

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
(through web-based video conferencing platform)**

**श्री एन के चौधरी, न्यायिक सदस्य एवं श्री डि.एस.सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.32/Viz/2020
(निर्धारण वर्ष/Assessment Year:2013-14)**

Dy.Commissioner of Income Tax
Circle-3(1)
Visakhapatnam

Vs. M/s Naga Hanuman Solvent Oils
Private Ltd.,
Sri Balaji Residency
Sector-9, MVP Colony
Visakhapatnam
[PAN : AACCN1547J]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri D.K.Sonowal, CIT, DR
: Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing

: 16.09.2021

घोषणा की तारीख/Date of Pronouncement

: 24 .09.2021

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Visakhapatnam in ITA No.10072/2017-18/CIT(A)-1/VSP/2019-20 dated 20.11.2019 for the Assessment Year (A.Y.) 2013-14 .

2. All the grounds of appeal in this case are related to the addition of Rs.5,53,16,938/- which was deleted by the Ld.CIT(A). The Assessing Officer (AO) found from the balance sheet of the company as on 31.03.2013 that share application money pending allotment was increased from Rs.3,19,37,796/- to Rs.7,85,15,078/-.. On calling for explanation of the assessee, the assessee submitted that increase in share application money was due to the reason that one of the directors of the company has agreed to take over the liabilities (sundry creditors) of the company in order to strengthen the equity in the balance sheet of the company and the liabilities taken over by the Director are treated as share application money of the Director, Mr.N.Bala Balaji in the books of accounts, hence there was increase in share application money and decrease in liabilities. As the transactions could not materialize, these book entries were reversed in the subsequent year and the creditors were paid from the company itself. The increase was due to the book entries and there was no cash inflow as investment in the company. Not being convinced with the explanation of the assessee, the AO treated the increase in share application money amounting to Rs.5,53,16,938/- as not genuine and brought to tax u/s 68 of the Act.

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 Ld.CIT(A) found that there were no fresh cash credits in the books of the assessee with reference to share application money, therefore, held that invoking section 68 of the Act is incorrect. Further, the Ld.CIT(A) verified the copies of accounts/statements submitted by the assessee and found that the trade creditors amount was transferred to share application money account and the same was reversed on 01.04.2013, thus there was no fresh credit and the identity, credit worthiness and genuineness was not in doubt. Though the practice followed by the assessee was unethical, there is no case of tax evasion, hence, following the order of this Tribunal in the case of M/s Srinivasa Hair Industries, Eluru vide its order in ITA No.194/Viz/2018 dated 03.01.2019, deleted the addition and allowed the appeal of the assessee.

4. We have heard both the parties and perused the material placed on record. In the instant case, though there was an increase in share application money, there was no infusion of fresh capital or fresh credit in the books of the assessee. One of the directors has taken over the outstanding liabilities (sundry creditors) and shown the same as share application money in his name in the balance sheet. Thus, the sundry

creditors was reduced and taken shape of share application money, which was stated to be taken over by Mr.Bala Balaji. The assessee furnished the paper book and on verification of the balance sheet it is observed that there was substantial decrease in the sundry creditors, long term borrowings or unsecured creditors. The assessee also furnished the copy of confirmation letters from the creditors along with proof for subsequent payment from Page no.44 to 104 creditor wise. Thus, it is established by the assessee that there was no fresh capital and the outstanding sundry creditors was taken over by Mr.Bala Balaji, one of the Directors and shown the same in the balance sheet as share application money. The Ld.CIT(A) has given a finding that the sundry creditors were reversed in the subsequent year and the same were paid by the company. Since, there was no introduction of capital or cash credit in the books of accounts during the year under consideration, the Ld.CIT(A) rightly held that there is no case for invocation of section 68 of the Act. As rightly observed by the Ld.CIT(A), the assessee has reduced the creditors and increased the share application money for the purpose of bank loans to project good financial condition of the company. Though the practice is unethical, there is no understatement of income or introduction of capital for which the source could not be explained. On similar facts, this Tribunal in the case of M/s

Srinivasa Hair Industries, Eluru (supra) relied upon by the Ld.CIT(A), held that there is no case for making addition u/s 41(1) of the Act and set aside the order of the Ld.Pr.CIT. For the sake of clarity, we extract para No.15 to 15.1 of the order of ITAT cited supra which reads as under :

“15. We have heard both the parties and perused the material placed on record. The first issue in this case is related to the trade creditors amounting to Rs.6,52,39,273/- transferred to capital accounts of the partners of the firm. It is established by the Ld.AR that the AO has called for the details during the assessment proceedings and the assessee had explained the reasons for transfer to the partners capital account vide letter dated 16.04.2015. The contention of the assessee is, as at the end of the year to increase the capital base for better bank loan facilities, the amounts were transferred to capital accounts of the partners. Verification of the balance sheet shows that the capital account balances of the partners are showing balance i.e. 13.17 crores including the transfer of trade creditors amounting to Rs.6.52 crores. If trade creditors are excluded the partners capital account shows only 6.25 crores as against the liabilities of Rs.51.00 crores which shows poor state of financials for bank loan facilities. Therefore, the assessee has resorted for window addressing to inflate the capital base to get better facilities from the banks. The explanation offered by the assessee appears to be reasonable and is a normal practice in the trading community though it is unethical. The assessee has retransferred the creditors balances in the subsequent years to the respective trade creditor which is evident from the traders account copies furnished in page No.47 to 51 of the paper book. In the case of Md.Mahasin Ali Khan, Bhagwanpur, the assessee has retransferred the sum of Rs.3,15,08,585/- to the traders account and subsequently made purchases and as well as payments through bank cheque and there was no cash payment. Similarly in the case of Habibulla Mallick, Bhagwanpur, the amount was transferred to one of the partners capital account of Sri Kanigolla Srinivasa Gupta and the said sum of Rs.1,32,19,285/- was transferred back to the trade creditors account on April 13. The credit in the case of Md.Mahasin Ali Khan Bhanwanpur was transferred back to the creditors account on 10.04.2013 a sum of Rs.90,38,030/-. Similarly credit in the name of Tikka Khan, Bhagwanpur was also transferred back to the creditors account on 10.04.2013. After retransfer of the credits to the trade creditors accounts, the assessee has made purchases and paid the entire sums through cheque including the retransferred amounts. The AO examined the purchases and sales and accepted the purchases and sales. From the scrutiny of the partners capital accounts, trade creditors account, we understand that the assessee has unilaterally transferred the sums to the partners capital accounts and there was no cessation or remission of the liability. The same fact is established as per the account copies placed in the paper book in

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M/s Naga Hanuman Solvent Oils Private Ltd, Visakhapatnam 

page no.47 to 49 of the paper book. It is settled law that to tax the trade creditors balances u/s 41(1), the cessation or remission of the liability has to be allowed by the trade creditor but not by the beneficiary assessee and the entries made in the books of accounts are immaterial. There must be consent from the creditor to waive the liability. This view is upheld by the Hon'ble Apex court in the case of Commissioner of Income tax Vs Sugauli Sugar Works (P.) Ltd 102 taxman 713, Hon'ble Apex Court held that

“Just because an assessee made an entry in his books of account unilaterally, he cannot get rid of his liability. The question whether the liability is actually barred by limitation, is not a matter which could be decided by considering the assessee's case alone but it is a matter which has to be decided only if the creditor is before the concerned authority. In the absence of the creditor, it is not possible for the authority to come to a conclusion that the debt was barred and had become unenforceable. There may be circumstances which may enable the creditor to come with a proceeding for enforcement of the debt even after expiry of the normal period of limitation as provided in the Limitation Act. The principle that expiry of period of limitation prescribed under the Limitation Act cannot extinguish the debt but it will only prevent the creditor from enforcing the debt is well-settled.

Mere entry in the books of account of the debtor made unilaterally without any act on the part of the creditor would not enable the debtor to say that the liability had come to an end. Apart from that that would not by itself confer any benefit on the debtor as contemplated by the section. Therefore, the High Court was right in holding that the assessee's unilateral entry in the accounts transferring the amount to the capital reserve account would not bring the matter within the scope of section 41.”

15.1. Similarly in the case of *Satpal & Sons (HUF)v. ACIT Circle-38(1), New Delhi** 85 taxman.com 283, the Coordinate Bench of ITAT Delhi has also taken similar view. In the instant case, the assessee has transferred the trade credit balances to the capital accounts without any confirmation from the trade creditor for cessation or remission of liability, hence, it is incorrect to hold that the said sum required to be brought to tax u/s 41(1) of the Act. As per the material placed before us by the assessee and discussed in the preceding paragraphs clearly establish that the AO has made reasonable and sufficient enquiries during the course of assessment proceedings. Thus, there is no error in the order passed by the AO and the Ld.Pr.CIT has incorrectly invoked the jurisdiction u/s 263 of the Act. Therefore, we cancel the order of the Pr.CIT u/s 263 on this issue and allow the appeal of the assessee.”

In the instant case, there is no dispute that no cash credits were found in the books of accounts during the previous year relevant to the assessment year for which the assessee could not offer explanation. What was found by the AO was sundry creditors were converted into share application money in the hands of one of the Directors and reflected the same as share application money. The sundry creditors were reduced and the share application money was increased. Subsequently, the sundry creditors balances were reversed back and the company has paid the same. The assessee also furnished evidence in the paper book in the form of copies of confirmation letters from the creditors. There was no cessation of liability and facts are identical to case of M/s Srinivasa Hair Industries, Eluru (supra). In the facts and circumstances of the case we, hold that there is no case for making addition u/s 68 and the Ld.CIT(A) has rightly deleted the addition, hence, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

5. In the result appeal of the revenue is dismissed.

Order pronounced in the open court on 24th September, 2021.

Sd/-
(एन के चौधरी)
(N.K.CHOUDHRY)
न्यायिक सदस्य/ JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER
Dated : 24 .09.2021
L.Rama, SPS

Sd/-
(डि.एस.सुन्दर सिंह)
(D.S.SUNDER SINGH)

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

1. राजस्व/The Revenue – Dy.Commissioner of Income Tax, Circle-3(1), Visakhapatnam
2. निर्धारिती/ The Assessee - M/s Naga Hanuman Solvent Oils Private Ltd., Sri Balaji Residency, Sector-9, MVP Colony, Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-1, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam