

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No.37/SRT/2023

निर्धारण वर्ष/Assessment Year: (2017-18)

(Physical Hearing)

Micro Systems, Plot No.4312, GIDC Industrial Estate, Ankleshwar – 393002.	Vs.	The DCIT, Circle-2(1)(1), Vadodara
(Appellant)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAFFM3725P		

Appellant by	Shri Rahul Deo, AR and Shri Krutarth Desai, AR
Respondent by	Shri Ashok B. Koli, CIT(DR)
Date of Hearing	31/03/2023
Date of Pronouncement	23/05/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (In short ‘NFAC’), Delhi, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’), dated 08.12.2019.

2. The grounds of appeal raised by the assessee are as follows:

1. The learned Commissioner of Income Tax (Appeals) erred in fact and in law in confirming the factually incorrect action of the Learned Assessing Officer in making addition of Rs.6,66,125/- as unexplained expenditure ignoring the Ledger Confirmation submitted.

2. The learned Commissioner of Income Tax (Appeals) erred in fact and in law in confirming the factually incorrect action of the Learned Assessing Officer in making addition of Rs.11,39,367/- as unexplained expenditure ignoring Ledger Confirmation submitted.

3. The learned Commissioner of Income Tax (Appeals) erred in fact and in law in confirming the action of Learned Assessing Officer in making addition of

Rs.24,905/- as differential amount of balance as compared to Ledger Confirmation of the Party.

4. The Learned Commissioner of Income Tax (appeals) erred in fact and in law in confirming the action of Learned Assessing Officer in making addition of Rs.17,885/- as differential amount of balance as compared to Ledger Confirmation of the Party.

5. Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal.”

3. Ground Nos. 1 and 2 raised by the assessee are interconnected and mix, therefore, we shall adjudicate them together.

4. Succinct facts *qua* ground Nos. 1 and 2 are that these grounds raised by the assessee relate to addition of Rs.18,05,492/- (Rs.6,66,125 + Rs.11,39,367), as unexplained expenditure. The assessing officer (A.O.) in his assessment order has observed that notice u/s 133(6) of the Act was issued to the sundry creditors to verify genuineness and to cross verify sundry creditors/purchasers shown, outstanding in the balance sheet of the assessee as on 31.03.2017. During the assessment stage, the assessing officer received replies from some creditors. Further, in some of cases creditors, the notice u/s 133(6) of the Act were returned by postal authorities. Therefore, assessing officer noted that genuineness of the transactions in which the notices were returned and no response received, thus remained unexplained. The assessing officer observed that notice u/s 133(6) of the Act, has been returned by the postal authorities in respect of Maharshi Electronics and Satyam Enterprise. On perusal of the details of sundry creditors, it is noticed that the Maharshi Electronics has provided goods amounting to Rs.6,66,125/- and Satyam electronics has provided goods amounting to Rs.11,39,367/-. However, the assessee has not produced any satisfactory documentary evidence of genuineness of the creditors. Therefore, a show cause notice was issued by the assessing officer to the assessee on 01/12/2019 and stating that why the purchases made in respect of above entities should not be added to the total income.

5. In response, the assessee had submitted only a comparative chart of creditors with the assessee's books and party's books. Further, the assessee did not

produce any documentary evidences regarding bills, ledger of the assessee in the books of creditors etc. On verification from Gujarat State commercial tax department website, the dealer, Satyam enterprise was found listed as a defaulter dealer. Thus, it was evident to the assessing officer that the assessee has failed to submit confirmation from the above two parties and therefore, he had failed to prove the primary onus of establishing the genuineness of the transaction. So, it was held by the assessing officer that the assessee has claimed bogus expenses for reducing its tax liabilities. Accordingly, the creditors amounting to Rs.6,66,125 + Rs.11,39,367/- totaling to Rs.18,05,492/- was disallowed and added to the total income of the assessee.

6. On appeal, Id CIT(A) confirmed the action of the assessing officer, therefore assessee is in further appeal before us.

7. Shri Rahul Deo, along with Shri Krutarth Desai, appeared before us and argued that in case of M/s. Maharshi Electronics, the ledger confirmation is in full conformity with the transactions recorded in books. The Id Counsel also submitted that assessee furnished before the assessing officer the invoices, bank statements and payment details and assessing officer could verify the expenses and genuineness of the transactions. That is, the transactions of expense and purchases and their genuineness can alternatively be verified from the invoices, bank statements showing payment entries etc. Therefore, Id Counsel stated that assessee has submitted enough documents and evidences to prove the genuineness of the transaction, hence addition made by the assessing officer may be deleted.

8. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

9. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that Ground Nos. 1

and 2 raised by the assessee relate to addition of Rs.18,05,492/- as unexplained expenditure. The A.O. in his assessment order has observed that notice u/s 133(6) of the Act was issued to the sundry creditors to verify genuineness and to cross verify sundry creditors/purchasers shown, outstanding in the balance sheet of the assessee as on 31.03.2017. We note that some of the creditors have replied to the assessing officer, however, two creditors could not reply to the assessing officer, therefore assessing officer made addition on account of unexplained expenses. We note that during the assessment stage the assessee had furnished before the assessing officer the invoices, bank statements and payment details in respect of expenditure/ purchases made from two parties. We also note that during the appellate proceedings, the assessee submitted tabular explanation for each of the parties made subject matter of show cause notice by the assessing officer. From the comparative table, it was clear that the transactions of purchases recorded by the assessee in its Books and debited to Profit and Loss account are in conformity with the amount of Sales recorded by these Creditors, except in case of M/s Satyam Enterprise. The difference of Rs.3,23,683.19 in case of this party was said to be explained as Note 2 of the table and it was brought to the notice of the assessing officer that since the invoice and goods were not received during 2016-17 the purchase is not recorded in books by the assessee. In case of the second party M/s. Maharshi Electronics, the ledger confirmation is in full conformity with the transactions recorded in books. The assessee has also submitted that in absence of the confirmations, the transactions of expense and purchases and their genuineness can alternatively be verified from the invoices, bank statements showing payment entries. The Ld. Counsel further submitted that during the assessment stage, assessee submitted confirmations, PAN number, name and address of the parties and the ledger account of parties, therefore, if the AO has any doubt about the genuineness of the purchases made from these creditors/parties, he could have verified from the assessing officer of these creditors. We note that assessee had furnished before the assessing officer the invoices, bank statements and payment details in respect of expenditure/ purchases made from these two parties and assessing officer did not find any mistake in these documents and evidences. The assessing officer has not refuted

or discredited these documents and evidences. That is, assessing officer does not mention in his assessment order that why he is not accepting these evidences and documents. The AO ought to have examined all these details, documents and evidences and refuted / rejected them, with a cogent adverse findings and discernable line of reasoning, in order to arrive at a conclusion and to make the addition. Hence we note that assessing officer has not refuted or discredited these evidences and documents. On the contrary, the assessing officer has just brushed aside these evidences without even a word on why they are not acceptable. It is a well settled Law that when an assessee has all the possible evidence in support of its claim, they cannot be brushed aside based on surmises. Hence, we are not inclined to accept the contention of the Assessing Officer in any manner and hence the addition so made is deleted. Hence these two grounds of the assessee are allowed.

10. In the result, ground Nos. 1 and 2 raised by the assessee are allowed.

11. Ground No.3 and 4 raised by the assessee relate to small additions of Rs.24,905/- and Rs.17,885/- respectively. Both the additions pertain to differential amount of balance as compared to Ledger Confirmation of the Parties. The Learned Counsel for the assessee took us through paper book page no.73 and explained that these small amounts were opening balances which were coming from the previous years. The Assessing Officer made addition during the assessment year under consideration, which is wrong and not sustainable in the eye of law. However, nevertheless Ld. DR for the Revenue relied on the order of the Assessing Officer.

12. We have heard both the parties and gone through the assessee's paper book at page no.73, and noted that these additions of Rs.24,905/- and Rs.17,885/- respectively are opening balances coming from the previous year, therefore these two amounts did not pertain to assessment year under consideration. The principle of taxation is that right income should be taxable in the right assessment year and we note that these two additions made by the

assessing officer do not pertain to assessment year 2017-18, under consideration, therefore we delete these additions.

13. In the result, ground Nos.3 and 4 raised by the assessee are allowed.

14. In the combined result, appeal filed by the assessee is allowed.

Order pronounced on 23/05/2023 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 23/05/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat