

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 246/Asr/2014  
& ITA No. 251/Asr/2018  
Assessment Year:2009-10**

Smt. Baneet Kaur Bhasin Prop. M/s Bepco (India), H. No. 7/235, New Vijay Nagar, Jalandhar. [PAN: -AJSPB8324M] <b>(Appellant)</b>	Vs.	Income Tax Officer, Ward-1(1), Jalandhar.  <b>(Respondent)</b>
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**I.T.A. No. 263/Asr/2014  
Assessment Year:2009-10**

Income Tax Officer, Ward-1(1), Jalandhar.  <b>(Appellant)</b>	Vs.	Smt. Baneet Kaur Bhasin Prop. M/s Bepco (India), H. No. 7/235, New Vijay Nagar, Jalandhar. [PAN: -AJSPB8324M] <b>(Respondent)</b>
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<b>Appellant by</b>	None
<b>Respondent by</b>	Sh. Digvijai Kumar Chaudhary, Sr. DR.

<b>Date of Hearing</b>	08.08.2023
<b>Date of Pronouncement</b>	21.08.2023

**ORDER**

**Per: Bench:**

The instant appeal of the assessee and the revenue were filed against the order of the Id. Commissioner of Income-tax (Appeals) Jalandhar, (in brevity 'the CIT(A)') order passed u/s 250 (6) of the Income-tax Act, 1961 (in brevity the Act) for assessment year 2009-10. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-1(1), Jalandhar, (in brevity the Id. AO) order passed u/s 143(3) & 271(1)(c) of the Act.

2. When the appeals are called for a hearing, none was present on behalf of the assessee. No adjournment petition was filed on behalf of the assessee. On perusal of record we find that the date was fixed several times but none was present to represent the appeal. Considering the issue, we proceed to dispose of the appeal on *ex parte qua* for assessee after hearing the Id. DR.

3. The assessee has taken the following grounds:

*"1. That the order of the CIT(A) to the extent sustaining the additions made by the A.O is against the law and facts of the case.*

*2. That the CIT(A) had failed to appreciate that the A.O despite not being satisfied with the correctness and completeness of the accounts of the assessee, had however proceeded with and*

*drawn adverse inferences without rejecting the latters 'Books of accounts', and rather had acted upon the same.*

*3. That the CIT(A) had gravely erred in law and facts of the case in upholding the addition of Rs. 10,25,395/- pertaining to the 'Opening balances' of the 'Sundry creditors', in the hands of the assessee during the year under consideration.*

*4. That the CIT(A) had gravely erred in law and facts of the case in confirming the addition of Rs. 48,03,967/- so made by the A.O in the hands of the assessee.*

*5. That the CIT(A) brushing aside the duly substantiated claim of the assessee that as the amount of Rs. 48,03,967/- was the amount generated from the 'Sales' which remained unrecorded in the 'Books of accounts', therefore addition only as regards the 'Profit' pertaining to such 'Unrecorded sales' was liable to made, however without dislodging the said claim of the assessee, had proceeded with most arbitrarily and made an addition of the entire amount of Rs. 48,03,967/- in the hands of the assessee.*

*6. That the CIT(A) while upholding the addition of Rs. 48,03,967/-, therein failed . to appreciate that where the 'Purchases' are accounted but however the correlating 'Sales' remain unrecorded, leading to inflated 'Closing stock' as per the 'Books of accounts', therein while recasting the 'Trading results' for deducing the 'True income' of the assessee, the 'Sales' are to be 'inflated', and the 'Cl. Stock' is to be*

*‘deflated’, as a consequence whereto the addition in the hands of the assessee would be restricted to the amount of ‘Profit’ on such ‘Unrecorded sales’.*

*7. That the CIT(A) had gravely erred in law and facts of the case in confirming the addition of Rs. 17,65,239/- in the hands of the assessee.*

*8. That the CIT(A) had gravely erred in law and facts of the case in upholding the disallowance of Rs. 2,80,000/- made by the A.O u/s 40A(3) of the ‘Act’.*

*9. Any other grounds as may be allowed to be raised at the time of hearing of the appeal.”*

3.1. The revenue has taken the following grounds:

*“1. That, on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 1,47,22,107/- out of total addition of Rs. 2,23,16,618/- rightly made by the A.O. on account of excess of assets over liabilities u/s 69 of the Income Tax Act, 1961.*

*2. That, it is prayed that the order of the Ld. CIT(A) be set-aside and that of the Assessing Officer restored.*

*3. That the appellant requests for leave to add or amend or alter the grounds of appeal before the appeal is heard and disposed of.”*

4. Brief facts as culled out from the records are that the assessee was running business of trading of paint and allied products and proprietress of M/s Bepco (India) Jalandhar. Assessment was framed U/s 143(3) of the Act. The additions were made in two heads related to bogus sundry creditors amount to Rs. 2,23,16,618/- and addition on account of violation of section 40A(3) amount to Rs. 2,80,000/- in assessment proceeding. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) partly allowed the appeal of the assessee. The additions related to sundry creditors is deleted amount to Rs. 1,47,22,107/- out of total addition amount to Rs. 2,23,16,618/-. But the additions were sustained by the Id. CIT(A) the amount to Rs. 10,25,395.03 on account of opening sundry creditors, the amount to Rs. 48,03,967/- on account of bogus sales, the amount of Rs. 17,65,239/- on account of bogus sundry creditors and the amount to Rs. 2,80,000/- on account of violation of Sec 40A(3) of the Act. Both the parties being aggrieved filed the appeals before us by challenging the appeal order.

5. The Id. DR vehemently argued and relied on the assessment order. The Id. DR first invited our attention indifferent paragraphs of appeal order which are reproduced as below: -

5.1. The appeal order pages 28 to 30 is inserted as below:

*“6.4 I have considered the observations of the Assessing Officer as made by him in the assessment order as well as the remand report. I have also considered the written submissions of the assessee as well as her counter comments on the report of the Assessing Officer. I have further considered the judicial pronouncement(s) relied upon by the assessee on the issue under reference. On careful consideration of the assessment order, assessment records and other materials placed on record, it has been noticed that the Assessing Officer has made the addition of Rs.2,23,16,618/- bn account of bogus sundry creditors by invoking the provisions of section 69 of the Act as the assessee has failed to prove the genuineness of the creditors shown in the balance sheet/books to this extent. After obtaining the addresses from the assessee, the Assessing Officer asked for copy of account of the assessee directly u/s 133(6) of the Act from all the creditors shown in the books but either no response has been received from the creditors or letters sent to them u/s 133(6) of the Act were received back un-served from almost all the creditors in whose case addition has been made. The fact regarding non receipt of any information or the fact with regard to receipt of letters back undelivered was conveyed to the assessee by the Assessing Officer. In the absence of any satisfactory reply from the assessee with regard to the sundry creditors which have been treated as bogus, the Assessing Officer concluded that the creditors are bogus and proceeded to make an addition of Rs.2,23,16,618/- to the returned income of the assessee.*

6.5 *During the course of appellate proceedings, along with the written submissions, the assessee has filed copy of relevant pages of the cash book to describe the nature of the sundry creditors as appearing in his books of account. The extracts of cash book now being produced at appellate stage have also been confronted to the Assessing Officer. The extracts of cash book are not being treated as additional evidence as the Assessing Officer has himself admitted that the assessee produced books of account without bills and vouchers. Although the present Assessing Officer has objected to the explanation being offered by the assessee but in my opinion it will be fare for the sake of justice to consider the explanation on its merits. It is pertinent to note that the Assessing Officer has not rejected the books of account at any stage and totally relied on the balance sheet and trading cum profit & loss account to make various additions although it has been proposed by him to reject the books of account.*

6.6 *The assessee has tried to demonstrate that as to how the bogus creditors appeared in her books of account. The assessee has bifurcated the bogus sundry creditors into three parts and submitted as under:-*

*(i). OP. BALANCES AS ON 01/04/2008 - Party No. 21 (of the aforesaid 'Chart'):*

*The amount as stood reflected in the 'Ledger a/c' of the following party was the 'Op. Balance' for the year under consideration:-*

S.No	PARTICULARS	AMOUNT
21.	M/s Shalimar Paints	Rs. 10,25,395-03

*(Copy of the 'Ledger a/c' of M/s Shaliraar Paints [i.e L.F 101] is enclosed herewith as Annexure 'A' -Page 16) .*

*According to the assessee, the aforesaid amount aggregating to Rs. 20,06,287/-(supra) represents the 'Opening Balances' of the aforesaid parties. In further opinion of the assessee that as no addition pertaining to the aforesaid amount had ever been made during the year under consideration, no adverse inference as regards the same (or any part thereto) was liable to be made in the hands of the assessee while framing of the assessment for the year under consideration. It has, therefore, been submitted that the aforesaid addition of Rs. 10,25,395.03 made by the Assessing Officer be deleted."*

5.2. The appeal order pages 46 to 48 is inserted as below:

*"6.7 On careful consideration of the submissions made by the assessee, I am of the opinion that the assessee has fairly conceded that most of the sundry creditors (except that of a sister concerns) are bogus creditors. It has surprisingly been noticed that in spite of finding so many discrepancies in the maintenance of books of account, the Assessing Officer has not chose to reject the books of account. In my considered opinion, the explanation put forth by the*

*assessee with the help of cash book and narration of entries with regard to sundry creditors appears to be reasonable. This is apparent from the fact that the assessee has also admitted the unaccounted sales of Rs. 48,09,967/- which have not been recorded in the books of account although cash to the same extent has been introduced in the books of account under the shadow of bogus creditors. If the assessee had to make a storey, he would have concealed the fact with regard to unaccounted sales also and would not have conceded the unrecorded sales. The Assessing Officer has not denied the fact either in the assessment order or in the remand report that the Branch Office of the assessee at Gagret and other sale points at Ner Chowk and Mubarakpur were to receive Rs.54,34,244.42, Rs.46,10,040/- & Rs.51,69,255.40 respectively from the Head office and other branch offices of the assessee and sale points as stated in the written submissions have also not been denied. The assessee has very well explained the reasons for converting genuine creditors of the branch offices into bogus creditors. The same argument was taken by the assessee during assessment proceedings. I found the explanation offered by the assessee with regard to converting genuine sundry creditors in respect of branch offices into bogus creditors as reasonable and acceptable. In these facts and in the circumstances of the case, the addition of Rs.1,47,22,017/- [Rs.48,40,974.71 + Rs.47,42,721.62 + Rs.51,38,320.06] made by the Assessing Officer out of total addition of Rs.2,23,16,618/- is directed to be deleted.*

6.8 *With regard to the addition in respect of the creditors represented by opening balance, I am not in agreement with the submissions made by the assessee as it has not been proved with documentary evidence that the creditors represented by opening balance are genuine creditors. Moreover, the Assessing Officer has also invoked provisions of section 69 of the Act. In these facts and in the circumstances of the case, I am of the opinion that the Assessing Officer has correctly made the addition of Rs. 10,25,395.03 which represents opening balance in the case of bogus sundry creditors. Therefore, addition of Rs. 10,25,395/- represented by opening balance in the case of sundry creditors is upheld.*

6.9 *As regards the unaccounted sales admitted by the assessee, I am also not in agreement with the theory put forward by the assessee that the sales to the extent of Rs.48,03,967/- are suppressed and closing stock to the extent of unaccounted sales minus gross profit on these sales has been shown as excess. If we except the theory put forth by the assessee for argument sake, the opening stock of the next assessment year will have to be decreased and the profit of that year will be increased to that extent. The whole exercise will be revenue neutral. The theory put forth by the assessee can also not be believed in view of the fact that the accounts of the assessee are audited on which the assessee has placed heavy reliance. In fact the assessee has introduced his own unaccounted income to the extent of Rs.48,03,967/- into the books in the form of cash by introducing bogus sundry creditors to this*

*extent. The fact that the cash has been introduced in the books to the extent of Rs.48,03,967/- has also not been denied by the assessee rather accepted. In these facts and in the circumstances of the case, I do not agree with the submissions of the assessee that only gross profit on admitted unaccounted sales of the assessee amounting to Rs.48,03,967/- should only be added to the income of the assessee. I, therefore, confirm the action of the Assessing Officer in making addition also to the extent of Rs.48,03,967/- in addition to Rs. 10,25,395/- confirmed earlier.*

*6.10 Moreover, the assessee has not furnished any explanation with regard to the following sundry creditors:-*

<i>S.No.</i>	<i>Particulars</i>	<i>Amount</i>
<i>1</i>	<i>Amritsar Paint &amp; Chemical Inds., Putlighar, G. T. Road, Amritsar</i>	<i>Rs.850779.00</i>
<i>11</i>	<i>Khalsa Plywood Store, Gurdaspur Road, Bhaini</i>	<i>Rs.869643.03</i>
<i>27</i>	<i>Span Coating (I) Pvt. Limited</i>	<i>Rs.21522.00</i>
<i>35</i>	<i>Rebate and discount</i>	<i>Rs.23295.23</i>
	<i>Total</i>	<i>Rs.1765239.26</i>

*It means, the assessee has to say nothing with regard to the genuineness of these creditors. In the absence of any explanation, the addition to the extent of Rs. 17,65,239/- made by the Assessing Officer is also confirmed.*

6.11 *In view of the above discussion, the total addition which has been confirmed out of total addition of Rs.2,23,16,618/- will come to Rs.75,94,601/-[Rs. 17,65,239/- + Rs.48,03,967/- + Rs. 10,25,395/-]. The balance addition of Rs. 1,47,22,017/- out of total addition of Rs.2,23,16,618/- made by the Assessing Officer is directed to be deleted. In the result, ground of appeal No. (ii) taken by the assessee is partly allowed.”*

6. We heard the submission of the ld. DR, relied on the orders of revenue authorities and considered the available record.

**Grievance of Revenue, ITA No. 263/Asr/2014: -**

The revenue has only grievance related to relief granted by the ld. CIT(A) on account of bogus sundry creditors amount to Rs. 1,47,22,107/-. The assessee had submitted relevant explanations before the appellate authority. The ld. CIT(A) allowed the ld. AO to examination the fact. The report was submitted by the ld. AO which is inserted in appeal order paragraphs 6.2 the said paragraph is reproduced as below:

*“6.2 The written submissions filed by the assessee were forwarded to the Assessing Officer for his comments/report. The report of the Assessing Officer was received vide his office letter dated 18.02.2013, the relevant paras of which read as under:-*

*Kindly refer to your office letter No. CIT (A)/Jal/12-13/1659 dated 01.01.2013 in the case cited in the subject above.*

*In this connection it is submitted as under:*

- 1. In his submission, the assessee has claimed that to safeguard your business interest and in order to avoid withdrawal of the bank facilities, he submitted the names of M/s bepcO (India), Ner Chowk, the creditor with the names of nine different parties for Rs. 4610040/-. He has not explained in his submission how the account of his sister concern was settled, neither it was explained at the time of assessment. In the absence of any such explanation on this account, the appeal of the assessee on this point has no locus standi.*
- 2. Similarly, the assessee has claimed that the credit of Rs. 4072721/- in the name of his sister concern ms/ Bepco (india), garget was transferred in the name of seven different parties. He has not explained how the credit in the name of M/s Bepco (India), garget was settled. As such the appeal of the assessee again does not have any locus standi in the absence of any explanation on this issue.*
- 3. Further it has been claimed that the credits of Rs. 5138320/- in the name of his sister concern m/s bepcO (India), Mubarakpur were transferred in the name of seven different parties. On this account again the assessee has failed to explain how the credit in the names of the sister concern were settled.*

4. In respect of the under mentioned parties, it has been claimed that the amount mentioned against each was received by the assessee from time to time from these parties, had erroneously been so reflected in the books of accounts for the reasons best known to his accountant who messed up the accounts of the assessee concern and its sister concern. The same were factually the cash receipts' generated in the hands of the assessee from the sale receipts collected by the seal representative of the assessee concern from different sale point of the assessee concern throughout the year, which for the aforesaid reasons had reminded omitted to be recorded, while for the purchase pertaining to the said sales stood duly recorded in the books of account, pursuant whereto the assessee who was not maintain any stock records and had carried out the stock valuation on the basis of the purchase/sales recorded in the books. On the basis of these facts it has been claimed that the assessee erroneously valued the closing stock at an inflated value in the closing stock.

While regard to these submissions in para 4, it is to point out at the time of the assessment the assessee failed to furnish details of opening and closing stock, , which he now calms to have valued at inflated cost. The assessee has furnished any evidence corroborating a his/her claim as above. In the absence of any quantities details of purchase and sale the plea of eth assessee cannot be accepted. The details of these parties/creditors is given below:

S.No	Name of the party	Amount
1.	M/s Archana Color Paint	798547/-
2.	M/s Gurhar Kamal	799547/-
3.	M/s Harpreet Cloth house	798520/-
4.	M/s Karan Enterprises	816641/-
5.	M/s Stylish Color Zone	797584/-
6.	M/s Yash Thinner & Chemical	799128/-
	Total	4809967/-

*In view of the facts discussed in details above, the appeal of the assessee as above to be dismissed.”*

6.1. The Id. DR submitted the written submission. The relevant paragraph is inserted as below:

ISITET SUBMISSIONS.

On Merits ( Deletion of unexplained sundry creditors of Rs 1,47,22,107/-)

1 Assessee officer added the above creditors as unexplained as the assessee could not prove their genuiness and respective parties also not found existing and submission of the assessee that he credited above amount to various parties and debited to his branch office and sale office as under.

Sr no	Name	Amount
1	Bemco india mubarkpur(sale shops )	5169255
2	Bemco india gagret (branch office )	4787539
3	Bemco india ner chowk (sale point )	4810040
Total		14766835/-

The submission of the assessee not accepted as per para 3.2 of the assessment order briefly stated as under.

- (i) These amount being credited in accounts of the assessee, it was primarily his responsibility to prove the identity, creditworthyness of creditors and genuiness of the transactions which he failed to prove.
- (ii) It has been calimed that it has been credited to various apties by debiting above above 3 accounts, it has not been explained as to how the liability of said account has been discharged and may have been settled from undisclosed sources.
- (iii) Even if it is assumed that liability toward above account is substituted in the name of other parties, assessee failed to explain reasons with documentary evidences with books of account of the above branch and shops.
- (iv) The branch or shops if have got credit balance with the assessee, then they out to have liability, which has not been explained with accounts books .

1.1 CIT(A) ignoring all the above facts as above , merely by following unreasonsble and unjustified explanation of the assessee that he has converted genuine creditors of the branch office into bogus creditors, only with the intent of avoiding disruption with the bank facilities avalived by her which is not justified at all as under .

- (i) When all the facts as per the detailed assessment order have been ignored and assessee failed to furnish the details and explain the genuiness of the liability of branch office with any evidences and books of account of branches .
- (ii)When the genuiness of the liability of the branches is not explained and proved with evidences even during the appellate proceedings.
- (iii) Whe even as per the remand report (para 6.2 of CIT (A) order) creditor found unexplained.
- (iv) At all there is found no logic to accept creditors as genuine pertaining to branches or sale office when the creditors of the branch office or sale office (not separe assessee or entity than head office) are the creditors of the head office which are found unexplained.
- (v) Why genuine creditors of branches not substituted with same genuine creditors of head office instead of bogus creditors for bank purpose and fact clearly going to conclude that creditors not genuine.

In view of the above, it is prayed that order of assessing officer be restored.

The revenue has raised the question that the Id. CIT(A) had not considered the golden rule for verification of sundry creditors i.e., identity of party, mode of transaction, creditworthiness. Even the paper documents of the parties are not considered. There is no such evidence that can satisfy the genuineness of sundry creditors. We dismiss the observation of the Id. CIT(A) and appeal order is set

aside. We remit back the matter to the file of the Id. CIT(A) and the assessee should get proper opportunity for represent the matter in set aside proceeding.

7. In the result, the appeal of the revenue **ITA No. 263/Asr/2014** is allowed for statistical purpose.

**Grievance of assessee, ITA No. 246/Asr/2014: -**

8. The assessee has challenged multiple issue. Related the sundry creditors we take the view that matter should be re-adjudicated by the Id. CIT(A) in setaside proceeding. So, the bogus sundry creditors amount to Rs. 17,65,239/- is remitted back in the file of the CIT(A). The addition of opening Sundry creditor amount to Rs. 10,25,329/- is not related to this year. There is no observation about verification of earlier year documents. The reasonable opportunity of the assessee was denied. The matter is remitted back in the file of the CIT(A) for adjudication.

The addition of entire undisclosed/ bogus sales amount to Rs. 48,03,967/- by the Id. CIT(A). the assessee prayed for restricting the addition by applying Gross profit rate of impugned assessment year. The matter is remitted back to the file of the Id. CIT(A) with the direction of the bench as indicated above.

The assessee's submission related to addition for contravening section 40A(3) of the Act amount to Rs. 2,80,000/- was not considered properly by the Id. CIT(A). the matter is remitted back to the file of the Id. CIT(A) for adjudication *de novo*. The Id. DR has not made any objection against this issue.

Needless to say, the assessee should get reasonable opportunity of hearing in set aside proceeding before the Id. CIT(A).

Considering above, assessee's ground nos. 1,2 & 9 are general in nature. Assessee's ground nos. 5 & 6 are allowed and ground nos. 3,4,7 & 8 are allowed for statistical purpose.

9. In the result, appeal of the assessment **ITA No. 246/Asr/2014** is partly allowed for statistical purpose.

**Penalty, ITA No. 251/Asr/2018**

10. The assessee's appeal related imposition of penalty U/s 271(1)(c) of the Act amount to Rs. 23,40,338/-. As both the quantum appeals of assessee and revenue are remitted back to the file of the Id. CIT(A), accordingly the imposition of penalty is to recalculate after the setting aside order of the Id. CIT(A). We remit back the matter to the file of the CIT(A) for further adjudication of penalty after determination of quantum appeals. The Id. DR has not made any objection against this issue.

Needless to say, the assessee should get reasonable opportunity of hearing in set aside proceeding before the Id. CIT(A).

11. In the result, the appeal of the assessee **ITA No. 251/Asr/2018** is allowed for statistical purpose.

**Order pronounced in the open court on 21.08.2023**

Sd/-

**(Dr. M. L. Meena)**  
**Accountant Member**

Sd/-

**(ANIKESH BANERJEE)**  
**Judicial Member**

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By order