

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.6339/Del/2016
Assessment Year: 2012-13

Adietika Pharma Pvt. Ltd.,
28, Dera Mandi Road,
Mandi Village, Mehrauli,
Delhi.

Vs. ITO,
Ward-1(3),
New Delhi.

PAN: AAACD4006A

(Appellant)

(Respondent)

Assessee by	:	Shri Misbahuddin Siddiqui, Advocate
Revenue by	:	Shri Kanav Bali, Sr. DR
Date of Hearing	:	15.02.2023
Date of Pronouncement	:	27.02.2023

ORDER

PER C.M. GARG, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order dated 05.08.2016 of the CIT(A)-I, New Delhi, relating to Assessment Year 2012-13.

2. The grounds of appeal taken by the assessee read as under:-

"1. That during the assessment and the appellate proceedings the records of the company were under the custody of lender bank IDBI under SARFAESI Act,2002 who had taken possession of the factory premises at Pant Nagar, Distt. Udham Singh Nagar, Uttarakhand on 02/01/2014. The appellant company was unable to obtain any information /record from the locked premises and hence was prevented by sufficient cause in adducing the desired details before the AO and the Ld. CIT (A).

2. That the Managing Director Mrs. Sunita Sharma is post cancer survivor and is hospitalized off and on. The required records/ details could

also not be obtained/ arranged from respective parties during the assessment/appellate proceedings due to her continued ill health.

3. That the Ld. CIT (A) has erred in confirming the addition made by AO on account of unsecured loans of Rs. 15,65,000/- due to non submission of the required confirmation from the lenders. The appellant had no access to the records and hence the same could not be adduced during the assessment/appellate proceedings. The appellant company may be permitted to adduce the relevant records before the Ld. AO.

4. That the Ld. CIT (A) has erred in confirming the addition made by AO in treating the advances reed, from the customers of Rs. 7,86,752/- as bogus liability. These parties have been regular purchaser of the appellant. There is no question of any bogus liability in the books of the appellant. The appellant had no access to the records as mentioned here in before and hence the same could not be adduced during the assessment/appellate proceedings. The appellant company may be permitted to adduce the relevant records before the Ld. AO.

5. That the Ld. CIT (A) has erred in confirming the addition made by AO of Rs. 91,98,481/- by treating the sundry creditors as bogus. The Ld. CIT(A) has referred to the findings of the AO wherein the AO has referred to the non compliance by two creditors, non service of the notice on two parties and denial of any liability by one party totaling in all to a sum of Rs. 46,98,481/-. There after 50% of the remaining creditors, amounting to Rs.45,00,000/-, have been treated as unverifiable on presumption and surmises. The additions confirmed by the Ld. CIT (A) are factually and legally incorrect. The appellant had no access to the records as mentioned here in before and hence the same could not be adduced at during the assessment/appellate proceedings. The appellant may be permitted to adduce the relevant records before the Ld. AO. That the appellant craves leave to add, alter, amend or vary all or any of the grounds of appeal at or before the time of hearing."

3. The Id. Counsel of the assessee submitted that during the assessment proceedings and the appellate proceedings, the records of the company were under the custody of lender bank IDBI under SARFAESI Act, 2002 who had taken possession of the factory premises including the office of assessee company situated at Pant Nagar, Distt. Udham Singh Nagar, Uttarakhand on 02.01.2014. The Id. Counsel submitted that during the assessment proceedings which was concluded on 05.03.2015 and during the first appellate proceedings which was concluded by

passing the order of the learned CIT(A) dated 05.08.2016, the said office premises could not be opened and the assessee could not obtain relevant documentary evidences pertaining to the issue and additions/disallowances made by the AO in the assessment order. Therefore, the assessee has been deprived of opportunity of being heard and opportunity for submitting its explanation and supportive documentary evidence due to the said *bona fide* reason beyond the control of the assessee. Therefore, the matter may kindly be restored to the file of the AO for allowing due opportunity of hearing and for allowing submission of the assessee along with relevant supportive documentary evidence.

4. Replying to the above, the Id. Sr. DR strongly supported the orders of the authorities below and submitted that despite sufficient and due opportunity of hearing, the assessee did not comply with the directions of the authorities below and, therefore, the AO was right in making addition and the Id.CIT(A) was also correct and justified in upholding the same. However, in all fairness, the Id. Sr. DR submitted that the Department has no serious objection if the matter is restored to the file of the AO for re-adjudication of appeal after allowing due opportunity of hearing to the assessee.

5. Placing rejoinder to the above, the Id. Counsel of the assessee drew our attention to page 3, middle para of first appellate order and submitted that the assessee repeatedly and consistently submitted before the authorities below that some of the books of account and vouchers and other important documents were lying in the factory office and due to closure and sealing of factory due to the custody of lender bank under SARFAESI Act, the documents could not be filed by the assessee

before the AO, therefore, it is apparent that the assessee was not allowed opportunity of being heard before the authorities below due to the reasons beyond the control of the assessee. The Id. Counsel also submitted that the case of the assessee could not be represented due to the inability of the assessee to obtain and submit relevant documentary evidence and explanation of the assessee coupled with another reason that the Managing Director of the company Dr. Sunita Sharma was a cancer survivor and had post radiation complications due to which she was hospitalized and photo copies of hospital prescription of Batra Hospital & Medical Research Centre were submitted before the authorities below which were not rightly and sympathetically considered by the authorities below. Therefore, the assessee should be allowed opportunity of hearing before the authorities below and the custodian of factory and office premises of the assessee i.e., lender bank IDBI should be directed to allow the assessee to obtain relevant documentary evidences, books of account, etc., from the office premises of the assessee situated in the factory premises at Pant Nagar, Distt. Udham Singh Nagar, Uttarakhand.

6. On careful consideration of the above submissions, first of all, we may pointed out that the assessee had tried to file an application before the competent authority/Tribunal/court where the proceedings under SARFAESI Act, 2002 were pending for adjudication or have been decided to issue appropriate directions to the custodian lender IDBI Bank to allow the assessee to obtain relevant books of account and documentary evidences from the office of the assessee situated at the factory premises of the assessee at Pant Nagar, Distt. Udham Singh Nagar, Uttarakhand. From the orders of the authorities below especially from the observations of the Id.CIT(A) at page 3 of the first appellate order, we have no hesitation to hold that the

assessee could not file relevant books of account and documentary evidences before the authorities below due to the reason beyond its control as the books of account and other relevant documentary evidences were kept in the office situated in the factory premises which were sealed/closed by the lender bank and this is a sufficient bona fide cause for the assessee for explaining the non-submission of relevant books of account and documentary evidences before the authorities below. Therefore, the matter is restored to the file of the AO for denovo adjudication after allowing due opportunity of hearing to the assessee and without being prejudiced from the earlier assessment and first appellate orders.

7. Before parting the order, we also expect from competent authority/custodian lender IDBI Bank officials to consider the request of the assessee for allowing its office bearers or officials to take out books of account and other documentary evidences, etc. from the office of the assessee situated at factory premises situated at Pant Nagar, Distt. Udham Singh Nagar, Uttarakhand.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes only.

Order pronounced in the open court on 27.02.2023.

Sd/-

(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated: 27th February, 2023.

dk

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi