

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
and
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.6078/Del./2012
(ASSESSMENT YEAR : 2009-10)**

ACIT, Circle 2,
Ghaziabad.

vs.

M/s. Supreme Ceramics Limited,
C – 154, B.S. Road, Industrial Road,
Ghaziabad.

(PAN : AACCS6095C)

**ITA No.5595/Del./2012
(ASSESSMENT YEAR : 2009-10)**

M/s. Supreme Ceramics Limited,
C – 154, B.S. Road, Industrial Road,
Ghaziabad.

vs. ACIT, Circle 2,
Ghaziabad.

(PAN : AACCS6095C)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rakesh Gupta, Advocate
Shri Deepesh Garg, Advocate
REVENUE BY : Shri Umesh Takyar, Senior DR

Date of Hearing : 13.12.2021
Date of Order : 22.02.2022

ORDER

PER AMIT SHUKLA, JM :

The aforesaid cross appeals have been filed by the Revenue as well as by the assessee against the impugned order dated 24.09.2012

passed by the CIT (Appeals), Ghaziabad for the quantum of assessment passed under section 143(3) of the Income-tax Act, 1961 (for short 'the Act') for the Assessment Year 2009-10.

2. The Revenue in this appeal has raised following grounds :-

“1. The learned CIT (Appeal) has erred in law and on facts by deleting the addition of Rs.80,00,000/-, on account of unsecured loans received on account of transfer entry made through banking channel.

2. In the facts and circumstances of the case, the learned C I T (Appeal) has erred in deleting the addition of Rs.80,00,000/-, by ignoring the fact that the attorney of the assessee has submitted on record that he has no further documents to file with respect to pending unsecured confirmations etc.

3. That Ld. CIT(A) has erred in law and on facts in accepting the additional evidences when the conditions of Rule 46A(1) of the I.T. Rules, 1962 are not satisfied whereas the assessee has been provided sufficient opportunity by the A.O. to adduce the evidence and the assessee was not prevented by any sufficient cause for producing the evidence before the A.O. during the assessment proceedings.

4. In the facts and circumstances of the case the CIT (Appeals) has erred holding that multiple credit entry of crores of rupees proves creditworthiness of the lender. Further, Ld. CIT(A) has erred in holding that it is also prove the identity of the creditors and genuineness of the transactions.

5. That in the facts and circumstances of the case, the order of the learned CIT (Appeal) has erred in law in deleting the addition of Rs.57 ,85,077/-, being sundry creditors in a case where the liabilities were bogus or did not exist.

6. That in the facts and circumstances of the case, the order of learned CIT (Appeal) has erred in law in deleting the addition of Rs.84,19,500/- being huge cash deposits in bank

account by ignoring that the huge sum, in cash, was utilized to run the normal business activity.

7. That in the facts and circumstances of the case, the learned CIT (Appeal) has erred in ignoring the fact that the defects exposed in the course of assessment does constitute the rejection of accounts.

8. That in the facts and circumstances of the case, it is requested that the order of CIT (Appeals) being erroneous in law and on fact is liable to be reversed/set-aside and the order of the A.O. may be restored.”

2.1 Whereas, the grounds of appeal taken by the assessee read as under:-

“The Ld. CIT (A) is wrong, unjustified & unjudicious in confirming the addition of Rs.39.50 lacs to the income of the assessee, being unsecured loans received, in the facts and circumstances of the case.”

3. The facts of the issues involved are that Assessee Company is engaged in the business of manufacturing, developing, improving, buying selling, import, export and deal in all kinds of refractories and minerals. The company is also carrying on the business of manufacturing, developing, improving, buying, selling and dealing in finished and designed ceramic materials of any kind. Assessing Officer from the perusal of the balance sheet noted that assessee had shown unsecured loans from others at Rs.5,57,96,996/-. Though in response to show-cause notice assessee had filed confirmation and copy of bank statement of one party, Shri Paras Steel Fab Ltd., however AO found that in respect to 8 parties sums aggregating to Rs.1,19,00,000/-, no confirmation was provided and neither any ITR or bank statement of the lenders was provided. Accordingly, he made the addition on account of unsecure loans of the following parties:-

Sl.No.	Name of the Party	Amount of loan
1.	Akarit Enterprises Ghaziabad	2200000
2.	Amba Steels Ghaziabad	4500000
3.	Arihant Engineering Works Ghaziabad	750000
4.	Omsree Traders Ghaziabad	1600000
5.	Paras Enterprises Ghaziabad	1000000
6.	SS Exports	250000
7.	Shree Nath Steel	500000
8.	Shree Shyam Steel Corporation	1100000
	Total	11900000

4. Further, Assessing Officer also noted that there were sundry creditors to the extent of Rs.10,39,02,425/-as appearing in the balance sheet and required the assessee to file details of the creditors with name, address, PAN and confirmation of the parties. He also asked the assessee to establish genuineness and creditworthiness of these parties. According to him, since no proper confirmation was filed in respect of the some parties, he added the same u/s 41(1) of the Act for cessation of liabilities of the following parties :-

Sl.No.	Name of the Sundry Creditors	Amount Outstanding
1	C.A. Polytech P. Ltd.	196566
2	Climax Engineering Works (R)	186967
3	Ma Chhinamastika Sponge Iron Ltd.	796539
4	Monnet Ispat and Energy Ltd.	23566
5	Nidhi Auto Pvt. Ltd.	183401
6	Pearey Lal and Sons Ltd.	1271388
7	S.A. Iron & Alloys Ltd.	183973
8	S.D.M. Metalloys Ltd.	1542366
9	Shri Ganesh Sponge Iron Ltd.	298151
10	Trident Structures Pvt. Ltd.	703565
11	Valiabh Steel Ltd.	82957
12	Vimsa Balls Pvt. Ltd.	315638
	Total	5785077

5. Lastly, from the perusal of different bank accounts of the assessee, Assessing Officer noted that there were huge cash deposits in different banks, namely, Syndicate Bank and IDBI Bank. In response to the show-cause notice, the assessee filed detailed reply which has been incorporated in the impugned assessment order. It was submitted that most of the amount was appearing as opening balance and for the balance amount, it was stated that cash was realized from the sundry creditors during the year under consideration and justification for the withdrawal was given by the Director of the company. Assessing Officer stated that assessee's explanation is not accepted and gave following reasons for making the addition of Rs.84,19,500/-:-

“The above explanation cannot be completely accepted. Even if we accept that there was cash withdrawal on earlier dates and cash deposited was on later dates, then also the cash withdrawn is only 1,44,50,000/- while the cash deposited is Rs.2,28,69,500/-. Even if we accept the assessee's contention about the opening cash balance as on 01.04.2008 at Rs.51,29,537/-, the same would have been used in normal business purposes and not in depositing in back in the assessee's accounts as cash as claimed by the assessee that to after five months from the date of opening balance. Also looking out the pattern of cash withdrawn, it is seen that the cash has been withdrawn from the assessee's Syndicate Bank account to the tune of Rs.1,44,50,000/- only in span of 42 (Forty two) days i.e . from 02.07.2008 to 14.08.2008, while cash has been deposited in span of 11 (Eleven) months i.e. from 12.05.2008 to 14.03.2008 which is beyond common business prudence of any company. As such it may be accepted that out of total deposits of Rs.2,28,69,500/- a figure of Rs.1,44,50,000/- may be coming from the cash withdrawn by the assessee. Regarding the rest, in lack of reasonable explanation and the chronology of cash deposits on different dates after the last date of withdrawal i.e. 14.08.2008, the unexplained cash deposit amounting to Rs.84,19,500/- is added as undisclosed income. Penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 is also being initiated on this issue.”

6. Ld. CIT (A), after considering the written submissions of the assessee as well as the remand report filed by the AO and rejoinder by the assessee, has deleted most of the additions in respect of unsecured loans by discussing party-wise details as well as documents filed before the AO as well as CIT (A).

7. The assessee's contention before the ld. CIT (A) as well as before us during the course of hearing was that, firstly, before the AO, the assessee has filed a letter submitting the confirmation of accounts and various other documents which has also been placed in the paper book before us. Details of documents furnished before the AO and CIT(A) have also been placed before us, which are summarised as under :-

- PB 1 is assessee's letter dated 16-12-2011 filed to Ld. AO submitting confirmations of account and e - challan showing payment of tax and PAN of unsecured loans.
- PB 8 is assessee's letter dated 20-12-2011 filed to Ld. AO submitting confirmations along with PAN in respect of four parties regarding unsecured loans have already been submitted.
- PB 182 - 196 is assessee's written submissions dated 02-05-2015 made before Ld. CIT(A) relating to lending parties, specifying which parties submitted the required documents needed to establish their identity and which have not because of non - cooperation with the assessee due to non-payment of their dues timely.
- PB 278 - 287 is rejoinder to Remand Report dated 18-09-2012, giving explanation regarding some of the lenders that why documents/details establishing their credit worthiness and identity could not be produced before and reasons why addition is not warranted on them and others.
- PB 289 is assessee's Letter dated 06-07-2012, in response to Ld. AO's Letter dated 29-06-2012 during remand proceedings,

requesting him to issue summons to all the lenders / Parties and submitting that documents proving identity and genuineness of majority of parties are produced except three parties, which are not cooperating at all.

- PB 290 - 291 is copy of Notice u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Reinforcement of Security Interest Act, 2002 dated 25-10-2010 from Canara Bank regarding bank accounts of assessee requiring the assessee to discharge its liabilities plus interest.

Regarding M/s Amba Steel

- PB 4 - 5 Confirmations of account and e - Challan showing payment of tax and PAN submitted before Ld. AO vide assessee's letter dated 16-12-2011 at PB 1.
- PB 9 -12 is copy of bank statement with Axis Bank submitted during appellate proceedings before Ld. CIT(A) vide application under Rule 46A dated 14-05-2012 at PB 197 -198.

Regarding Akarti Enterprises

- PB 2 - 3 Confirmations of account and e - Challan showing payment of tax and PAN submitted before Ld. AO vide assessee's letter dated 16-12-2011 at PB 1.
- PB 23A - 23B is copy of bank statement with Central Bank of India submitted during appellate proceedings before Ld. CIT(A) vide application under Rule 46A dated 14-05-2012 at PB 197 - 198.

Regarding Paras Enterprises

- PB 6 -7 Confirmations of account and e- Challan showing payment of tax and PAN submitted before Ld. AO vide assessee's letter dated 16-12-2011 at PB 1.
- PB 13 - 15 is copy of bank statement with Central Bank of India submitted during appellate proceedings before Ld. CIT(A) vide application under Rule 46A dated 14-05-2012 at PB 197 -198.

Regarding Om Shree Traders

- PB 17 is ledger account in books of the assessee company.
- PB 20 - 21 is copy of bank statement with Axis Bank submitted during appellate proceedings before Ld. CIT(A) vide application under Rule 46A dated 14-05-2012 at PB 197 -198.
- PB 22 - 23 is relevant pages of the bank statement of the assessee company with Syndicate Bank showing the cheque was bounced.

Adverse observations of Ld. AO regarding unsecured loans

- On perusal of the lender's bank account and on tallying it with that of the assessee company it is seen that on the date of presentation of the cheque in the bank there was meager fund available. Further as and when the cheques were presented for clearing in the cheque issuing branch within a span of 1-2 days of it substantial credits were transferred by way of clearing. This shows incredibility. Also that for a prudent businessman it is impossible to lock such huge amount in the lending for a long period and that too, without charging of interest.
- In reply it was submitted that regarding the observation in respect of availability of meager funds in the account of the lender it only reflects the quality of proper funds management and in no way reflects the non creditworthiness of the lender. Further from the perusal of the bank statement of the lender it is clear that substantial credits itself prove the credit worthiness of the lenders.
- Regarding the locking of such amount in the lending for a long period and that too without charging of interest, it was submitted that due to speculation and thus the fluctuation created by commodity exchange resulted into financial crisis to the assessee company, it has borrowed these funds on its goodwill for a short period but unfortunately, but it could never come out of these financial crisis which subsequently resulted into criminal cases filed against the assessee company and thereafter bank accounts of the assessee company were declared as non performing assets

by its bankers and they have also filed case before DRT for recovery of its dues.

- PB 292 - 293: Evidence regarding case of the assessee referred to Debt Recovery Tribunal, Order dated 15-05-2012 in O.A. No. 127 of 2011, which vide this order has disposed off the application of the bank and has directed the local commissioner to make an inventory and defendants has been directed to maintain status quo.

Finding of Ld. CIT(A) in respect of M/s Amba Steels (Rs.45 lakhs)

- From the bank account submitted during appellate proceedings it is found that funds are coming through cheques only and no cash was introduced for clearance of the assessee's cheque. Further as per bank statement of the lender there are credits to the tune of Rs.236.72 lakhs in a period of 2 months through different clearings. Thus the identity cannot be doubted and there appears to be no reason for making any addition in this regard.

In respect of Paras Enterprises (Page 36 of CIT(A)'s order)

- It is found that funds are coming through cheques only and no cash was introduced for clearance of the assessee's cheque. Further as per bank statement of the lender there are credits to the tune of Rs.280.71 lakhs in a period of 3 months through different clearings. Thus, the identity cannot be doubted and there appears to be no reason for making any addition in this regard.

In respect of Om Shree Trader (R. 16 lakhs) (Page 35 of CIT(A)'s order)

- The assessee has furnished the bank statement and necessary evidences during appellate proceeding, which were forwarded to AO for remand. It is observed that these cheques of Rs.16 lakhs were deposited by assessee on 31-03-2009, but these were actually bounced; for which the necessary evidences are submitted by assessee and are placed on record.

I find that the funds of Rs.16 lakhs were actually never realized or received by the assessee company and as such there appears to be no reasons for making any addition in respect of this Rs.16 lakhs.

In respect of M/s Akarti Enterprises (Rs. 9 lakhs) (Page 34 of CIT(A)'s order)

- The assessee has furnished the bank statement and necessary evidences during appellate proceeding, which were forwarded to AO for remand. It is observed that these cheques of Rs.9 lakhs were deposited by assessee on 31-03-2009, but these were actually bounced; for which the necessary evidences are submitted by assessee and are placed on record.

9. On the other hand, ld. DR strongly relied upon the order of the AO.

10. After considering the relevant findings in the impugned order as well as material placed and submissions made before us, we find that insofar as addition on account of unsecure loan of Rs.1,19,00,000/-, ld. CIT (A) has given relief in respect of following four parties for a sum aggregating of Rs.80,00,000/- :-

Sl.No.	Name of the Party	Amount (Rs.)
1.	Amba Steels Ghaziabad	45,00,000
2.	Paras Enterprises Ghaziabad	10,00,000
3.	Omsfree Traders Ghaziabad	16,00,000
4.	Akarti Enterprise (partly)	9,00,000
	Total	80,00,000

11. The case of the assessee insofar as Akarti Enterprise and Om Shree Traders was that an amount of Rs.9,00,000/- and Rs.16,00,000/- respectively for both the parties was received during the year but the cheques deposited on 31.03.2009 were bounced and, therefore, there could not be any addition aggregating to

Rs.24,00,000/- . Ld. CIT (A) before whom various documents were filed including bank statements, confirmations and other catena of documents as additional evidence and the same were admitted and on which, the ld. CIT (A) called for the remand report from the AO and the AO has given a detailed reply which has been incorporated in the impugned appellate order. The summary of the remand report as incorporated in the appellate order reads as under :-

“7.1.2 In the remand report, the AO has submitted :-

- (a) On the day of presentation of the cheques in the bank, by the assessee, there was meager fund available in the accounts of the lenders and as & when cheques were presented for clearing in the cheque issuing branch or within a span of 1-2 days of it, substantial credits were transferred either by way of clearings or by way of cash, which shows non-creditworthiness of the lender.
- (b) The unsecured loans were remained unpaid for the whole year and that too without charging of interest.
- (c) Regarding cheque bounced of Rs.9 lacs, the AO has not given any observation in the remand report & in respect of cheque bounced of Rs.16 lacs. AO submitted that the said party has not lent any amount to the assessee and the amount remains doubtful in nature.
- (d) An opportunity of being production of necessary details was provided by the assessee during remand proceedings fixing the date of compliance on 6.07.12 but on the date fixed or even till the preparation of this report, neither the assessee nor his AR attended nor any written submissions was furnished.
- (e) Since the beginning of the case, the intention of the assessee has been not to furnish details and confirmation etc. & in some cases, which are now furnished, do not bear the correct present postal addresses of the lenders.”

12. The finding of the Id. CIT (A) with regard to the aforesaid four parties and also two other parties for which sum aggregating to Rs.1,19,00,000/- which has been confirmed by him is as under :-

“7.1.4 Considering all facts and documents on record; my observation regarding leader-wise factual position and my inferences are as under :-

(a) Akarti Enterprises (Rs.22.50 lacs)

The assessee has furnished the confirmation & assessment details during assessment proceedings & has submitted bank account during appellate proceedings, which were forwarded to AO for remand. Out of Rs.22.50 lacs, the cheque of Rs.9 lacs deposited by assessee on 31.3.09 was actually bounced, the necessary evidences for which submitted by assessee & are placed on record. Thus this Rs.9 lacs were actually never realized/received by the assessee company and as such there appears to be no reasons for making any addition in respect of this Rs.9 lacs. Regarding balance Rs.13.50 lacs, I find that cash has been deposited in the bank account of the lender before clearance of the cheque of the assessee.

The introduction of cash in the bank account of lender remains unexplained and as such the addition of Rs.13.50 lacs is hereby confirmed.

(b) Amba Steels (Rs.45 lacs)

The assessee had furnished the confirmation & assessment details during assessment proceedings & has submitted bank account during appellate proceedings, which were forwarded to AO for remand. From the bank account of the lender, I find that the funds are coming through cheques only and no cash was introduced for clearance of the assessee's cheque. Further, as per bank statement of the lender, there are credits to the tune of Rs.236.72 lacs in a period of 2 months thro' different clearings.

Thus I find that the identity, genuineness of the transaction & creditworthiness of the lender cannot be doubted and there appears to be no reasons for making any addition in this respect.

(c) Arihant Engineering Works (Rs.7.50 lacs)

Confirmation, assessment details & bank account have been submitted during appellate proceedings, which were forwarded to AO for remand. However on perusal of bank account, I find that cash has been deposited in the bank account of the lender before clearance of the cheque of the assessee.

This introduction of cash in the bank account of lender remains unexplained and as such the addition of Rs.7.50 lacs is hereby confirmed.

(d) Om Shree Traders (Rs.16 lacs)

The assessee has furnished the bank account & necessary evidences during appellate proceedings, which were forwarded to AO for remand. It is observed that these cheques of Rs.16 lacs were deposited by assessee on 31.3.09, but these were actually bounced; for which the necessary evidences are submitted by assessee & are placed on record.

Thus, I find that the funds of Rs.16 lacs were actually never realized/received by the assessee company and as such there papers to be no reasons for making any addition in respect of this Rs.16 lacs.

(e) Paras Enterprises (Rs.10 lacs)

The assessee has furnished the confirmation & assessment details during assessment proceedings and has now submitted bank account during appellate proceedings, which were forwarded to AO for remand. From the bank account of the lender, I find that the funds are coming through cheques only and no cash was introduced for clearance of the assessee's cheque. Further, as per bank statement of the lender, there are credits to the tune of Rs.280.71 lacs in a period of 3 months thro' different clearings.

Thus, I find that the identity, genuineness of the transaction & creditworthiness of the lender cannot be doubted and there appears to be no reasons for making any addition in this respect.

(f) Remaining unsecured loans of Rs.18.50 lacs

Sine no evidences of any kind were furnished in respect of M/s. S.S. Exports, Shree Nath Steel and M/s. Shree Syam Steel Corporation, by the assessee either before AO or before me, the addition of Rs.18.50 lacs is hereby confirmed.

7.1.5 Thus, overall, I conclude that addition to the tune of Rs.80 lacs requires deletion, while addition of Rs.39.50 lacs (Rs.13.50 lacs + Rs.7.50 lacs + Rs.18.50 lacs) is hereby confirmed.”

13. In case of Akarti Enterprise who has given Rs.22,50,000/-, as per the record and also the finding of the ld. CIT (A) as incorporated above, not only confirmation was filed during the assessment proceedings but also bank account which was filed during appellate proceedings which was confronted to the AO and remand report was sought for. Out of this sum of Rs.22,50,000/-, cheque of Rs.9,00,000/- deposited with the bank was bounced, therefore, to this extent, the amount was never realized by the assessee. Since the balance amount of Rs.13,50,000/- ld. CIT (A) has noted that there was cash deposit in the account of the creditor before issuing cheque which, according to him, has remained unexplained, so he has confirmed to the extent of Rs.13,50,000/-.

14. Insofar as Amba Steels, again confirmation of Rs.45,00,000/- was filed before the AO and bank account before the ld. CIT (A) and the ld. CIT (A) has given a categorical finding that the funds are coming through cheques only and no cash was introduced for clearance of the assessee's cheque and the lender has credit to the tune of Rs.236.72 lacs before issuing the cheque to the assessee. Thus, in this transaction, creditworthiness stood proved and hence it has rightly been deleted by Ld. CIT(A).

15. In case of Arihant Engineering Works, ld. CIT (A) confirmed the loan of Rs.7,50,000/- on the similar reason that cash has been deposited in the lender's bank account before clearance.

16. In case of Om Shree Traders who has given loan of Rs.16,00,000/-, the same has been deleted on the ground that the amount has not been received by the assessee during the year and the cheque deposited on 31.03.2009 was bounced.

17. Regarding Paras Enterprises who has given loan of Rs.10,00,000/-, again the same reasoning has been given that assessee has filed all the details including the confirmation, assessment details, bank statement and there was no cash deposit before the clearance of the cheque given to the assessee.

18. Further, in respect of other three parties, M/s. S.S. Exports, Shree Nath Steel and M/s. Shree Syam Steel Corporation for a sum aggregating to Rs.18,50,000/-, he has given a finding that no evidence whatsoever has been filed. Accordingly, he confirmed the same.

19. Insofar as the additions deleted by the ld. CIT (A) to the extent of Rs.80,00,000/-, we do not find any infirmity in the order of the ld.CIT(A) for the reason that not only the identity but also the creditworthiness and genuineness of the loan stood proved at the appellate stage, as the parties have not only have confirmed the loan but has also given their bank details and there was no other contrary material or information to disprove such document. Therefore, the order of the ld. CIT(A) deleting the unsecured loans in respect of four parties, namely, Amba Steels, Paras Enterprise, Om Shree Traders &

Akarti Enterprise, for a sum aggregating to Rs.80,00,000/- is upheld and the Revenue's appeal on this ground is dismissed.

20. Insofar as addition of Rs.13,50,000/- in the case of Akarti Enterprise and addition of Rs.7,50,000/- in case of Arihant Engineering Works confirmed by the ld. CIT (A), which has been challenged by the assessee, we find that the only reason cited by the ld. CIT(A) is that prior to the clearance of the cheque of the assessee, there was cash deposit in the account of the lender. Qua these two parties, we find that not only they have directly confirmed to the AO but also given bank details. The source of cash deposit, if at all, was required to be enquired from the lender and it is not the assessee's onus to prove the cash deposit in their bank accounts. The assessee's onus is only to prove that the loan received from the creditor and not the lender. The onus cast upon the assessee is to prove prima facie identity, genuineness and creditworthiness of the lender which stands established from the bank details and the loan has been shown by them to be given from their source of income. Thus the onus cast upon the assessee stood duly discharged. Simply because there was certain cash deposits before the issuance of cheques, adverse inference cannot be drawn against the assessee. There is no other adverse material found during the course of enquiry or lenders were called upon to explain the source of the deposits and accordingly, addition of Rs.13,50,000/- on account of loan in the case of Akarti Enterprise and addition on account of loan of Rs.7,50,000/- in case of Arihant Engineering Works is deleted and the order of the ld. CIT (A) on these additions is set aside.

21. In respect of loan of Rs.18,50,000/- taken from three parties, namely, M/s. S.S. Exports, Shree Nath Steel and M/s. Shree Syam Steel Corporation, we do not find any infirmity in the order of the Id. CIT (A). Here, in respect of these parties, no such documentary evidences have been filed in the form of confirmation and bank accounts, therefore, genuineness and creditworthiness of these three parties cannot be proved. **Accordingly, the order of the Id. CIT (A) confirming the addition of Rs.18,50,000/- is upheld.**

22. Now, insofar as the addition of Rs.57,85,077/- made u/s 41(1) of the Act, Id. CIT (A) has given following findings of fact for deleting the addition :-

“Considering the details and submission on record; I agree with the Appellant’s contentions that out of Rs.5785077/-, the outstanding of Rs.2853423 pertains to purchases made during the year under consideration only, making this amount out of purview of sec.41(1) directly, as the primary condition of sec. 41(1) of deduction in an earlier year does not satisfy. I also hold that in respect of the entire creditors for which addition has been made, liabilities have been duly shown in the assessee's balance sheet duly audited & approved by the members in AGM, which clearly amounts to acknowledgement of the debts & merely because these liabilities are outstanding, it can never be presumed that they have ceased to exist. These liabilities are not even time barred, the detailed copy of accounts of these creditors were filed during appellate proceedings & the same are placed on record, then how the same can be finally ceased to exist to attract the legal fiction contemplated by sec. 41(1). The AO has not brought on records any evidence which proves that assessee has obtained any benefit concerning such trading liabilities by way of remission or cessation during the relevant year i.e. the second primary condition for applicability of sec.41(1) is also not satisfied. Regarding genuineness & creditworthiness, though the same has no role

to play for application of sec.41(1). The appellant has submitted the copies of purchase bills of these creditors showing their sales tax registration no., excise no., PLA no. etc. etc. It is observed that all the creditors are either ltd. companies or pvt. Ltd. companies & that the payments are always made thro' banking channels.”

23. Ld. CIT(A) has also referred to various decisions and held that once the liabilities have been duly acknowledged by the assessee and no parties have been given their claim, no addition can be made u/s 41(1) of the Act.

24. Before us, ld. counsel for the assessee submitted that the entire creditors were genuine and the liability was duly acknowledged in the balance sheet and was very much payable to the creditors and there cannot be any presumption of cessation of liability in absence of any evidence. He further pointed out that assessee has given catena of evidences during assessment proceedings as well as appellate proceedings which are illustrated as under :-

PB 1 is assessee's letter dated 16-12-2011 filed before Ld. AO submitting that the confirmed' copy of accounts in respect of majority of sundry creditors has already been filed during the course of assessment proceedings, the confirmations in respect of balance creditors will be filed in due course as and when the same will be received by the assessee. Books of accounts also produced along with this letter.

PB 8 is assessee's letter dated 20-12-2011 filed to Ld. AO submitting that assessee has already submitted several confirmations and regarding balance creditors, it was submitted that on contacting them, they confirmed the receipt of summons from Ld. AO and that they have complied with the details sought by Ld. AO and rest are in the process of compliance.

PB 50 - 64 are copies of ledger account of following sundry creditors (out of total 30 sundry creditors) in the books of assessee company.

PB 50: M/s. C. A. Poly tech (P) Ltd.

PB 51: M/s. Climax Engineering Works (R).

PB 52: M/s. MA Chinmastika Sponge Iron Ltd.

PB 53: M/s. Monnet Ispat & Energy Ltd.

PB 54: M/s. Nidhi Auti (P) Ltd.

PB 55: M/s. Pearey lal & Sons Limited

PB 56: M/s. Pearey lal & Sons (E.P.) Ltd.

PB 57: M/s. S.A. Iron & Alloys Ltd.

PB 58: M/s. S.D.M Metalloys Ltd.

PB 59: M/s. Sri Ganesh Sponge Iron (P) Ltd.

PB 60: M/s. Trident Structure

PB 61: M/s. Trident Structures (P) Ltd.

PB 62-63: M/s. Vallabh Steel Ltd.

PB 64: M/s. Vimsa Balls (P) Ltd.

It was submitted that out of Rs.57,85,077/-, outstanding amount of Rs.28,53,423/- pertains to purchases made during the year under consideration only, making this amount out of purview of provisions of section 41(1), (as a primary condition of deduction in an earlier year does not satisfy).

PB 90-100: Invoices/ purchase bills of following sundry creditors:-

PB 90- M/s. Climax Engineering Works.

PB 91- M/s. C. A. Polytech (P) Ltd.

PB 92- M/s. Pearey Lall & Sons (E.P) ltd.

PB 93- M/s. Sri Ganesh Sponge Iron (P) Ltd.

PB 94- M/s. Vimsa Balls Pvt. Ltd.

PB 95- M/s. Nidhi Auto Private Ltd.

PB 96- M/s. Monnet Ispat Ltd.

PB 97- M/s. S.D.M. Metalloys Ltd.

PB 98- M/s. Trident Structures.

PB 99- M/s. S.A. Iron & Alloys Ltd.

PB 100- M/s. Vailabh Steel Ltd.

PB 182 - 196 Assessee's written submissions dated 02-05-2012 made before Ld. CIT(A), Ghaziabad citing reasons for non-applicability of section 41 (1).

PB 199-256: Assessee's submissions before Ld, CIT(A), Ghaziabad dated 29-05-2012 furnishing the copies of invoices related to purchases made during the year under consideration on which addition was made by Ld. AO are as follows-

M/s. C. A. Poly tech (P) Ltd.

PB 202 Ledger Account in the books of Assessee.

PB 203-205 Invoices.

M/s. Climax Engineering Works (Bl

PB 206 Ledger Account in the books of assessee.

PB 207 Invoices.

M/s. Monnet Ispat & Energy Ltd.

PB 208 Ledger Account in the books of assessee.

PB 209-213 Invoices.

M/s. Pearey La. & Sons Limited.

PB 214 Ledger Account in the books of assessee.

PB 215 Invoices.

M/s. S.A. Iron & Alloys Ltd.

PB 216 Ledger Account in the books of assessee.

PB 217-226 Excise cum tax invoice.

M/s. S.D.M. Metalloys Ltd.

PB 227 Ledger Account in the books of assessee.

PB 228-235 Invoices.

M/s. Trident Structures (P) Ltd.

PB 236 Ledger Account in the books of assessee.

PB 237-238 Invoices.

25. On going through these evidences, we find that the assessee had genuine business transactions with all these parties which are corroborated from the copy of ledger accounts and several confirmations as well as invoices. In fact, out of sum of Rs.57,85,077/- outstanding amount of Rs.28,53,423/- pertained to purchases made during the year under consideration, therefore, to this extent, AO could not have drawn any inference of cessation of liability u/s 41(1) of the Act. Even, for the balance amount, we find that liability has been acknowledged by the assessee and duly shown in the balance sheet and since some of the creditors could not file confirmation before the AO, it cannot be held that there was a cessation of liability. Genuineness and creditworthiness does not come into play for application of section 41(1) of the Act. Assessee has submitted copies of purchase bills of each and every creditors showing their sales tax registration number, excise number, PLA number etc.

26. **Hon'ble Delhi High Court in case of CIT vs. Shri Vardhman Overseas Ltd. (2012) 69 DTR 379 (Del.)** has held that if the outstanding balance in the name of sundry creditors for more than 4 years has not been written back in the profit & loss account, the same cannot be taxed u/s 41(1) of the Act. **Hon'ble Supreme Court in case of CCIT vs. Kesaria Tea Co. Ltd. (2002) 254 ITR 434 (SC)** has laid down that resort to section 41(1) could arise only if the liability of the assessee has said to have ceased finally without having possibility of reviving it, which is not the case here. Accordingly, the order of the Id. CIT (A) deleting the said addition is upheld and the ground raised by the Revenue is dismissed.

27. Insofar as addition of Rs.84,19,500/- on account of unexplained cash deposits, it is seen that the assessee has deposited cash of sum aggregating to Rs.2,28,69,500/- in its bank accounts of Syndicate Bank and IDBI Bank. Since there was a withdrawal of Rs.1,44,50,000/-, the difference amount has been treated by the AO as deposit from unexplained sources. First of all, from the perusal of the impugned order and documents placed in the paper book, there was opening cash balance of Rs.51,29,537/- and the balance amount was stated to be realized from the debtors. The assessee has filed various evidences to substantiate its claim including the cash flow statement for the entire financial year and the reasons for withdrawal/deposit of cash. Id. CIT (A) has given following findings of facts while deleting the addition :-

(i) There was opening cash in hand to the tune of Rs.5129537/- as per audited balance sheet as at 31.3.08 & as per regular books of accounts maintained by the assessee.

(ii) The books accounts maintained by the assessee including cash book has been accepted as genuine by AO.

(iii) There was sufficient availability of cash as per regular books of accounts for depositing in bank accounts.

(iv) The AO has not brought on record any material which lead to conclusion about the nature of source from where assessee company derived the remaining cash and that the money withdrawn from bank as utilized for any other purpose.”

28. It is undisputed fact that opening cash in hand was available in the books of account. There is no reason to treat the cash deposit in the bank account from unexplained sources; once the cash book and regular books of accounts have been accepted by the AO and no adverse inference can be drawn if there are sufficient availability of cash in the books of account. Hence, cash deposit made in the bank account, the addition cannot be sustained. Accordingly, the order of the Id. CIT (A) on this issue is upheld and the ground raised by the Revenue is dismissed.

29. In the result, the appeal of the Revenue is dismissed, whereas the appeal of the assessee is partly allowed.

Order was pronounced in open court on 22nd day of February, 2022.

**Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Dated: 22.02.2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.