

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)

I.T.A. No.5608/Mum/2019
(Assessment year 2014-15)

Shri Jayantilal Dinesh Purohit Room No.114, 5 th Floor Gitanjali Building-B, Dr. D.B. Marg Lamington Road, Mumbai-400 008 PAN : AJSP3006A	vs	ITO-19(2)(1), Mumbai
APPELLANT		RESPONDENT

Appellant by	Shri Vimal Punmiya (AR)
Respondent by	Smt. Smita Verma (DR)

Date of hearing	08-06-2021
Date of pronouncement	03-09-2021

ORDER

This is an appeal by the assessee against order dated 24-07-2019 of learned Commissioner of Income Tax (Appeals)-30, Mumbai for the assessment year 2014-15.

2. The primary dispute arising in the present appeal is confined to addition of an amount of Rs.42,75,000/- under section 68 of the Income Tax Act, 1961.

3. Briefly the facts are, the assessee is an individual and stated to be engaged in the business of trading in healthcare products through his proprietary concern, M/s Shivam Enterprises. For the assessment year under dispute, assessee filed his return of income on 26-11-2014 declaring total income of Rs.6,42,750. In course of assessment proceedings, the assessing officer noticed that as against purchases

shown of Rs.1,50,73,562/- assessee has shown creditors of Rs.2,41,16,702/- in the current year's balance-sheet. Whereas, in the preceding assessment year the assessee had shown purchases of Rs.2,82,01,376/- and sundry creditors of Rs.2,07,60,801/-. Noticing the above, the assessing officer called upon the assessee to furnish the details of sundry creditors. After perusing the details furnished by the assessee, the assessing officer observed that some of the creditors remained outstanding even after lapse of two years. Further, he alleged, the veracity of all the creditors in the current year could not be proved in absence of confirmations. Therefore, he held that the creditors are non genuine. However, he ultimately disallowed 30% on estimate basis out of the total increase in creditors shown between the preceding assessment year and the impugned assessment year, which worked out to Rs.10,06,770/-. Assessee contested the aforesaid disallowance before the first appellate authority. Though, learned Commissioner of Income Tax (Appeals) deleted the adhoc disallowance made by the assessing officer; however, she wanted to verify the genuineness of the creditors and accordingly, called upon the assessee to furnish the details. After verifying the details of creditors, learned Commissioner of Income Tax (Appeals) found that most of the creditors were relating to purchases made by the assessee below Rs.10 lakhs. However, two purchase invoices in the name of M/s Khushal Trading Corporation were more than Rs.10 lakhs, i.e. Rs.22.50 lakhs and Rs.20.25 lakhs. To verify the genuineness of the credit amount shown in the name of M/s Khushal Trading Corporation, learned Commissioner (Appeals) issued notices under section 133(6) at the given addresses. As observed by learned Commissioner (Appeals), the notice issued at Mumbai Central address was served, whereas, the notice issued at the Mira Road address remained unserved.

Further, the Inspector deputed to ascertain the genuineness of M/s Khushal Trading Corporation reported that there was no business undertaking in the said name at the given address. However, in response to notice issued under section 133(6), M/s Khushal Trading Corporation furnished certain documentary evidences such as profit and loss account, balance-sheet; income-tax return filing acknowledgements for various years and ledger account of M/s Shivam Enterprises for some years. Further, M/s Khushal Trading Corporation also furnished sales invoices for Rs.22,50,000/- and Rs.20,25,000/-. However, since complete ledger account was not furnished, learned Commissioner (Appeals) issued a notice under section 251(1)(a) of the Act for enhancing assessee's income and ultimately held the purchases of Rs.22,50,000/- and Rs.20,25,000/- aggregating to Rs.42,75,000/- from M/s Khushal Trading Corporation as unsubstantiated purchases and disallowed under section 37 of the Act. Simultaneously, she treated the amount of Rs.42,75,000/- as unexplained cash credits under section 68 of the Act.

4. Learned authorized representative of the assessee submitted, in course of appellate proceedings, the assessee had furnished all the details relating to the purchases made from M/s Khushal Trading Corporation. In this context, he drew my attention to the account confirmation from M/s Khushal Trading Corporation, tax audit reports, both, in case of the assessee as well as M/s Khushal Trading Corporation, Sales-tax / VAT returns filed by M/s Khushal Trading Corporation, bank statements reflecting payment made against purchases, purchase invoices, VAT paid challans, etc. Specifically drawing my attention to the VAT audit report and sales-tax return of M/s Khushal Trading Corporation, he submitted, the sales made to the assessee have been specifically reflected in them. He submitted, the

assessee has regular transaction with M/s Khushal Trading Corporation; hence, cannot be treated as non genuine. He submitted, in response to notice issued under section 133(6), M/s Khushal Trading Corporation has furnished information as required. Further, he submitted, there is no allegation even by the Sales-tax department against M/s Khushal Trading Corporation. Thus, he submitted, the disallowance made is unjustified.

5. The learned departmental representative, relying upon the observations of learned Commissioner (Appeals) submitted that on enquiry made, the concerned party was not found at the given address. Further, she submitted, assessee's ledger account copy was not furnished by the concerned party despite repeated requests by learned Commissioner (Appeals). She submitted, even the Inspector deputed to conduct a physical enquiry has reported that no such party was available at the given address. Thus, she submitted, since the genuineness of purchases could not be established, disallowance made was justified.

6. I have considered rival submissions and perused materials on record. Admittedly, the assessing officer has not raised any doubt regarding the purchases effected from M/s Khushal Trading Corporation. He has only made adhoc disallowance out of the sundry creditors considering the fact that certain creditors were continuing for about two years. However, at the appellate stage learned Commissioner (Appeals) had enquired into the details of sundry creditors and has picked up two purchases from M/s Khushal Trading Corporation for further enquiry and made the disallowance. As could be seen from the facts on record, in response to the notice issued under section 133(6) of the Act, M/s Khushal Trading Corporation did furnish its reply with certain documentary evidences, such as, profit and loss account, balance-sheet, Income-tax return

acknowledgements, account confirmation copies, etc. Even, assessee's ledger account appearing in their books for two assessment years was furnished. In fact, learned Commissioner (Appeals) has referred to the reply received from M/s Khushal Trading Corporation in response to notice under section 133(6) of the Act. Thus, it is not a case where the selling dealer has completely vanished. Therefore, the identity of M/s Khushal Trading Corporation has been established. The fact that M/s Khushal Trading Corporation is an Income-tax assessee and has also been filing VAT/ sales-tax return is established from copies of such returns submitted in the paper book. In fact, the assessee has also furnished the VAT audit report and Sales-tax return of M/s Khushal Trading Corporation, wherein, the transaction with the assessee has been reflected. It is also evident, the assessee has made payment for purchase to M/s Khushal Trading Corporation through banking channel. Thus, from the aforesaid facts and evidences available on record, it can be said that not only the identity of M/s Khushal Trading Corporation is established but the assessee had purchased goods from the said party is also proved, as the concerned selling dealer has also furnished confirmation of account. Thus, in such circumstances, the amount of Rs.42,75,000/- cannot be treated as unexplained cash credit as the identity, genuineness and creditworthiness have been established.

7. Having held so, the next issue which arises is whether the purchases made from M/s Khushal Trading Corporation can be held to be non genuine. Pertinently, no allegation has been made by Sales-tax department regarding the genuineness of M/s Khushal Trading Corporation. Rather, M/s Khushal Trading Corporation appears to be a registered dealer under the Sales-tax department, Government of Maharashtra as it is filing its VAT returns. Further, the existence of

M/s Khushal Trading Corporation is also established from the fact that in response to notice issued under section 133(6), it has furnished various information/evidences acknowledging the sales made to the assessee. That being the case, the purchases made from M/s Khushal Trading Corporation cannot be held as non genuine merely because ledger account copy of assessee for couple of years could not be furnished due to certain exigencies. In any case of the matter, once the selling dealer confirms the sales made to the assessee and when such sales have been reflected in its accounts and returns filed, both, before the Income-tax department as well as Sales-tax department and there is no adverse information from the Sales-tax department, the purchases made from M/s Khushal Trading Corporation cannot be doubted, merely on the basis of presumption and surmises, unless, the revenue brings evidence on record to factually establish that the purchases are non genuine or M/s Khushal Trading Corporation is a non genuine entity. In view of the aforesaid, I delete the addition of Rs. 42,75,000/-.

8. In the result, appeal is allowed.

Order pronounced on 03/09/2021.

Sd/-

SAKTIJIT DEY
JUDICIAL MEMBER

Mumbai, Dt : 03/09/2021

Pavanan

Copy to :

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

/True copy/

By Order

Asstt. Registrar, ITAT, Mumbai