

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No. 1646/DEL/2023
Assessment Year: 2017-18**

DCIT, Central Circle-1, Noida. PAN-	<u>Vs</u>	Satish, 2082, ATS Village, Gautam Budh Nagar, Noida-201301 PAN: CJKPS 7014 K
APPELLANT		RESPONDENT
Assessee represented by	Shri Abhishek Jain, CA; & Shri Shivam Bansal, AR	
Department represented by	Shri Anuj Garg, Sr. DR	
Date of hearing	28.05.2024	
Date of pronouncement	29.05.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the Revenue, is directed against the order of the learned Commissioner of Income-tax (Appeals), Kanpur-4, dated 21.03.2023, pertaining to the assessment year 2017-18. The Revenue has assailed the correctness of the impugned order by raising following grounds:

“1. On facts and circumstances of the case Ld. CIT(A)-IV, Kanpur has erred in deleting the addition of Rs. 1,41,34,374/- made by the AO treating

8.5% of sundry creditors as undisclosed income of the assessee despite the fact that the assessee failed to furnish the confirmation of creditors, their ITR and corresponding bills/vouchers to prove the genuineness of scrutiny sundry creditors standing in its books, despite of affording numerous opportunities. The primary onus is on the assessee to furnish these documents which was not discharged by the assessee.

2. On facts and circumstances of the case Ld. CIT(A)-IV, Kanpur has erred in allowing the appeal of the assessee ignoring the fact that the assessee cannot shift his responsibility of furnishing confirmations to the AO by saying that enquiries were not made by the AO. Also, by merely furnishing the name, address and PAN of the creditors the genuineness is not proved. The confirmations and corresponding bills/vouchers are also required to be furnished. Hence, the addition was rightly made.

3. That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

2. The only effective ground in the appeal is against deletion of addition of Rs. 1,41,34,374/- made by the Assessing Officer ('AO') by treating 8.5% of sundry creditors as undisclosed income.

3. Facts, in brief, are that in this case the assessee had filed his return of income on 27.10.2017 declaring taxable income of Rs. 23,91,930/-. Subsequently, case was selected for scrutiny through CASS and notice u/s 143(2) of the Income-tax Act, 1961 (the 'Act') was issued. Thereafter the AO issued statutory notices seeking explanation of the assessee. The AO on the basis that the assessee failed to furnish purchase bills thoroughly, treated 8.5% of the sundry creditors as undisclosed income of the assessee and thus made addition of Rs. 1,41,34,374/-.

The assessee being aggrieved carried the matter in appeal before learned CIT(Appeals), who deleted the addition and thus, now the Revenue is in appeal before this Tribunal.

4. Learned DR vehemently argued that learned CIT(Appeals) was not justified in deleting the addition. He took us through the assessment order and submitted that before AO purchase bills were not furnished by the assessee. The assessee was under statutory obligation to furnish the supporting evidence but the assessee even did not file any explanation in this regard. The AO was, therefore, justified in treating the purchases as unexplained and making addition on estimate basis.

5. On the other hand, learned counsel for the assessee submitted that the AO has not doubted the book results. He has not disturbed the books of account and submitted that before the Assessing Officer as well evidences in respect of purchases were furnished. The AO purely on the basis of surmises has made the impugned addition. He submitted that the law is well settled that if the AO has accepted the book results in that event addition on the basis of estimation cannot be sustained.

6. We have heard rival submissions and perused the material available on record. Undisputedly, in this case the AO made addition purely on the basis of

estimation. Further, book results of the assessee are not disturbed and the same have been accepted. The AO made addition on the ground that the assessee failed to furnish purchase bills. We find that the learned CIT(A) has given a finding of fact that the bills were furnished before him. For the sake of clarity the finding of learned CIT(A) is reproduced as under:

“6.12 I have carefully perused the findings of Ld. AO in the assessment order and the submission of the appellant. Ld AO has made addition by estimating 85% of sundry creditors to Rs 1,41,34,374/- (8.5% of the Sundry creditors 16.62,86,754/-) and treating this amount as undisclosed income of the appellant. The Ld. AO stated that the appellant has not furnished details as called for in the notices. However from the facts of the case, it has been found that requisite compliances have been made and complete list of creditors along with their addresses and PAN detail was furnished. Ld AO did not conduct any inquiry from which it would have been found that some creditors are bogus. From the facts of the case, it is found that opening balance of the creditors stand allowed since purchases of earlier years have not been doubted in any assessment order of earlier years. Further no purchases of this year have been found bogus, in-fact no inquiries have been conducted in this regard. Therefore sundry creditors stand explained. Thus considering 8.5% of sundry creditors as bogus is not based on sound reasoning. Hence looking to the facts and circumstances of the case addition of Rs 1,41,34,374/- is hereby deleted and relief is allowed to the appellant. All the grounds of appeal relating to this addition are adjudicated accordingly.”

6.1 The Revenue has not controverted the above finding of fact. Moreover, the AO has not made any independent inquiry in respect of the sundry creditors and no adverse material has been collected, coupled with the fact that book results are not

disturbed. We, therefore, do not see any infirmity into the order of learned CIT(A).

The same is hereby affirmed. Grounds raised by the Revenue are dismissed.

7. Appeal of the Revenue is dismissed.

Order pronounced in open court on 29th May, 2024.

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated: 29.05.2024.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI