

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA Nos.419 & 420/SRT/2023 (AYs 2016-17 & 2018-19)

(Hearing in Physical Court)

Samrat Remedies Ltd. 208, 2 nd Floor, De Elmas, Pahadi Village, Sonawala Cross Lane No.2, Goregaon East Mumbai-400063 PAN : AAJCS 3844 G	Vs	Asst. Commissioner of Income Tax, Vapi Circle, Income Tax Office, Vapi, 8 th Floor, Fortune Square-II, Above TBZ, Chala, Vapi -396191 National e-Assessment Centre Delhi
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से /Assessee by	Shri Ashok Sharma, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	19.06.2023
सुनवाई की तारीख/Date of hearing	01.09.2023
उद्घोषणा की तारीख/Date of pronouncement	06.09.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by assessee are directed against the separate order of National Faceless Appeal Centre (NFAC), Delhi/Ld. CIT(A) dated 25.05.2023 & 27.05.2023 for assessment years (AYs) 2016-17 and 2018-19 respectively, which in turn arose out separate assessment orders passed by Assessing Officer under section 143(3) r.w.s 144B dated 22.12.2018 and 30.04.2021 respectively. Since the facts in both the appeals are common except variation of amount related to addition on account of sundry creditors. With the consent of both the parties, the appeal for assessment year 2016-17

is treated as “lead” case, the assessee has raised following grounds of appeal;

1A. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs.1,41,93,303 in respect of sundry creditors.*

1B. *The Ld. CIT(A) erred in rejecting the additional evidences filed in form of confirmations of accounts from three parties which was not available during scrutiny proceedings because the parties did not respond at that point of time and that in respect of one party the confirmation could not be filed since, the party being government organization insisted on notice from department to file the confirmation letter.*

1C. *The appellant submits that the confirmations are available and that CIT(A) ought to have consider the same and that the addition should be deleted.*

2. *The appellant craves leave to add, alter or amend any grounds of appeal before or at the time of hearing of the appeal.”*

2. Rival submissions of both the parties heard and record perused. At the outset of hearing, Ld. Authorized Representative (Ld-AR) for the assessee submits that in appeal for assessment year 2018-19 the assessee, besides common ground of sundry creditors, has also raised grounds of appeal against the addition on account of duty drawback of Rs.14,424/-. The Ld. AR for the assessee submits that he has instructed by assessee not to press due to smallness of amount and the ground of appeal may be dismissed as “not pressed”.
3. For other additions on account of sundry creditors, the Ld. AR for the assessee submits that before Assessing Officer assessee could not file confirmation as same were not received from the parties. However, before Ld. CIT(A) assessee filed such confirmation and application for admission of additional evidence under Rule-46A of Income Tax Rules, 1962. The Ld. CIT(A) rejected the application of

assessee under Rule 46 of Income Tax Rules, by taking view that approach of assessee seems to be causal and application is not maintainable and upheld the addition made by Assessing Officer. The Ld. AR for the assessee submits that assessee has now filed application for admission of additional evidence under Rule 27 of Income tax (Appellate Tribunal) Rules, copy of which filed pages 1 & 2 of the paper book. The assessee also filed copies of confirmation of creditors. Such evidences are relevant and essential to adjudicate the issue, which goes to the root of the case. To support his submission, Ld. AR for the assessee relied upon the decision of Hon'ble jurisdictional High Court in the case of Pari Mangaldas Girdhardas vs. CIT, 2nd August, 1977 reported Indian Kanoon.org/doc/625055/. The Ld. AR for the assessee prayed that additional evidence may be admitted and the matter may be restored back to the file of Assessing Officer, instead of, to the file of Ld. CIT(A) to avoid the process of remand report. The assessee undertake to be more vigilant in future in making compliance of notices of lower authorities.

4. On the other hand, Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue supported the order of lower authorities. The Ld. Sr-DR for the Revenue submits that assessee was given ample opportunities to file confirmations of the creditors but assessee failed to furnish such confirmation and to show reasonable cause for not furnish such confirmation before assessing officer. The ld CIT(A) has rightly taken a view that the assessee has not filed the

impugned confirmation before assessing officer. The assessee has not fulfilled the condition of Rule 46 of Income tax Rules, in seeking permission to file additional evidence before first appellate authorities. In alternative submission, Ld. Sr-DR for the Revenue submits that Bench may take view in accordance with law, if the bench is of the view that additional evidence furnished by assessee are admitted, in such event the matter may be restored to the file of Assessing Officer to avoid long drawn process of seeking remand report.

5. We have considered the submissions of the parties and perused the materials available on record. We find that Assessing Officer made addition for want of confirmation of sundry creditors. Before Ld. CIT(A) the assessee filed an application for under Rule-46A of Income Tax Rules, 1962 on 28.01.2021. Along with such application, the assessee filed confirmation of parties. The assessee contended that confirmation could not be filed during assessment proceedings as same were not sent by the parties at the relevant time. The Ld. CIT(A) rejected the application for admission of additional by taking view that assessee was having in possession of said confirmation before passing the assessment order. And that the approach of assessee was casual and upheld the addition made by the Assessing Officer in a single sentence. The Ld. CIT(A) confirmed the action of Assessing Officer in a cryptic manner.
6. On perusal of contents of application for admission of additional evidence and the nature of additional evidence furnished along with

application, we find that additional evidence so furnished are relevant and have direct bearing on the addition and needs consideration. In our prima facia view if the evidence/ confirmation are accepted, the assessee may succeeds on merit. Considering the relevancy of evidence, which is the confirmation of various creditors, we admit the plea raised by Ld. AR for the assessee for admission of additional evidence. Considering the fact that additional evidence is accepted for the first time before the Tribunal, therefore the matter is to be restored back to the file of Assessing Officer to examine or verify all the confirmations of sundry creditors and to pass order in accordance with law, after giving reasonable opportunity of being heard to assessee. The assessee is also directed to furnish all the evidence at the earliest possible of time before Assessing Officer as and when call for.

7. In the result, all the grounds raised by the assessee are allowed for statistical purposes.

ITA No. 420/SRT/2023 for AY 2018-19.

8. At the time of hearing Ld. AR for the assessee Ground No.1A is not pressed due to smallness. Hence same is dismissed as not press. Considering the facts that we have restored similar grounds of appeal in appeal of AY 2016-17 to the file of Assessing Officer, therefore following principle of consistency, this appeal of assessee is also allowed for same footing.
9. In the result, appeal of assessee are partly allowed in the above term.

10. In combined result, both the appeal of the assessee are allowed for statistical purposes. A copy of the instant common order be placed in the respective case file(s).

Order pronounced in the open Court on 06/09/2023.

Sd/-

(Dr ARJUN LAL SAINI)

[लेखा सदस्य/ACCOUNTANT MEMBER]

Surat, Dated: 06/09/2023

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

//True Copy //

Sd/-

(PAWAN SINGH)

[न्यायिक सदस्य JUDICIAL MEMBER]

By order

Sr. P.S./Assistant Registrar, ITAT, Surat