

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA No.3638/Mum/2023  
Assessment Year: 2014-15**

ITO 13(1)(1), Mumbai	vs.	Nirmit Mercantile Private Limited  101/102, 1 <sup>st</sup> Floor, Surya Kiran Building, S.V.P. Road, Borivali (West), Mumbai-400092.  PAN: AAECN 3853 B
(Appellant)		(Respondent)

**Present for:**

Assessee by : None

Revenue by : Shri Ashok Kumar Ambastha, SR. DR

Date of Hearing : 01.08.2024

Date of Pronouncement : 23.08.2024

**ORDER**

**PER PRASHANT MAHARISHI, ACCOUNTANT MEMBER:**

1. ITA 3113/Mum/2024 is filed by the Income Tax Officer 13(1)(1), Mumbai ('ld. AO') for A.Y. 2012-13 against the appellate order passed by the National Faceless Appeal Centre, Delhi ('ld. CIT(A)') dated 15.03.2024 wherein the appeal filed by the assessee against assessment order dated 29.12.2016 passed by the ITO, Ward-13(1)(1), Mumbai u/s 143(3) of the Income-tax Act,
2. The ld. Assessing Officer has aggrieved with that order and has preferred this appeal raising following grounds:

*"i. On the facts and circumstances of the ld. CIT(A) erred in deleting addition of Rs. 5,63,40,148/- by holding that the assessee has satisfactorily explained the identity of the*

*creditor and genuineness of the transaction without appreciating the facts that the identity of transaction was not established since M/s. B.S. Hydrocarbons Private Limited has not filed return of income and during the course of assessment proceedings assessee has not filed copy of return of income, audited accounts i.e. profit and loss account, balance sheet of M/s. B.S. Hydrocarbons Private Limited.*

*ii. The appellant prays that the order of the CIT(A) on the grounds be set aside and confirm the order of the AO.*

*iii. The appellant craves leave to add, amend or alter all or any of the grounds of appeal.”*

3. The brief fact of the case shows that assessee is a company engaged in trading of iron and steel, fabrics, chemicals and pharmaceuticals products filed its return of income on 30.11.2014 at total income of Rs. 83,158/-. Subsequently, the return of income was selected for scrutiny and notice u/s 143(2) dated 28.08.2015 was issued. The case was selected for limited scrutiny for the reason of large increase in sundry creditors with respect to the turnover as compared to preceding year. Accordingly, notice u/s 142(1) was issued on 18.04.2016, the assessee submitted that there is no purchase or sale transaction during the year purchases was made on the terms of credit, so the amount of sundry creditors is reflected in the balance sheet. In order to verify the genuineness of the creditors, the AO issued notice u/s 133(6) on 20.07.2016 to the two parties. Notice was returned by the postal authorities with remarks 'left'. The assessee was requested to present the parties for verification. The assessee filed confirmation from one party submitting the

copies of the bills. Further, neither the letter nor the copy of return of income was furnished. The AO once again issued notice on 27.10.2016. Further summon u/s 131 were also issued to the above two parties which was returned by postal authorities as not known. The AO requested the assessee to produce the parties for verification. The assessee did not appear and neither filed any detail. One more opportunity was granted by another letter dated 02.12.2016. The same was also not complied with. On 15.12.2016, a final opportunity was granted. Some persons from the assessee submitted in one case of one creditor ,loan confirmation, profit and loss and balance sheet have already been sent through courier and requested to consider the same. However, in case of one party namely B.S. Hydrocarbon provided nothing was submitted. The AO also verified that party is not filing any return of income. Accordingly, the AO made addition of Rs. 5,63,40,148/- with respect to amount of sundry creditors related to M/s. B.S. Hydrocarbons Pvt. Ltd. and determined the total income of the assessee at Rs. 5,64,23,310/- by assessment order dated 29.12.2016.

4. Assessee aggrieved with the same preferred an appeal before the ld. CIT(A). The assessee made a written submission stating that assessee is a private limited company engaged in the trading of plastic and PVC products. Assessment year 2014-15 was the first year of the operation where assessee made a sale of Rs. 11.55 crores against purchase of Rs. 11.52 crores. As on 31.03.2014, assessee had total sundry

creditors of Rs. 13,24,00,000/- out of which M/s. B.S. Hydrocarbons Pvt. Ltd. was of Rs. 5,63,40,148/-. During the course of assessment proceedings, the above company could not respond to notice u/s 133(6) of the Act as there was change in the registered office of the creditors but before Id. CIT(A) the confirmation and details of the transactions were submitted. It was claimed that the addition is made on account of non-genuine creditor without rejecting the purchases made by the assessee. The details of purchases were verified and same are accepted. Therefore, the sundry creditors out of such purchases could not be added to the total income of the assessee. The assessee relied upon several judicial precedents. It was further submitted that merely because the creditor has not filed the return of income same could not be added to the total income of the assessee when purchases are accepted. The Id. CIT(A) from the confirmation and the annual accounts of B.S. Hydrocarbons Pvt. Ltd. found that in its balance sheet trade receivable of Rs. 5,63,40,148/- was shown in the name of assessee M/s. Nirmit Mercantile Pvt. Ltd. Thus, he found that in the supplier's accounts assessee is shown as a debtor for the identical amount. He deleted the addition holding that when purchases have been accepted as genuine the resultant creditor cannot be added to the total income of the assessee. The Id. CIT(A) followed the decision of Hon'ble Delhi High Court in the case of CIT vs Ritu Anurag Agarwal (2009) (7) TMI 1247, Hon'ble Allahabad High Court in the case of CIT vs Pancham Das Jain 205 CTR 444 and Hon'ble Punjab and Haryana High Court in the case of PCIT vs

Kulwinder Singh (2017) (7) TMI 957. He held that assessee has satisfactorily explained the identity of the creditor and genuineness of the transaction. Accordingly, appeal of the assessee was allowed.

5. The ld. Assessing Officer is aggrieved with the same and submitted the ld. CIT(A) has admitted the additional evidence and did not give any opportunity to the Assessing Officer while deleting the above addition. He submitted that in case of the addition, no details were provided before the ld. AO , there is no reference of any application of additional evidence submitted before him, despite this the ld. CIT (A) has considered all the evidence produced before him by assessee and he allowed the claim of the assessee. As the Order of the ld. CIT (A) is in clear violation of Provisions of Rule 46 A of The Income tax Rules, therefore, the order of the ld. CIT(A) is not sustainable.
6. Despite notice none appeared on behalf of the assessee on the date of hearing. On careful perusal of the order sheets, the appeals were fixed for hearing earlier on 29.04.2024 on 06.06.2024 wherein the notices were issued to the assessee by RPAD and none appeared. On one of the occasions, the notice sent through RPAD was returned back. We find that address mentioned in Form No. 36 by the Assessing Officer as well as the address mentioned by the assessee in Form No. 35 are identical. Therefore, the issue is decided on the merits of the case as per information available on record.

7. We have carefully considered the contentions of the ld. Departmental Representative and also perused the orders of the lower authorities. The ld. Assessing Officer has selected the case of the scrutiny for verification of disproportionate creditors. The AO was not furnished any information with respect to one party B.S. Hydrocarbons Pvt. Ltd. whose outstanding was Rs. 5,64,23,308/-. All the notices sent to that party u/s 133(6) and u/s 131 of the Act were not responded to or not served. Thus, no information was submitted by the assessee with respect to this supplier which resulted in addition. On appeal before the ld. CIT(A), the appellant has filed the written submission which was uploaded on ITBA portal wherein assessee explained its turnover, its creditors as well as the amount outstanding in the name of B.S. Hydrocarbons Pvt. Ltd. The assessee has also submitted that the creditor has changed its registered office also. This explanation was not available before the AO and new address was also not supplied to the AO. Before the ld. CIT(A), assessee submitted the (1) confirmation of the creditor( 2) balance sheet of the creditor , (3) . The ld. CIT(A) has mentioned as under

“The assessee has also produced Confirmation and Audited books of account of M/s. B.S. Hydrocarbons Private Limited. On perusal of the same, it is found that M/s. B.S. Hydrocarbons Private Limited in its balance sheet had shown “Trade receivable from M/s Nirmit Mercantile Private Limited” amounting to Rs. 5,63,40,148/-. The appellant has also produced the confirmation of

M/s. B.S. Hydrocarbons Private Limited wherein the creditor having accepted trade receivable from the appellant amounting to Rs. 5,63,40,148/-.”

8. Thus, ld. CIT (A) also considered that in the balance sheet of the supplier, the amount was standing as outstanding debtors in the name of the assessee-company. Thus, it is clear that the ld. CIT(A) was also provided with audited annual financial statement of the creditor for the year ended on 31.03.2017. The impugned assessment year is 2014-15 but ld. CIT(A) considering the balance sheet of the creditors for the year ended on 31.03.2017 has deleted the addition. The ld. CIT(A) in paragraph no. 3.2 has also categorically mentioned that assessee has not produced any document in respect to the above creditors before the ld. Au. Thus, it is apparent that the ld. CIT(A) has considered the additional evidence filed before it by the assessee which was not available before the ld. AO. No doubt, according to the provisions of Rule 46A, the ld. CIT(A) is empowered to admit the additional evidence, provided it falls into conditions as mentioned in clause (a) to (d). Further for admitting such evidence a specific order under Rule 46A also to be passed under the appellate order. Accordingly, to sub-rule (iii), he has to give an opportunity to the Assessing Officer to verify the same. In the appellate order, we do not find any (1) reference to any application made by the Assessee for admission of additional evidence, (2) Correspondence with the ld. AO for comments on admission of such evidence, (3) any order admitting such additional evidence. Thus, there

is no reference of any power exercised by him u/r 46A of The IT Rules, 1962, . Therefore, it is apparent that ld. CIT(A) has admitted the additional evidence without any application made by the assessee, without making any order and without providing any opportunity to the AO. Thus, there is clear violation of rule 46A of the IT Rules.

9. In view of the above facts, we restore the whole issue back to the file of the ld. CIT(A) to comply with the provisions of Rule 46A and decide the issue afresh.

10. In view of this, the solitary ground raised by the ld. Assessing Officer is allowed.

In the result, appeal of the revenue is allowed.

Order pronounced in the open court on 23.08.2024.

**Sd/-**  
**(RAJ KUMAR CHAUHAN)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 23.08.2024  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

*ITA No.3638/Mum/2023*  
*Nirmit Mercantile Private Limited*  
*A.Y. 2014-15*

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai