

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "H" BENCH: NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1997/Del/2021
[Assessment Year : 2016-17]**

Winner Diamond Tools Pvt.Ltd., T-31, 3 rd Floor, Plot No.2, Manish Global Mall, Sector-22, Dwarka, New Delhi-110077. PAN-AAACW0184G	vs	ACIT, Circle-27(2), Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Hari Krishan, CA	
Respondent by	Shri Amit Katoch, Sr.DR	
Date of Hearing	21.08.2023	
Date of Pronouncement	24.08.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), Delhi-9 dated 21.11.2019 for the assessment year 2016-17.

2. The assessee has raised following grounds of appeal:-

1. *"The Ld. Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs.60,87,034/- made by the Assessing Officer u/s 68 of the Income Tax Act. The addition may be deleted.*
2. *The Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the addition of Rs.60,87,034/- made to the income of the assessee u/s 68 of the income Tax Act, on account of sundry creditors outstanding for more than three years, is unsustainable in law. None of these amounts were received by the assessee in the previous year relevant to Assessment Year 2016-17 under consideration. As such the provisions of section 68 of the Income Tax Act are not applicable to these amounts.*

In the case of Kohinoor Enterprises 410 ITR 153 (J&K) an addition was made in Assessment Year 2007-08 on account of a credit of Rs.1,50,00,000/- which was carried forward from the earlier years. In the appeal before the Hon'ble High Court the counsel of the assessee argued that, the said loan does not relate to the Assessment Year 2007-08 and, in no case, it can be considered as an addition in the Assessment year 2007-08. Even for the sake of argument, if the loan can be treated as fictions it can in no way be added as an income under Section 68 of the Act in the year 2007-08, when the Assessing Officer has accepted that it was being carried forward since assessment year 2001-02. Section 68 of the Act lays down that if any sum is found credited in the books of an Assessee maintained for any previous year, and the Assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the Assessee of that previous year. In the instant case, the matter pertains to some six years back and it has been explained by the Assessee that the loan in question is outstanding due to the financial crunch being faced by the appellant firm.

The counsel of the assessee further relied upon the judgement of the Hon'ble Rajasthan High Court in the case of Prameshwar Bohra 301 ITR 404 (Raj), wherein the Hon'ble Rajasthan High Court has held that it does not require any elaborate arguments that a carried forward amount of the earlier year does not become an investment or cash credit in a latter relevant year under consideration.

The Hon'ble J&K High Court held as follows.

"It is clear beyond any shadow of doubt that the said loan does not relate to the Assessment Year 2007-08 and, in no case, it can be considered as an addition in the Assessment year 2007-08. No effort at all has been made on the part of the Assessing Officer to show this loan as a fictitious loan. Even for the sake of argument, if

it is treated to be so, it can in no way be added as an income under Section 68 of the Act in the year 2007-08, when the Assessing Officer has accepted that it was being carried forward since the assessment year 2001-02. Section 68 of the Act lays down that if any sum is found credited in the books of an Assessee maintained for any previous year, and the Assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the Assessee of that previous year. In the instant case, the matter pertains to some six years back and it has been explained by the Assessee that the loan in question is outstanding due to the financial crunch being faced by the appellant firm. In this view of the matter, we find substance in the contentions of the learned counsel for the Assessee/appellant before us as the material/reply placed by the Assessee before the Assessing Officer has not been considered and no opportunity has been given to him to explain his position, therefore, the view taken by the Tribunal is perverse, accordingly, this question is answered in favour of the Assessee/appellant before us."

3. *The appellant craves leave to add to or amend/modify or delete any or all of the above grounds of appeal."*

3. The assessee has filed an affidavit dated 28.03.2023 seeking condonation of delay of 55 days in filing the appeal. For the sake of clarity, the relevant contents of the affidavit are reproduced as under:-

"I, Mr. ASHWAT DHARMAPURI solemnly affirm as under:

1. *In this case the order of the Commissioner of Income Tax (Appeals) was received on 21-11-2019. Accordingly, the appeal was required to file before the Hon'ble Tribunal by 20-01-2020. The appeal however has been filed on 28-12-2021. In view of the judgment of the Hon'ble Supreme Court in the case of Cognizance for Extension*

of Limitation - [2022] 134 taxmann.com 307 (SC), because of COVID-19 pandemic, the delay in filing of the appeal from 15-03-2020 to 28-02-2022 is to be excluded. Thus there is delay of 55 number of days (55 days; from 20-01-2020 to 15-03-2020) in filing of the appeal.

- 2. The Assessment Order in this case was passed u/s 143(3) on 30-12-2018. In this assessment order the Assessing Officer has accepted the returned loss of Rs.1,37,11,751/-. The Assessing Officer has however made an addition of Rs.60,87,034/- u/s 68 r.w.s. 115BBE of the Income Tax Act and has raised the demand. The assessee preferred appeal before the Commissioner of Income Tax (Appeals), against the assessment order. Vide his order dated 21-11-2019 the Commissioner of Income Tax (Appeals) has confirmed the addition of the Rs. 60,87,034/- made by the Assessing Officer. The Commissioner of Income Tax (Appeals) has however allowed the said income of Rs.60,87,034/- to be set off against the current year's loss of Rs.1,37,11,751/- determined in the assessment order. Since the demand raised against the assessee was to be deleted in view of the order of the Commissioner of Income Tax (Appeals), the assessee did not realise the need of filing further appeal against the order of the Commissioner of Income Tax (Appeals) before the Hon'ble Tribunal.*
- 3. On 18-11-2021 the assessee however received a penalty order dated 18- 11-2021, DIN No. ITBA/AST/S/143(3)/2018-191014662304(1) levying concealment penalty of Rs.28,21,340/- u/s. 271(1)(c) of the Act. In view of the same the assessee has nowrealised the need of filing the appeal against the order of the Commissioner of Income Tax (Appeals), before the Hon'ble Tribunal.*
- 4. The delay has not been caused on account of any palpable negligence, or malafide on the part of the assessee. The delay was not caused deliberately by the assessee. The delay is absolutely unintentional and is due to the bonafide reasons. The assessee has*

not obtained any undue benefit because of the delay in filing the return of income.”

4. In view of the above affidavit, Ld. Counsel for the assessee submitted that the assessee has reasonable cause for not filing the appeal in time due to widespread expansion of Covid-19 Pandemic and lockdown position in the country, during the relevant time. Hence, the assessee was prevented by reasonable cause for not filing the appeal in time.

5. Per contra, Ld. Sr. DR opposed these submissions and submitted that there is no reasonable cause for condonation of delay. Therefore, the appeal filed by the assessee deserves to be dismissed on account of time barred by 55 days.

6. We have heard the submissions of the parties and perused the material placed on record. In view of the judgment of Hon'ble Supreme Court in ***Suo Motu Writ Petition (Civil) No.3 of 2020 in Cognizance For Extension Of Limitation [2022] 134 taxmann.com 307 dated 08.03.2021***, we are of the considered view that there was a reasonable cause for not filing the appeal in time. Therefore, respectfully following the judgment of Hon'ble Supreme Court, we condone the delay of 55 days in filing the appeal and the appeal of the assessee is taken up for hearing on the basis of material available on record.

7. The only effective ground raised by the assessee in this appeal is against sustaining the addition of INR 60,87,034/- and invoking the provisions of section 115BBE of the Income Tax Act, 1961 (“the Act”).

8. Brief facts of the case are that the assessee filed return of income through e-mode on 17.10.2016 declaring loss of INR 1,37,11,751/-. The case

was selected for limited scrutiny under CASS. Statutory notice u/s 143(2) of the Act was issued and served upon the assessee. Again notice u/s 142(1) of the Act was issued but there was no compliance on behalf of the assessee. Thereafter, a show cause notice dated 21.12.2018 was issued to the assessee. The assessee had filed a reply dated 24.12.2018 to the show cause notice issued to him which was not found acceptable by the AO on the ground that the assessee failed to file supporting evidences. Thereafter, the Assessing Officer ("AO") framed the assessment u/s 143(3) of the Act dated 30.12.2018 and made addition of INR 60,87,034/- which was to be taxed separately as per provision of section 115BBE of the Act.

9. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee.

10. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal. Thereby, he allowed set off of losses against the addition made u/s 68 of the Act. However, he sustained the addition.

11. Apropos to grounds of appeal, Ld. Counsel for the assessee submitted that impugned addition was made on the basis that no documentary evidences were submitted by the assessee. However, the documentary evidences were submitted by the assessee. He drew our attention to the Paper Book. To buttress the contention that certain evidences were available with the AO. He submitted that the assessee is ready to get confirmations of the concerned parties.

12. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

13. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find that the AO made impugned addition by observing as under:-

6.2. *“The reply filed by the assessee is found not tenable. As discussed above the assessee has been granted enough opportunity to file the confirmation of the parties above two lakhs However, not a single confirmation has been filed till date. Further, the assessee has also not provided the PAN of the creditors. The assessee has discharged its onus by claiming that the creditors have subsequently been squared off through banking channel. However, the assessee has not provided the bank statement to substantiate that the creditors have subsequently been squared off. In view of this the following sundry creditors are treated as bogus and added back to the income of the assessee u/s 68 of the Income Tax Act.*

Sl.No.	SUNDRY CREDITORS	AMOUNT (Rs.)
1.	Circa Systems Pvt.Ltd.	4,14,221
2.	CR Gems Superabrasives Co.OLtd.	3,30,260
3.	Nanjing Hanrui Cobalth CO.ltd.	2,34,591
4.	Shi Krishna Abrasives	11,53,080
5.	Udyen Jain & Associates (Tax Auditor of the assessee. Balance outstanding for more than three years)	9,79,426
6.	Unnati Enterprises	8,40,129
7.	Unnati Stone Tools Pvt.Ltd.	4,09,921
8.	Ansa metals and Chemicals Ltd.	4,26,565
9.	Nidhi Steel	3,31,138
10.	Sheel Scientific Suppliers	2,19,042
11.	Umcore India Pvt.Ltd.	748661
12.	Total	60,87,034

6.3. *In the absence of any documentary evidence the amount of Rs. 60,87,034/- being sundry creditors outstanding in the books of the assessee is treated as bogus and added back to the income of the assessee u/s 68 r.w.s. 115BBE of the Income Tax Act, 1961.1 am satisfied that the assessee has concealed its income and hence this*

is a fit case for the initiation of penalty within the meaning of section 271(1)(c) of the Income Tax Act.1961. Accordingly. penalty proceedings u/s 271(1)(c) of the Act for concealment of income are being initiated separately.

(Addition: Rs. 60,87,034/-)

7. *In view of the above the income of the assessee is recomputed as hereunder-*

<i>Income as shown in the ITR</i>	<i>(loss) Rs. 1,37,11,751/-,</i>
<i>Addition as per Para 6 (To be taxed separately u/s 68 r.w.s 115BBE of the Income Tax Ac.</i>	<i>Rs. 60,87,034/-</i>

8. *Business loss assessed at Rs.1,37,11,751/-. Addition of Rs. 60,87,034/- is to be taxed separately u/s 68r.w.s. 115BBE of the Income Tax Act, 1961. Necessary forms [ITNS]. ascertaining tax liability and Challans are being annexed with this order. Notice u/s.271(1)(c) of the I. T. Act is being issued separately.”*

14. The basis of AO for the impugned addition is that the assessee failed to furnish the documentary evidences hence, made the addition. However, the ledger accounts and addresses of the creditors were given. It was stated before the AO that the amount was paid to concerned parties through banking channel. In this regard, he drew our attention towards bank statement. The assessee has appended a certificate to Paper Book filed by it, stating that bank statement was before Ld.CIT(A)/AO. However, AO recorded that no bank statement was filed to prove that the amount was subsequently squared off. Therefore, considering the totality of the facts, the impugned order is set aside and the issue is restored to the AO to make verification of the correctness of the claim of the assessee. Grounds raised by the assessee are thus, allowed for statistical purposes.

15. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 24th August, 2023.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI