

आयकर अपीलीय अधिकरण , ' बी ' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI**

श्री एन.आर.एस .गणेशन, न्यायिक सदस्य एवं
श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 797/Chny/2019

निर्धारण वर्ष/Assessment Year : 2014-15

M/s. Shivsu Canadian Clear Waters Ltd.,
(Old Name: M/s. Shivsu Canadian Clear International Ltd),
No. 6B2, II Floor, Parivakkam Road,
Leelavathy Nagar, Senneerkuppam,
Poonamallee,
Chennai – 600 056.

Income Tax Officer,
Vs. Corporate Circle -6(2),
Chennai.

[PAN: AAICS 2574C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri. A. Sundararajan, Addl. CIT
सुनवाईकीतारीख/Date of Hearing : 03.10.2019
घोषणाकीतारीख/Date of Pronouncement : 23.12.2019

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-15, Chennai in ITA No. 437/2016-17/CIT(A)-15 dated 30.01.2019 for assessment year 2014-15.

2. M/s. Shivsu Canadian Clear International Ltd., the assessee, is manufacturing of water treatment plants. While making the assessment for the assessment year 2013-14, the Assessing Officer found, inter alia, that the assessee has shown in its current liabilities advances received from its customers at Rs. 6,46,53,183/- and hence required the assessee to furnish the name and address of the persons from whom such advances were received. The assessee has not furnished the same. The assessee was required to furnish confirmation from the persons from whom it received the advances. The assessee has not furnished them. Therefore, the AO held that since the assessee has not produced confirmation even from a single party, the amount shown under advances from customers is treated as bogus credit and hence added to the total income. Aggrieved, the assessee filed an appeal before the CIT(A). Based on the plea made by the assessee, the Ld. CIT(A) called for a remand report from the AO and after considering the remand report and the assessee's explanation etc., partly allowed the appeal.

3. Aggrieved against that order, the assessee filed this appeal with the following grounds of appeal:

"1. The Commissioner of Income Tax Appeals, erred in confirming the addition made by the AO on account of bogus credits to the extent of Rs.4,85,95,503/-.

2. The Commissioner of Income Tax Appeals, erred in not considering the submission of the appellant that the entire addition is not liable to be sustained, since there is no clarity whether the addition is made U/s.68 or U/s.41(1).

3. The Commissioner of Income Tax Appeals, erred in not considering the submission of the appellant that even if the addition is U/s.68 the same cannot be sustained with regard to opening balance at the beginning of the year, a view supported by binding decisions of the jurisdictional Income Tax Appellate Tribunal.

4. The Commissioner of Income Tax Appeals, erred that many of the creditor parties are having transactions during current year and in subsequent years and that several of the accounts have been reduced to Nil balance as on date through transactions.

5. The Commissioner of Income Tax Appeals, erred in not adjudicating on the specific issues raised during appeal, in writing under written submissions dated January 24, 2019 (filed on 25th January 2019) reproduced by the Hon CIT Appeals in Page 12 to 14 of the impugned appeal order.

6. In view of the foregoing we respectfully submit that the finding of the Hon CIT Appeals confirming part of the addition made by the AO on account of bogus credit needs to be deleted and justice rendered.

7. The Appellant craves leave to add, delete, amend or raise fresh grounds at the time of personal hearing."

4. The Ld. AR presented the case on the lines of grounds of appeal, supra, and invited our attention to the paper book, wherein some of the copies furnished before the lower authorities were placed and submitted that they have not considered the assessee's claim. Therefore, he pleaded that the assessee's appeal be allowed.

5. Per contra, the Ld. DR supported the order of the Ld. CIT(A).

Therefore, the relevant portion is extracted as under:

"5.2 During the course of appeal proceedings, the AR of the appellant has filed his submission before the CIT(A) on the aforesaid issue and the same is reproduced below:

"It is not clear whether the impugned addition is under Section 41 (1) Section 68 of the Act. If there is cessation of liability, then subject to other requirements to be satisfied, Section 41(1) may apply. Under identical circumstances Delhi High Court in Ctl' vs Sri Vardhaman Overseas 343 ITR 408 as held that neither Section 68 nor Section 41(1) would apply.

Without prejudice to the above -

a. The addition cannot be sustained U / s. 41 (1) since the section applies only to a case where "an allowance or deduction is allowed in a particular year and subsequently __ ".

b. If the addition is vs Sec 68, the addition cannot be sustained U/ s.68 with regard to opening balance as at beginning of the year i.e., 1.4.2013. This proposition is supported by the Rajasthan High Court decision in CI'T' vs Parameshwar Bohra 301 ITR 404, CIT vs Usha Stud Agricultural Farms Limited 301 ITR 384 (Del) and jurisdictional ITAT in Nallam Maniam. Textiles P Ltd. vs Appellant on 30 April, 2012, (A Bench, Chennai- 776/Mds/2011) and in 305/Mds/2016 in Sooraj Leathers vs ITO, Lexpo International, Chennai vs Department Of Income Tax on 28 August, 2012 (B Bench, Chennai - 649/Mds/2012).The details of opening balance included in the disallowance is as per list enclosed ... Ann A

c. Without prejudice to the above, the AO failed to consider that many of the creditor Parties are having transactions during and in subsequent years, including additional payments, invoices etc and hence they are running parties accounts and not dormant accounts. They all have , TNGST and Central excise registration and several are corporate bodies. Several of the accounts have been reduced to Nil

Balance as on date, through transactions. By no stretch of imagination can they be labelled as bogus.

d. the AO himself confirms in his remand report that of the letters sent, amount of more than Rs. 160,57,680/- was confirmed by the parties (see para 5.2 of this remand report, Ann E- copy enclosed after highlighting). AnnB.

e. Some of the Advances Received have been forfeited. and the Credits have already been written back in subsequent years (Rs. 191,15,031/-IN ALL) and offered to tax and balances hence reduced to 'NIL.'

f. The disallowance by the AO is erroneous, contrary to facts and circumstances and deserves to be deleted.

5.3. CIT(A)'s remarks and decision:

I have carefully gone through the observation of the AO in the assessment order as mentioned above under para 5.1, and the appellant's submission before the CIT(A) under para 5.2.

5.3.1. The A O has added the current liabilities towards advances from customers in the balance sheet to the extent of Rs.6.46 Crores on the ground that no confirmation letter for advance was furnished and therefore, it was to be treated as bogus credit. The A O has further observed that the aforesaid credits arising in AY 2011-12 do not pertain to this AY. Before the CIT(A), the appellant's AR has contended that they were genuine credits and identity can be proved. Therefore, the appellant's submission was forwarded to the AO for a re-examination by giving an opportunity to the appellant to prove the genuineness of those credits. The AO's remand report dated 13-8- 2018 has been reproduced above under para 3.1. The AO has observed in the remand report, that the appellant did not discharge the primary onus of furnishing confirmation letters pertaining to those credits. The AO's conclusion in the remand report is briefly mentioned below:

5.3.2 Totally, there were 294 parties and the appellant gave addresses only in respect of 129 parties, in respect of whom the A O issued notice u/s. 133(6) seeking their confirmation. Out of 129 notices sent, 52 notices returned unserved and response was received only in respect of 26 parties. Out of 26 parties, only 15 parties confirmed those credits and 11 parties denied the credits as claimed by the appellant. 51 parties did not respond at all.

5.3.3. From the above facts, it is clear that the appellant's claim that all those credits were genuine is not acceptable. When the remand report was forwarded to the appellant, the AR argued that at least to the extent of confirmation of credits by 15 parties should be deleted. This submission of the AR is acceptable. Although the AO has observed in the remand report that the entire addition is to be sustained, he has not referred to the confirmation of credits in respect of 15 parties and the A O is not justified how addition in respect of confirmed credits can be sustained.

5.3.4. After considering both the points of view, I am of the considered opinion that the addition of credits in respect of 15 parties who have confirmed when the AO issued notices u/s. 133(6), amounting to Rs. 1,60,57,680/- is to be deleted and the remaining addition is sustained. In view of the above remarks, the appellant's ground is partly allowed."

6. We heard the rival submissions and considered them carefully. It is clear from the above that the assessee is in the business of manufacturing of water treatment plants. It has shown in its current liabilities advances received from its customers at Rs. 6,46,53,183/- and hence AO required the assessee to furnish the name and address of the persons from whom such advances were received. When it failed, the AO required it to furnish confirmation from the persons

from whom it received such advances. On its further failure, the A O treated them as a bogus credit and assessed them. On the appeal, the assessee contended before the Id CIT(A), that they were genuine credits and identity can be proved. Therefore, the Id CIT(A) forwarded the assessee's submissions to the AO for a re-examination by giving an opportunity to the assessee to prove the genuineness of those credits. The AO has observed in the remand report, that the assessee did not discharge the primary onus of furnishing confirmation letters pertaining to those credits. The A O's conclusion in the remand report briefly is that there were 294 parties and the assessee gave addresses only in respect of 129 parties, in respect of whom the A O issued notice u/s. 133(6) seeking their confirmation. Out of 129 notices sent, 52 notices returned unserved and response was received only in respect of 26 parties. Out of 26 parties, only 15 parties confirmed those credits and 11 parties denied the credits as claimed by the appellant, 51 parties did not respond at all. In such facts and circumstances, the Id CIT(A) held that it is clear that the assessee 's claim that all those credits were genuine is not acceptable. When the remand report was forwarded to the assessee, the AR argued that at least the confirmation of credits made by the 15 parties should be deleted. Therefore, the Id CIT(A) directed the A O to delete the addition of credits in respect of those 15 parties , who have confirmed the credit, at Rs. 1,60,57,680/- and

sustained the remaining addition. Since the impugned sum being credits in the assessee's books of account, it is settled law that the assessee must satisfy three conditions namely, (1) identity of the creditor, (2) genuineness of the transaction and (3) credit worthiness of the creditor. Once this is established, then, it is held that the assessee has discharged his burden. In this case, it is clear from the above that the assessee has not established its onus even after the first appellate authority gave an opportunity. Therefore, the addition sustained is upheld subject to the following further finding. We find merit in the assessee's submission that the addition on such cases can not be made during this assessment year to the extent there are opening balances in those creditors. Therefore, we direct the AO to compute the assessable credits accordingly, after giving an effective opportunity to the assessee. In the result the assessee's appeal is treated as partly allowed to the above extent.

7. In the result, the assessee's appeal is treated as partly allowed.

Order pronounced on 23rd December, 2019 at Chennai.

Sd/-

(एन.आर.एस .गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 23rd December, 2019

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF