

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.898/Bang/2023
Assessment Year: 2010-11

Marulasidappa Gundagathi Dyamavvanahalli #2035/148, Nutan Nilaya 12 th Cross, Anjaneya Badavane Davangere 577 005 Karnataka PAN NO.AGEPD9313P	Vs.	ITO Ward-1 Davangere
ASSESSEE		RESPONDENT

Assessee by	:	Shri V. Srinivasan, A.R.
Revenue by	:	Shri AParithivel, D.R.

Date of Hearing	:	06.02.2024
Date of Pronouncement	:	06.02.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2010-11 dated 29.9.2023 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The assessee has raised following grounds of appeal:

1: The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in upholding the addition made u/s. 68 of the Act amounting to Rs.2,79,54,672/- towards sundry creditors as on 31/03/2010 on the ground that the identity and creditworthiness of the party and genuineness of the transactions are not proved without appreciating that the appellant had furnished the information sought for in response to notice u/s. 142[1] of the Act and the mere absence of confirmation letters from trade creditors was not fatal especially since the appellant had filed the ledger accounts

showing payments made to these sundry creditors through banking channels in the subsequent financial year under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] is not justified in upholding the addition of Rs.4,76,430/- made towards sundry creditors for vehicle maintenance on the ground that the identity and creditworthiness of the party and genuineness of the transactions are not proved without appreciating that the appellant had furnished the information sought for in response to notice u/s. 142[1] of the Act and the mere absence of confirmation letters from trade creditors was not fatal especially since the appellant had filed the ledger accounts showing payments made to these sundry creditors through banking channels in the subsequent financial year under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A] is not justified in disposing off the appeal without allowing sufficient and effective opportunity to the appellant in course of the appellate proceedings considering that the appellant had sought time on one occasion in the month of August 2023 and the authorised representative of the appellant was pre-occupied with tax audits in the month of September 2023 under the facts and in the circumstances of the appellant's case.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

2. Originally, the revenue came in appeal before this Tribunal in ITA No.2698/Bang/2018, the Tribunal vide order dated 25.10.2019 has remitted the issue to the file of ld. AO with following observations:

“6. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We noted from the assessment order that the AO has made additions towards sundry' creditors mainly on the ground that the assessee could not file confirmations from the creditors to prove genuineness of transactions. We further noted that the assessee has filed confirmations from the parties before the learned CIT(A) during appellate proceedings. The learned CIT(A), after considering additional evidences filed by the assessee, deleted additions made towards sundry' creditors for materials and sundry creditors for vehicle maintenance charges without confronting those additional evidences filed by the assessee to the AO for his comments. No doubt, the CIT(A) has co-terminus powers with the AO, therefore he can verify additional evidences filed by the assessee on his own without confronting those additional evidences to the AO. but before admitting such additional evidences, the learned CIT(A) has to record reasons as to why such additional evidences have been admitted and also carry out necessary verification before granting relief to the assessee. In this case, the learned CIT(A) has neither assigned any reasons for

admitting additional evidences nor confronted those additional evidences to the AO for his verification. Therefore, we are of the considered view that there is violation of Rules 46A of the IT Rules, 1962, in as much as not providing opportunity to the AO to comment on additional evidences filed by the assessee during appellate proceedings. Hence, the issue to the file of the AO and direct him to reconsider the issue in light of additional evidences filed by the assessee to justify sundry creditors for statistical purposes.”

2.1 On remittance to the Id. AO, the AO asked various details in order to elicit the identity, genuineness and creditworthiness of the creditors. However, assessee did not reply to any of the questions asked vide notice issued u/s 142(1) of the Act dated 15.9.2021. Later, vide letter dated 30.8.2021 furnished certain details and after perusal of the reply filed by the assessee, the Id. AO observed as under:

“8. Thus, after perusal of the only response filed by the assessee dated 30.8.2021, the assessment is completed as under:

(i) The assessee has not furnished any confirmation letters in respect of these creditors. The onus lies on the assessee to prove the genuineness of the transactions. The assessee was asked to give confirmations from sundry creditors to prove the genuineness.

ii) Onus lies on the assessee to prove the genuineness and identity and credibility of the Sundry Creditors. This responsibility has not been discharged by the assessee fully. The assessee has submitted merely the ledger entries and sample vouchers of the parties . However no independent third party confirmation has been produced by the assessee when asked specifically so.

iii) Thus it cannot be elicited fully and completely that the funds are not unaccounted/undisclosed. The identity, creditworthiness and genuineness of all the creditors parties were not proved by the assessee. The explanation furnished by the assessee in the form of ledger entries and sample voucher bills of the creditors do not adequately and sufficiently explain the genuineness of the transactions and the Assessee was also notable to establish the identity and creditworthiness of these persons.

9. Further, in accordance with the principles of natural justice, the assessee was issued show cause notice along with Draft Assessment Order dated 24.09.2021 fixing the date for making the compliance on 26.09.2021. However, the assessee has not responded to the final show cause notice. Hence it can be safely presumed that the assessee has nothing to say in this matter. Hence the draft assessment order is been finalized herewith.

10. Hence, a proposal for additions of unexplained Sundry Creditors to the extent of Rs. 2,79,54,672 & Rs. 4,76,430/- is added to the income Hence, a sum of Rs. 2,79,54,672/- and Rs. 4,76,430/- is added as unexplained sundry creditors to the to income of the assessee u/s 68 of the Act.

10. Total income of the assessee assessed as under:	
Total Returned Income	:Rs.63,01,850/-
Add:	
1. Sundry creditors for materials not proved	:Rs.2,79,54,672/-
2. Sundry creditors for Vehicle maintenance not proved	:Rs.4,76,430/-
Total Income assessed R/o	:Rs.3,47,32,950/-“

2.2 Against this assessee carried the appeal before CIT(A)/NFAC. Before NFAC, no reply has been filed. Accordingly, the NFAC observed that ld. AO has passed speaking order with detailed discussion on the issue involved therein and the assessee has not pursued the appeal before NFAC. No documents or submissions were provided by the assessee substantiating its grounds of appeal. In the absence of supporting documents and evidences and submission, the NFAC has confirmed the order of ld. AO. Against this, assessee is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. Admittedly, there was no response from the assessee before NFAC. As such, NFAC has confirmed the order of the ld. AO. Before us, ld. A.R. submitted that these are trade creditors emanated from the purchases made by assessee in the assessment year under consideration. Once the department has accepted the purchases as genuine, the other limb of the same transaction being a trade creditors cannot be doubted or no addition could be made on this count. For this purpose, he relied on the judgement of Allahabad High Court in the case of CIT Vs. Pancham Dass Jain (205 CTR 444) and for the same purpose, he also relied on the order of the coordinate bench in the case of Smt. Madhu Solanki in ITA No.974/Bang/2009 dated 9.8.2021, wherein held as under:

“14. We have heard rival contentions on this issue and perused the record. The undisputed fact is that the assessing officer has made addition of outstanding trade creditors u/s 68 of the Act. The question whether unpaid trade creditors could be added u/s 68 of the Act has been examined by various courts. The Five member special bench of ITAT has held in the case of Manoj Agarwal vs. DCIT (113 ITD 377) as under on this issue:-

“The argument that section 68 is not applicable where an asset is sold and the sale proceeds are credited in the books of account cannot be accepted having regard to the settled legal position that it is always for the assessee to explain the nature and source of the sums credited in his books of account. The section does not recognize any distinction between amounts credited in the books as gifts or loans or pure receipts, on the one hand, and amounts credited as sale proceeds. In either case, when called upon, the assessee is bound to explain the nature and source of the amounts credited. There may be a few exceptions to this general rule. For example, in the case of credit purchases, the account of the supplier is credited with the amount payable. In such a case, where the purchase is allowed as expenditure, it may not be possible for the Assessing Officer to again call upon the assessee to prove the nature and source of the credit, for the reason that the purchase itself was allowed as expenditure only on being satisfied that it was a genuine purchase on credit. Implicitly, the nature and source of the amount credited has also to be taken as having been explained satisfactorily. Another possible argument can be that in such a case, the amount credited is not a cash credit in the sense that some monies have been received by the assessee, but the credit represents a mere liability payable by the assessee in future. Under accounting principles, a liability can only be brought into account by making a credit entry in the books of account in favour of the person to whom the money is payable. Thus, there is marked difference between a credit representing a liability payable by the assessee and a credit representing monies received from another person. It is because of this distinction, a liability for purchase which has been credited in the account of the supplier cannot be added under section 68 of the Act, more so when the purchase has been accepted as genuine and a deduction there for has been allowed. In all other cases including the case of a credit representing the sale proceeds of an asset, the provisions of section 68 are applicable and it is for the assessee to prove satisfactorily the nature and source of the monies.....”

12. Similar view has been expressed by Hon'ble Delhi High Court in the case of CIT vs. Ritu Anurag Agarwal reported in 2009 (7) TMI 1247 as under:-

“This finding of AO remained undisturbed before the CIT(A) as well and has been accepted by the ITAT. Proceeding on this basis, the ITAT observed that the sales, purchases as well as gross profits as disclosed by the assessee have been accepted by the Assessing Officer. Once this is accepted, we are of the opinion that the approach of the ITAT was correct inasmuch as the Assessing Officer did not consider this aspect while making additions of sundry

creditors under Section 68 of the Income Tax Act. As there was no case for disallowance for corresponding purchase, no addition could be made under Section 68 inasmuch as it is not in dispute that the creditors outstanding related to purchases and the trading results were accepted by the AO. We are, therefore, of the opinion that no substantial question of law arises for consideration in this case. The appeal is accordingly dismissed.”

13. *The Ld D.R placed his reliance on the decision rendered by the Bangalore bench of ITAT in the case of Suresh Kumar T. Jain (supra), which was also confirmed by Hon'ble Karnataka High Court, vide its order dated 20-11-2018 passed in ITA No.160 of 2010. The Ld D.R contended that the outstanding trade creditors could be added u/s 68 of the Act. We have gone through the above said decision and notice that the facts prevailing in that case were different. In the above said case, most of the creditors confirmed the outstanding balances as per their books of accounts, which were much lesser than the outstanding balances disclosed by the assessee before the High Court. Copies of confirmation letters received from the creditors were also furnished to the assessee, but he did not offer any explanation. Hence, it was considered to be a case of either payment outside books or cessation of liability. Under these set of facts, it was held that the addition made u/s 41(1) and 68 of the Act was justified.*

14. *In the present case, the facts are totally different. First of all, the outstanding balances related to the purchases made during the year under consideration and not brought forward balances. The AO did not get reply from both the trade creditors and hence he proceeded to assess the outstanding balances, while accepting the purchases made during the year & payments made during the year. The AO has made the addition u/s 68 of the Act and did not invoke provisions of sec. 41(1) of the Act. On the contrary, the assessee has shown that the payments have been made in the succeeding year through banking channels. Accordingly, we are of the view that the revenue could not rely upon the decision rendered in the case of Sureshkumar T Jain. Under these set of facts, we are of the view that the AO could not have made addition of trade creditors u/s 68 of the Act.*

15. *Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the impugned addition of trade creditors.”*

3.1 In our opinion, at this stage, we are not in a position to decide the appeal on merit as the NFAC/CIT(A) has not gone in to the merit of the issues raised by the assessee before it. Being so, in our opinion, it is appropriate to remit the entire issue in dispute to the file of NFAC/CIT(A) to decide the same after giving opportunity of hearing to the assessee.

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

Order pronounced in the open court on 6th Feb, 2024

Sd/-
(George George K.)
Vice President

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 6th Feb, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.