

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A-Bench" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 457/JPR/2024  
निर्धारण वर्ष/Assessment Year : 2012-13

Asso Gums Pvt Ltd 138, Shanti Nagar, Gopal Pura Bypass Jaipur	बनाम Vs.	The ITO Ward 6 (4) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AABCA 5676 J		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assessee by : Shri P.C. Parwal, CA  
राजस्व की ओरसे/ Revenue by: Shri Rajesh Ojha (CIT-DR)

सुनवाई की तारीख/ Date of Hearing : 06/06/2024  
उदघोषणा की तारीख/ Date of Pronouncement : 10/06/2024

आदेश/ORDER

PER: NARINDER KUMAR, J.M.

Appellant company firstly felt aggrieved by assessment order dated 8.12.2019, after assessment proceedings relating to AY 2012-13 conducted under section 147 read with section 143(3) of Income Tax Act, 1961 (hereinafter referred to as "the Act"), whereby its income was computed and assessed at Rs.1,40,19,120/-. Said order came to be challenged by the assessee by way of appeal.

Secondly, it feels dissatisfied with the order dated 26.2.2024 passed by Learned CIT(A), NFAC, Delhi, whereby its appeal against the abovesaid assessment order has been partly allowed.

That is how, the company is before this Appellate Tribunal by way of appeal.

2. Vide assessment dated 8.12.2019, two additions came to be made to the income of the assessee company. One addition was on account of unaccounted income. The other addition was on account of unexplained sundry creditors.

3. Learned CIT(A), NFAC, has deleted the first mentioned addition i.e. on account of unaccounted income, while observing that in absence of any supporting evidence, Assessing Officer could not proceed with addition based on said alleged transition. But, the other addition on account of unexplained sundry creditors has been upheld.

4. Arguments heard. File perused.

5. As noticed above, under challenge is the only addition that was made on account of unexplained sundry creditors.

### **Contentions**

6. Learned AR for the assessee has pointed out that additional evidence was sought to be produced by the assessee before Learned CIT(A), NFAC, but said additional evidence was not considered at all, while observing that the assessee had failed to justify non production of said additional evidence before the Assessing Officer, despite reasonable opportunity provided in the assessment proceedings.

Another submission is that the Assessing Officer provided only one opportunity to the assessee to furnish details so as to explain the allegation pertaining to sundry creditors.

The contention is that said additional evidence could not be produced by the assessee before the Assessing Officer as it was under bona fide belief that assessment having been reopened only on one ground i.e. in securing accommodation entries through M/s Indore Impex, it was not required to furnish details as regards the second allegation pertaining to sundry creditors. So, it has been urged that the additional evidence, copies whereof have also been submitted before this Appellate Tribunal, be allowed to be taken on record and considered by the authority below for the purposes of said addition under challenge.

7. Learned DR for the department has opposed the contention raised on behalf of the assessee, while submitting that reasonable opportunity was granted by the Assessing Officer to furnish requisite information with requisite documents, as regards sundry creditors, but it failed to furnish any such details or information or documents, and as such, Learned CIT(A) was justified in not allowing the assessee to place on record additional evidence, while relying on the provisions of Rule 46(1) of Income Tax Rules, 1962.

The contention is that since the assessee failed to make out any case as regards deletion of the addition relating to sundry creditors, Learned CIT(A) has rightly dismissed the appeal for the reasons recorded therein, and as such, present appeal deserves to be dismissed.

### **Discussion**

8. After going through the record, we proceed to consider the respective contentions raised by Learned Representatives of the parties, to find out as to

whether the impugned order and the impugned assessment deserve to be upheld or set aside, as regards said addition i.e. unexplained sundry creditors.

9. Admittedly, assessment proceedings under section 147 of the Act were initiated on the basis of information possessed by the Assessing Officer, and thereupon, notice under section 148 of the Act was issued and served upon the assessee. The assessee then filed return of income declaring total income of Rs.57,70,910/-. Thereafter, notice under section 143(1) and other notices were issued and served. Show cause notice was issued to the assessee on 4.11.2019. It is also admitted that the assessee submitted reply to the said notices.

So far as the show cause notice issued on 4.11.2019 is concerned, the assessee furnished reply dated 8.11.2019, through its CA and AR.

In reply to the show cause notice, the assessee did not seek adjournment by way of any further opportunity to furnish details and relevant documents and books. Had the assessee sought any adjournment or further opportunity, to do so, it would have been a different matter. But, the reality is that it did not ask for the same.

In this way, when the assessee was duly served with show cause notice as well, to explain the things and also produce books of accounts i.e. cash book, ledger book, stock register etc., there is no merit in the contention raised on behalf of the assessee that only one opportunity was granted to the assessee, as regards the allegation of sundry creditors.

10. As this stage, we find it necessary to reproduce para 6 and 7 of the show cause notice dated 4.11.2019. Said para read as under:

“6. Please submit the details of sundry creditors of Rs.69,77,370/- submitting the relevant information i.e. complete name and address of the concerned person, PAN, nature of business, amount, quantity, quality, rate, total amount and mode of payment etc.

7. Partywise details of purchase and sales made by you during the year under consideration, alongwith the bills producing the books of accounts i.e. cash book, ledger book, stock register etc”

Then, we refer to parawise reply of the assessee, corresponding to the above two paragraphs of the show cause notice. Same read as under:

“6. We would like to submit here again that the assessee has neither deal in share transactions nor any purchases / sales transaction from M/s. Indore Impex and Ajay Maheshwari.

7. We are attaching herewith an affidavit declaring that the assessee company has no transaction with M/s. Indore Impex of Shri Ajay Maheshwari for Rs.1270846/- and the assessee has no transaction with M/s. Indore Impex.”

11. As noticed above, para 6 pertained to details of and documents pertaining to sundry creditors information as desired by the Assessing Officer. But, the corresponding para of the reply does not pertain to said details or documents or sundry creditors. In other words, the assessee intentionally did not respond or comply with the directions contained in para 6 & 7 of the show cause notice.

Even in para 7 of the reply, the assessee intentionally did not respond or fully comply with the directions contained in the show cause notice. The assessee opted to restrict its response only to the first allegation i.e. unaccounted income

and bogus purchase and sales entries, and to file only an affidavit, and no other document.

We have drawn attention of AR of the assessee to what we have of own noticed, without any reference from his side, while going through the show cause notice and the reply.

The only submission by AR of the assessee in this regard is that the assessee was under bona fide belief that the ground of unexplained sundry creditors being not there in the notice under section 148 of the Act, the assessee was not required to furnish details and documents about sundry creditors. In this regard, Learned AR has also mentioned particulars of case **Principal Commissioner of Income Tax v. Lark Chemicals (P) Ltd.**, SLP(C) No.34183 of 2018, decided by Hon'ble Apex Court on 5.10.2018 and to the head-note of another case titled as **Ravera Milk & Foods (P) Ltd. V. Income Tax Officer**, ITA No.1974/Mum/2021, decided on 24.1.2023.

12. As regards the first mentioned decision, we clearly mentioned in the course of arguments, that in absence of decision by Hon'ble Bombay High Court, which was upheld by the Hon'ble Supreme Court by the said first mentioned decision, we cannot say as to in which facts and circumstances, decision was given, and as such we would not be able to place any reliance thereon.

As regards the second mentioned decision, in absence of full text of the decision, we express our helplessness to rely only on the head-note relied on.

13. Question arises "if any party, to whom show cause notice is issued by the department or Assessing Officer, can be allowed to allege before the Appellate Authorities that having regard to certain provision of law, it was justified in non replying a particular allegation levelled therein? "

The answer is “No”.

The reason is that each show cause notice is to be replied para wise so that the concerned Authority or Officer is able to appreciate as to what is the response of the other party as regards each allegation contained in different paragraphs of the said notice.

It is not being argued before us that it was a case of lack of proper legal assistance in furnishing of the reply to the show cause notice. Here, the assessee company had the assistance of CA and AR in replying the show cause notice.

When the show cause notice was duly paragraphed, assessee was required to respond even para 6 and 7 and comply with the same or furnish reply for non compliance of the directions. But, it failed to respond or comply with the same, without any justification. It remains unexplained as to how the assessee, having assistance of CA and AR, opted not to respond the allegation levelled in para 6 of the show cause notice, what to say of non production of any document or details pertaining thereto.

The fact remains that the assessee opted not to reply the specific allegation as regards unexplained sundry creditors or to comply with directions for production of relevant record and books.

Going further, we are of the view that in absence of any response as regards said allegation i.e. unexplained sundry creditors, Learned CIT(A) was justified in disallowing the prayer of the assessee for production of additional evidence.

14. As already noticed above, Learned AR for the assessee submitted that same be allowed to be taken on record and matter be restored for decision afresh.

So, next question arises as to whether we should or should not allow the assessee to produce the additional evidence, which was declined to be taken on record by the Appellate Authority?

Learned DR for the department stands by the impugned order passed by Learned CIT(A).

After going through the copies of the documents, which are stated to have been submitted by the assessee before Learned CIT(A) for the first time, we find that same are relevant and necessary for adjudication of the allegation levelled against it as regards unexplained sundry creditors.

But, as noticed above, in reply to the show cause notice, the assessee opted to keep silent in this regard and omitted to furnish any response or comply with directions.

In such a situation, before any additional evidence is allowed to be taken on record, first of all, version of the assessee needs to be there on record. It is settled law that in absence of a pleading, a party to the litigation cannot lead evidence to substantiate its version.

As noticed above, in the first instance, the assessee failed to put forth its version as regards said allegation, despite opportunity granted by the Assessing Officer. It also failed to produce relevant information or details or documents in this regard, before the Assessing Officer.

So, firstly, the assessee would have to put forth its version in response to the allegation of unaccounted sundry creditors, as levelled in the show cause notice, before the additional evidence, now sought to be produced, is taken into consideration.

**Conclusion**

In the given facts and circumstances, Learned AR for the assessee and Learned DR for the department are in agreement that the matter needs to be restored to the files of Assessing Officer for decision afresh as regards the allegation of unaccounted sundry creditors.

15. Keeping in view all this, including the conduct of the assessee in the assessment proceedings, as discussed above, and as rightly submitted by Id. DR. We deem it a fit case to burden the assessee with costs.

**Conclusion**

16. As a result, this appeal is disposed of for statistical purposes, and in the given facts and circumstances, the matter is restored to the files of Assessing Officer, instead of CIT(A), for decision afresh as regards the allegation of unaccounted sundry creditors, after the assessee furnishes its response to para 6 and 7 of the show cause notice and produces all the relevant details, information and record, as already directed therein, and henceforth, by the Assessing Officer, in accordance with law.

Assessee is burdened with costs of Rs. 5,000/- to be deposited in Prime Minister's National Relief Fund. It shall produce receipt in proof of deposit of the costs, with the Assessing Officer, before commencement of the assessment proceedings as regards the only allegation referred to above.

Order pronounced in the open court on 10/06/2024.

Sd/-  
(राठौड़ कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-  
(नरेन्द्र कुमार)  
(NARINDER KUMAR)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10/06/2024

\*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. Asso GumsPvt. Ltd. Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward 6 (4) Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 457/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar