

**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.9703/Del/2019**

**[Assessment Year : 2015-16]**

R M Components Pvt.Ltd., A-138, SGM Nagar, NIT Faridabad, Faridabad, Haryana-121001. <b>PAN-AADCR5485J</b>	vs	ACIT, Circle-2, Faridabad.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Vijay Singla, CA & Ms. Airik Singla, Adv.	
<b>Respondent by</b>	Shri Amit Katoch, Sr.DR	
<b>Date of Hearing</b>	22.08.2023	
<b>Date of Pronouncement</b>	05.09.2023	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee is directed against the order passed u/s 143(3) of the Income Tax Act, 1961 ("the Act") by Ld.CIT(A), Faridabad dated 28.11.2019 for the assessment year 2015-16.

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

- 1). *"That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 143(3) without appreciating that the Assessment Order is bad in law, void-ab-initio and is liable to quashed. (No show cause notice).*
- 2) *That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 143(3) without appreciating that the depreciation of 34,876/-on account of electric installation is an integral part of plant and machinery.*

- 3) *That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 143(3) without appreciating that*
- *the creditors have already submitted their confirmations in response to notices u/s 133(6) and;*
  - *the payment to the creditors have been made in next years; and*
  - *the liability to the payments have not ceased exist, and liability to the creditors have been duly acknowledged in books of accounts;*
  - *There is no question of cessation and remission of sundry creditors liability and it is not covered by the provisions of section 41(1) of the IT Act, if the same is shown in Balance Sheet of Assessee*

*Violation of Audi Altrem partem (ie Principles of Natural Justice)*

- 4) *That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 143(3) without appreciating that the Assessment order of Learned Assessing Officer is bad in Law and facts as it is prejudice to the interests of the Assesse due to lack of natural justice or violation of principles natural justice and no proper show cause notice has been issued.*

*Others*

- 5) *That the Appellant prays for the grant of permission to add, alter, delete or modify, any or all the grounds of appeal at any time on or before or during the time of hearing before the Hon'ble ITAT.”*

3. Facts giving rise to the present appeal are that the assessee is a company, engaged in the business of manufacturing of automobile and auto parts, filed its return of income declaring total income of INR 46,56,210/- through e-mode on 21.09.2015. The case was selected for scrutiny under

Computer-Assisted Scrutiny Selection (“CASS”). Statutory notice was issued on 08.04.2016 and duly served upon the assessee company. Thereafter, the Assessing Officer (“AO”) framed the assessment after giving opportunity to the assessee. Ld. Counsel for the assessee attended the proceedings on behalf of the assessee and filed various details before the Assessing Authority. The Assessing Authority thereafter, framed the assessment u/s 143(3) of the Act dated 30.12.2017 by making addition on account of bad debts of INR 12,60,319/- and disallowance of expenditure u/s 37(1) of the Act on adhoc basis amounting to INR 4,20,009/-. Further, the AO made disallowance of depreciation in respect of electricity installation amounting to INR 34,876/- and a sum of INR 44,70,124/- on account of unexplained creditors.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee. Thereby, Ld.CIT(A) confirmed the addition of depreciation and addition on account of creditor in part. Rests of the additions were deleted.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

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

7. **Ground No.1** raised by the assessee is against the assessment order is bad in law on account of non-service of notice u/s 143(2) of the Act.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find that the AO has categorically stated that in the assessment order, a notice u/s 143(2) of the Act was issued on 08.04.2016 and duly served upon the assessee. Thereafter, Statutory notices u/s 142(1) of the Act were issued and served upon the assessee. In response thereto, Ld. Authorized Representative (“AR”) on behalf of the assessee attended the proceedings. This finding on fact is not rebutted by the assessee by placing any contrary material on record. We therefore, do not find any infirmity into the order of the authorities below, the same is hereby affirmed. Ground No.1 raised by the assessee is thus, dismissed.

9. **Ground No.2** raised by the assessee is against the sustaining of disallowance of depreciation of INR 34,876/-.

10. Ld. Counsel for the assessee submitted that the authorities below failed to appreciate the fact that electricity installations are being integral part of the plant & machinery. Therefore, the depreciation should be allowed as a plant & machinery.

11. On the other hand, Ld. Sr. DR relied upon the orders of the authorities below and contented that there is no ambiguity under law. Electricity installations are of different rate of depreciation and the authorities below have rightly disallowed the claim.

12. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. In the case in hand, the assessee failed to bring on record, any evidences in support of its contention that the electricity

installations were integral part of the plant & machinery. On the contrary, it is brought on record that the electricity installations were separate from the plant & machinery. Therefore, we do not find any reason to interfere in the findings of authorities below, the same is hereby affirmed. Thus, Ground No.2 raised by the assessee is dismissed.

13. **Ground No.3** raised by the assessee is against the sustaining of addition partly on account of unexplained creditors.

14. Ld. Counsel for the assessee submitted that the AO had made addition of INR 44,70,124/- on account of four sundry creditors out of which, one M/s Shiva Autoforge Pvt.Ltd. amounting to INR 31,33,380/- was deleted and in respect of other three creditors, Ld.CIT(A) sustained the additions without considering the submissions in right perspective. Ld. Counsel for the assessee placed reliance on the judgement of Hon'ble Bombay High Court in the case of **Pr.CIT vs Pukhraj S.Jain in ITA No.1288 of 2016** dated **04.01.2019** and decision of the Co-ordinate Bench rendered in the case of **Satpal & Sons (HUF) vs ACIT in ITA No.388/Del/2015** dated **29.08.2017**. Ld. Counsel for the assessee submitted that lower authorities failed to appreciate the fact that the assessee had filed confirmation on M/s. Lalit Wafers and Namkeen. Further, he submitted that similarly the other creditors also have confirmed the addition. Therefore, Ld.CIT(A) ought to have allowed the appeal of the assessee.

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

16. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find that Ld.CIT(A) has given a finding on facts by observing as under on these three creditors:-

ii) “M/s Lalit Wafers and Namkeen (Rs.1,52,000/- cr)

*The appellant furnished the confirmation from Sh. Lalit Arora, Prop. M/s Lalit Wafers and Namkeen along with his ITR during the assessment proceedings. From the perusal of the same it was noted by the AO that Sh. Lalit Arora has not shown any income from M/s Lalit Wafers. On the basis of such facts the AO treated M/s Lalit Wafers as bogus creditor and made addition of Rs.1,52,000/-. During the appellate proceedings, the appellant relied upon the same documents which were furnished before the AO. The appellant could not bring on record any satisfactory document to establish the genuineness of the said creditor. Keeping in view the adverse observations as discussed in the assessment order the addition made by AO is hereby confirmed for Rs.1,52,000/-.*

iii) M/s Dutt Constructions (Rs.10,78,792/-cr)

*The AO mentioned in the assessment order that ITR, balance sheet, profit and loss account of the said concern were not furnished and the name of the prop, was not mentioned in the confirmation. Accordingly the AO treated the same as bogus and made addition of Rs. 10,78,792/-. During the appellate proceedings, the appellant relied upon the same documents which were furnished before the AO. On going through the same it is noted that the appellant had not explained the nature of goods purchased or services taken from the said creditor. The copy of invoices or any other evidence were not furnished in support of genuineness of the same. Only confirmation was furnished which was not having even the name of the person who had signed the same. It was further noted that the said creditor was outstanding till 31.012.2018 and payments have been shown in the month of January 2019. The appellant has tried to justify the genuineness of the said creditor by showing payments after the completion*

*of assessment proceedings and during the pendency of the appellate proceedings. Even the copy of the bank statement has not been made available to show that cheques issued in the month of January 2019 have been got encashed. The appellant has failed to show the genuineness of such sundry creditor. The onus was upon the appellant to explain nature of such credit outstanding in its books of accounts. The appellant has failed to do so. Keeping in view the above facts and discussion it is held that the AO was justified in making addition of Rs.10,78,792/-, the same is hereby confirmed.*

*(iv) M/s Accurate Tools Pvt. Ltd. (Rs.1,05,952/-cr)*

*The appellant has furnished details of trade receivable part of balance sheet of M/s Accurate Tools. However, the AO observed that the appellant has produced false document which had been fabricated. Therefore, the AO treated the said creditor as bogus. During the appellate proceedings, the Ld. AR had furnished certain documents like tax invoices and registration under GST of the said entity in order to prove the genuineness of the creditor, however on going through the same it is noted that these invoices pertain to the period November 2018 and January 2019, the GST registration has been made on 28.05.2018. Thus it is found that there is no evidence on record to show genuineness of the said creditor for the period under consideration. Thus on the basis of these facts, it is held that appellant could not establish genuineness of M/s Accurate Tools. Therefore, addition of Rs.1,05,952/- is hereby confirmed.”*

17. We find that during the course of assessment proceedings, the AO did not make verification of claim of the assessee that the assessee had made payment in subsequent years so far the credit related to M/s. Lalit Wafers and Namkeens and M/s. Dutt Constructions. In our considered view, Ld.CIT(A) also failed to get these credit entries verified from the aforementioned creditors. Therefore, looking to the totality of the facts, these two creditors deserves to be

allowed and impugned addition of INR 1,52,000/- and INR 78,792/- is hereby, deleted. Rest of the addition is sustained as the assessee failed to rebut the finding on fact qua M/s. Accurate Tools (P) Ltd. This ground raised by the assessee is partly allowed.

18. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 05<sup>th</sup> September, 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