

THE INCOME TAX APPELLATE TRIBUNAL  
"A" Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 5354/Mum/2019 (Assessment Year 2015-16)

Aliullah Aniullah Shaikh Shop No. 3, U.P. Compound, LBS Marg Kurla West Mumbai-400 070  PAN : AECPG7858Q (Appellant)	Vs.	ITO Ward 26(1)(1) Kautilya Bhavan Bandra Kurla Complex, Bandra Mumbai-400 051.  (Respondent)
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Assessee by	Ms. Arati Agarwal
Department by	Shri Brajendra Kumar
Date of Hearing	04.08.2021
Date of Pronouncement	09.08.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 30.1.2018 for A.Y. 2015-16.

2. The grounds of appeal read as under :

1. "That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 52,23,936/- to the income of the appellant.
2. That on the facts and circumstances of the case of and in law, the Ld. CIT(A) erred in rejecting the additional evidences despite the fact that the reason for not filing the evidences before the Assessing Officer were duly explained in the written submission filed before him.
3. That on the facts and circumstances of the case, the Ld. CIT(A) failed to appreciate that the additional evidences submitted before him were germane to the additions made by the Ld. AO, and ought to be admitted by the Ld. CIT(A) on account of principles of natural justice itself.
4. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the outstanding balances of the sundry creditors, were actually amounts in the nature of security

deposits, advances, etc. which were receivable from the creditors, and as such, no addition can be made u/s. 68 of the Act.”

3. Brief facts of the case are that in this case the Assessing Officer made addition under section 68 of the I.T. Act for the following balances :

Sundry Creditors shown by assessee as outstanding

(i)	ONGC Ltd. Security Deposit	666,036/-
(ii)	Royal Star Trading Co.	400,000/-
(iii)	Symcom Communication	<u>41,57,900/-</u>
		<u>52,23,936/-</u>

4. Before learned CIT(A) assessee sought to file additional evidence and claimed that these are actually debit balances and cannot be added under section 68 of the Act. But learned CIT(A) refused to admit additional evidences and confirmed the Assessing Officer' action.

5. Against this order the assessee is in appeal before us. We have heard both the parties and perused the records. We may gainfully refer to learned CIT(A)'s order as under :-

“7.1 The perusal of the grounds of appeal enumerated in the foregoing paragraph 3 of this order, demonstrate that the appellant has grievance on delayed assessment proceedings stating that it was initiated on 29.07.2016 but taken up for hearing on 26.10.2017 and that sufficient time was not granted for compliance. The reasons for additions are baseless. Addition made based on facts reflected by assessee. The appellant prays to kindly set aside the assessment and remand back the case with direction to the Assessing Officer to verify the facts and make fresh assessment. As these grounds of appeal are inter-laced with each other, they are taken together for adjudication as follows:

7.1.1 It is seen from the facts available on record that the assessee is a Proprietor of M/s. National Steel and engaged in the business of metal scrap and filed the instant appeal against assessment order u/s. 143(3) of the IT Act dated 28.12.2017 wherein the AO has disallowed of Rs. 52,23,936/- on account of unexplained sundry creditors under the provisions of section 68 of the IT Act. The appellant filed the appeal on 16.01.2018 and Notice for hearing was issued through ITBA portal and postal authorities on 02.01.2019. The appellant has not attended the hearing but filed its submission dated 14.01.2019 and ledger confirmation from two parties namely (1) M/s. Synccom Communications and (2) M/s. Royal Star Trading Company. The appellant has submitted copy of 'Release order' dated 28.08.2014 of ONGC. Hence, in the interest of natural justice, the appellant was provided another opportunity of hearing by issuing notice dated

16.01.2019 vide speed post and the same was duly served on the appellant and hearing was fixed on 24.01.2019. However, the appellant did not comply with the statutory notice and no documentary evidence was furnished. Therefore, it is construed that the appellant does not want to avail the opportunity of being heard and produce requisite evidences in support of the appeal filed. Thus, the appeal is decided on the material available on record.

7.1.2 The facts of the case are that during the year the appellant had shown six sundry creditors. The AO had issued notice u/s 133(6) of the IT Act to them. The following creditors had not complied with the statutory notices issued.

1.	M/s. Symcom Communication	Rs.41,57,900/-
2.	M/s. Royal Star Trading Co.	Rs. 4,00,000/-
3.	M/s. ONGC SD	<u>Rs. 6.66.036/-</u>
	Total amount	Rs.52,23,936/-

7.1.3 The same was confronted to the assessee and asked to submit substantial documents in support of its claim. The assessee did not produce any documents in support of its claim. After considering the submission, the AO disallowed of Rs.52,23,936/- as unexplained credit under the provisions of section 68 of the I.T Act.

7.1.4 In the appellate proceedings vide aforesaid written submissions, it has objected to the disallowance made by the AO and requested that the said disallowance should be deleted, The main contention of the appellant is that the appellant was not given sufficient opportunity during the assessment proceedings and there was debit balance instead of credit balance in case of M/s. Royal Star Trading Co. and M/s.Symcom Communication. These debit balances were in respect of financial transactions over and above purchases and payments of purchases and filed only confirmation letters of both parties which are dated 01.04.2015 and "Release Order". However, no other documents are submitted by the appellant such as invoices, bank statement etc in support of its claim.

7.1.5 On careful perusal of the submissions of the appellant with reference to the assessment order, I find that the case was selected for scrutiny under CASS and accordingly notices u/s. 143(2) was issued on 29.07.2016 and duly served on the assessee. Subsequently, the file was received on 13.10.2017 by the present AO, on transfer vide transfer memo dated 05.10.2017. The AO issued notice u/s. 142(1) on 26.10.2017 along with questionnaire and duly served on the assessee. However, neither the assessee nor his AJR attended and no details or written explanation was submitted on appointed date. The sundry creditors have not responded to notice u/s. 133(6) issued and served on them during assessment proceedings. The AO brought these facts to the notice of the AR. Going by the above facts I find that opportunity was accorded to the appellant to submit the documentary evidences and offer explanation regarding the nature of transactions undertaken by the appellant with the aforesaid parties on account of which such balances has arisen vide questionnaires issued along

with notice u/s. 142(l) dated 26.10.2017. The appellant did not furnish the details called for and that is why the AO was compelled to resort to provisions of Section 133(6). It was only after no reply was received from the sundry creditors that AO issued notice u/s. 142(1) dated 20.12.2017. The appellant was asked to either furnish ledger confirmation of above three parties with all invoices raised by them or to show cause as to why corresponding sundry creditors balances amounting to Rs.52,23,936/- should not be added to total income of the appellant as per provisions of Income Tax Act, 1961. Hence, I do not find merit in the submission of the appellant that sufficient time was not granted to the appellant to furnish documentary evidence and to submit the requisite explanation. Therefore, this contention of the appellant is untenable and is rejected.

7.1.6 Coming to merit of the case, on going through Paragraph No.4.3 of the assessment order, I find that the Assessing Officer has specifically pointed out that the appellant has failed to prove the genuineness of the outstanding balances with documentary evidences. It is stated, therein that the assessee has not furnished any ledger copy of the concerned parties," confirmation of the concerned parties, invoices raised by them and details of material/services supplied by the above parties. Assessee has also not provided any detail showing any subsequent payment made towards these outstanding balances. Thus, ledger confirmation from two parties namely (i) M/s. Synccom Communications, (ii) M/s. Royal Star Trading Company and (iii) copy of "Release order" dated 28.08.2014 in the name of ONGC, supra are submitted in the course of appellate proceedings are additional evidences not produced before the AO during the assessment proceedings. Before me, in the appellate proceedings, appellant has not prayed for admission of the said additional evidences under Rule 46A. Therefore, I am unable to admit and accept the additional evidences and adjudicate the grounds of appeal based on the additional evidences. In the given facts and circumstances, the aforesaid additional evidences are not admitted and rejected. It is pertinent to point out here that the aforesaid "Release Order" of ONGC is dated 28.08.2014 and the confirmation of accounts by M/s, Royal Star Trading Company and M/s. Synncom Communication arc both dated 01.04.2015, which means the appellant was in the possession of these documents even during the time of assessment proceedings were in progress. Yet, the appellant did not submit them to the AO during the Assessment proceedings started on 29.07.2016 and concluded on 28.12.2017. A period of seven days is sufficient for the appellant to submit the aforesaid documents since the appellant was already in possession of the aforesaid ledger confirmations. There is, therefore, no justification for admitting the aforesaid additional evidences at this stage. Without prejudice to the above, the above documents alone are not adequate to establish the veracity of the claim of the appellant that the balances are genuinely outstanding as on 31.03.2015. Only confirmation letter is not enough to substantiate the appellant's claim. The appellant has not discharges the onus cast on the appellant to prove his claim with supporting documents."

6. From the above we note that despite noting the assessee's submission that these are actually debit balances learned CIT(A) has not examined the issue and has also not considered the additional evidence. In our considered opinion on the facts and circumstances of the case the issue needs to be remitted to the Assessing Officer. The Assessing Officer shall consider the issue denovo. If in fact these are debit balances there is no law for their being added under section 68 of the Act. Hence, this issue is remitted to the Assessing Officer. Needless to add the assessee should be given adequate opportunity of being heard.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open court on 9.8.2021.

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 09/08/2021

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//

PS

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai