

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.741/Del/2020

निर्धारणवर्ष/Assessment Year: 2016-17

Dwarikadhish Spinners Ltd., 1, Kouli Majra, Lalru, Patiala, Punjab.	बनाम Vs.	ACIT Circle 7(2) New Delhi.
PAN No. AABCD0202D		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	None
राजस्वकीओरसे /Revenue by	Shri S.L. Anuragi, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	13.07.2022
उद्घोषणाकीतारीख/Pronouncement on	13.07.2022

आदेश /O R D E R

PER SHAMIM YAHYA, A.M.

The appeal by the assessee is depicted against the order of the Ld. CIT (Appeals)-3, New Delhi dated 14.11.2019 and pertains to AY 2016-17. The issue raised is that the Ld. CIT(A) erred in confirming the addition of Rs.10,35,332/- on account of unconfirmed sundry creditors. The assessee has urged that proper opportunity was not given in this regard.

2. Brief facts of the case are that the assessee company is in the business of Cotton Yarn which are sold in domestic market and International market. During the course of assessment proceedings, the

Assessing Officer asked the assessee to furnish the list of sundry creditors. The assessee duly furnished the same. Thereafter, the Assessing Officer made the impugned addition by observing as under by reference to his notice in this regard:

- (i) "Furnish the details of transaction with M/s Dwarikadhish Spinners Limited during the FY 2015-16 along with necessary supporting documents.*
- (ii) Furnish confirmed copy of account for AY 2016-17 and 2017-18 and*
- (iii) Furnish the PAN number.*

5.1 In response of the notice u/s 133(6) dated 29.11.2016, the notice in the name of (i) M/s SIL Autofab Ltd. and (ii) M/s Hari Kishan Shiv Rattan has been returned undelivered by the post authorities.

5.2 The outstanding demand is in respect of (i) M/s SIL Autofab Limited and (ii) M/s Hari Kishan Shiv Rattan is Rs.6,70,010/- and Rs.3,65,322/- as on 31.03.2016. It is also important to mention that the amount is outstanding for the received credits during the financial year 2015-16. Therefore, the total credit amount of Rs.10,35,332/- has not been verified."

3. Upon assessee's appeal, the Ld. CIT(A) though reproduced the submissions of the assessee but held that since notice u/s 133(6) have returned the addition was liable to be made. Against this order the assessee has filed the appeal before the ITAT.

4. We have heard the Ld. DR and perused the records.
5. Upon careful consideration, we note that the addition has solely been made by the Assessing Officer by holding that notice u/s 133(6) was issued to the concerned creditors and no response was received. Just issuing one notice u/s 133(6) and non-receipt of response thereof by no strategy of imagination can be said to point out that said sundry creditor is not at all existing. Full details of the party and the transactions were before the Assessing Officer. He did not make proper enquiry nor did he specify whether the addition was being made u/s 41(1) or section 68 of the Act. This aspect was duly raised before the Ld. CIT(A). But the Ld. CIT(A) chooses to ignore this aspect. In our considered opinion in the interest of justice, the issue needs to be sent back to the file of the Assessing Officer. The Assessing Officer shall make due and proper enquiry and, thereafter, pass an order as per law. Needless to add, the assessee should be granted adequate opportunity of being heard.
6. In the result, the appeal filed by the assessee is termed as allowed for statistical purpose.

Order pronounced in the open court on 13/07/2022

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 13.07.2022

**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