

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1128/Mum/2024 (A.Y.2020-21)

Parvez Ahmed Khalkullah Choudhary

C/410, C-Wing, Ivy Homes
CTS 750 Others, Village Ward
Kurla (West), Kurla S. O.
Mumbai-400 070
PAN: CIZPK9479G

..... Appellant

Vs.

ITO, Ward 41(1) (3),

Kautilya Bhavan, C-41 to C-43,
G-Block, Bandra Kurla
Complex, Bandra (East),
Mumbai- 400 051

..... Respondent

&

ITA No. 1243/Mum/2024 (A.Y.2020-21)

ITO, Ward 41(1) (3),

Kautilya Bhavan, C-41 to C-43,
G-Block, Bandra Kurla
Complex, Bandra (East),
Mumbai- 400 051

..... Appellant

Vs.

Parvez Ahmed Khalkullah Choudhary

C/410, C-Wing, Ivy Homes

CTS 750 Others, Village Ward
Kurla (West), Kurla S. O.
Mumbai-400 070
PAN: CIZPK9479G

..... Respondent

Appellant by : Shri Tejveer Singh, Ld. AR
Respondent by : Shri H. M. Bhatt, Ld. DR

Date of hearing : 13/06/2024
Date of pronouncement : 22/07/2024

ORDER

PER GAGAN GOYAL, A.M:

These cross appeals by Assessee and Revenue are directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 19.01.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2020-21. The assessee has raised the following grounds of appeal:-

Ground No. 1 - Addition w.r.t. increase in proprietor's capital amounting to Rs. 1, 50, 12,664/-

1.1 On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the Ld. Assessing Officer in making addition u/s. 68 of the Income Tax Act, 1961 ("the Act") amounting to Rs. 1,50,12,664/- w.r.t. increase in proprietor's capital considering the same as unexplained.

1.2 The Appellant prays that the addition made by the Ld. Assessing Officer may kindly be deleted.

Ground No. 2-Addition w.r.t. unsecured loan amounting to Rs. 71, 50,192/-

2.1 On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the Ld. Assessing Officer in making addition u/s. 68 of the

Income Tax Act, 1961 amounting to Rs. 71,50, 192/- w.r.t. unsecured loan from certain parties considering the same as unexplained.

2.2 The Appellant prays that addition made by the Ld. Assessing Officer may kindly be deleted.

Ground no. 3-Levy of interest under section 234A and 234B of the Act

3.1 on the facts and in the circumstances of the case and in law, the Hon'ble CIT (A) has erred in confirming the interest levied under section 234A and 234B of the Act.

3.2 The Appellant prays that the levy of interest under section 234A and 234B of the Act may kindly be deleted.

I reserve my right to add, amend & alter anything as stated here in above or may be stated here in after and all the grounds are alterative and independent to each other.

2. The revenue has raised the following grounds:-

1. "Whether on the facts and in the circumstances of the case and in law, the Ld CIT (A) has erred in law in deleting the addition u/s. 69C of the Income Tax Act, 1961 of Rs. 5, 39, 61,241/- on account of unexplained expenditure for the reason that the assessee failed to prove genuineness of the transaction during the assessment proceeding."

2. "Whether on the facts and in the circumstances of the case and in law, the Ld CIT (A) has erred in law in deleting the addition of Rs. 97, 13,024/- on account of claim of GST on unexplained expenditure u/s. 69C of the Income Tax Act, 1961 for the reason that the assessee failed to prove genuineness of the transaction during the assessment proceeding"

3. "Whether on the facts and in the circumstances of the case and in law, the decision of the Ld CIT(A) is erroneous in deleting the addition u/s. 69C of the Income Tax Act, 1961 of Rs. 5,39,61,241/-on account of unexplained expenditure and of Rs. 97,13,024/- on account of claim of GST on unexplained expenditure u/s. 69C of the Income Tax Act, 1961 for the reason that the assessee himself has accepted that he had not received GST Input Tax credit and continued to change his stand in respect of short supply of goods delivered and no debit issued to the party whom the goods were purchased."

4. *"In addition and in alternative to ground 1, 2 & 3, whether on the facts and circumstances of the case and in law, the Ld.CIT (A) is justified in deleting the addition made by the assessing officer on account of unexplained expenditure & GST on unexplained expenditure u/s. 69C of the Act, without considering fact that the parties whom the assessee had purchased material never replied the notices issued by the AO."*

5. *"The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary."*

3. The brief facts of the case are that assessee is an Individual and is a proprietor of M/s. National Steelage Corp., dealing in all type of scrap related business. The assessee is also dealing in all type of ferrous and ferrous metals, pharma equipments and machineries and also engaged in import of stainless Steelage Pipes Scrap, etc. The assessee filed his return of income on 15.02.2021 declaring total income at Rs. 1,04,57,840/-. The case of the assessee was selected for complete scrutiny on the following issues:-

- i) Purchase from high risk biller;
- ii) High liabilities as compared to low income /receipts.

Ultimately, case of the assessee was assessed at Rs. 9, 74, 26,749/-. The assessee being aggrieved with this order preferred an appeal before the Ld. CIT (A), NFAC Delhi. The Ld. CIT (A) partly allowed the appeal of the assessee, in consequence of that both the parties i.e. the assessee and the revenue are in appeal before us.

4. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of the assessee alongwith grounds taken before us by both the

parties. For the sake of logical conclusion of the matter, first we are disposing the appeal of the assessee ground wise.

5. Ground no. 1 raised by the assessee pertains to the addition u/s. 68 of the Act on account of increase in proprietor's capital account amounting to Rs. 1,50,12,664/-. It is observed that the assessee had shown capital as on 31.03.2019 at Rs. 3,01,98,397/-, in addition to this, the profit for the year under consideration was at Rs. 1,08,12,818/-. But the closing balance of the capital account as on 31.03.2020 was at Rs. 5,06,41,893/- (after considering the withdrawals of Rs. 53,80,385/-). In nutshell, there was a gap of Rs. 1, 50, 12,664/- which the assessee was asked to explain keeping in view the provisions of section 68 of the Act. As per the AO despite of giving proper opportunity, the assessee was not able to explain the same, hence added back. Similar view was taken by the Ld. CIT (A) also. It is submitted by the assessee that during the year the account of following parties (credit balance) has been written off as the same are not payable by the assessee. The details of the parties alongwith amount in tabular form is as under:-

Sr. No.	Name of Party	Amount in Rs.
1.	Balaji Enterprises	96,67,033/-
2.	Metal Vision Industries	45,27,270/-
3.	Kachchh Metal Hub	7,62,280/-
4.	Other Small Creditors	56,081/-
	Total	1,50,12,664/-

6. It is submitted by the assessee before us alongwith relevant ledgers of the above mentioned parties and demonstrated that the parties and amounts mentioned above are in the nature of trade capitals i.e. purchases were made in the previous years, but as the liability is no longer enforceable against the assessee, hence the same are written back and instead of routing the same through profit and loss account, directly credited to the capital account of the assessee. This fact is not under challenge by either of the parties; hence the same is taxable undoubtedly. To this extent, the orders of the lower authorities are confirmed with a variation that being trade creditors written off, same is taxable u/s. 41(1) of the Act instead of charging the same u/s. 68 of the Act. **With this observation, there is a partial relief to the assessee in terms of charging section, but amount of addition is confirmed. In the result, ground no. 1 raised by the assessee is partly allowed.**

7. Ground no. 2 pertains to addition with respect to unsecured loans amounting to Rs. 71, 50,192/-. During the year under consideration, the AO observed following loans from various banks and other parties:-

• Secured loan (from ICICI bank)	Rs. 3,79,26,067/-
• Unsecured loan from various loans	Rs. 4,42,79,549/-
• Loan from Fullerton India Home Finance	Rs. 1,10,66,916/-
• HDFC-Car Loan	Rs. 29,15,437/-
• From Parties	<u>Rs. 3,08,08,318/-</u>
Total Loan Amount	Rs. 12, 69, 96,287/-

8. On this issue, we have gone through the observations of the AO as under:-

“(ii) With regard to loans such as "Secured Loan from ICICI Bank of Rs. 3,79,26,67/-, Unsecured Loan from various Bank of Rs. 4,42,79,549/-, Loan from Fullerton India Finance of Rs. 1,10,66,916/- and Car Loan from HDFC of Rs. 29,15,437/-, the assessee has filed all related documents as sought for. All the documents were perused and verified. No adverse inference has been drawn in this regard.

(iii) However, a perusal of records related to loan from parties shown at Rs. 3,08,08,318/-, it has been found that during the year under consideration the assessee has raised unsecured loan to the tune of Rs. 1,00,30,192/-. In this regard, vide reply dated 29.01.2022, the assessee has submitted that he has received loan amounting to Rs. 1,00,30,192/- from various parties as mentioned below:

1. Abhishek Makad	Rs. 40, 00,000/-
2. Kohinoor Enterprises	Rs. 25, 00,000/-
3. MH Textile	Rs. 10, 00,500/-
4. Mohd Shoaib	Rs. 1, 80,000/-
5. Mukhtar Ahmed	Rs. 20, 44,147/-
6. Sattar Enterprises	Rs. 2, 00,000/-
7. Time T Engg	Rs. 1, 05,545/-

(iv) In this regard, the assessee was asked vide notice u/s. 142(1) dated 20.01.2022 and 02.02.2022 to provide copy of accounts, bank account statements and copy of ITRs/Audit Reports along with annexure from the persons from whom assessee have raised loans along with copy of their PAN, complete address and e- mail Id. Meanwhile, notice u/s 133(6) of the Act was issued to the above mentioned parties. However, the assessee has not furnished relevant documents as sought for, Therefore; a show cause notice was issued to the assessee. In response to show cause notice, the assessee has furnished desired documents such as ledger confirmation, PAN Copy, Bank Account Statement in the case of Kohinoor Enterprises, Mohd Shoaib, and Sattar Enterprises only. Further, confirmation along with relevant documents has also been received from these parties on ITBA Portal. The same was perused and verified. In this regard no adverse inference has been drawn.

It has been noticed further that Sh. Mohd Shoaib is a proprietor of "MH Textile". Sh. Mohd Shoaib has stated vide his confirmation filed on ITBA Portal that he has given loan of Rs. 1, 80,000/- only to the assessee. However, he has not confirmed that any loan has been given to the assessee on behalf of M H Textile.

(v) Keeping in view of the above facts, it has been concluded that assessee has claimed bogus liability on account of unsecured loan taken from below mentioned parties:

<i>1. Abhishek Makad</i>	<i>Rs. 40, 00,000/-</i>
<i>2. MH Textile</i>	<i>Rs. 10, 00,500/-</i>
<i>3. Mukhtar Ahmed</i>	<i>Rs. 20, 44,147/-</i>
<i>4. Time T Engg.</i>	<i><u>Rs. 1, 05,545/-</u></i>
<i>Total unexplained loan</i>	<i>Rs. 71, 50,192/-“</i>

9. The Ld. CIT (A) also confirmed the order of the AO. During the proceedings before us, assessee submitted before us the ITR carrying details like name of the party, PAN No., Aadhaar No. and Bank a/c details, etc. It is observed that all the above parties declared ample figures of income and have sufficient funds in their balance sheets furnished alongwith return which confirms the identity, genuineness and creditworthiness of the parties concerned. We further observed the order of AO wherein he pointed out a loan amount of Rs. 12, 69, 96,287/- and other than Rs. 71, 50,192/-, the assessee was able to explain and substantiate the balance amount of Rs. 11, 98, 46,095/- (almost 95%). In addition to the above, it is also observed that assessee looks to be fair in his treatment of various accounting entries may be the trade creditors or otherwise. As discussed, while adjudicating ground no.1 wherein assessee suo moto declared an amount of Rs. 1, 50, 12,664/- as trade liability no longer exists and the same is chargeable to tax u/s. 41(1) of the Act. Documents pertaining to the above mentioned unsecured loan were

submitted before us and there was no challenge on the same by the other side. **Based on above, we found that addition of Rs. 71, 50,192/- is not justified and the overall behaviour of the assessee and documents produced before us confirms the ingredients of section 68 of the Act, hence ground no. 2 raised by the assessee is allowed.**

10. Ground no. 3 pertains to levy of interest u/s. 234A and 234B of the Act. This issue is consequential in nature and to be decided by the AO while giving effect to our adjudication on above 2 grounds, hence no separate adjudication is required.

11. In the result, appeal of the assessee is partly allowed.

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12. The appeal of the revenue has 4 grounds and all are interlinked, hence adjudicated together. For sake of clarity on the facts, we are reproducing herein below the observations and findings of the AO as under:-

“The Assessing Officer made addition of Rs. 8, 69, 68,909/- on the ground that the Appellant has made bogus purchases from Smt. Vimala Devi Prop. Of M/s. Shubham Steelage (PAN NO.- BIZPV9455N) i.e. purchases of Rs.5,39,61,241/- and GST on Purchases Rs.97,13,024/- totalling to Rs.6,36,74,265/- and added it to the Appellants Net income of Rs. 1,04,57,840/- as per IT return filed and Assessed the Appellant’s total income. The Appellant claimed that he has made genuine purchases from Smt. Vimala Devi Prop. Of M/s. Shubham Steelage and also the

expenses and liabilities claimed by the Appellant are true and correct as per his records.

Whereas the Assessing Officer has shown the additional income of Rs. 6, 36, 74,265/- (Purchases - Rs. 5, 39, 61,241/- and GST on Purchases Rs. 97, 13,024/-) by disallowing the purchases made with Smt. Vimala Devi, Prop. Of M/s. Shubham Steelage (PAN No.BIZPV9455N) describing as bogus purchases and added it to the income of the appellant. The Assessing Officer has mentioned in the Assessment Order that they have identified the name of Smt. Vimala Devi (Prop. Of M/s. Shubham Steelage) in the list of High Risk Billers and to verify the genuineness of Purchases transactions with the Appellant, the Assessing Officer has issued the notice u/s. 133(6) of the Act to the Purchaser asking her for genuineness of Purchase transactions with supporting documents. But when the Assessing Officer did not get any response from Smt. Vimala Devi, he assumed that the purchases are not genuine and are nothing but bogus purchases which were added to the Income of the Appellant. Smt. Vimala Devi, Prop. of M/s. Shubham Steelage (PAN NO. BIZPV9455N) was passed away on 16.06.2021. The notice u/s. 133(6) of the Act has been issued to her on 25.01.2022. After her demise, there was no one to look after these matters hence they failed to response for the said notice of the Appellant. Therefore, the said Assessing officer and the Verification Unit did not get any response on time from the Purchaser Smt. Vimala Devi. During this period, the Appellant contacted Smt. Vimala Devi family members and her CA & requested them to provide him the Notice copy which she has received from department regarding the Appellant's case. As our purchases were genuine with Smt. Vimala Devi, upon our request they have provided us copy of Notice issued

u/s. 133(6) of IT Act, 1961 in the name of Smt. Vimala Devi and Copy of her Death Certificate. Copies of notice and death certificate were submitted before the AO to demonstrate that purchases with them are actual and genuine. Also, the GST department has never initiated any recovery against amount of purchases made with Smt. Vimala Devi. Even though the name of Smt. Vimala Devi (Prop. Of M/s. Shubham Steelage) has been identified in the list of high risk billers data the Appellant has never made any bogus purchases transactions with them of which the GST department have also taken note of it. Therefore, no actions have been taken against purchases made from Smt. Vimala Devi (Prop. of M/s. Shubham Steelage) so far, till date from GST department.”

13. Before adjudication the findings and observations of the Ld. CIT (A) which he arrived after through verification of relevant documents is as under:-

“4.3 As regards, the first ground relating to Disallowance of purchases made from Shubham Steelage amounting to Rs. 5,39,61,241/- and Additional of GST on purchases amounting to Rs. 97,13,024/- made from Shubham Steelage. The appellant did not clarify the discrepancies found by the AO during the assessment proceedings. During the appeal proceedings, the appellant has submitted invoice copies, delivery challan, transport bill, ledger confirmations from shubham steelage, bank statements evidencing payment received from shubham steelage, GST Returns filed by Shubham Steelage and corresponding receipts of the taxes paid. Further, the appellant has also submitted its GSTR 2A to show that it has received GST Input Tax credit w.r.t purchases made from Shubham Steelage. Considering the same, Disallowance of purchases amounting to Rs. 5, 39, 61,241/- and GST on purchases amounting to Rs. 97, 13,024/- is deleted. The ground taken by assessee is allowed.”

14. On this issue although the revenue is in appeal, but the Ld. DR appeared for the department was not able to substantiate the findings of the AO and also not able to controvert the findings of Ld. CIT (A). We have gone through the submissions of the assessee alongwith the orders of the authorities below and found that although the name of the party was there amongst the high risk billers, but there is no action was ever taken by the GST department against the party, moreover the AO simply relied on a red flag shown by the Central Board of Indirect Taxes and Customs (CBIC), there was no objective investigation or observation was there against the party which confirms this addition / disallowance. Based on above, we do not see any perversity in the order of Ld. CIT (A), hence the same is confirmed and grounds raised by the revenue are dismissed.

15. **In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open court on 22nd day of July, 2024.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 22/07/2024

Dhananjay, Sr. PS

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai