

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA Nos.3305 & 3306/Del/2015
Assessment Years: 2009-10 & 2010-11

Sh. Surinder Malhotra (Prop. M/s Craft India), O-34A, Lajpat Nagar-II, New Delhi	Vs.	ITO, Ward-32(3), New Delhi
PAN :AAIPM8332K		
(Appellant)		(Respondent)

Appellant by	Sh. Abhishek Jain, CA
Respondent by	Sh. Anil Kumar Sharma, Sr. DR

Date of hearing	06.02.2023
Date of pronouncement	13.02.2023

ORDER

Captioned appeals by the assessee arises out of two separate orders of learned Commissioner of Income Tax (Appeals)-18, New Delhi, pertaining to assessment years 2009-10 and 2010-11.

ITA No.3305/Del/2015
AY: 2009-10

2. At the outset, learned counsel appearing for the assessee, on instructions, did not press ground no. 2. Further, he submitted,

ground no. 3 on the issue of levy of interest under section 234A, 234B and 234C, being consequential, does not require adjudication. In view of the aforesaid, ground nos. 2 and 3 are dismissed.

3. In ground no. 1, the assessee has challenged the addition of Rs. 4,67,192/- made under section 68 of the Income-tax Act, 1961 (in short 'the Act').

4. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, the assessee filed his return of income on 29.09.2009 declaring income of Rs.19,91,490/- In course of assessment proceedings, the Assessing Officer noticed that in the balance-sheet of the year under consideration, the assessee has shown liability of sundry creditors to the tune of Rs.1,04,66,333/-. After calling for and examining necessary details, he observed that in assessment year 2008-09, the assessee has surrendered liability of 15 creditors to the tune of Rs.9,43,772/-. Further, he observed that the liability of sundry creditors surrendered in assessment year 2008-09 has increased to Rs.4,42,772/- in the impugned assessment year. Thus, treating the amount of Rs.4,42,772/- as unexplained cash credit under section 68 of the Act, he added back to the income of

the assessee. Further, the Assessing Officer added back an amount of Rs.24,420/- under section 68 of the Act on the reasoning that the assessee could not reconcile the account of some other creditors. Though, the assessee contested the aforesaid additions before learned Commissioner (Appeals), however, adopting the reasoning of the Assessing Officer, learned Commissioner (Appeals) confirmed the additions.

5. Learned counsel appearing for the assessee submitted that under a factual misconception that the entire outstanding sundry creditor was offered as income in assessment year 2008-09, the Assessing Officer has made the addition, which was confirmed by learned Commissioner (Appeals). He submitted, the assessee had surrendered only a part of the sundry creditors in assessment year 2008-09, since with other creditors the assessee had done transaction in subsequent years. He submitted, in subsequent years the assessee has discharged the liability of the concerned creditors. In this regard, he drew my attention to the ledger account copies of the concerned sundry creditors along with bank statement. However, he submitted, the assessee would not like to contest the additions of Rs.24,420/- representing credit balance

of Kangsiya Art Palace and Rs. 8,550/- relating to Ansari Wood Art.

6. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

7. I have considered rival submissions and perused materials on record. At the outset, I must observe that out of the addition of Rs.4,67,192/-made under section 68 of the Act, the assessee has given up its claim in respect of an amount of Rs.32,970/-. In other words, the amount in dispute before me is Rs.4,34,222/-. As discussed earlier, the addition represents outstanding sundry creditors, which, as alleged by the departmental authorities, the assessee has surrendered in assessment year 2008-09. However, on perusal of facts and materials on record, I have noticed that the amount disputed before me was not part of surrendered outstanding creditors in assessment year 2008-09. Further, on perusal of the ledger accounts of the concerned sundry creditors as well as the bank statement, I have noticed that the credit liability was subsequently discharged by making payment to the concerned creditors in subsequent assessment years. Thus, materials on record clearly establish that outstanding sundry

creditors continued in the books of the assessee in the impugned assessment year and they are genuine. In view of the aforesaid, I delete the addition of Rs.4,34,222/-. This ground is partly allowed.

8. In addition to the main grounds, the assessee has raised additional ground, challenging the disallowance of Rs.1,22,472/- made under section 40(a)(ia) of the Act.

9. I have heard rival contentions on the issue of admission of additional ground. It is observed, though, the assessee has raised the aforesaid issue before the first appellate authority, however, at the time of hearing, the assessee did not press this ground. Accordingly, learned Commissioner (Appeals) dismissed the ground without examining it on merits. This is clear from the observations of learned Commissioner (Appeals) in paragraph 1.2 of the impugned order.

10. In fact, before me, learned counsel appearing for the assessee conceded to the aforesaid factual position. However, he submitted that in view of change in legal position, subsequently on account of introduction of second proviso to section 201(1) and 40(a)(ia) of the Act, the assessee wants to contest the issue. In my considered opinion, once the assessee, on his own volition, had

given up the claim in respect of an issue and accepted the addition, he cannot be permitted to raise the issue again before a higher forum. Further, in my view, application of the send proviso to section 201(1) and 40(a)(ia) is not automatic but depends upon the facts and evidences to be furnished by the assessee. Further, applicability of second proviso to section 201(1) and 40(a)(ia) to the present case would require fresh investigation into facts. In view of the aforesaid, I decline to entertain the additional ground. Accordingly, the additional ground is dismissed.

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

ITA No. 3306/Del/2015
AY: 2010-11

12. Ground nos. 1, 2D and 2E, being general in nature, are dismissed.

13. At the time of hearing, learned counsel appearing for the assessee, on instructions, did not press ground no. 2A. Accordingly, this ground is dismissed.

14. In ground no. 2B, the assessee has contested the disallowance of expenditure amounting to Rs.60,023/-.

15. Briefly the facts are, in course of assessment proceeding, the Assessing Officer noticed that the assessee has claimed expenses of Rs.1,21,048/- on car maintenance, Rs.3,80,380/- on depreciation on car, Rs.48,190/- on car insurance, Rs.50,612/- on interest paid on car loan, and Rs. 58,371/- on telephone. After calling for necessary details and examining them, the Assessing Officer, being of the view that the assessee must have used the car and telephone for personal purposes, the Assessing Officer disallowed 1/10th of the expenses, which worked out to Rs.60,023/-. This disallowance was confirmed by learned Commissioner (Appeals).

16. I have considered rival submissions and perused the materials on record. It is a fact that the assessee is an individual. Therefore, it is possible that the car and telephone, to some extent, must have been used by the assessee for non-business purpose, that is, personal use. In fact, from the observations of the Assessing Officer in paragraph 3 of the assessment order, it is very much clear that learned counsel appearing for the assessee in the assessment proceeding did not completely rule out the use of car and telephone for personal purposes.

17. In view of the aforesaid, I do not find any reason to interfere with the decision of the departmental authorities as the disallowance made is reasonable. This ground is dismissed.

18. In ground no. 2C, the assessee has challenged addition of Rs.11,17,579/- under section 41(1) of the Act.

19. Briefly the facts are, in course of assessment proceeding, the Assessing Officer on verifying the balance-sheet found that the assessee has shown sundry creditors of Rs.76,47,961/-.

20. After calling for and examining the necessary details, he found that in respect of certain sundry creditors representing an amount of Rs.11,17,579/-, no transaction had taken place in the year under consideration. He, therefore, called upon the assessee to furnish confirmation from those creditors. Alleging that the assessee failed to furnish the confirmations and being of the view that the liabilities of the concerned creditors must have ceased to exist in terms of section 41(1) of the Act, the Assessing Officer added back an amount to the income of the assessee. Learned Commissioner (Appeals) confirmed the addition.

21. I have considered rival submissions and perused material on record. A reading of section 41(1) of the Act makes it clear that before invoking the provision three conditions have to be satisfied.

Firstly, the credit appearing in the books of the assessee must relate to a trading transaction. Secondly, the assessee in the year under consideration must receive benefit by way of cash or kind in relation to such credit amount. Thirdly, the creditors must have ceased to exist in the books of the assessee. In the facts of the present case, undoubtedly, the creditors were continuing from earlier years and were appearing as outstanding creditors in the books of the assessee. Therefore, they have not ceased to exist insofar as assessee's books of accounts are concerned. No material has been brought on record by the Assessing Officer to demonstrate that the creditors have ceased to exist and that too, in the year under consideration. In course of hearing it has been brought to my notice that in subsequent assessment years, the assessee has discharged the entire liability of the concerned creditors. The materials placed before me demonstrate such fact. Thus, when in subsequent years, the assessee has discharged the liability relating to the concerned creditors, it cannot be said that the creditors have ceased to exist so as to treat it as remission/cessation of liability under section 41(1) of the Act.

22. In view of the aforesaid, I do not find any justifiable reason to sustain the addition. Accordingly, the Assessing Officer is

directed to deleted the addition of Rs.11,17,579/-. This ground is allowed.

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

Order pronounced in the open court on 13th February, 2023

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 13th February, 2023.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi