

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.2476/Bang/2019
Assessment years : 2012 – 13

Shri Shardendu Thangavelam, M/s Adroit Technologies, E – 201, Adarsh Gardens, 47 th Cross, Jayanagar, 8 th Block, Bengaluru – 560 082. PAN : AEQPT3558Q	vs.	ITO Ward – 7 (2) (4), Bengaluru.
APPELLANT		RESPONDENT
Assessee by	:	Shri Sreehari Kutsa, Advocate
Revenue by	:	Shri A. Ramesh Kumar, JCIT (DR)
Date of hearing	:	05.03.2020
Date of Pronouncement	:	29.05.2020

ORDER

Per A. K. Garodia, Accountant Member

This appeal is filed by the assessee and it is directed against the Order of CIT (A) – 10 Bengaluru dated 25.11.2019.

2. The assessee has raised as many as 10 grounds but there are only three effective grievances i.e. (1) Addition of Rs. 74,76,106/- in respect of Advances from Buyers, (2) Addition of Rs. 15,21,730/- in respect of Sundry Creditors and (3) Addition of Rs. 91,950/- in respect of negative cash balance.

3. Brief facts till the assessment stage are noted by the learned CIT (A) in para 2.1 of his order and for ready reference, this para is reproduced here in below:-

2.1 *The appellant has filed his return of income on 12/03/2013 for the AY 2012-13, declaring a total income of Rs. 6,03,350/-. The appellant is proprietor of M/s Android Technologies, involved in the business of selling welding machines and machine parts imported from Germany and USA and also providing after sales services for the products they sell or third party service. The case was taken up for scrutiny under CASS. During the scrutiny proceedings, it was noticed that the appellant has reflected the following as current liabilities outstanding as on 31.03.2012 in his Balance Sheet:*

Description	Sundry Creditors	Advances from Buyers
Sundry Debtors		Rs. 16,985
Artech Welders Pvt. Ltd.		Rs. 41,769
Nuclear Fuel Complex		Rs. 34,88,400
3D equipments		Rs. 4,00,000
Bharat Earth Movers Ltd.		Rs. 46,908
Cenlub systems		Rs. 1,17,800
Copara Engineering ,		Rs. 77,250
Demas		Rs. 41,920
Maco Corporation (India) Pvt. Ltd.		Rs. 3,672
Nuclear Fuel Complex		Rs. 25,85,520
Soham Automation		Rs. 127
Techno Controls		Rs. 7,058
Valeo Engine		Rs. 8,24,160
VensHydroluft P Ltd.		Rs. 25
Vyankatesh Optics		Rs. 698
3D equipments	Rs. 13,03,927	
ACE automation control Equipments Pvt. LW.	Rs, 12,890	
Micron Engineering Corporation	Rs. 5,915	
Suco Robert Scheuffele	Rs. 1,98,998	
	Rs.15,21,730	Rs.76,52,192

4. For the amount of Rs. 15,21,730/- shown by the assessee as Sundry Creditors, there are only four parties and out of that, only two parties are major parties i.e. (1) M/s 3D Equipments Rs. 13,03,927/- and (2) M/s Suco Robert Scheuffele Rs. 198,998/- and the amount shown as outstanding from remaining two parties is very small i.e. Rs. 12,890/- and Rs. 5,915/-. In para 2.2 of his order, it is noted by CIT (A) that during assessment proceedings, the assessee was asked to explain the details and nature of current liabilities as reflected in the return/books of accounts and the AR of the assessee filed the submissions along with confirmation letters. The AO noted that the confirmations are stereo typed, further enquiry was made from 5 parties i.e. (1) Nuclear Fuel Complex Rs. 34,88,400/- and Rs. 25,85,520/-, (2) Caparo Engineering India Pvt. Ltd., Greater Noida Rs. 77,250/-, (3) Cenlube Systems, Haryana Rs. 117,800/-, (4) 3D equipments Rs. 13,03,927/- and (5) Valeo India Pvt. Ltd., Pune Rs. 824,160/-. In para 2.3 of his order, it is noted by CIT (A) that parties No. 1, 2 and 3 denied the confirmation and from parties No. 4 & 5, no reply was received. The AO came to the conclusion on the basis of denial of three parties and no reply from 2 parties that all the confirmations are not genuine and he made addition of both amounts of Sundry Creditors Rs. 15,21,730/- and Advances from Buyers Rs. 76,52,192/- total Rs. 91,73,922/-. The assessee filed appeal before CIT (A) being aggrieved by this addition of Rs. 91,73,922/-. There was one more issue raised before CIT (A) about addition of Rs. 91,950/- in respect of negative cash balance. Learned CIT (A) in Para 4 has noted that the assessee has filed written submissions along with other related documents which were forwarded to AO for Remand Report and the Remand Report was forwarded to the assessee for Rejoinder and the assessee filled the rejoinder and thereafter, learned CIT (A) decided the issues raised in the appeal. The CIT (A) has reproduced the remand report in para 5.5 of his order and as per the same, it is reported by the AO that till the date

of remand report, only two parties (1) M/s Techno Controls Rs. 7058/- and (2) M/s Capsro Engineering India Limited Rs. 77,250/- have confirmed the outstanding amount. Addition of these two amounts was deleted by CIT (A) apart from deletion of a few very small amounts.

5. In course of hearing, learned AR of the assessee submitted that out of all parties, the major party is Nuclear Fuel Complex for whom, amount shown as payable is Rs. 34,88,400/- and Rs. 25,85,520/- total Rs. 60,73,920/-. About this party, he submitted that this is a Government party and copy of two Purchase Orders dated 07.07.2011 and 03.11.2011 is available on pages 136 to 139 of the paper book. He pointed out that as per page 136, the amount of purchase order is Rs. 38.76 lacs and 90% advance being an amount of Rs. 34,88,400/- was received with this P.O. as can be seen in the Bank Statement available on page 140 of the paper book being Rs. 25,19,400/- and Rs. 969,000/-. He also submitted that after the supply is made, the party carry out the inspection and after approval only, the balance payment of 10% is received and if it is not approved, the advance payment is to be refunded or fresh supply has to be made and therefore, till the approval, there is no effective sale and therefore, the assessee does not book sale till approval even after making supply and hence till then the advance received appears as a liability being advance from customer. He submitted that under these facts, the addition made by the AO is not justified about this party. Regarding remaining parties also, he submitted that confirmations are submitted and letter of AO to the parties are delivered to the parties as A/D is received by the AO as noted by him and therefore, no adverse material is available with AO to make addition and simply because, the party has not replied, addition cannot be made. Learned DR of the revenue supported the order of AO and CIT (A).

6. We have considered the rival submissions. We find that this is admitted position that confirmation is produced by the assessee before the AO but that was not considered adequate by the AO by saying that the same are stereo typed. This is also admitted position that query letters were sent by the AO to the parties and the same were delivered on the parties. For three parties, the AO says that the parties have denied the confirmation but even these three parties have not said that there is no transaction with the assessee or no/lesser amount is receivable from the assessee. Out of all parties involving the amount of Rs. 91,73,922/-, one party i.e. M/s Nuclear Fuel Complex is a government party and the amount involved is Rs. 60,73,920/-. For this party, copy of purchase order is made available in the paper book and also bank statement showing receipt of cheques from this party. On page 152 of the paper book is the confirmation of this party which shows payment of Rs. 28,72,800/- and Rs. 34,88,400/- to the assessee and it is stated in this confirmation that payments are made after receipt of material as per purchase orders. On this aspect, this is the submission of the learned AR of the assessee that even after making supply, the assessee has not booked the sale by debiting the party and crediting the sale because the sale is completed only after the supplied materials is approved by the party and if the material is not approved, fresh supply has to be made or the advance amount received is to be refunded. For Government supplies, such a condition is very common and there is nothing unusual in this. It is unbelievable that any assessee will show bogus creditor in the name of a government party. Hence, we delete the addition about this party. For remaining parties also, when the assessee has produced confirmation may be stereo typed and letters of the AO are delivered to those parties and no adverse material could be brought on record by the AO to show that no or less amount is payable to these parties, then merely on this basis that no reply is received from those parties, it cannot be said that the

confirmations are bogus and the credit shown by the assessee is bogus. Hence, these additions are also deleted. Ground No. 2 and 3 are allowed.

7. About Ground No. 4 i.e. addition of Rs. 91,950/- in respect of negative cash balance, various arguments were made by the learned AR of the assessee but we find no merit in the same and reject this ground.

8. In the result, the appeal of the assessee is partly allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,

Dated: 29th May, 2020.

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|---------------|-------------------------|---------------|
| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.