

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री एन के चौधरी, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI N.K.CHOUDHRY, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.401/Viz/2019  
(निर्धारण वर्ष/Assessment Year:2014-15)**

Income Tax Officer  
Ward-5(4)  
Visakhapatnam

Vs. M/s Vijayalakshmi Steel  
Enterprises  
F.No.8-13-7, NH 5 Road  
Old Gajuwaka  
Visakhapatnam  
[PAN :AAXFS8016P]

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

**Cross Objection No.01/Viz/2020  
(Arising out of I.T.A.No.401/Viz/2019  
(निर्धारण वर्ष/Assessment Year:2014-15))**

M/s Vijayalakshmi Steel Enterprises  
F.No.8-13-7, NH 5 Road  
Old Gajuwaka  
Visakhapatnam  
[PAN :AAXFS8016P]

Vs. Income Tax Officer  
Ward-5(4)  
Visakhapatnam

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

राजस्व की ओर से /Revenue by  
निर्धारिती की ओर से / Assessee by

: Shri B.Satyanarayana Raju,DR  
: Shri C.Subrahmanyam, AR

सुनवाई की तारीख / Date of Hearing

: 16.02.2021

घोषणा की तारीख/Date of Pronouncement

: 24.02.2021

## **आदेश /ORDER**

**Per Shri D.S.Sunder Singh, Accountant Member :**

### **Condonation of Delay**

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)-2, Visakhapatnam in I.T.A. No.10619/2016-17/ITO,W-5(4),Vsp/2018-19 dated 25.02.2019 for the Assessment Year (A.Y.) 2014-15 with the delay of 30 days. The Assessing Officer (AO) has filed the condonation petition submitting that there was delay in filing the appeal due to administrative reasons and election duties. The Ld.AR has not objected for condoning the delay. After considering the submission of the Ld.DR and the petition the delay is condoned and the appeal is admitted.

1.1. Cross objections are filed by assessee in support of the order of the Ld.CIT(A).

2. All the grounds of appeal are related to deletion of addition made by the Assessing Officer (AO) u/s 69B of the Act amounting to Rs.2,39,17,297/- relating to difference in sundry debtors. Brief facts of the case are that the assessee is a Partnership firm engaged in the business of iron and steel, filed its return of income for the A.Y.2014-15 declaring total

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income of Rs.12,82,400/-. During the course of assessment proceedings, the AO called for the stock statements i.e. securities pledged, stocks hypothecated etc. for availing Overdraft(OD) facility from Karur Vysya Bank, Gajuwaka Branch, Visakhapatnam and obtained the information. As per the information received from the bank, the AO found that the sundry debtors outstanding as on 31.03.2014 was shown at Rs.6,04,20,199/- as against the outstanding debtors of Rs.3,65,02,902/- as per the Balance Sheet. Clarification was sought from the assessee with regard to the difference in debtors and the assessee stated that the inflated balances were submitted to the bank for obtaining better credit facilities. He further submitted that the balances declared in the balance sheet as per the books of accounts are true and correct. The debit balances declared to the bank was inflated and incorrect, therefore, requested to accept the book balances. However, the AO, not being impressed with the explanation of the assessee, treated the difference amount in the bank statement and the book balance as income u/s 69B of the Income Tax Act, 1961 (in short 'Act') and accordingly made the addition of Rs.2,39,17,297/- to the returned income.

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3. Against the order of the AO, the assessee went on appeal before the CIT(A) and reiterated the submissions made before the AO. The assessee further stated before the Ld.CIT(A) that it is a prevalent practice among all the business community to inflate the stock and debtors to get additional loan limits. He, therefore, requested to delete the addition. The Ld.CIT(A) deleted the addition made by the AO placing reliance on the order of this Tribunal in the case of ACIT Vs. Thatvarthi Ramesh Babu vide Appeal No.28/Viz/2015, dt.08.12.2017, wherein, similar issue of unaccounted stock was involved.

4. Against the order of the CIT(A), the revenue is in appeal before this Tribunal. During the appeal hearing, the Ld.DR submitted that the Ld.CIT(A) without making any enquiries allowed the appeal, though there were discrepancies in debtors statement submitted to the bank and the balance sheet. The Ld.DR argued that the Ld.CIT(A) is having co-terminus powers with that of the AO and she ought to have made necessary enquires before deleting the addition. The Ld.DR further submitted that the assessee has filed confirmation letters before the CIT(A) and the Ld.CIT(A) has considered the additional evidence placed before the CIT(A) and allowed the appeal of the assessee, instead of referring the issue to the AO and

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since, the same constitute additional evidence under Rule 46A of the Income Tax Rules, the Ld.DR requested to remit the matter back to the file of the AO with a direction to reexamine the entire issue.

5. On the other hand, the Ld.AR submitted that the assessee is maintaining regular books of accounts which were duly audited by the Accountant as per law and submitted the audit report as required u/s 44AB of the Act. All the closing balances were in synch with the books of accounts, hence, submitted that the balances outstanding in the books of accounts are correct and the statement obtained from the Karur Vysya Bank was incorrect and inflated for loan purposes. The Ld.AR further stated that this is a common practice in business fraternity. The Debtors statement filed before the bank is as good as the stock statement for the purpose of taking the credit facilities which was never verified by the bank authorities. Since the assessee is maintaining regular books of accounts and no defects were found in the books of accounts, the debtors statement obtained from the bank has no relevance for making the assessment, hence, argued that there is no case for the department to make the addition. The Ld.AR submitted that that the decision of ITAT in the case of Thatavarthi Ramesh Babu (supra) is squarely applicable in the assessee's case and

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hence, argued that no interference is called for the in the order of the Ld.CIT(A) and accordingly requested to dismiss the appeal of the revenue.

6. We have heard both the parties and perused the material placed on record. The Ld.DR has argued that assessee has furnished the additional evidence i.e. confirmations from the debtors before the CIT(A) and the Ld.CIT (A) allowed the appeal without giving opportunity to the assessee as provided under Rule 46A of the act therefore requested to remit the matter back to the file of the AO.

6.1. On the other hand, Ld.AR submitted that the Ld.CIT(A) has not considered the additional evidence, while disposing the appeal, hence argued that there is no case for remitting the matter back to the Ld.CIT(A).

6.2. We have heard both the parties and find that the Ld.CIT(A) has not decided the appeal on the basis of additional evidences furnished by the assessee, hence, we find no reason to remit the matter back to the file of the AO. Accordingly the proposition made by the Ld.DR to remit the matter back to the AO is untenable, hence, rejected.

7. In the instant case, the addition was made on account of difference between the debtors statement obtained from the Karur Vysya bank by the

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AO and the debtors balances outstanding as per balance sheet. The assessee is maintaining regular books of accounts which were duly audited by an Accountant and the debtors balance shown in the balance sheet was in synch with the books of accounts. The books of accounts were produced before the AO, verified by him and no defects were found. There is no dispute that the debit balances of the debtors outstanding in the books of accounts are in agreement with the Leger accounts. The assessing officer has accepted the sales and purchases accounted in the books of accounts. No differences were found by the AO in the sales made by the assessee in respect of the parties outstanding in the ledger accounts as provided by the assessee and the list of sundry debtors as per the books. The AO had obtained the list of debtors from the Karur Vysya bank and viewed that the difference between the list of debtors submitted to the bank and the list of debtors outstanding in the books of accounts under the head 'debtors' would be taxable u/s 69B of the Act, without verification and supporting evidence, which is incorrect proposition. Having obtained the list of sundry debtors from the Karur Vysya Bank, if the AO had any suspicion, he ought to have made necessary verifications and confronted the difference if any with the assessee to make logical conclusion. In the instant case, no

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exercise or no effort was made by the AO to elicit the correctness of the sundry debtors balances given to the bank. On clarification sought by the AO, the assessee had explained the difference stating that the list of debtors with inflated balances was furnished to the bank for better credit facilities and the practice is prevalent in business community. The explanation appears to be correct, since, no other corroborative evidence is available to disprove the submission of the assessee. Though the list of sundry debtors obtained from the bank is source of information, the same cannot be a conclusive proof without having corroborative evidence to treat the difference as income. As observed from the orders of the authorities below, we find that the assessee has provided the list of debtors, produced the books of accounts and all the necessary details were made available to the AO with ledger extracts and no difference was found in the outstanding balance of the debtors. There were no sales outside the books of accounts, there were no purchases found to have been made outside the books of accounts and not even a single defect was found by the AO in the books of accounts. Therefore, there is no reason to suspect the correctness of the balances outstanding as per the books of accounts. Though, we cannot appreciate the attitude of the assessee to submit the inflated balances to

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the bank to obtain the better credit facilities, the same cannot be treated as undisclosed income as provided u/s 69B of the Act without the supporting evidence. Thus, we hold that the assessee's case is squarely covered by the decision of this Tribunal relied upon by the Ld.CIT(A) in the case of Thatvarthi Ramesh Babu (supra). Similar issue of addition on account of difference in stock was considered by the Hon'ble Madras high court in [2002] 125 Taxman 233 (Madras) Commissioner of Income-tax. v.N. Swamy and observed as under:

*"4. We find it a little difficult to agree with those observations. The assessee's income is to be assessed by the ITO on the basis of the material which is required to be considered for the purpose of assessment and ordinarily not on the basis of the statement which the assessee may have given to a third party unless there is material to corroborate that statement of the assessee given to a third party, even if it be a bank. The mere fact that the assessee had made*

*such a statement by itself cannot be treated as having resulted in an irrebuttable presumption against the assessee. The burden of showing that the assessee had undisclosed income is on the revenue. That burden cannot be said to be discharged by merely referring to the statement given by the assessee to a third party in connection with a transaction which was not directly related to the assessment and making that the sole foundation for a finding that the assessee had deliberately suppressed his income.*

*5. That the burden is on the revenue to prove that the income sought to be taxed is within the taxing provisions and there was in fact income, are propositions which are well-settled by the Supreme Court in the case of Parimiseti Seetharamamma v. CIT [\[1965\] 57 ITR 532](#) which reiterates these propositions."*

7.1. Hon'ble Gujarat High Court has also considered the issue on stock statement given to the bank on inflated balance for bank loan purposes and decided the issue favour of the assessee in Commissioner of Income-

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tax-I.v.Vrundvan Roller Floor Mill, High Court of Gujarat, [2016] 72 taxmann.com 250 (Gujarat).For the sake of convenience we, extract the relevant part of the order of the Hon'ble Gujarat High court (supra) as under:

*"7. Having heard learned advocates appearing on behalf of the parties and the question posed for consideration before us reproduced hereinabove and considering the decisions of this Court, the question which is raised in the present appeal is required to be answered in favour of the assessee. We are not giving further elaborate reasons for the same as in the case of Riddhi Steel and Tubes (supra) it is held by this Court that only on account of inflated statements furnished to the banking authorities for the purpose of availing of larger credit facilities, no addition can be made if there appears to be a difference between the stock shown in the books of account and the statement furnished to the banking authorities. Similar view has been taken by this Court in Tax Appeal No. 1371 of 2006 vide decision rendered on 12.12.2014.*

*7.1. It is a settled law that only on account of inflated statements furnished to the banking authorities for the purpose of availing of larger credit facilities, no addition can be made if there appears to be a difference between the stock shown in the books of account and the statement furnished to the banking authorities. If, for the purpose of fulfilling the margin requirements of the bank purely on inflated estimate basis, when the stock statement had reflected inflated value of the stock, in wake of otherwise satisfactory explanation, both - for the purpose of value as well as quantity and taking into account the actual non verification of stock, we find no reason to interfere with the order of the Tribunal. Accordingly, the question is answered in the affirmative i.e. against the appellant - revenue and in favour of the assessee. We hold that the Tribunal was right in law in deleting the addition made on account of difference in stock statement as furnished before the bank as compared to shown in books of account."*

7.2. In the instant case there is no dispute that the assessing officer has made the addition purely on the information obtained from the bank and balances of sundry debtors were never verified independently by the AO causing necessary enquiries. There was no other corroborative evidence to

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support the sundry debtors balances list given to the bank. The sundry debtors balances in balance sheet are in agreement with the books of accounts. Thus the case of the assessee is squarely covered by the decisions cited supra and we find no reason to interfere with the order of the Ld.CIT(A) and the same is upheld. Accordingly, the appeal of the revenue is dismissed.

8. The assessee filed cross objections supporting the order of the Ld.CIT(A). Since the appeal of the revenue is dismissed, the cross objections filed by the assessee become infructuous, hence dismissed.

9. In the result, appeal of the revenue as well as the cross objections of the assessee are dismissed.

Order pronounced in the open court on 24<sup>th</sup> February , 2021.

Sd/- (एन के चौधरी) (N.K.CHOUDHRY)	Sd/- (डि.एस.सुन्दर सिंह) (D.S.SUNDER SINGH)
न्यायिक सदस्य/ JUDICIAL MEMBER	लेखा सदस्य/ACCOUNTANT MEMBER
Dated : 24 .02.2021	
L.Rama, SPS	

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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–M/s Vijayalakshmi Steel Enterprises, F.No.8-13-7, NH 5 Road, Old Gajuwaka, Visakhapatnam
2. राजस्व/The Revenue –Income Tax Officer, Ward-5(4), Visakhapatnam
3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-2, Visakhapatnam
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary  
ITAT, Visakhapatnam