account and the parties accounts, which are as follows:-

Sr. No.	Name of the party	As per parties account (Amt. in Rs.)	As per assessee’s account. (Amt. in Rs.)
1.	M/s.Colourtech Products Pvt.Ltd.	32,92,585	31,91,585
2.	M/s.Orson Chemicals	8,94,368	8,91,368
3.	M/s.S & S Polymers	3,53,123	3,53,123

8.2 Being so, since the difference was very small in that case, the Tribunal took a view that there was a slight difference and

the addition cannot be made. However, in the present case, the difference between the assessee's books of account and the party's accounts are very substantial, and also the assessee has not furnished any confirmation of the sundry creditors and notice issued by the A.O. were unserved. Hence, in the interest of justice, I remit the entire issue in dispute to the file of the Assessing Officer, for fresh consideration. I also direct the assessee to reconcile its books of account with the accounts of the concerned parties. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 28th day of January, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Bangalore ; Dated : 28th January, 2020.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-Gulbarga.
4. The Pr.CIT- Gulbarga.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore