

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH 'DB', JABALPUR**

**Before Dr. B. R. R. Kumar, Accountant Member**

**Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 74/JAB/2023 : Asstt. Year: 2014-15**

Ashok Kumar Vishwakarma, 4/462, Vishwakarma Niwas, Goutam Lane, Rammanhar Ward Lohiya Ward, Katni, (MP) 483501	Vs	Income Tax Officer-2, Katni, (MP) 483501
(APPELLANT)		(RESPONDENT)
<b>PAN No. ADEPV 2880 J</b>		

**Assessee by : Sh. Dhiraj Ghai, CA**

**Revenue by : Sh. Ravi Mehrotra, JCIT-DR**

**Date of Hearing: 29.11.2023**

**Date of Pronouncement: 01.12.2023**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by assessee against the order of Id. NFAC/CIT(A), New Delhi dated 17.03.2023.

2. The assessee has raised the following grounds of appeal are as under:-

1. *On the facts and in the circumstances of the case the Id CIT(A) erred in confirming addition of Rs. 61,71,659/-merely by relying on AO stand that sundry creditors in relevance has not responded to notice under section 133(6) and hence are not genuine but failed to recognize the fact that assessee has no control over response of notice under section 133(6) by creditors in any manner whatsoever and hence addition cannot be made on this ground as has been decided in the case of Sonicwall Technology System India Pvt. Ltd. v. ACIT ITA no.3860/Mum./2019 dated December 02, 2022 (Mum) (Trib) and M/s Kesha Appliances Pvt. Limited v. ITO ITA No. 2175/Del/ 2016 March 09, 2018 (Del) (Trib)].*

2. *On the facts and in the circumstances of the case the Id CIT(A) erred in confirming addition of Rs. 61,71,659 /-merely by relying on AO stand that sundry creditors in relevance has not responded to notice under section 133(6) but has duly accepted the these creditors have been paid there dues during the year as per*

*legal norms and act by assessee and more than 95% of Creditors have duly responded to notice under section 133(6).*

*3. On the facts and in the circumstances of the case the Id CIT(A) erred in confirming addition of Rs. 61,71,659 /-merely by relying on AO stand that sundry creditors in relevance has not responded to notice under section 133(6) but totally failed to recognize the fact that addition made of creditors had a balance carried forward from earlier years and in past their transactions have been accepted by department as genuine and assessee has duly produced all bills of these sundry creditors.*

*4. On the facts and in the circumstances of the case the Id CIT (A) erred in confirming addition of Rs. 61,71,659/-towards creditors Of transportation work but failed to recognize that if the addition of Rs. 61,71,659 / - is added to transportation income then it yields more than 33% of profit which in ordinary course and as per section 44 AD is assumed to be 8% in transportation business. Accordingly addition of RS 61,71,659 /-may kindly be deleted.*

*5. On the facts and in the circumstances of the case the Id CIT(A) erred in confirming addition of Rs. 61,71,659/-towards creditors by not considering the fact that books of accounts of assessee has not been rejected before making addition.*

*6. The Id CIT(A) should have held that the assessment order dated 30.11.2016 is bad in law as was against the policy of CBDT of limited scrutiny. The assessment order is also bad in law for other reasons too.*

3. Out of the 30 sundry creditors, the following sundry creditors have not responded to the letters issued u/s.133(6) of the I.T Act, 1961. After giving the opportunities and intimating to the assessee regarding the noncompliance to the notices issued by the AO to the sundry creditors, the Assessing Officer treated the following sundry creditors namely;

1. Aircon Engg. Works, Rewa
2. Shiveshwar Minerals, Narsingarh

as non-existing, fictitious and bogus.

4. Aggrieved the assessee appeal filed before the Id. CIT(A).

5. The Id. CIT(A) confirmed the addition.

6. Aggrieved, the assessee appeal filed before the Tribunal.
7. Heard the arguments of both the parties and perused the material available on record.
8. We find from the order sheet of the Assessing Officer, that after intimating to the assessee about non-compliance to the notices, the assessee has informed the new addresses of the sundry creditors. The Assessing Officer has not issued notices to the new addresses nor directed the assessee to produce the parties. The assessee before the Assessing Officer furnished details of PAN, address, transaction bills, details of payment given in next year etc. The appellant has also made payments to these creditors in earlier year also. The AO has never doubted payments made in earlier year to the same creditors, there lies no onus with the, AO to presume the same as bogus in the year under consideration. The AO has treated the entire amount of Rs. 61,71,659/- as bogus transportation expenses merely on ground that summons issued u/s 133(6) returned un-served. Further, we find that the GP as disclosed by the assessee of 12.87% would shoot up to 39.88% if the sundry creditors are treated as bogus which in any case cannot be the case beyond the normal business profits.
9. Hence, on going through the entire factual matrix, we are unable to concur with the decision of Id. CIT(A) and hold that the AO was not justified in presuming that the said creditors were bogus only on the basis that the notices returned un-served. In this case the sundry creditors have changed address and were not available at the time of delivery of notice, the assessee has already provided new addresses, hence the

assessee cannot be found to be guilty even when payments have been made in earlier year, current year and upcoming years. The order of the Id. CIT(A) is hereby reversed on this ground.

10. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 01/12/2023.

**Sd/-**  
**(Yogesh Kumar U.S)**  
**Judicial Member**

**Sd/-**  
**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Jabalpur Dated: 01/12/2023**

\*NV, Sr. PS\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT JABALPUR**