

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC' NEW DELHI**

SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.2018/Del/2019
Assessment Year: 2015-16

M/s. New Shakti Highway Carriers Pvt. Ltd., 9062/13, Old Britania Biscuits Factory, Ram, Bagh Road, Delhi-1100 06	Vs.	ITO, Ward-18(2), New Delhi.
PAN :AACCN4488N		
(Appellant)		(Respondent)

Appellant by	Shri Abishek Mathur, Adv.
Respondent by	Shri Om Parkash, Sr. DR

Date of hearing	22.08.2022
Date of pronouncement	21.11.2022

ORDER

This is an appeal by the assessee against order dated 18.12.2018 of learned Commissioner of Income-Tax (Appeals)-6, Delhi for the assessment year 2015-16.

2. At the outset, learned counsel appearing for the assessee, on instructions did not press ground nos. 1 and 3. Accordingly, these two grounds are dismissed as not pressed.

3. Ground nos. 6 & 7, being general grounds, are dismissed.

4. In ground no.2, assessee has challenged disallowance of Rs.1,58,241 made under Section 41(1) of the Income-Tax Act, 1961.

5. Briefly, the facts are, the assessee is a resident corporate entity. For the assessment year under dispute, assessee filed its return of income on 30.09.2015 declaring income of Rs.7,44,740.

6. In course of assessment proceeding, the Assessing Officer noticed that as on 31.3.2015, the assessee has shown outstanding sundry creditors of Rs.1,58,924. After calling for and examining the necessary details relating to outstanding sundry creditors, the Assessing Officer observed that such sundry creditors have remained outstanding for a long period. Alleging that the assessee was unable to furnish the address, PAN details and confirmation to prove the genuineness of the outstanding sundry creditors, the Assessing Officer held that assessee's liability in respect of outstanding sundry creditors has ceased in terms of sec. 41(1) of the Act. Accordingly, he added

back the amount of Rs.1,58,924 to the income of the assessee. The addition so made was confirmed by learned Commissioner (Appeals).

7. I have considered rival submissions and perused the material on record. It is evident, the Assessing Officer has made the disputed addition by treating it as cessation of liability under Section 41(1) of the Act. Further, he has held it as unexplained cash credit under section 68 of the Act.

8. Undisputedly, the outstanding sundry creditors as on 31.3.2015, is continuing from earlier assessment years and is not a credit, which is introduced in the year under consideration. Therefore, the genuineness of such sundry creditors could not have been examined by the Assessing Officer in the impugned assessment year. If at all, the Assessing Officer could have examined the genuineness of such creditors in the respective assessment years, wherein, the credit amount was first introduced in the books of the assessee. Therefore, no addition under Section 68 could have been made. As regards applicability of sec. 41(1) of the Act, the burden is entirely on the Assessing Officer to establish on record that the liability has ceased in the impugned assessment year. When the outstanding sundry creditors

are continuing from the earlier years, it is not understood on what basis the Assessing Officer has concluded that the liability has ceased to exist in the impugned assessment year. The Assessing Officer has not brought any material on record to establish such fact. More so, when the amount appears as a liability in the books of account of the assessee and has not been written off either by the assessee or by the creditor. Further, from the material placed before me by the assessee, it is evident that subsequently, the accounts of most of the sundry creditors have been squared off on payment of the outstanding liability. This fact also proves that the liability relating to the sundry creditors has not ceased in the year under consideration.

9. In view of the aforesaid, I am inclined to delete the addition of R.1,58,924. This ground is allowed.

10. In ground no.4, assessee has challenged disallowance of Rs.3,50,000 out of the deduction claimed towards freight charges.

11. Briefly the facts are, in course of assessment proceeding, the Assessing Officer noticed that the assessee has claimed deduction of Rs.11,36,99,427 towards freight charges. Though, in response to the query raised by the Assessing Officer, the assessee furnished details of

freight charges, including, the truck number, however, relying upon the assessment order passed for assessment year 2014-15, the Assessing Officer disallowed an amount of Rs.3,50,000 out of the expenditure claimed .

12. In appeal proceedings, learned commissioner (Appeals) sustained the disallowance.

13. I have considered rival submissions and perused the material on record.

14. Relying upon similar disallowance made in assessment order for assessment year 2014-15, the Assessing Officer has disallowed Rs.3,50,000 out of the freight expenses, purely on ad hoc basis. However, material on record reveals that the assessee furnished all necessary and relevant details relating to the freight expenses in course of assessment proceeding. Pertinently, in assessment year 2014-15, though, the Assessing Officer had made similar ad hoc disallowance out of the freight expenses, however, learned Commissioner (Appeals) had deleted such disallowance.

15. In my view, the disallowance made by the Assessing Officer is without any basis at all and merely because similar disallowance was

made in the preceding assessment year. Therefore, the disallowance made simply on ad hoc basis without any valid reason cannot be sustained. Accordingly, I delete the disallowance.

16 In ground no.5, assessee has challenged disallowance of Rs.1,33,230 out of expenditure stated towards leave wages. Before the Assessing Officer, assessee stated that the amount claimed as deduction for leave wages was calculated on the basis of leaves due, which have not been claimed. The Assessing Officer observed that since the assessee is maintaining accounts on mercantile basis, the liability to pay wages would arise only when demanded by the employees. He observed that the employee has an option to take leave instead of encashment of leave. Holding that the expense has not accrued during the year, the Assessing Officer disallowed it.

17. Before me, learned counsel appearing for the assessee submitted that in course of assessment proceeding, the assessee was never asked to produce the details and documentary evidence relating to leave wages. He submitted, had the Assessing Officer asked for the necessary details and evidence, assessee would have definitely furnished them. He submitted, the expenditure has not only accrued

but paid during the year. In this regard, he drew my attention to the details of salary and wages paid during the year along with supporting vouchers. However, he fairly submitted that these evidences are furnished for the first time before the Tribunal. Further, he requested to admit the additional evidences furnished in terms of Rule 29 of the Income-Tax (Appellate Tribunal) Rules, 1963.

18. The Learned Departmental Representative submitted, before the departmental authorities the assessee did not furnish any evidence in respect of the leave wages. He submitted, since the evidences now produced were not examined by the Assessing Officer, issue may be restored back to the Assessing Officer for fresh adjudication.

19. I have considered rival submissions and perused the material available on record.

20. The only reason for which the Assessing Officer has disallowed the expenditure relating to leave wages is, the assessee failed to prove that the expenditure has accrued during the year.

21. Before the Tribunal, the assessee has furnished certain additional evidences to demonstrate that the expenditure not only accrued during the year but was also paid during the year.

22. Admittedly, the additional evidences now produced before the Tribunal were not before the departmental authorities. Therefore, in my view, the Assessing Officer must be given a fair opportunity to examine the authenticity of such evidences vis-a-vis assessee's claim. Therefore, though, I admit the additional evidences, however, the issue is restored back to the Assessing Officer for enabling him to factually verify such evidences and then decide acceptability or otherwise of assessee's claim of deduction. Of course, assessee must be provided due opportunity of being heard. This ground is allowed for statistical purpose.

23. In the result, the appeal is partly allowed.

Order pronounced in the open court on 21st November, 2022.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 21st November, 2022.
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	21.11.2022
2.	Date on which the draft of order is placed before the Dictating Member:	21.11.2022
3.	Date on which the draft of order is placed before the other Member:	-
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	21.11.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	21.11.2022
6.	Date on which the final order received after having been singed/pronounced by the Members:	21.11.2022
7.	Date on which the final order is uploaded on the website of ITAT:	21.11.2022
8.	Date on which the file goes to the Bench Clerk	21.11.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	