

THE INCOME TAX APPELLATE TRIBUNAL  
"C" Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 1398/Mum/2017 (Assessment Year 2012-13)

Power House Fitness Ltd. 18, Surti Chambers 2nd Dhobi Talao Lane Marine Lines Mumbai-400 002.  PAN : AACCN0015B (Appellant)	Vs.	ITO-4(3)(1) Aayakar Bhavan M.K. Road Mumbai-20.  (Respondent)
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Assessee by	Shri Himank Desai
Department by	Shri V. Sreekar
Date of Hearing	06.05.2021
Date of Pronouncement	01.07.2021

ORDER

Per Shamim Yahya (AM) :-

This is an appeal by the assessee is directed against the order of learned CIT(A) dated 23.12.2016 for assessment year 2012-13.

2. The grounds of appeal read as under :-

- 1) On facts and in circumstances of the case and in law the learned CIT(A) erred in confirming in addition of sundry creditors related to AY 2012-2013 without identifying sundry creditors and without quantifying amount.
- 2) On the facts and in the circumstances of the case and in law the learned CIT(A) erred in not considering confirmations and balance sheets filed of sundry creditors.
- 3) On the facts and in the circumstances of the case and in law the learned CIT(A) erred in confirming applicability of Section 41(1) of the IT Act even though confirmations were filed and there was no cessation of liability.
- 4) On the facts and in the circumstances of the case and in law the learned CIT(A) erred in confirming applicability of Section 41(1) of the IT Act when purchases were found to be genuine.
- 5) On the facts and in the circumstances of the case and in law the learned CIT(A) erred in giving direction to AO for re-opening of assessment of previous years.

6) On the facts and in the circumstances of the case and in law the learned CIT(A) erred in confirming addition of Rs. 6,50,000 u/s 68 of the IT Act

7) On the facts and in the circumstances of the case and in law the learned CIT(A) erred in confirming addition of Rs. 20,00,324 u/s 68 of the IT Act  
PRAYERS

It is therefore prayed that additions be deleted Appellant craves leave to add, amend, modify and or delete any grounds of appeal.

3. Brief facts of the case are that the Assessing Officer noted that during the course of assessment proceedings, as per the order sheet noting dated 03.02.2015 the assessee was asked to submit the details of creditors and confirmation for the amount of Rs. 21,20,74,676/- and Unsecured Loans of Rs. 26,50,324/-. The assessee has submitted the confirmations of the creditors. In this regard the assessee has been asked to submit the ITR, Balance Sheet and confirmation of Unsecured Loans.

4. Thereafter he referred to various show-cause letters issued and replies of the assessee, which inter alia objected to addition under section 41(1) of the Act. The Assessing Officer did not make any independent inquiry of his own with the parties. He concluded as under :

“Under these circumstances, after considering the submission and perusing the material available on record and in view of lack of material deficiencies. I hold that unsecured loans and creditors shown by the assessee during the year remained unverifiable; there is a possibility of leakage of revenue. Therefore, I have no hesitation to invoke the provisions of section 145(3) of the I.T. Act, 1961 for rejecting the books of accounts. Accordingly, it is relevant to bring out that during the course of the assessment proceeding, the unsecured loans and creditors allegedly shown by the assessee were meticulously examined and it was revealed that the total amount of unsecured loans works out to Rs. 26,50,324/- and the total amount of creditors work; out to Rs.21,20,74,676/- and the same is added back to the total income. Penalty proceedings under section 274 r.w.s. 271(1)(c) are separately initiated for concealing particulars of income.”

5. Upon assessee's appeal learned CIT(A) rejected additional papers filed by the assessee without giving any cogent reasoning. His order in this regard is as under :

“During the course of appellate proceedings, the appellant has enclosed certain confirmation of accounts from various parties which again is not complete for the entire additions made by the AO however, at the same time

the appellant has not filed any specific letter praying for admission of additional evidence under rule 46A. Further, the appellant has not filed any consolidated paper book containing whatever documents it wanted to rely including confirmation of accounts from various parties and which needed to be duly certified by the appellant that such documents were filed before the AO during the course of assessment proceedings. Therefore, in view of these facts and failure of the appellant to file its specific letter for admission of additional evidence, some incomplete number of confirmations of accounts filed by the appellant during the course of appellate proceedings, cannot be taken on record.”

6. Thereafter learned CIT(A) passed a peculiar order. He found some errors made by the Assessing Officer. Realising that some of the additions cannot be made during the year he directed that earlier year assessment should be reopened. His order may be referred as under :-

“After considering the factual part of the submissions of the appellant has reproduced above, it is seen that the AO has added Rs.21,20,74,646/- as disallowance of creditors. However, from para 5.2 (page 4 & 5 of the assessment order) it is found that the AO has added up the entire amount of Sundry creditors which was the closing balance as on 27.03.2015 whereas, amount of sundry creditors as per closing balance of confirmation of creditors filed on 12.02.2015, stood at Rs.18,23,01,198/-.

It is further seen that the appellant has not been able to prove the entire sundry creditors were genuine and were existing. At the same time, the AO has also not given its break up for the different assessment years to which these creditors belong and has added the entire amount as appearing in the column of closing balance of confirmation on 27.03.2015, neither the AO has given any finding that the entire creditors were related to the current assessment year which is under appeal. In view of this, it will be difficult to uphold the entire addition made by the AO and at the same time it will be also difficult to delete any specific amount out of this addition since the appellant has also not given bifurcation of figures. But one thing is very clear that the appellant has not been able to justify and substantiate the claim of the entire sundry creditors. Accordingly, the additions related to creditors for assessment year 2012-13 is being upheld and the balance will be needed to be added in their respective assessment years and the AO is directed to take the remedial measures for the same by re-opening the case of preceding assessment years after verifying the assessment record for A Y 2012-13.

With this direction, the various ground related to addition of Rs. 21,20,74,676/- is being disposed off and these grounds are to be treated as Partly Allowed subject to above directions to the AO.

As regards addition of Rs. 26,50,324/-, it is seen from para 5.4 of the assessment order that the AO has added Rs.26,50,324/- being unsecured loans. However, from para 5.3 of the assessment order itself, it is seen that the AO has brought certain facts from Note 3 of balance sheet of the

appellant. It is seen that in first table of para 5.3, Rs. 6,50,000/- was shown by the appellant as ICICI loan, however, from the subsequent chart in para 5.3 itself, it is seen that the appellant has shown unsecured loan of Rs. 6,50,000/- having been received from Santowin Corp Ltd. Similarly, with regard to unsecured loan from Power House Gym, the appellant has not filed any details/confirmations to prove the genuineness of the said loan. Accordingly, the same is directed to be upheld.

It is an established law that to prove the genuineness of loan onus is on the appellant to prove the identity of the creditor, genuineness of transaction through banking channel and credit worthiness of the loan creditor which has not been proved before the AO during the assessment proceedings nor during the appellate proceedings. Accordingly, both the additions made by the AO are upheld.”

7. Against the above order assessee is in appeal before us.
8. We have heard both the parties and perused the records. We find that the Assessing Officer has proceeded to add unsecured loan and creditors without referring in detail to the inquiry independently done by him. He has also not examined whether these pertain to assessment year or earlier year. Though it is also true that the assessee has not submitted the proper detail as required by the Assessing Officer. Learned CIT(A) based on unconvincing reason has rejected the additional papers. He has rejected them merely on the ground that covering paper for the request is not there. It is settled law that even administrative orders have to be consistent with rules of natural justice. Moreover, learned CIT(A) has made further error by directing that earlier year assessment be reopened, when he realised that addition cannot be made during the year as ingredients of addition under section 41(1) are not there. In this view of the matter in our considered opinion interest of justice will be served the issue is remitted to the Assessing Officer to pass an order afresh after considering the additional paper and submission of the assessee. Needless to add the assessee should be granted adequate opportunity of being heard.

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

Pronounced in the open court on 1.7.2021.

Sd/-  
(PAVANKUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 01/07/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS