

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND

DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 148/SRT/2020 (AY: 2015-16)

(Physical Hearing)

I.T.O., Ward 2(3)(7), Surat.	Vs.	Atin Exports LLP, 4 th Floor, Shashvat Apartmental, Pipala Sheri, Mahidharpura, Surat-395003. PAN No. ABBFA 6184 F
Appellant/ Respondent		Respondent/ Assessee

Department represented by	Shri Ritesh Mishra, CIT-DR
Assessee represented by	Shri Mehul Shah, C.A.
Date of hearing	06/10/2023
Date of pronouncement	31/10/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the Revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-1, Surat (in short, the Id. CIT(A)) dated 19/02/2020 for the Assessment Year (AY) 2015-16. The Revenue has raised following grounds of appeal:

- "1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in admitting the additional evidences u/s 46A despite sufficient time and opportunity given to the assessee during the assessment proceedings and assessee was in no way prevented by sufficient cause to submit the detail/documents etc. to the A.O.*
- 2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO on account of unexplained outstanding liabilities of Rs. 3,47,40,260/- whereas during the course of assessment proceedings as well as remand proceedings, the assessee failed to prove the genuineness of purchases with evidences.*

3. *On the facts and circumstances of the case and in law, the Ld. CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Id. CIT(A)-1, Surat may be set aside and that of the Assessing officer's order may be restored.*
 4. *On the facts and circumstances of the case and in law, the appellant craves its right to add, alter, amend, deleted, any of the ground or grounds of appeal."*
2. Brief facts of the case are that the assessee is an LLP, engaged in trading of diamond, filed its return of income for A.Y. 2015-16 declaring income of Rs. 31,900/-. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that the assessee has shown sundry creditors on account of purchase of goods and also claimed various expenses. The Assessing Officer further recorded that neither any one attended on behalf of assessee nor filed any written submission, therefore, a final show cause notice dated 24/10/2017 was issued to the assessee as to why assessment be not concluded under Section 144 of the Income Tax Act, 1961 (in short, the Act). In the show cause notice, the Assessing Officer recorded non-compliance of various show cause notices on different dates. The Assessing Officer also noted that the assessee has shown current liability of Rs. 3.47 crores due to creditors. No detail is available or provided. The Assessing Officer recorded that despite service of final show cause notice, the assessee neither furnished any detail nor attended his office, therefore, entire current liability of Rs. 3.47 crores was added back to the total income of assessee. The Assessing Officer also made 20% of

disallowance of various expenses. The assessee claimed expenses of Rs. 81,965/- out of which Rs. 16,393/- being 20% was disallowed for want of details.

3. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed statement of facts and written submissions. In the statement of fact, the assessee stated that their firm was incorporated on 28/01/2015 and remained in operation for two months only in the respective year. The assessee was engaged in trading activities of polished diamonds during the year addition was made on account of outstanding current liability i.e. trade liability of Rs. 3.47 crores in absence of explanation. The assessee in its submission submitted that they have not received any notice during the assessment, hence, they were unable to file reply. The assessee came to know about the initiation of show cause notice from his auditor on telephone that notices have been issued against them. On receipt of such information, the assessee approached the Assessing Officer for submission of debtor, but the Assessing Officer refused to accept and informed that assessment proceeding is concluded. On the addition of outstanding current liability, the Assessing Officer stated that no addition under Section 68 is warranted and Assessing Officer erred in appreciating the fact that the assessee was incorporated only on 28/01/2015 and

remained operational for two months. In the trading of assessee, the normal credit period varied from 90 days to 180 days and due to lesser period of operation, it cannot be assumed of wrong or additional outstanding liability. The Assessing Officer has not rejected sales and outstanding debtor of the firm, why there is no opening or closing stock in the audit report. If entire stock bought has been sold and sales consideration is not realized then it implied that payment of outstanding creditors will yet to be completed. The assessee furnished copy of trading and profit and loss account, balance sheet, purchase register, sales register, stock register, bank statement, details of sundry creditors which includes Takshila Exim Pvt. Ltd. with copy of confirmation and ITR. Copy of sundry debtor, Bahubali Diamonds Pvt. Ltd., copy of confirmation and ITR. The latest address of creditor and debtors were also furnished. On the basis of such submission and the evidence, the assessee made prayer for deleting the entire addition.

4. On the submission and evidences furnished by the assessee, were considered as additional evidence and forwarded to Assessing officer under Rule 46A of the Income Tax Rules, 1962 (in short, the Rules). The Assessing Officer furnished his remand report dated 29/08/2019. The remand report contains of remand report, as recorded in para 8.1 of order of Id. CIT(A). The Assessing Officer objected against admission of additional evidence on the basis of certain case laws. However, in

his without prejudice submission, the assessee submitted that during the remand proceedings, notice under Section 133(6) of the Act was issued to sale and purchase party to verify the genuineness of transaction. In response to notice, the sale and purchase parties furnished the required details, copy of such details were annexed with the remand report. The Assessing Officer reported that the assessee has shown all purchases as creditor and sales as debtor in its balance sheet. The assessee was asked to furnish details regarding sales and purchases, bank statement and expenditure. The Assessing Officer reported that no expenditure voucher or bills of expenses were found and vouchers are self-made and without full name and address of the persons to whom such payments were made. The Assessing officer reiterated his contention that additional evidence may not be considered and addition made by him may be upheld. In response to such remand report, the assessee filed his rejoinder. In the rejoinder, the assessee submitted that the Assessing Officer has made further enquiry and issued notice under Section 133(6) of the Act to sole debtor and creditor appearing in their books. Notices were duly served and were responded which was duly received in the office of Assessing Officer in the time period provided. The assessee further submitted that enquiry conducted by Assessing Officer in pursuance of direction under Section 250(4) r.w. Rule 46A should be given equal or more weightage.

The Assessing Officer has of the Act made any comment on the documents furnished to him during the enquiries made by him. The assessee has explained non-submission of document during the assessment. The assessee also stated that the case laws relied by Assessing Officer in the remand report are not applicable on the facts of their case. The assessee on merit of the additions, submitted that no adverse inference on the business transaction is made by Assessing Officer even after his enquiry rather the Assessing officer in para 9 of remand report, mentioned that notice under Section 133(6) were issued to sale and purchase parties to verify the genuineness of transaction. In response to said notice, the sales and purchase party furnished details called for, thus I the enquiry, addition made in respect of current liability stand clarified. The assessee also raised a plea that the Assessing Officer doubted the creditors against the purchases and made addition of the entire amount outstanding against the purchases without pointing out any mistake in the books maintained by assessee in regular course of business and not doubted the method of accounting regularly employed. Trade result is not doubted. Payment made in the subsequent year would outstanding trade payable had not been refuted by the Assessing officer. Once sales and purchase and trade result is accepted, the purchases made on credit being represented as sundry creditor in the books of assessee is not to be

doubted. The assessee also relied on various case laws. On the submission of assessee that the Assessing Officer has not made any adverse report/not given his finding, the Assessing Officer was directed to furnish his report. In response to such direction dated 24/06/2019, the Assessing Officer furnished his second remand report vide report dated 29/08/2019. In the second remand report, the Assessing Officer submitted that Bahubali Diamond Pvt. Ltd. and Takshila Exim Pvt. Ltd. submitted their bank statement showing that some payments in the subsequent year and return of income alongwith ledger of party reflecting in A.Y. 2015-16 and submitted that matter may be decided on merit. Copy of second remand report was provided to the assessee for their comment. The assessee filed their rejoinder on 11/09/2019. In the rejoinder, the assessee stated that reference of various notices which was allegedly received were in fact not received and prayed to consider the remand report and decide the case accordingly.

5. The Id. CIT(A) after considering the contents of assessment order, submission of assessee, both the remand reports and reply thereof admit the additional evidence by taking a view that the additional evidences are admitted for the interest of principles of natural justice. On merit of addition, the Id. CIT(A) recorded that he has examined the details and documentary evidences forwarded by the Assessing Officer. The Id. CIT(A) noted that the entire outstanding balance is towards

Takshila Exim Pvt. Ltd. against four purchases. The purchase invoices, ledger account is filed which are verifiable. The Id. CIT(A) further noted that some amounts were paid in the next year and it could be ascertained that the assessee continued to them transaction with supplier in next years too. Prima facie, no defect or short coming is to warrant such addition. The genuineness of purchases are not doubted. The Assessing Officer has accepted trade result and only 20% of expenses were disallowed. The Id. CIT(A) further held that the addition of outstanding trade creditors in treating as unexplained cash credit is not correct as per law. The outstanding trade creditors balance are the result of purchase transactions. The assessee has not received any money from these creditors. The credit represents amongst due to them for the purchases made. Section 68 comes to play where any sum is credited in the account which is not explained by assessee. On the basis of such observation, the Id. CIT(A) deleted the entire addition. Aggrieved by the order of Id. CIT(A), the revenue has filed present appeal before the Tribunal.

6. We have heard the submissions of the learned Commissioner of Income Tax-Departmental Representative (Id. CIT-DR) for the revenue and the learned Authorised Representative (Id. AR) of the assessee and have perused the orders of the lower authorities carefully. The Id CIT-DR for the revenue submits that no details were furnished about the sundry

creditors by the assessee despite repeated notices by the Assessing Officer. The assessee for the first time filed before the Id. CIT(A), filed such details by taking plea that they started business only in the last days of January, 2015 or that credit period varies from 90 days to 180 days. The additional evidence of assessee was admitted without considering the scope of Rule 46A. The Assessing Officer opposed the admission of additional evidence during the appellate proceedings. The onus was on the assessee to prove the genuineness of credit entry in their books of account and the assessee failed to discharge their onus. To support such view, the Id. CIT-DR for the revenue relied upon the case laws which was relied by Assessing Officer in CIT Vs Ranjit Kumar Choudhary (2007) 288 ITR 179 and N.B. Surti Family Trust Vs CIT (2007) 288 ITR 523 wherein it was held that where the evidence is new and assessee could not give any explanation why such evidence was not produced at lower stage, the Tribunal was justified in not entertaining new evidence. The Id. CIT-DR for the revenue submits that books of account was not verified by Assessing Officer, therefore, the matter may be restored back to the file of Assessing Officer for adjudicating it afresh.

7. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that the assessee explained before the Id. CIT(A) that no notice of assessment

proceeding was in fact received by the assessee. The assessee came to know through their Accountant and approached the Assessing Officer with documents. However, such document was not accepted by Assessing Officer. The assessee furnished complete details before the Id. CIT(A) as recorded in para 7 of his order. On furnishing such evidence, the Assessing Officer was directed to furnish his remand report. In the first remand report, the Assessing Officer has not given any adverse remark against the admissible evidence, except objecting the admission of additional evidences. Rather the Assessing Officer accepted that seller and purchaser parties responded and furnished required details which goes to prove that transaction of assessee are genuine. The sales of assessee was not disputed. The Id. CIT(A) on filing reply to the remand report, sought second remand report from the Assessing Officer. The Assessing Officer has not again doubted the transaction of sale and purchase rather took the similar objection that no such details were furnished during the original assessment. When the evidences filed by assessee is not discarded nor any adverse comment on such evidence was given by the Assessing Officer rather the Assessing Officer accepted that sellers and purchaser party responded and filed required details. The Id. CIT(A) granted relief on his complete satisfaction that in subsequent year, the assessee discharged some liability and the assessee is having regular business

transaction with the sundry creditors. The Id. AR of the assessee submits that all its transaction are genuine particularly when the business was commenced just two months before ending of relevant financial year.

8. At the time of conclusive conclusion of hearing, the Id. AR of the assessee was directed to give confirmation of creditor, if any payment subsequent to relevant financial year was made by them. The Id. AR of the assessee filed bank statement of the assessee alongwith confirmation of Takshila Exim Pvt. Ltd. about the receipt of Rs. 50.00 lacs on 07/08/2015 and further sales to assessee in F.Y. 2015-16.
9. We have considered the rival submissions of both the parties and have gone through the orders of the lower authorities carefully. We find that the Assessing Officer made addition by disallowing sundry creditor of Rs. 3.47 crores by taking a view that despite giving various show cause notices, no detail is furnished. We find that the Id. CIT(A) granted relief to the assessee on considering the additional evidence. The Id. CIT(A) sought remand report from the Assessing Officer. The Assessing Officer in his remand report has not disputed about the transaction rather accepted that seller and purchaser party both responded. Moreover, the Assessing Officer in second remand report clearly submitted that "they have submitted bank statement (shown some payment in subsequent year)". We also find that neither the sale of assessee was

disputed nor the purchase transaction was disputed, the Assessing Officer merely disputed the outstanding balance of sundry creditors. The Assessing Officer has not brought any adverse material to show that the assessee was having wrong credit when the assessee categorically contended that they started business activity in the end of January, 2015.

10. We find that the Id. CIT(A) admitted the additional evidence by considering its nature and veracity and other circumstances. Before us, the Id. CIT-DR for the revenue objected against the admission of additional evidence by relying upon the case laws in the case of CIT Vs Ranjit Kumar Choudhary (2007) 288 ITR 179 and N.B. Surti Family Trust Vs CIT (2007) 288 ITR 523, we find that the ratio of such decision relied by the Id. CIT-DR is not applicable on the facts of the present case. In the present case, the assessee right from the beginning clearly and categorically took their stand that no notice during the assessment was received thus they have no opportunity to file such evidence before the Assessing Officer. However in the case of CIT Vs Ranjit Kumar Choudhary and N.B. Surti Family Trust Vs CIT (supra), the evidences were filed for the first time without disclosing any reason, therefore, in our considered view, the ratio of those decisions are not applicable in the facts of the present case. Pas per our direction, at the time of conclusion of hearing, the Id AR for the assessee filed confirmation of

creditors and the part payment received by them in subsequent assessment year. Such fact is otherwise was accepted by assessing officer in his remand report.

11. In view of the aforesaid discussion and with our additional observation, we do not find any reason to intervene with the finding of Id. CIT(A) which we affirm. In the result, the grounds of appeal raised by the revenue are dismissed.

12. In the result, this appeal of revenue is dismissed.

Order announced in open court on 31st October, 2023.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 31/10/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat