

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

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

I.T.A. No.408/Lkw/2020
Assessment Year:2015-16

Dy.C.I.T., Range-3, Lucknow.	Vs.	Shri Surendra Paratap Singh, 432/61/2 Yaseen Ganj, Campbell Road, Lucknow. PAN:AUWPS8667H
(Appellant)		(Respondent)

Appellant by	Ms. Sweta Mittal, C.A.
Respondent by	Shri Harish Gidwani, D. R.
Date of hearing	01/09/2022
Date of pronouncement	02/09/2022

ORDER

PER T. S. KAPOOR, A.M.

This is an appeal filed by the Revenue against the order of learned CIT(A), dated 23/09/2020 pertaining to assessment year 2015-2016. In this appeal the Revenue has raised the following grounds:

- "1. That the Ld. CIT(A)-2, Lucknow has erred in law and on facts in deleting the addition of Rs.2,29,64,485/- made u/s 68 of the Income Tax Act, 1961 with respect to unexplained Sundry Creditors.
2. Ld. CIT(A)-2, Lucknow has erred in law and on facts in ignoring the fact that the assessee failed to discharge his onus of proving the identity of creditors, genuineness of transactions and their creditworthiness, the assessing officer had rightly invoked the provisions u/s 68 of the Act."

2. Learned D. R., at the outset, submitted that the assessee, during the course of assessment proceedings, was required to file full postal addresses of the sundry creditors amounting to Rs.2,29,64,485/-. The assessee, in reply to the query of the Assessing Officer, vide reply dated 05/09/2017, submitted that the accountant had left the job and the accounting data available on computer as well as CD was not opening therefore, for providing the required information allow us a period of 15 days and therefore, the Assessing Officer gave another opportunity and the case was adjourned to 12/09/2017 and even then the assessee did not file the details and therefore, another opportunity was provided and the case was fixed for 14/09/2017 and again no information was filed. Therefore, from the above facts, the Assessing Officer observed that the assessee had failed to provide postal addresses of even a single creditor. Learned D. R. further submitted that the assessee was also asked to produce the copy of purchase bills to which he also failed to file and therefore, the Assessing Officer rightly made the addition of outstanding creditors as the assessee was not able to prove the genuineness of creditors. It was submitted that before learned CIT(A), the assessee filed written submissions and learned CIT(A), after obtaining remand report from the Assessing Officer, has deleted the addition which is not based upon the facts of the case. Therefore, it was prayed that the order of learned CIT(A) be reversed and that of the Assessing Officer be upheld.

3. Learned counsel for the assessee, on the other hand, submitted that it is a fact that the computer of the assessee was not opening as the accountant of the assessee had left job and that is the reason that even after availing many opportunities, the assessee was not able to file the addresses of the creditors but mere non providing of the addresses of the creditors, does not mean that the creditors were not genuine. It was

submitted that the books of account of the assessee were audited and the assessee had obtained audit report also which was filed along with return of income and further it was submitted that the creditors also included opening balances, which the Assessing Officer also included as part of the addition which is also not correct. It was further submitted that before learned CIT(A), the evidence of having made the payments to creditors in the succeeding year were also filed and which the learned CIT(A) had forwarded to Assessing Officer for remand report and after obtaining remand report and counter comments of the assessee, learned CIT(A) has rightly deleted the addition. Learned counsel for the assessee heavily placed reliance on the order of learned CIT(A).

4. We have heard the rival parties and have gone through the material placed on record. We find that the assessee is engaged in the business of work contract and during the year under consideration, as on 31/03/2015, the outstanding amount of sundry creditors in the balance sheet of the assessee amounted to Rs.2,29,64,485/-. The assessee had got its accounts audited u/s 44AB of the Act. The Assessing Officer, during the course of assessment proceedings, wanted the assessee to furnish the postal addresses of the sundry creditors which the assessee failed to file on account of the fact that the Accountant of the assessee had left the job and the computer of the assessee was not working. Therefore, the Assessing Officer made the total addition of outstanding creditors u/s 68 of the Act holding these to be unexplainable credits. Before learned CIT(A), the assessee filed affidavit to the effect that the Accountant of the assessee was ill and it was also submitted that complete details regarding sundry creditors were available. Before CIT(A), the evidence of having made the payments in the succeeding years to the creditors was also filed and it was also submitted that the Assessing Officer had made the addition of entire sundry

creditors without considering the fact that the certain creditors had the opening balances also. The Assessing Officer, in the remand report, did not make any comment on the evidences filed by the assessee but kept on reiterating that number of opportunities were provided to the assessee but the assessee did not file the required information therefore, the fresh evidence should not be accepted. The learned CIT(A) however, after obtaining remand report from the Assessing Officer and counter comments from the assessee, allowed relief to the assessee by holding that the list of sundry creditors along with their TIN number and addresses along with the confirmation of accounts, were filed before him and the copy of bank statement was also filed before him wherein there was evidence of having made the payments to sundry creditors in the succeeding years. The learned CIT(A) has further held that the purchases from such creditors have not been doubted at all and trading results were duly accepted and the liability existed in the books of account of the assessee and the same could not be added merely for non verification. The learned CIT(A) has further held that Assessing Officer was provided sufficient opportunity to make verification of the evidences which was not utilized by him. The learned CIT(A) further held that the addition u/s 68 can only be made if there is a credit entry in the books of account and the assessee did not offer any explanation or the explanation offered by the assessee is unsatisfactory. The learned CIT(A) held that the assessee had discharged the onus cast upon him by providing the addresses and TIN numbers of the sundry creditors and the Assessing Officer should have come up with some evidence which he should have made part of the remand report which he did not do. The learned CIT(A) further held that closing balance of the sundry creditors cannot be added u/s 68 of the Act as the closing balance also included opening balance of sundry creditors also. He held that these opening balances had emanated from some purchases of goods made in the

past and these purchases also form part of stock out of which subsequently the sales made by the assessee were recorded in the books of account and therefore, the rejection of entire sundry creditors without rejecting the sales, purchase and stock of the assessee is incorrect. The learned CIT(A) has relied on certain case laws, as reproduced by him in his order at page 11. We find from the order of learned CIT(A) that he has passed a reasoned order based upon the facts and circumstances of the case and he had provided proper opportunity to the Assessing Officer to rebut the merits of the additional evidences. The Assessing Officer, during the remand proceedings, did not make any adverse comments on the additional evidence. The evidence included copy of bank statements from which the payments to these creditors were made in succeeding years and list of creditors included their names, TIN numbers and addresses along with confirmation of accounts. In view of these evidences, on which the Assessing Officer did not make any adverse comments, the learned CIT(A) has rightly allowed relief to the assessee and we do not find any infirmity in the order and therefore, the appeal of the Revenue is dismissed.

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

(Order pronounced in the open court on 02/09/2022)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:02/09/2022
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow