



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.446/LKW/2020
Assessment Year: 2016-17

The Asstt. CIT Range 1 Lucknow	v.	Shri Yogesh Mulwani 36, Cantonment Road Lucknow
		TAN/PAN:AHNPM4669B
(Appellant)		(Respondent)

Appellant by:	Shri Harish Gidwani, D.R.		
Respondent by:	Shri K.R. Rastogi, C.A.		
Date of hearing:	19	05	2022
Date of pronouncement:	01	06	2022

O R D E R

PER A.D. JAIN, V.P.:

This is Revenue's appeal against the order of the Id. CIT (A)-1, Lucknow, dated 23.9.2020 for the Assessment Year 2016-17, raising the following grounds of appeal:

- 1. The Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs.1,61,64,481/- made by the AO under the head "Sundry Creditors" as the assessee failed to substantiate the genuineness and creditworthiness of the creditors.*
- 2. The Ld. CIT(A) has erred in law and on facts by allowing relief of Rs.40,064/- under various head of expenses as the assessee himself offered the same to taxation during the assessment proceedings.*
2. There is a delay of 23 days in filing of the appeal. The Revenue has filed an application dated 22.12.2020 for

condonation of delay, stating therein that the appellate order dated 23.9.2020, under consideration, was received in the office of the PCIT-1, Lucknow on 1.10.2020 only; that however, there is no limitation for filing the appeal/Miscellaneous Application in view of the decision of the Hon'ble Supreme Court, vide order dated 23.3.2020 in Writ Petition (Civil) No.03/2020 owing to the situation arising on account of Covid-19 Pandemic; and that therefore, the delay in filing of the Miscellaneous Application may be condoned and the Revenue may be allowed to argue the case on merits. In view of the above, we find that there was sufficient cause for delay in filing of the appeal. Accordingly, we condone the delay and admit the appeal for hearing.

3. Apropos addition of Rs.1,61,64,481/- under the head 'Sundry Creditors', the Id. CIT(A) deleted the addition made by the Assessing Officer, observing as under:

"4.4 I have considered the submission of the appellant, facts mentioned in the assessment order and Remand Report and rejoinder submitted by the appellant The AO added the purchases made from these six persons (Sundry Creditors)

Sr. No.	Name of Supplier	Amount of Purchases made in A.Y 2015-16	Amount of purchases made in A.Y 2016-17	Amount of purchases made in A. Y 2017-18
1	M/s Kiran Sales Corporation	15,78,181	91,88,135	63,99,575
2	M/s N. M Gopani Opticians Pvt. Ltd	10,01,191	23,94,404	3,63,956.40
3	M/s GKB RX Lenses Pvt. Ltd	46,57,161	44,58,196	48,16,892.63

4	M/s Stylrite Optical Industries	56,202	1,23,746	-
5	M/s SSD Optics		3,15,196	1,55,326
6	M/s Optics Trade	1,39,353	12,88,041	29,17,939
	TOTAL(Rs)	74,32,088	17,76,771	1,46,53,689.03

4.5 From the perusal of the assessment order and Remand Report, it is evident that four (Sl. No 1 to 4 in the above table) out of above six persons did confirm the transactions with the appellant in response to notices u/s 133(6) issued to them. The AO held that since bank statements were not submitted by them hence disallowed the purchases made from them by the appellant. However, it is observed that bank statements were provided by two of them. In any case, non-submission of bank account by these persons cannot be a reason for making addition especially considering that all the purchases have been made by the appellant from them through banking channels and the appellant did produce his bank statements wherein all these purchase were reflected. The appellant further submitted VAT return wherein all these purchases have been accepted by the VAT Authority which is an independent quasi-judicial authority. VAT input credits were also allowed to the appellant. All the above four persons had submitted ledger accounts of the appellant with percentage of VAT charged, details of Tax Invoice and payments made by the appellant which were verifiable from the bank statements of the appellant. The appellant had also submitted copy of Form 38 for permission for movement of goods and Form C for EX-UP Purchases. Thus, in my opinion, the action of the AO in rejecting the confirmations filed u/s 133(6) by the above four parties and adding the purchases made by the appellant from them is not justified. Hence, the addition of Rs.1,61,64,481/-

(purchases made from four persons at Sl.Nos. 1 to 4 in the above table) is deleted and relief is allowed to the appellant.”

4. Before us, the ld. D.R. has submitted that the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs.1,61,64,481/- made by the Assessing Officer under the head "Sundry Creditors", as the assessee failed to prove the identity of the creditor and genuineness and creditworthiness of the transaction. He submitted that accordingly, the order of the ld. CIT(A) on this issue be cancelled and that of the Assessing Officer be restored.

5. On the other hand, the ld. Counsel for the assessee has submitted that in respect of the credits mentioned at Sl. Nos.1 to 4, totaling to Rs.1,61,64,481/-, the creditors duly complied with the notices issued by the Assessing Officer under section 133(6) of the I. T. Act and replies were received from the creditors, acknowledging the purchases made by the Assessee and also submitted the copies of their Ledger Accounts, wherein the details of purchases made by the them, i.e. the date, Invoice number and the amount received by these creditors from the assessee against the sales made by them were duly recorded in their Ledger Accounts and all the payments were received through Banking Channel from the Bank Account of the Assessee with Indian Overseas Bank, Nari Shiksha Niketan Branch, Lucknow, Account No. 146802300; that vide reply dated 19.12.2018, in response to show cause notice dated 17.12.18, the assessee had produced before the Assessing Officer the Books of Account, purchase bills/invoices with Form 38 issued

by the VAT Authorities for movement of Ex-UP Purchases and Form C issued by the VAT Authorities for Central Sales Tax(CST) Purchases, Annual VAT Return in form No. 52; that the copies of bank statements, relating to three creditors namely M/s Kiran Sales Corporation, M/s GKB RX Lenses Pvt. Ltd. and M/s Styirite Optical Industries were also filed before the Assessing Officer; that the provisions of section 68 of the Act are not applicable where the amount in question represents purchases made on credit and the outstanding credits balance against purchases, as the same has been paid through account payee cheques on close of the year, which are verifiable from the bank statements submitted by assessee; that the provisions of section 68 can only be invoked where any sum is found credited in the books of an Assessee, maintained for any previous year, whereas it is not the case of the assessee that it has taken any Loan or Deposit from the said creditors and not even the amount of purchases is found credited in the books of the assessee; that on the contrary, the assessee had purchased goods and the amount of purchases is a debit in the books of the Assessee and thus, the provisions of section 68 are not applicable for the purpose of allowability and disallowability of any deduction, as section 68, which is a deeming provision, is applicable only when any sum is found credited in the books of the assessee and the assessee is not able to explain the nature and source of such credit. The ld. Counsel for the assessee has also placed reliance on the following case laws:

1. 'CIT vs. Pancham Dass Jain', 205 CTR 444 (Alld.)
2. 'CIT vs. Jagdish Prasad Tewari', 220 Taxman 141 (Alld.)

3. 'CIT vs. Swastik Roadlines (P.) Ltd.', 36 taxmann.com 441 (Agra Trib.)
4. 'Smt. Sudha Loyalka vs. ITO', 97 taxmann.com 303 (Delhi Trib.)
5. 'PCIT vs. Rishabhdev Technocable Ltd.', 115 taxmann.com 333 (Bombay)

6. We have heard the parties and have gone through the material placed on record. We find that in respect of the credits mentioned at Sl. No.1 to 4 of the Sundry Creditors, as reproduced hereinabove at paragraph No.3, totaling to Rs.1,61,64,481/-, the creditors had duly complied with the notices issued by the Assessing Officer under section 133(6) of the I. T. Act and replies were furnished, acknowledging the purchases made by them. They also submitted the copies of their Ledger Accounts, wherein the details of purchases made by the them, i.e., the date, Invoice number and the amount received by them from the assessee against the sales made by them were duly recorded in their Ledger Accounts and all the payments were received through Banking Channel.

7. In 'CIT vs. Pancham Dass Jain' (supra), the Hon'ble Jurisdictional Allahabad High Court has held that the provisions of section 68 of the I.T. Act are not attracted to the amounts representing purchases made on credit.

8. In 'CIT vs. Jagdish Prasad Tewari' (supra), the Hon'ble Jurisdictional Allahabad High Court has held that where the assessee had made payments to the creditors through cheques, merely because some creditors had not confirmed the receipts,

no addition as cash credit could be made to the assessee's income.

9. In view of the above facts and circumstances, we find that the ld. CIT(A) has rightly deleted the addition made by the Assessing Officer under section 68 of the I.T. Act. Accordingly, Ground no.1 raised by the Department carries no merit. It is rejected.

10. Apropos Ground no.2, relating to deletion of disallowance of Rs.40,064/-, we find that the Assessing Officer had made ad-hoc disallowances in respect of expenses claimed by the assessee under the heads "Computer Upkeep Expenses", Grinding Expenses", "Motor Car Repairs & Maintenance Expenses", "Shop Expenses", "Staff Welfare Expenses" and "Travelling Expenses", without pointing out any specific defect in the books of account of the assessee. The Assessing Officer also did not point out any specific bill to be not verifiable. However, the ld. CIT(A) has restricted the disallowance to Rs.40,000/- as against the total disallowance of Rs.80,064/-, giving a relief of Rs.40,064/-, observing that the action of the Assessing Officer is not justified, as he disallowed the expenses without pointing out any specific defect in the books of account of the assessee and any specific bill, which is not verifiable; that it is also a fact that most of the expenses have been incurred entirely in cash and thus, 100% verification is not possible.

11. It is trite that the Assessing Officer cannot, under law, make such unsustainable ad-hoc disallowances in the absence of any defects in the assessee's books. At the same time, the expenses need to be verified. However, since the assessee has

made cash payment for a majority of the expenses claimed, complete verification is out of the question. In this situation, we find that the ld. CIT(A) has rightly restricted the disallowance made by the Assessing Officer on the expenses claimed by the assessee under various heads. Accordingly, Ground no.2 raised by the Department is also rejected.

12. In the result, the appeal of the Revenue stands dismissed.

Order pronounced in the open Court on 01/06/2022.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:01/06/2022

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar