

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. Nos. 796 & 804/Mum/2020
(Assessment Years 2011-12 & 2012-13)

Rajeshkumar chamaria C-, Azad Apartment Azad Road, Andheri West Near Shoppers Stop Mumbai-400 058 PAN : AAOPC6157A (Appellant)	Vs.	ITO-24(3)(5) Piramal Chambers, Lalbaug Mumbai-400 012 (Respondent)
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Assessee by	Veena
Department by	Anil Gupta
Date of Hearing	15.11.2021
Date of Pronouncement	06 .01.2022

ORDER

Per Shri Shamim Yahya (AM) :-

These appeals by the assessee are directed against the order of learned Commissioner of Income Tax (Appeals)-36 dated 29.11.2019 pertain to the respective assessment years as above

2. Since grounds are common facts and adjudication of revenue authorities are similar, we refer to AY 2012-13.

3. Grounds of appeal read as under:-

1.0 Ground No.1: Confirming the addition

On the facts and in the circumstances of the case, the Hon'ble CIT(A) has erred in law and in facts of the case confirming the addition of Rs.24,252 being 0.55% of closing creditors and debtors as bogus.

2.0 Ground No. 2: Reassessment proceedings not based on any new material facts

On the facts and in the circumstances of the case, the Hon'ble CIT(A) has erred in law and in facts of the case failed to appreciate that reassessment proceedings were not based on any new material facts and conditions required for reassessment proceedings were not fulfilled.

3.0 Ground No.3: Appellant has discharged the burden & proved genuineness. Revenue has not given any evidence to discharge the burden

On the facts and in the circumstances of the case, the Hon'ble CIT(A) has erred in law and in facts of the case failed to appreciate the fact that the Apex Court ruling of *Sumati Dayal v. CIT* relied is not applicable and Appellant has discharged the burden to prove the creditors and debtors are genuine and submitted all the necessary explanations, bank statements, ledger confirmations and documentary evidences; the Revenue has not given any evidence to rebut the same and discharge the burden of proof which lay on it.

4.0 Ground No.4: Purchase & sale transactions are not on rotational pattern and not within specific group

On the facts and in the circumstances of the case, the Hon'ble CIT(A) has erred in law and in facts of the case failed to appreciate that the purchases for the year under appeal were Rs.31.71 crores & turnover of Rs.31.88 crores are with different entities not within a specific group.

5.0 Ground No.5: Debtors & Creditors- Purchases & Sales of the year under appeal
On the facts and in the circumstances of the case, the Hon'ble CIT(A) has erred in law and in facts of the case failed to appreciate that the creditors of Rs.0.44crores and nil debtors materialized from the purchases and sales made during the year under appeal and creditors paid within six months on receipt from the debtors/sale realization.

6.0 Ground No.6: Creditors & Debtors cannot be bogus when Purchases & Sales have been accepted as genuine

On the facts and in the circumstances of the case, the Hon'ble CIT(A) has erred in law and in facts of the case failed to appreciate that the creditors & debtors cannot be bogus when purchases & sales have been accepted as genuine in the assessment order passed under section 143(3) r.w.s. 147 of the Act.

4. In the present case, the AO made disallowances by observing as under:-

On perusal of the Balance sheet of the assessee, the assessee has shown sundry creditors of Rs.44,09,531/- and debtors of zero respectively. During the course of assessment proceedings the AR of the assessee was asked to justify the huge creditors. IN response to the same, the assessee submitted that the creditors are year end creditors and are settled in the subsequent years through account payee cheques.

I have gone through the explanation along with the ledger submitted by the assessee but the same is not tenable.

it is seen that during the year assessee has made sales of Rs.31, 88,32. 977/- from Suashish diamond Ltd. and purchase were made Rs.31,71,52,000/- from Peace Impex Pvt. Ltd.

From the above, it is clearly seen that the purchasers / creditors are throughout the year and which clearly shows that the assessee is not doing genuine business activity. No prudent businessman can keep such a huge amount as debtors /creditors- Since the assessee has failed to prove the rationale behind the credit entries and debit entries in his books, they are not genuine. The assessee has submitted that –

"The assessee is engaged in the trading business and associated with diamond industry where business is done on good faith and bonafide belief. The purchase payments made and the sales receivables are through banking channels. The assessee does not have capital to invest in its trading business. The assessee endeavours to mitigate its risk and it buys the goods on requirement of its customers and such there is nil inventory in books of accounts at the year end. The assessee interacts directly with the purchaser and sellers and the goods are purchased and sold based on customers requirement. The assessee always purchase goods on credit whenever there is customers to buy and the payment is made immediately after the assessee receives the sale consideration from its customers. In other words, there is a mutual understanding between the assessee and the seller that payment shall be made by him upon receipt of consideration from its customers. This is evidenced from the bank statement wherein it can be observed that the purchase payment/debit in bank is immediately upon the credit of the sale consideration /RTGS."

The assessee did not make any efforts to prove the genuineness of high value transactions in the bank account. Neither has controverted the findings recorded by Investigation Wing of the Department. After considering the submissions and perusing the material available on record I hold that the transaction pattern in the account of Axis Bank of M/s Supriyam Diamond shows a rotational pattern of high value transfer within a specific group of entities viz, Marquise Diamond Pvt Ltd, Peace Empex Pvt Ltd, Suashish Diamond Limited. The transactions are apparently not having any economic rationale behind them and are thus treated as bogus.

In the light of the above, and after consideration of the case. I hold that the creditor and debtors, having regard to the facts and circumstances of the case and considering the gross profit @ 0.5% shown by the assessee, I estimate the gross creditor and debtors at the rate of 0.55% of the unproved creditors and debtors treating them as bogus. Accordingly 0.55% of creditors of Rs.44,09,531/- which comes to Rs.24,252/- are added to the total income of the assessee. Penalty proceedings u/s.271(1)(c) of the I.T.Act, 1961 are initiated separately for furnishing inaccurate particulars of income.

12. After going through the details filed and discussion with the authorized representative, the total income of the assessee is computed as under :-

Total income as per order u/s. 143(3) of the I.T.Act, 1961 dated 26.03.2015			Rs.2,02,940/-
Add; As discussed above			Rs.24.252/-
	Total income:		Rs.2.27,192/-
	Rounded off to		Ru.2, 27,200 /-

5. The Ld.CIT(A) confirmed the AO's action by observing as under;-

I have carefully gone through the submission of the assessee and material available on record. In this case enquiry were conducted by the DDIT(Inv) and case of the assessee was subsequently been reopened by the AO. The assessee has claimed to be a trader in Diamond and have achieved a huge turnover of Rs.31.88 crores. The assessee has also shown the purchase to the tune of Rs.31.71 crores. It is the submission of the assessee before the AO as well as before the undersigned that the assessee always purchases goods on credit when there is a customer to buy and the payment is made immediately after the assessee receives the sale consideration from its customers. Thus it was submitted that there is mutual understanding between the assessee and the seller that payments shall be made by him upon receipt of consideration from its customers.

It was clearly seen that the purchasers/ creditors were pertaining not only to March but were throughout the year, which clearly shows that the assessee was not doing genuine business activity. No prudent businessman can keep such a huge amount as debtors/creditors. Since the assessee had failed to prove the rationale behind the credits entries and debit entries in his books, they were not genuine. The contention of the assessee was not acceptable as it did not prove the genuineness of high value transactions in the bank account The assessee did not make any efforts to prove the genuineness of high value transactions in the bank account. Neither the assessee has controverted the findings recorded by Investigation Wing of the Department. After considering the submissions and perusing the material available on record the AO held that the transaction pattern in the account of M/s. Supriyam Diamond shows a rotational pattern of high value transfer within a specific group of entities were apparently not having any economic rationale behind them and were treated as bogus.

The assessee did not bring any material on record to prove that the creditors are genuine except stating that the payments to creditors are made through account payee cheques in subsequent year. The case of the assessee is defies the human probability test laid down by the Hon'ble Supreme Court in the case of Sumati Dayal vs. CIT

[214 ITR 801]. The undersigned thereby relies upon the decision of Hon'ble Supreme Court in the case of Sumati Dayal (supra) and held that the transactions of the assessee are beyond the test of human probability and the AO has correctly assessed 0.55% of the creditors of 44,09,531/- amounting to Rs. 24,252/- as bogus. I therefore confirm the addition of Rs. 24,252/- made by the AO. Hence, the ground of appeal no. 4 is dismissed.

6. Against the above order, assessee is in appeal before the ITAT

7. I have heard both the parties and perused the records. I find that the disallowance of creditors @ 0.55% of the total value is absolutely based upon the surmise and conjectures. If the AO is not satisfied about the books of the assessee, he can reject the same and make an estimate of the income based upon industry trend or past record of the assessee. No such exercise has been done by the AO. This is fatal to the assessment here. Moreover, outstanding creditors which are trade creditors can be added only under provisions of section 41(1) of the Act. No case has been made out that section 41(1) has been invoked and there is disallowances as per provisions of section 41(1). Hence, I do not find any merit in additions. Hence, I set aside the orders of the authorities below and direct that addition in this regard should be deleted.

8. The above adjudication applies mutatis mutandis to AY 2011-12 appeal also

9. In the result, these appeals by the assessee are allowed.

Pronounced in the open court on 06 .01.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 06 /01/2022

Thirumalesh, Sr.PS

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