

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH 'FRIDAY' NEW DELHI]**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

STAY APP. No. 90/Del/2020.
[in ITA No. 678/Del/2017]
Assessment Year : 2011-12

Star Forms, 8710–Rahat Ganj, Roshnara Road New Delhi – 110 007. PAN : AABFS5603C	Vs	The Income Tax Officer, Ward : 34 (5) New Delhi.
(APPLICANT)		(RESPONDENT)
<u>AND</u> ITA No. 678/Del/2017 Assessment Year : 2011-12		
Star Forms, 8710–Rahat Ganj, Roshnara Road New Delhi – 110 007. PAN : AABFS5603C	Vs	The Income Tax Officer, Ward : 34 (5) New Delhi
(APPELLANT)		(RESPONDENT)

Revenue by	Shri M. Baranwal, Sr. D. R.;
Assessee by	Shri Amol Sinha, Adv.; Shri Nitin Gulati, Adv.; & Shri Ashvini Kumar, Adv.;

Date of hearing:	07/02/2020
Date of Pronouncement:	11/03/2020

ORDER

PER PRASHANT MAHARISHI, AM:

The assessee has preferred stay petition in ITA. No. 678/Del/2017 filed on 06.02.2017 seeking stay of demand of Rs.4,59,140/-. At the time of hearing of the stay petition, with the consent of the parties, looking to the facts of the case and issue involved in the appeal, it was agreed that appeal may also be heard in this matter. Therefore, we also proceed to hear the appeal of the assessee.

2. Assessee is a partnership firm, who filed its return of income for Assessment Year 2011-12 on 30.09.2011 at Rs.1,76,661/-. The assessment was passed under Section 144 of the Income Tax Act, 1961 (the Act) despite assessee filing replies on 10.01.2014 and 15.01.2014. The Assessing Officer made additions with respect to the creditors as well as loans. Consequently assessment order was passed under Section 144 of the Act on 18.03.2014 at Rs.2,16,27,543/- against the returned income of the assessee of Rs.1,76,660/-.

3. Assessee filed an appeal before the learned CIT (Appeals)-12, New Delhi. He passed an order on 30.11.2016 partly allowing the appeal. However, she confirmed the addition of Rs.11,97,174/- on account of un-proved sundry creditors. She also restricted the disallowance to Rs.40,66,636/- on account of sundry credit balances amounting to Rs.87,23,675/-. Out of the other disallowances also she partly deleted the same and partly sustained. The assessee is in fact aggrieved with respect to confirmation of addition of sundry creditors of Rs.40,66,636/- as per ground No. 2 and addition of Rs.1,78,501/- on

account of un-secured loans. This is as per ground No. 3 of the appeal. As per ground No. 4 assessee is aggrieved for addition of Rs.19,565/- out of unpaid salary expenditure.

4. The learned Authorized Representative submitted that the Assessing Officer has made the addition without giving proper opportunity of being heard. He further submitted that with regard to the sundry creditors the CIT (Appeals) confirmed merely for the reasons that the confirmation under Section 133(6) of the Act were not received from those creditors. He submitted that these are the business creditors of the appellant and assessee has submitted their name and addresses along with bank statements and, therefore, this addition cannot be made. With respect to the addition of Rs.1,78,501/- of un-secured loan he stated that despite assessee filing confirmation along with Permanent Account Numbers of these parties the Assessing Officer has made the addition and sustained by the learned CIT (Appeals). He also stated that all the un-secured loans are old and are not received during the year. With respect to the various outstanding credits confirmed by the learned CIT (Appeals), he submitted that these are confirmed without any basis. He admitted that there was failure on the part of the assessee in compliance before the Assessing Officer initially, but later on there is complete information submitted. With respect to the lack of opportunity, he submitted that despite assessee submitting all the details in the month of January, 2014 the Assessing Officer proceeded to issue further enquiry letters in the end of February, and ignoring all the submissions passed assessment order on 18th March, 2014. Thus, he submitted that there is a lack of proper opportunity to the assessee also.

5. The learned Departmental Representative vehemently supported the orders of the lower authorities. It was stated that the assessee has not complied with the notices of the Assessing Officer. Page No. 1 of the assessment order was referred to. Thus, there was complete opportunity to the assessee before the Assessing Officer. On the issue of the additions she referred to the order of the learned CIT (Appeals) and supported it.

6. We have carefully considered the rival contentions and perused the orders of the lower authorities.

7. Ground No. 1 is general in nature and does not require any adjudication, hence dismissed.

8. Ground No. 2 is against addition sustained of Rs.40,66,636/- out of the sundry creditors. In para 9.3 of CIT (Appeals)'s order, it is apparent that out of the total sundry creditors of Rs.1,69,64,505/-, the Assessing Officer issued notices under Section 133(6) of the Act, in some cases it were received back and in some cases, there was no response. During the course of appeal the learned CIT (Appeals) found that, except in case of 5 parties, confirmations were received, but CIT (A) noted in those 5 cases that the transactions took place with these parties. There were continuous transactions. The assessee has made the payment of the balance amount also to these parties. However, there is no reference whether the subsequent payments have been effected through bank transactions or not. Further when there are continuous transactions with these parties of purchase, the assessee was not questioned that how it is operating with those parties and the

manner of payment and nature of transactions were also not ascertained, though the assessee submits that it is regularly carrying on business with these parties and also ready to co-operate further to prove the transactions. Even otherwise, mere no reply under Section 133(6) of the Act by the creditors cannot lead to addition to income of the assessee, when there are transactions of purchase from those parties and such purchases are accepted. Further, if there are purchases from these parties, they would be definitely having VAT Number and if the payments are made by cheque, payment might have gone through the banking channels to those parties. Thus, in the interest of justice, we direct the assessee to furnish complete information of these parties, with the copies of the bills and all other relevant information, so that the same can be verified. The Assessing Officer is also directed to carry out necessary enquiries with these parties. He may also conduct necessary enquiries and then decide the issue afresh with respect to addition confirmed by CIT (Appeals).

9. In the result, ground No. 2 of the appeal is set aside to the file of the Assessing Officer with above directions.

10. With respect to ground No. 3, assessee has submitted that the un-secured loan of Rs.1,78,501/-, which is confirmed by the learned CIT (Appeals) is pertaining to earlier years, therefore, no addition can be made. The learned CIT (Appeals) noted that with respect to 5 parties, that no details have been filed which resulted into sustaining of the addition of Rs.1,78,501/- and deletion of the addition of Rs.27,89,512/-. If these loans are outstanding from earlier years, naturally they cannot be added as income of the assessee for this year. However, there is no confirmation of these facts can be traced from the

orders. Further the ld. CIT (Appeals) has also stated that no details are filed. Therefore, it is necessary to verify the claim of assessee with this regard. Therefore, ground No. 3 of the appeal is set aside to the file of the learned Assessing Officer with direction to the assessee to submit the necessary details which may be verified by the learned Assessing Officer and then the issue may be decided afresh. Ground No. 3 is allowed with above direction.

11. Ground No. 4 is related to the addition of Rs.19,565/- which is dealt with by the learned CIT (Appeals) in para No. 9.14 of his order. Assessee did not furnish any details of salary payable to various labours and, therefore, the addition is made. This amount is outstanding at the end of the year. Naturally subsequently this amount would have been paid by the assessee to the various labours. On other issue it might have been written back. Thus, we set aside this issue also to the file of the learned Assessing Officer also with direction to the assessee to furnish the details of salary payable and its subsequent payment. Assessing Officer may verify the same and decide the issue afresh.

12. In the result, the appeal of the assessee is allowed, for statistical purposes and consequently, Stay petition filed by the assessee, is dismissed as infructuous.

Order pronounced in the open court on : 11/03/2020.

Sd/-
(H. S. SIDHU)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

MEHTA

Date : 11/03/2020.

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	11/03/2020
Date on which the typed draft is placed before the dictating Member	11/03/2020
Date on which the typed draft is placed before the Other member	11/03/2020
Date on which the approved draft comes to the Sr.PS/PS	11/03/2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	11/03/2020
Date on which the fair order comes back to the Sr. PS/ PS	11/03/2020
Date on which the final order is uploaded on the website of ITAT	11/03/2020
Date on which the file goes to the Bench Clerk	11/03/2020
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order.	