

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'DB' BENCH AT KOLKATA**

[Virtual Court]

Before

SRI RAJPAL YADAV, VICE PRESIDENT

&

SRI MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. No.: 295/Pat/2018

Assessment Year: 2014-15

M/s. Shashi Galvanising (P) Ltd.....Appellant
[PAN: AAICS 5884 K]

Vs.

ITO, Ward-2(2), Patna.....Respondent

I.T.A. No.: 307/Pat/2018

Assessment Year: 2014-15

ITO, Ward-2(2), Patna.....Appellant

Vs.

M/s. Shashi Galvanising (P) Ltd.....Respondent
[PAN: AAICS 5884 K]

Appearances by:

Sh. A.K. Rastogi, Sr. Adv. &

Sh. Rakesh Kumar, Adv., appeared on behalf of the Assessee.

Sh. Pranab Kumar Koley, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : August 29th, 2022

Date of pronouncing the order : August 31st, 2022

ORDER

Per Manish Borad, Accountant Member:

The captioned cross appeals pertaining to the Assessment Year (in short "AY") 2014-15 is directed against the common order

passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals)-1, Patna [in short Id. "CIT(A)"] dated 28.09.2018 arising out of the Assessment Order framed u/s 144 of the Act dated 26.12.2016.

2. The assessee is in appeal before this Tribunal raising the following grounds:

"1. For that the Ld. CIT(A) has erred in confirming addition of Rs. 1,25,14,056/-made on account of a trade party namely Kushwaha Engineering.

2. For that the Ld. CIT(A) has erred in holding that the bank statement itself will not establish the genuineness of the trade party namely Sundry Creditors as payments to the said party have been made by the appellant in various years.

3. For that the Ld. CIT(A) has erred in holding that the appellant could have furnished the identity, credit worthiness and genuineness of the trade party.

4. For that the Ld. CIT(A) has erred in confirming the addition by holding that the onus u/s 68 has not been discharged by the appellant.

5. For that the Ld. CIT(A) has failed to appreciate that appellant has filed confirmation from the said trade party with whom the appellant has running account and has also submitted that the bank statement which shows repayments to the said party through RTGS.

6. For that in case of any doubt the Ld. CIT(A) could have initiated enquiry either on his own or through Assessing Officer. However, without conducting any enquiry whatsoever the addition has been confirmed merely on flimsy ground that the appellant has not discharged its onus.

7. For that the Ld. CIT(A) has failed to appreciate that by filing confirmation from trade party and producing the Bank statement the appellant has discharged its onus u/s 68.

8. For that the sustenance of addition of Rs. 1,25,14,056/- is wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.

9. For that the whole order is bad in fact and law of the case and is fit to be modified.

10. For that other grounds, if any, shall be urged at the time of hearing of appeal.”

3. The Revenue is in appeal before this Tribunal raising the following grounds:

“(i) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in overlooking the provisions of Rule 46A of the Income Tax Rule, 1962. It is an admitted fact that no submission was made before the AO on this issue. The AO should have been given an opportunity to go over this material as this was fresh evidence.

(ii) Any other grounds that may be urged at the time of hearing.”

4. First we take up the Revenue's appeal in I.T.A. No. 307/Pat/2018.

5. Admittedly the tax effect in this revenue appeal, is less than Rs.50,00,000/-. In Circular No. 17/2019, dated 08/08/2019 vide F. No. 279/ Misc. 142/2007-ITJ(Pt.), the CBDT has modified Circular No. 3 of 2018 dated 11/07/2018. Further, the CBDT in its circular F. No. 279/Misc./M-93/2018-ITJ, dated 20/08/2019, has clarified that the revised monetary limits, so mentioned in Circular No. 17/2019 is applicable to all pending appeals. As per these circulars all the revenue appeals filed before the ITAT, having tax effect of less than Rs.50,00,000/- have to be treated as withdrawn.

6. The Ahmedabad Bench of the ITAT in the case of *ITO vs. Dinesh Madhavlal Patel* in ITA No. 1398/Ahd/2004, Assessment

Year 1998-99, order dated 14/08/2019, while disposing off the appeal along with 627 others appeals, held as follows:-

“5. Having considered the rival submissions and having perused the material on record, we do not have slightest of hesitation in holding that the concession extended by the CBDT not only applies to the appeals to be filed in future but it is also equally applicable to the appeals pending for disposal as on now. Our line of reasoning is this. The circular dated 8th August 2019 is not a standalone circular. It is to be read in conjunction with the CBDT circular no 3 of 2018 (and subsequent amendment thereto), and all it does is to replace paragraph nos. 3 and 5 of the said circular. This is evident from the following extracts from the circular dated 8th August 2019:

2. As a step towards further management of litigation. It has been decided by the Board that monetary limits for filing of appeals in income-tax cases be enhanced further through amendment in Para 3 of the Circular mentioned above and accordingly. The table for monetary limits specified in Para 3 of the Circular shall read as follows:

S.No.	Appeals/SLPs in Income-tax matters	Monetary Limit (Rs.)
1	Before Appellate Tribunal	50,00,000
2	Before High Court	1,00,00,000
3	Before Supreme Court	2,00,00,000

3. Further, with a view to provide parity in filing of appeals in scenarios where separate order is passed by higher appellate authorities for each assessment year vis-a-vis where composite order for more than one assessment years is passed. para 5 of the circular is substituted by the following para:

***“5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3.*”**

Further, even in the case of composite order of any High Court or appellate authority which involves more than one assessment year and common issues in more than one assessment year no appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In case where a composite order/ judgement involves more than one assessee, each assessee shall be dealt with separately”

4. The said modifications shall come into effect from the date of issue of this Circular.

6. Clearly, all other portions of the circular no. 3 of 2018 (supra) have remained intact. The portion which has remained intact includes paragraph 13 of the aforesaid circular which is as follows:

13. This Circular will apply to SLPs/ appeals/ cross objections/references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/ appeals/ cross objections/references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed.

7. In view of the above discussions, we hereby hold that the relaxation in monetary limits for departmental appeals, vide CBDT circular dated 8th August 2019 (supra) shall be applicable to the pending appeals in addition to the appeals to be filed henceforth.

8. Learned Commissioner (DR) then submits liberty may kindly be given to point out, upon necessary further verifications, and to seek recall the dismissal of appeals and restoration of the appeals in the cases (i) in which it can be demonstrated that the appeals are covered by the exceptions, and (ii) which are inadvertently included in this bunch of appeals, wherein the tax effect, in terms of the CBDT circular (supra), exceeds Rs 50,00,000. None opposes this prayer; we accept the same. We make it clear that the appellants shall be at liberty to point out the cases which are wrongly included in the appeals so summarily dismissed, either owing to wrong computation of tax effect or owing to such cases being covered by the permissible exceptions- or for any other reason, and we will take appropriate remedial steps in this regard.

9. In the light of the above discussions, all the appeals stand dismissed as withdrawn. As the appeals filed by the Revenue are found to be non-maintainable and as all the related cross-objections of the assessee arise only as a result of those appeals and merely support the order of the CIT(A), the cross objections filed by the assessee are also dismissed as infructuous. Ordered, accordingly.”

7. Respectfully following the same and while giving liberty to the parties as per Para 8 of the order of the Ahmedabad Bench of the ITAT (supra), we dismiss this appeal of the revenue as withdrawn.

8. In the result, the appeal of the revenue is dismissed.

9. Now, we take up the assessee's appeal in I.T.A. No. 295/Pat/2018.

10. On perusal of the grounds, the sole substantive issue pertains to addition of Rs. 1,25,14,056/- made on account of unexplained sundry creditors.

11. Brief facts relating to the issue are that the assessee e-filed its return on 25.07.2015 declaring total income of Rs. 4,85,770/-. After the case being selected for scrutiny, and notices u/s 143(2) & 142(1) of the Act served upon the assessee, assessment proceedings were carried out. The assessee did not comply to the notices and, therefore, ld. AO proceeded to frame an *ex-parte* assessment. Ld. AO observed that in the balance sheet sundry creditors outstanding for less than one year are amounting to Rs. 1,25,14,056/-. Further, ld. AO noticed that in the immediately preceding year sundry creditors were amounting to Rs. NIL. Since the purchases during the year were of Rs. 1,29,79,795/-, ld. AO doubted the genuineness of the sundry creditors amounting to Rs.

1,25,14,056/- . In absence of any details filed by the assessee, ld. AO confirmed the addition. Then the assessee carried this matter before ld. CIT(A). Various evidences were filed to prove that the amount shown under the head “sundry creditors/trade payables” is an advance received from M/s. Kushwaha Engineering which was repaid during the period 2014-15 to 2017-18. Copy of bank statement was also filed. However, ld. CIT(A) was not satisfied with the identity, creditworthiness and genuineness of the transaction with the alleged sundry creditors and confirmed the addition.

12. Now, the assessee is in appeal before this Tribunal. Ld. Counsel for the assessee submitted that though all the details were filed before ld. CIT(A) to prove the genuineness of the sundry creditors which were in the form of advances and their repayment through banking channel over a few year but no remand report was called for by ld. CIT(A) and, therefore, these details may be restored to the file of ld. AO for necessary examination so as to prove the identity, genuineness and creditworthiness and to explain the genuineness of the sundry creditors of Rs. 1,25,14,056/-.

13. Ld. D/R though supported the orders of both the lower authorities, did not oppose this request of the ld. Counsel for the assessee.

14. We have heard rival contentions and perused the records placed before us. Addition for unexplained sundry creditors of Rs. 1,25,14,056/- is in dispute before us. The assessee did not comply to the notice of ld. AO and details of alleged sundry creditors were

not filed before ld. AO which resulted in the addition of the said sum of Rs. 1,25,14,056/-. Before ld. CIT(A) the assessee filed certain details and after considering the same, though ld. CIT(A) has dismissed the assessee's grounds, this decision was arrived at without calling for remand report from ld. AO since additional evidences were filed for the first time before ld. CIT(A). Before us also the assessee has filed certain details in the paper book containing 18 pages showing the statement of payment to M/s. Kushwaha Engineering along with audited bank statement showing debit on account of payment made to the said party and confirmations. In all fairness, ld. Counsel for the assessee made a request to restore this issue to ld. AO for afresh adjudication after considering the evidences filed by the assessee. Revenue has not opposed to this request.

15. We, therefore, restore all the issues raised in the assessee's appeal to ld. AO for afresh adjudication and also direct the assessee to file all necessary details as filed before us as well as ld. CIT(A) to ld. AO so as to explain the creditworthiness of the sundry creditors of Rs. 1,25,14,056/- standing in the balance sheet of the assessee company which are appearing under the head "Trade Payables" and details of such trade payables are mentioned in Schedule 2 to the audited balance sheet as on 31.03.2014. Needless to mention that proper opportunity of being heard should be provided to the assessee. The assessee is also directed not take adjournment, unless otherwise required for reasonable cause. In case after providing sufficient opportunity to the assessee, there is

no compliance before the ld. AO, then ld. AO can pass the order in accordance with law.

16. In the result, the appeal filed by the assessee in I.T.A. No. 295/Pat/2018 is allowed for statistical purposes and the appeal filed by the Revenue in I.T.A. No. 307/Pat/2018 is dismissed.

Kolkata, the 31st August, 2022.

Sd/-
[Rajpal Yadav]
Vice President

Sd/-
[Manish Borad]
Accountant Member

Dated: 31.08.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. M/s. Shashi Galvanising (P) Ltd., A-26, Ashok Puri Colony, Veterinary College, Bailey Road, Patna-800 014.***
- 2. ITO, Ward-2(2), Patna.***
- 3. CIT(A)-1, Patna.***
- 4. CIT-***
- 5. CIT(DR), Patna Bench, Patna.***

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata