

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

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.961/Bang/2024
Assessment year : 2012-13

Sha Thanmal Sukhraj Jain & Co., P.B. No.15, APMC Yard, Ranebennur – 581 115. <b>PAN : AAEFS 7877F</b>	Vs.	The Income Tax Officer, Ward 2, Haveri.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sudheendra B.R., Advocate
Respondent by	:	Shri Sreenivasa Karthik Devara, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	07.08.2024
Date of Pronouncement	:	28.08.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the assessee against the order dated 21.3.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2012-13 on the following grounds:-

“1. General Ground

1.1 The order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as CIT(A), NFAC) under section 250 of the Act to the extent prejudicial to the appellant is bad in law and liable to be quashed.

2. Addition in respect of sundry creditors

2.1. The learned AO and the CIT(A), NFAC have erred in making addition of Rs. 60,529, Rs. 90,79,528 and Rs. 29,60,099 in respect of the amounts standing in the names of sundry creditors only for the reason that the creditors have not confirmed the balances standing in the name of the appellant independently.

2.2. The learned AO and CIT(A), NFAC erred in not appreciating and considering the balance confirmations confirmed by the sundry creditors which was submitted during the assessment and appellate proceedings.

2.3 On facts and circumstances of the case and law applicable, impugned addition of Rs.60,529, Rs.90,79,528 and Rs.29,60,099 in respect of the amounts standing in the names of sundry creditors is liable to be deleted.

3. Levy of interest under section 234B and 234C

3.1 The learned AO and the CIT(A), NFAC have erred in confirming the levy of interest under section 234B and 234C.”

2. Briefly stated the facts of the case are that the assessee filed return of income on 27.9.2012 declaring total income of Rs.3,24,040. The case was selected for scrutiny and statutory notices issued to the assessee. During the course of assessment proceedings, the AO on verification of sundry creditors called the assessee to furnish the names and address of sundry creditors and confirmation account. The assessee submitted the name and address of the parties with confirmation letters. The AO sent notices to 28 creditors as listed in the assessment order directly and received reply from them. On verification of the reply he noted a difference of Rs.60,529 from the closing balance as shown by assessee and asked assessee to furnish

reconciliation statement. The assessee filed the reasons for difference as per Annexures 1 & 2. The AO did not accept the reasons and added to total income the amount of Rs.60,529.

3. Further AO noted that 24 creditors as per para 4.1 of his order did not respond regarding their credit balances as appearing in their names in the books of assessee and the assessee was asked to produce them for examination. The assessee was unable to produce the sundry creditors and failed to establish that the sundry creditors are genuine. Accordingly, the entire closing balance of Rs.90,79,428 of 24 creditors was added to total income of assessee.

4. The AO further noted that 3 notices sent to the creditors returned unserved. In this regard also the assessee did not produce the creditors before the AO. Accordingly Rs.29,60,999 was also added back to the total income of assessee.

5. Further the AO sent letters to debtors, out of which in the case of 6 debtors letters returned unserved with the postal remarks “no such address, insufficient address, left without instruction, deceased, etc.” which was also intimated to the assessee, but there was no compliance to the satisfaction of the AO, hence a sum of Rs.48,79,106 was added back to total income of assessee. The AO assessed income of Rs.1,81,58,926.

6. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA) with detailed written submissions.

The Id. FAA called remand report from the AO and considering the remand report, the Id. FAA deleted the addition towards non-verification of debtors and confirmed the addition towards creditors. Aggrieved, the assessee is in appeal before the ITAT.

7. The Id. AR submitted that the difference of Rs.60,529 towards closing balance in the books of assessee and closing balance of creditors. the reasons were explained during the course of assessment proceedings which is placed at pages 106 & 107 of PB as difference due to calculation, TDS, commission not accounted by the party, debit note, etc. In respect of addition of Rs.90,79,528 as per para 4.1 of the AO's order in respect of non-compliance by the creditors and addition of Rs.29,60,099 where notices were unserved, the Id. AR submitted that the books of the assessee are audited and auditor has not pointed out any mistake. The books have not been rejected by the AO. Corresponding purchases from the creditors have been accepted and out of the purchases from such creditors, some part of the goods are lying as closing stock of assessee and there is no dispute on the sales and closing stock as declared by the assessee therefore, the AO(Assessing Officer) is not justified in disallowing the sundry creditors. He further submitted that the case of the assessee for AYs 2011-12 & 2013-14 were subject to scrutiny proceedings and order was passed u/s. 143(3) on 26.3.2014 and 26.02.2016 respectively and there is no addition made towards creditors. The closing balance appearing in the books of assessee of creditors were shifted to the next assessment year as opening balance and the AO has not disputed it

while completing the assessment proceedings for AY 2013-14 on 26.2.2016, however the assessment order for the impugned assessment year is passed on 27.3.2015. He also submitted that the confirmation of creditors were also filed in the remand proceedings and the AO did not doubt on the same. In support of his arguments, the ld. AR relied on the following judgments:-

	<b>Mere issue of notices u/s. 133(6) with no additional efforts is not a valid ground for addition of sundry creditors</b>
1	CIT v Orissa Corpn, (P.) Ltd (1986) 159 ITR 78 (SC)
2	CIT v Jagdish Prasad Tewari [2013] 40 <a href="http://taxmann.com">taxmann.com</a> 265 (Allahabad)
3	PCIT v Rajesh Kumar [2018] 100 <a href="http://taxmann.com">taxmann.com</a> 267 (Delhi)
4	Rameshwar Shaw v ITO (2024) TaxCorp (A.T.) 110274 (ITAT-KOLKATA)
5	ACIT v Uppal Jitendra Shah (2022) TaxCorp (A.T.) 98093 (ITAT-PUNE)
6	ACIT v Samtex Fashions Ltd (2021) TaxCorp (A.T.) 89543 (ITAT-DELHI)
	<b>Where trading results have been accepted, no addition w.r.t sundry creditors merely because 133(6) notices were not responded</b>
7	ITO v Standard Leather P. Ltd [2016] 76 <a href="http://taxmann.com">taxmann.com</a> 109 (Kolkata Trib.)
8	ITO v Swati Housing & Construction (P.) Ltd [2019] 112 <a href="http://taxmann.com">taxmann.com</a> 371 (Delhi - Trib.)
	<b>Once trading results have been accepted, no addition w.r.t. sundry creditors</b>
9	CIT v. Ritu Anurag Aggarwal [2010] 2 <a href="http://taxmann.com">taxmann.com</a> 134 (Delhi)
10	PCIT v. Attire Designers (P) Ltd. [2022] 145 <a href="http://taxmann.com">taxmann.com</a> 188 (Delhi)
11	IKEA Trading (India) (P.) Ltd. v DCIT [2021] 123 <a href="http://taxmann.com">taxmann.com</a> 129 (Delhi - Trib.)
	<b>Where creditors were brought forward balances, no addition under section 68</b>
12	DCIT v. Amod Petrochem (P) Ltd. [2008] 307 ITR 265 (Guj.)
13	CIT v. Usha Stud Agricultural Farms Ltd. [2008] 301 ITR 384 (Delhi)

8. The ld. DR relied on the order of lower authorities and submitted that regarding difference in accounts of Rs.60,529, the assessee did not

file any evidence as placed in Page 106 of PB. It was the primary duty of the assessee to substantiate all the entries made in the books of account with cogent materials. However the assessee has failed to do so. Further in respect of non-compliance of notices and notices unserved to the creditors, he categorically relied on para 6.4.2 of the CIT(Appeals) order and submitted that assessee did not file confirmation letters of the parties either during assessment proceedings as well as appellate proceedings. During the remand proceedings the assessee was unable to prove the genuineness of creditors and not filed genuineness of payments to the creditors. The assessee could not file confirmation from the persons from whom purchases were purportedly made. The assessee explanation is that these persons being small traders of limited means and operating from table space, etc. are no longer available for verification, but these persons were not available at the stage of assessment proceedings. All that has been stated are self-serving statements without any supporting evidence. The onus is on the assessee to prove the identify of these persons, genuineness of transactions. The assessee has miserably failed in discharging his onus. The Id. DR relied on the judgment of jurisdictional High Court.

9. Ground Nos. 2.1 to 2.3:

9.1 Considering the rival submissions, here the dispute is only regarding verification of creditors as per para 4 to 4.2 of the assessment order. The first issue is in regard to difference of Rs.60,529 as per para No. 4 of the assessment order. In this regard, the assessee has

submitted detailed reasons without any supporting evidence which is placed at page 106 of PB. The entries made in the books of accounts should be supported by evidences but here there are no such evidences in support of entries made at any stage of proceedings, only reasons are given by the assessee which is not acceptable. The assessee was granted sufficient time but the assessee was unable to produce such in support of claim. Therefore, this addition is confirmed.

9.2 Further in respect of those creditors who have not responded to the notices of AO as well as in case of some creditors some notices were not served or returned unserved, the assessee was also asked to produce confirmations from creditors, but the assessee had provided only name and address as per assessment order. But on going through the pages 115 to 145 of PB (sl.no.22) filed by the assessee, the assessee has mentioned that letter dated 2.2.2015 filed with the AO on 6.2.2015 along with confirmation of sundry creditors balances signed by the sundry creditors and it was filed before the AO. The letter is dated 9.2.2015 and it was received by office of ITO, Ward 1, Haveri. However jurisdiction of the AO who has passed the order is ITO, Ward 2, Haveri. During the course of arguments the Id. Counsel of assessee strongly relied on the confirmation letters filed before the AO and there is no dispute regarding closing balance as shown in the confirmation from the creditors.

9.3 The Id. CIT(Appeals) called remand report from the AO towards confirmation of creditors and the AO submitted the remand report which is as under:-

“4. In respect of the sundry creditors under Sl. No.(i) And (ii) above, the assessee has filed the confirmations, vide letter Dated: 02.02.2015, received by the Assessing Officer on 06.02,2015. However it is seen that the confirmations do not contain the PAN of the creditors. Therefore the genuineness of these creditors remains unverified. In view of this, I request the Commissioner of Income-tax (Appeals) to kindly uphold the additions made by the Assessing Officer.”

9.4 From the above, we note that the confirmations were available with the AO. If he had any doubt regarding balances shown, he could have again verified with the creditors. He has not doubted the closing balances, he has merely observed that the confirmations do not contain PAN of the creditors and therefore genuineness of these creditors remains unverified. The names and address of creditors were available with the CIT(Appeals), therefore he could have verified from the books of account of the creditors by taking appropriate steps. The statute has provided ample powers to the authorities but both the authorities did not do so. It is interesting to note that the for the AY 2014-15 for the following AY the order was passed by the AO W-1 on 26.02.2016 after the passing of the order the impugned AY and there is no any whisper or remarks on the opening balance of the creditors. Therefore, considering the totality of the facts of the case and the case laws relied by the Id. AR, we delete the addition of Rs.90,79,528 and Rs.29,60,099.

- 9.5 Ground Nos. 2.1 to 2.3 are partly allowed.
10. Ground No.3 is consequential in nature.
11. In the result, we partly allow the appeal of the assessee.

Pronounced in the open court on this 28<sup>th</sup> day of August, 2024.

Sd/-  
( BEENA PILLAI )  
JUDICIAL MEMBER

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 28<sup>th</sup> August, 2024.

*/Desai S Murthy/*

Copy to:

1. Appellant      2. Respondent      3. Pr.CIT      4. CIT(A)  
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.