

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1802/PUN/2017
निर्धारण वर्ष / Assessment Year: 2014-15

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| Dhanraj Chhaganlal Shah, 1377, Bhawani Peth, Pune- 411042. PAN : AHOPS2401E | Vs. | DCIT, Circle-6, Pune. |
| Appellant | | Respondent |

आयकर अपील सं. / ITA No.2027/PUN/2017
निर्धारण वर्ष / Assessment Year: 2014-15

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| ACIT, Circle-6, Pune. | Vs. | Dhanraj Chhaganlal Shah, 1377, Bhawani Peth, Pune- 411042. PAN : AHOPS2401E |
| Appellant | | Respondent |

Assessee by : Shri Bharat Shah
Revenue by : Shri M. Jasnani

Date of hearing : 07.03.2022
Date of pronouncement : 23.03.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the cross-appeals filed by the assessee as well as by the Revenue directed against the order of Id. Commissioner of Income Tax (Appeals)- 4, Pune ['CIT(A)' for short] dated 09.05.2017 for the assessment year 2014-15.

2. Briefly, the facts of the case are that the assessee is an individual. The return of income for the assessment year 2014-15 was filed on 30.03.2015 declaring total income of Rs.37,80,103/-. Against the said return of income, the assessment was completed by the Dy. Commissioner of Income Tax, Circle-6, Pune ('the Assessing Officer') at total income of Rs.5,74,04,823/- vide order dated 26.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act'). While doing so, the Assessing Officer made addition of Rs.2,27,27,402/- on account of sundry creditors appearing in the books of accounts by holding that the notices issued u/s 133(6) of the Act to the parties were returned 'un-served' by the postal authorities, therefore, doubted the genuineness of these credits. The Assessing Officer also made addition of Rs.1,15,47,555/- on the ground that in respect of the following sundry creditors, there was no transaction with the sundry creditors during the year and opening & closing balances are remained the same for more than 3 years and the assessee had failed to prove the genuineness, creditworthiness and identity of the these parties :-

| | |
|----------------------|----------------|
| D. Chaganlal and Co. | Rs.58,12,475/- |
| Laxmy Poly Products | Rs.4,52,102/- |

| | |
|---------------------------------|------------------|
| Mat fab Polymers Ahemdabad | Rs.7,13,540/- |
| Mrunal Shah | Rs.4,25,000/- |
| Signet Overseas Ltd. | Rs.21,90,000/- |
| Tessitura Monti India Pvt. Ltd. | Rs.15,37,500/- |
| Maharathi Textiles | Rs.1,55,686/- |
| Pari Plast Industries | Rs.1,59,082/- |
| Shrishti Machinerics Pvt. Ltd. | Rs.1,02,170/- |
| Total | Rs.1,15,47,555/- |

3. The Assessing Officer also made addition of Rs.1,84,93,241/- being between the outstanding Provision for warranty for the assessment year 2012-13 and 2013-14 of Rs.51,52,198/- and Rs.1,33,41,043/- respectively by holding that the assessee is continuously making this provision without incurring any liability out of this provision.

4. Being aggrieved by the above additions, an appeal was preferred before the Id. CIT(A) who vide impugned order deleted the addition of Rs.2,27,27,402/- on account of sundry creditors by holding that the addition on account of fictitious sundry creditors cannot be made as unexplained expenditure invoking the provisions of section 69C of the Act and also taking note of the additional evidence submitted in the form of ledger extract of the following three parties :-

| | |
|-----------------------------|------------------|
| Ashapura Poly Mills Ltd. | Rs.2,05,54,253/- |
| Deshmukh Hi Tech Irrigation | Rs.48,319/- |
| Rex Polyextrusion Ltd. | Rs.21,24,830/- |
| Total | Rs.2,27,27,402/- |

The confirmations letter submitted from Rex Polyextrusion Ltd. etc. and also subsequent payments made. As regards the addition of Rs.1,15,47,555/-, the ld. CIT(A) confirmed the addition on account of sundry creditors u/s 41(1) of the Act by holding that there is a cessation of liability in respect of 9 parties whose details are given above. As regards to the addition of Rs.1,84,93,241/- being the Provisions for warranty, ld. CIT(A) had granted relief to the assessee.

5. Being aggrieved by the decision of the ld. CIT(A), which is against the assessee, the assessee is in appeal before us in ITA No.1802/PUN/2017 and the Revenue is in appeal before us in ITA No.2027/PUN/2017 aggrieved by the decision of the ld. CIT(A) deleting the additions made by the Assessing Officer on account of sundry creditors of Rs.2,27,27,402/- and Provision for warranty of Rs.1,84,93,241/-.

ITA No.1802/PUN/2017 - By Assessee :

6. Now, we shall take up the assessee's appeal in ITA No.1802/PUN/2017.

7. This appeal is filed by the assessee aggrieved by the action of the ld. CIT(A) in confirming the addition of Rs.1,15,47,555/- under the provisions of section 41(1) on account of cessation of liability.

It is submitted that the Assessing Officer ought not to have added the outstanding sundry creditors of Rs.1,15,47,555/- as unexplained credits invoking the provisions of section 68 of the Act only on the ground that the opening and closing balance remained the same. It is submitted that the Assessing Officer ought not to have made the addition as cash credit u/s 68 of the Act, inasmuch as, there was no fresh credits found to the account of the creditors. It is further submitted that this sundry creditors already offered to tax by writing back the same during the previous year relevant to the assessment year 2015-16.

8. On the other hand, ld. Sr. DR placing reliance on the order of the ld. CIT(A) submitted that the fictitious sundry creditors

outstanding for more than 3 years can always be added to the returned income invoking the provisions of section 41(1) of the Act.

9. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the taxability of the said sundry creditors outstanding for more than 3 years invoking the provisions of section 41(1) of the Act. The Assessing Officer made the addition of the same by invoking the provisions of section 68 of the Act. However, on appeal before the ld. CIT(A), the ld. CIT(A) held that the same are taxable under the provisions of section 41(1) of the Act. The very fact that the assessee itself had offered to tax the credits in the succeeding assessment year i.e. A.Y. 2015-16 goes to prove that the sundry creditors were fictitious which means that the purchases shown to have been made from these parties is either bogus or these sundry creditors may be fictitious which means, the assessee could have made payments in cash to the parties. Therefore, it is required to be examined whether the purchases are bogus or sundry creditors are fictitious. In the absence of finding on the very nature of sundry creditors appearing, it is impossible to decide as to under what provisions of the Act

these items can be brought to tax. Thus, the ld. CIT(A) as well as the Assessing Officer had failed to examine the issue in proper perspective and, therefore, we are of the considered opinion that it is appropriate to remand the matter to the file of the ld. CIT(A) to decide the issue afresh.

10. In the result, the appeal of the assessee in ITA No.1802/PUN/2017 stands partly allowed for statistical purposes.

ITA No.2027/PUN/2017 – By Revenue :

11. Now, we shall take up the Revenue's appeal in ITA No.2027/PUN/2017.

12. The Revenue has filed this present appeal challenging the findings of the ld. CIT(A) deleting the addition of Rs.2,27,27,402/- made u/s 69C of the Act as unexplained expenditure.

13. During the course of assessment proceedings, the assessee had failed to discharge the onus lying upon it by proving the genuineness, creditworthiness and identity of the following parties :-

| | |
|-----------------------------|------------------|
| Ashapura Poly Mills Ltd. | Rs.2,05,54,253/- |
| Deshmukh Hi Tech Irrigation | Rs.48,319/- |
| Rex Polyextrusion Ltd. | Rs.21,24,830/- |

| | |
|-------|------------------|
| Total | Rs.2,27,27,402/- |
|-------|------------------|

14. Even the notices issued by the Assessing Officer u/s 133(6) of the Act were returned un-served by the postal authorities. In these circumstances, the Assessing Officer drew adverse inference that the parties are not genuine and, accordingly, made an addition of Rs.2,27,27,402/-.

15. During the course of proceedings before the Id. CIT(A), in an attempt to establish the genuineness of these transactions, the assessee had filed ledger extract of those parties. Considering the same, the Id. CIT(A) held that the provisions of section 69C are not applicable.

16. Being aggrieved, the Revenue is in appeal contending that mere entries in the books of account of the assessee does not establish as to the genuineness of the creditors appearing in the books of accounts and the assessee had failed to discharge the onus lying upon him to prove the genuineness, creditworthiness and identity of the parties. Therefore, the Id. CIT(A) was not justified in granting the relief to the assessee.

17. On the other hand, the ld. AR contended that the onus lying upon the assessee u/s 68 of the Act cannot be applicable in respect of the sundry creditors for supply. Thus, it is contended that the ld. CIT(A) has rightly deleted the addition of Rs.2,27,27,402/- and order of the ld. CIT(A) be sustained.

18. We heard the rival submissions and perused the material on record. The issue in the present ground no.1 relates to the addition of outstanding sundry credits. The Assessing Officer made addition on account of sundry credits appearing in the books of accounts of Rs.2,27,27,402/- for failure of the assessee to discharge its onus proving the genuineness, creditworthiness and identity of the sundry creditors. Undisputedly, the sundry creditors are on account of supplies made by them. It is now equally settled law that even in respect of sundry creditors for supplies, the provisions of section 68 applies in full force. Therefore, admittedly, the assessee had failed to prove to discharge the onus casts upon him in terms of provisions of section 68 of the Act. The ld. CIT(A) had merely granted relief based on the ledger extract of the parties appearing in the books of accounts of the assessee, which does not establish ingredients

required to be satisfied u/s 68 of the Act. Therefore, we hold that the ld. CIT(A) had clearly fell in error in deleting the addition of Rs.2,27,27,402/- without satisfying himself as to the genuineness, creditworthiness and identity of these parties. Even before us, no evidence was filed proving the genuineness, creditworthiness and identity of these parties. In these circumstances, we have no option but confirm the addition of Rs.2,27,27,402/-. Accordingly, we reverse the order of the ld. CIT(A) and restore the assessment order on this issue. Thus, the ground no.1 raised by the Revenue stands allowed.

19. The ground no.2 challenges the decision of the ld. CIT(A) deleting the addition made on account of Provisions for warranty of expenses.

20. The Assessing Officer merely added the outstanding Provision for warranty expenditure only on the ground that the assessee has not been incurring any expenditure out of the Provision for warranty expenditure. However, the ld. CIT(A) considering the submissions made by the assessee before him that the excess Provision for

warranty was written back in the succeeding years and warranty expenditure incurred was reduced from the Provision granted relief.

21. Being aggrieved, the Revenue is in appeal before us.

22. The ld. Sr. DR submitted that the ld. CIT(A) without considering the decision of the Hon'ble Supreme Court in the case of Rotork Controls India (P.) Ltd. vs. CIT, 314 ITR 62 (SC) has allowed the Provision for warranty as a deduction.

23. On the other hand, ld. AR submitted that Provision for warranty was not debited from the Profit & Loss Account and, therefore, no claim for warranty expenditure was made. When no claim for allowance for Provision for warranty was made, the question of addition does not arise.

24. We heard the rival submissions and perused the material on record. The issue in the present ground of appeal relates to the allowability of Provision for warranty expenditure. In the present case, the Assessing Officer had merely added the outstanding balance of Provision for warranty expenditure and on appeal before the ld. CIT(A), the same came to be deleted by considering the submissions of the assessee that the actual expenditure incurred on

warranty was reduced from the Provision for warranty and excess Provision was written back offered to tax in the succeeding assessment year. There is no dispute in principle as to the allowability of the Provision for warranty expenditure, but the Hon'ble Supreme Court in the case of Rotork Controls India (P.) Ltd. (supra) has laid down certain parameters under which the Provision for warranty can be allowed. One of the parameters is that the Provision for warranty can be allowed based on the historical data. In the present case, the lower authorities had failed to take the cognizance of the law laid down by the Hon'ble Supreme Court in the case of Rotork Controls India (P.) Ltd. (supra) and to consider the issue in proper perspective. In these circumstances, we remand the matter back to the file of the ld. CIT(A) to decide the issue of allowability of Provision for warranty in the light of the decision of the Hon'ble Supreme Court in the case of Rotork Controls India (P.) Ltd. (supra). Thus, this ground is partly allowed for statistical purposes.

25. In the result, the appeal of the Revenue in ITA No.2027/PUN/2017 stands partly allowed for statistical purposes.

26. Resultantly, the cross-appeals filed by the assessee as well as by the Revenue are partly allowed for statistical purposes.

Order pronounced on this 23rd day of March, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 23rd March, 2022.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-4, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.