

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" NEW DELHI**

**BEFORE SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
AND SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.1549/Del/2017

निर्धारणवर्ष/Assessment Year: 2010-11

Jyoti Oil Industries (P) Ltd., 40, Transport Nagar, New Rohtak Road, Punjabi Bagh, New Delhi.	बनाम Vs.	ITO Ward 13(4) New Delhi.
PAN No. AAACJ0424G		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri KVSR Krishna, Adv.
राजस्वकीओरसे /Revenue by	Shri Sanjay Kumar, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	21.04.2022
उद्घोषणाकीतारीख/Pronouncement on	05.05.2022

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-5, Delhi dated 16.11.2016 for the AY 2010-11. All the grounds in grounds of appeal of the assessee are directed against the order of the Ld. CIT(A) in sustaining the addition of Rs.36,25,000/- made u/s 68 of the Act in respect of cash deposits into bank account of the assessee.

2. Briefly the facts are that the Assessing Officer while completing the assessment u/s 143(3) on 18.03.2015 noticed that the assessee made cash deposits of Rs.36,25,000/- in bank account maintained with HDFC

Bank, Punjabi Bagh Branch, Delhi. Assessee was asked to file details of these entries along with documentary evidences. Assessee in the course of assessment proceedings submitted that the company was closed since 1997-98 due to incurring of heavy losses as there was slump in vanaspati oil market. It was submitted that assessee became defaulter for term loans and working capital loans taken from Haryana Finance Corporation (HFC). It was further submitted that Oriental Bank of Commerce had filed suit in Debt Recovery Tribunal (DRT), Jaipur. It was further submitted that in the year 2004-05 the company received closure notice from HUDA and its building was auctioned. During 2008-09 HFC & HSIDC pressed for payment and a one-time settlement was agreed as per which the assessee had to repay about 2 crores. It was submitted that in the process the assessee sold scrap/machinery etc. of the unit and these proceeds were deposited in the bank account and they were utilized for repayment of loans.

3. Not convinced with the submissions of the assessee the Assessing Officer treated the cash deposits to the extent of Rs.36,25,000/- as cash credit u/s 68 in the absence of any evidence furnished by the assessee regarding these transactions. Apart from that the Assessing Officer also considered Rs.19,20,000/- as cash credit which was received from sister concern Balaji Carriers.

4. On appeal the Ld. CIT(A) deleted the addition of Rs.19,20,000/- made u/s 68 holding that the assessee has proved the identity, creditworthiness of the transaction which was made with its sister concern Balaji Carriers. However, coming to the cash deposits of Rs.36,25,000/- from out of sale proceeds of scrap sales, the Ld. CIT(A) sustained the addition observing that the assessee failed to produce the parties before the Assessing Officer in the remand proceedings. Ld. CIT(A) also observed that assessee not able to produce complete vouchers in respect of all cash credits but only to the extent of Rs.14,34,687/- have been produced.

5. Before us the Ld. Counsel for the assessee reiterated the submissions made before the lower authorities stating that the company has closed since 1997-98 as heavy losses were incurred due to slump in the oil market. The company had gone into liquidation and had become defaulter in respect of term loan taken from Haryana Financial Corporation (HFC) and HSIDC and working capital loans taken from its banker M/s OBC. It is stated that the bank had filed a suit in DRP, Jaipur and in the year 2004-05, the company received closure notice from HUDA and the building was auctioned. The company approached BIFR for rehabilitation but could not succeed. In FY 2008-09 due to the pressure of the financial institution HFC and HSIDC a one-time settlement was done with them whereby the company has to repay about Rs.2 crore. The then Directors of the company arranged funds in the form of sale of

scrap/machinery of the unit from their own drawings/property etc., collection from debtors and funds from relative.

6. The Ld. Counsel for the assessee further referring to page 14 of the Paper Book which is the remand report of the Assessing Officer submitted that the Assessing Officer has examined all the vouchers in respect of scrap sales and given a finding that there are no discrepancies noted. Therefore, there are no adverse comments from the Assessing Officer as the Assessing Officer verified all the original vouchers and found no discrepancy. The Ld. Counsel submits that the finding of the Ld. CIT(A) that the assets could not be disposed off without prior approval of HFC is misplaced since what was sold by the assessee was only scrap and not plant and machinery. The ld. Counsel further submits that the assessee company is on the verge of total shut down. There is not even any possibility of any income being generated by the assessee. Assessee depositing cash collected from sale of scrap into bank account in respect of a company which is going to be shut down or closed down for payment of dues to the bankers itself shows the *bona fide* transactions. The Ld. Counsel further submits that in spite of request of the assessee that the vendors can be summoned u/s 133 of the Act for verification no efforts were made to carry out any verification by the Assessing Officer. Therefore, it is submitted that having discharged the primary onus of furnishing original invoices in respect of scrap sales and more importantly that these were all petty scrap dealers for small amount which has been

deposited into bank account and since there is no other income from the operation of the business of the assessee the explanation offered by the assessee should be accepted. Reliance was placed on the following decisions in support of the contentions raised:

1. *CIT vs. P. Mohanakala 291 ITR 279 (SC);*
2. *MOD Creations Pvt. Ltd. vs. ITO 354 ITR 282 (Del.);*
3. *AGM Protection Devices Ltd. vs. DCIT 324 ITR 334 (Del.).*

7. On the other hand, the Ld. DR strongly supported the orders of the authorities below.

8. Heard rival submissions perused the orders of the authorities below and the case laws placed before us. Before the Assessing Officer the assessee contended that the company became sick and could not pay the loans to the creditors, bankers and there was one-time settlement offered to the assessee and the business was completely closed down and in fact there was an auction notice issued by Haryana Financial Corporation and the assessee in order to pay one-time settlement and the other dues sold scrap and the sale proceeds were deposited into bank account and the loans were discharged by utilizing the sale proceeds. However, the Assessing Officer in the absence of any further details treated the cash deposits of Rs.36,25,000/- as unexplained cash credits u/s 68 of the Act. Before the Ld. CIT(A) it appears that the assessee has furnished the evidences and the Ld. CIT(A) called for the remand report and in the remand report the Assessing Officer stated as under: -

“Regarding the claim of the assessee for sale of scrap the AR of the assessee was required to produce the persons to whom it has sold scrap. In this regard he has submitted as under:

“As regards producing the scrap dealers to whom scrap was sold in 2009-10 as about 8-9 years have passed. It is quite difficult to trace the person dealt with and so the department may call them as per the provisions of Section 133 of the I.T. Act, 1961.

As per your directions the AR was asked to produce the original vouchers for the sale of scrap. Originals were produced by the AR of the assessee which were verified and no discrepancy was noted.”

9. However, the Ld. CIT(A) sustained the addition observing that the assessee could not produce the vendors before the Assessing Officer. There is no complete address provided and all the transactions are less than 20,000/- and, therefore, they are suspicious. However, the remand report submitted by the Assessing Officer indicates that all the original vouchers were verified and there is no discrepancy found in the vouchers furnished by the assessee. It is noticed from the remand report that the assessee in fact requested the Assessing Officer to issue notice u/s 133 to the vendors as it could not produce the vendors as the transaction happened in 2009-10 around 8-9 years passed and it is quite difficult to trace the persons. It is not known as to how the Ld. CIT(A) came to the conclusion that only to the extent of Rs.14,34,687/- the vouchers were furnished when the Assessing Officer clearly stated in the remand proceedings that all the original vouchers were verified by him and stated that no discrepancy is noted. It is only an assumption that since the amounts are less than Rs.20,000/- the transactions are suspicious. As could be noticed from para 4.4.1 of the Ld. CIT(Appeals) order the

transactions, scrap sales made to Gurucharan Singh on various dates are to the extent of Rs.3,02,250/- only which are all less than Rs.20,000/- but the rest of the transaction appears to have made above Rs.20,000/-. Therefore, simply because the transactions are less than Rs.20,000/- they cannot be treated as suspicious transactions. The assessee has provided all original invoices and there is no dispute that the assessee company became sick the business was shut down long back in the year 1997-98 and there was demolition order by the Haryana Financial Corporation in the month of June, 2009 there was a demolition order from Estate Office, Sonapat in the month of July, 2009. Assessee also approached bankers/financial institutions for one-time settlement of loans in the month of December, 2007 and May, 2008. Page 3 of the Paper Book also suggests that Haryana Financial Corporation gave an advertisement in the newspaper for sale of sick/closed units and assessee company also appears at Sl. No. 14 of the said advertisement. All these goes to show the assessee became financially weak due to heavy losses in past years, business operations were shut and was trying to wriggle out of the financial crunch by settling the dues to bankers and other creditors. The assessee sold some scrap generated in its factory and the sale proceeds were utilized for clearing the loans. The assessee has given explanation regarding the cash deposits made into bank account are out of sale proceeds from scrap generated.

10. The Hon'ble Supreme Court in the case of CIT vs. P. Mohanakala (supra) held as under: -

“The question is what is the true nature and scope of section 68 of the Act? When and in what circumstances would section 68 of the Act come into play? A bare reading of section 68 suggests that there has to be credit of amounts in the books maintained by an assessee; such credit has to be of a sum during the previous year; and the assessee offer no explanation about the nature and source of such credit found in the books; or the explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory, it is only then the sum so credited may be charged to income tax as the income of the assessee of that previous year. The expression “the assessee offer no explanation” means where the assessee offer no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. It is true the opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion”.

11. As could be seen from the above as held by the Hon'ble Supreme Court, in order to attract the scope of section 68 of the Act the assessee offers no explanation about the nature and source of such credit found in the books or the explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory. It is only then the sum so credited in the books may be charged to Income tax as income of the assessee. As held by the Hon'ble Supreme Court the expression “the assessee offered no explanation” means where the assessee offers no proper reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. Here in the case of the assessee, the

assessee has given an explanation that the credit entries in the bank account are relating to sale of scrap and the original vouchers were also furnished before the Assessing Officer in the remand proceedings. On examination of all the original vouchers the Assessing Officer could not point out any discrepancy in the vouchers. Therefore, the assessee has discharged its initial onus and there was no further enquiry by the Assessing Officer in the remand proceedings though requested by the assessee to summon the vendors. Therefore, taking the totality of facts and circumstances into consideration, we hold that the cash deposits of Rs.36,25,000/- made into bank account by the assessee are nothing but the sale proceeds of scrap sales and the Assessing Officer should not have treated such scrap sales as unexplained cash credits u/s 68 of the Act. Thus, we direct the Assessing Officer to delete the addition of Rs.36,25,000/- made u/s 68 of the Act and re-compute the income of the assessee accordingly. Grounds of appeal of the Assessee are allowed.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 05/05/2022

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 05/05/2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi