

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

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

ITA No.3285/Del/2023, A.Y.2014-15

Poonam Narang 1-B/154, NIT, Faridabad-121001 PAN: AAIPN4328C		ITO, Ward 2(1), Faridabad
(Appellant)		(Respondent)

Appellant by	Sh.D.C.Garg, CA
Respondent by	Sh. Vivek Vardhan ,Sr. DR

Date of Hearing	03/07/2024
Date of Pronouncement	28/08/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal filed by the assessee for the Assessment Year (hereinafter, the 'AY') 2014-15 is directed against the order dated 20.09.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi [hereinafter, the 'CIT(A)'].

2. Following grounds are raised in this appeal:-

"1. That Learned National Faceless Appeal Centre (NFAC), Delhi has grossly erred in law as well as on facts in confirming the addition of Rs. 2,26,60,903 out of additions of Rs.

2,45,64,754/- made by the Assessing Officer by treating creditors as income of the Appellant without appreciating the fact correctly.

2. That Learned National Faceless Appeal Centre (NFAC), Delhi, has grossly erred in law as well as on facts in confirming the addition of Rs. 2,26,60,903/- out of additions of Rs. 2,45,64,754/- made by the Assessing Officer by misplacing rejoinder to the remand report furnished by the Appellant.

3. That Learned National Faceless Appeal Centre (NFAC), Delhi has grossly erred in law as well as on facts in confirming the addition of Rs.2,26,60,903/- out of additions of Rs.2,45,64,754/- made by the Assessing Officer by ignoring judicial pronouncements relied by the Appellant.

4. The appellant craves leave to add, amend or vary from the aforesaid grounds of appeals at or before the time of hearing.”

3. The relevant facts giving rise to this appeal are that the appellant/assessee, Proprietor of M/s. Kartik Electricals, engaged in the business of trading of electrical appliances/goods, filed her Income Tax Return (hereinafter, the 'ITR') on 30.11.2014 declaring income of Rs.2,12,530/-. The case was picked up for limited scrutiny on the reasoning that the appellant/assessee had a large amount of sundry creditors. During the course of assessment proceedings, the appellant/assessee was required, vide statutory notices as detailed on page 2 of the assessment order, to explain the genuineness of the

sundry creditors of Rs.2,45,64,754/-. However, no compliance was ever made by the appellant/assessee. Therefore, the Assessing Officer (hereinafter, the 'AO') had no option except to complete the assessment before getting barred by the limitation. The AO therefore, treated the sundry creditors of Rs.2,45,64,754/- as non-genuine liability and taxed it accordingly. Aggrieved, the appellant/assessee filed appeal before the CIT(A) who upheld the addition of sundry creditors of Rs.2,45,64,754/- out of Rs.2,45,64,754/- and allowed relief of Rs.19,03,851/-.

4. Before us, the Ld. Authorized Representative (hereinafter, the 'AR') reiterated the facts, details, etc. submitted before the CIT(A). The Ld. AR argued that the AO could not treat the sundry creditors as non-genuine after accepting the trading results; i.e. purchases and sales. To buttress his arguments, the Ld. AR placed reliance on the decision of the Hon'ble Delhi High Court in the case of Ritu Anurag Agarwal in ITA No. 325/2008 (order dated 22.07.2009), wherein it was held that unless the AO disputed the purchases & sales and disturbed trading results, the sundry creditors could not be questioned. Further, our attention was also drawn to the fact that the appellant/assessee had paid these liabilities in the subsequent years. In support of the

above arguments, the Ld. AR also placed reliance on the following decisions:-

- (i) Sita Devi Juneja [187 Taxmann 96], (P&H)
- (ii) Vardhman Overseas Ltd. [343 ITR 408] (Delhi)

5. The Ld. Senior Departmental Representative (hereinafter, the 'Sr. DR') submitted that the facts of the case of the appellant/assessee were quite different than the facts of the cases relied upon by the Ld. AR; hence these decisions were of no help to the appellant/assessee. The Ld. Sr. DR contended that the sundry creditors had been taxed under section 41(1) of the Act in cases relied upon by the Ld. AR; whereas in the case in hand, the AO had held sundry creditors as non-genuine liabilities. The sundry creditors held non-genuine by the AO were not exclusively from the purchases made during the current/relevant year only. It was submitted that the sundry creditors held as non-genuine were mainly of earlier years and the AO held sundry creditors as non-genuine in the relevant year in absence of any explanation of the appellant/assessee and in particular to the fact that these creditors were lying idle/unaltered/static since long in this materialistic time.

5.1 It was argued by the Ld. Sr. DR that it could not be ruled out that these liabilities might have not been paid in cash or non-genuine/bogus and kept accounted for in the Books of Account to match with the asset side of the Balance Sheet. The Ld. Sr. DR further argued that the case

laws relied upon by the Ld. AR were of no relevance in the present case as these cases were distinguishable on the facts. The Ld. Sr. DR drew our attention to the page 22-27 of the impugned order and submitted that the details of payments of Rs.20,000/- at a time on consecutive dates made against purchases in lakhs spoke volumes. In this regard, he drew out attention to the observations of the Ld. CIT(A) and submitted that the preponderance of probability of payment of Rs.20,000/- in cash on consecutive dates in cases of Parmar Electricals, N H Electronics, Lakhani Light House, Khanna Electricals, Bajwa Electricals, Apna Electrics Store were very remote as no prudent businessman would like to make payment or send his man to collect his dues on daily basis unless designed so. Mangla Electric Store, Durga Electricals, Jain Electricals, Jyoti Engineering Corporation and Veera Enterprises did not respond to the statutory notices of the AO; however, the appellant/assessee, on specific query, failed to produce them in person before the AO though she had filed their confirmations. In other cases, the Ld. CIT(A) found the explanation of the appellant/assessee as unsatisfactory; hence he upheld the order of the AO. In view of the above, the Ld. Sr. DR prayed for dismissal of appeal particularly when the Ld. AR failed to bring any new material on the record to demonstrate that these sundry creditors were genuine and to controvert the finding of the Ld. CIT(A).

6. We have heard both the parties and have perused the material available on record. Admittedly, the appellant/assessee did not respond to any statutory notice during the assessment proceedings. Even then, the AO completed assessment under section 143(3) instead of 144 of the Act. The appellant/assessee produced additional evidences during the appellate proceedings. We find merit in the arguments /submissions /contentions of the Ld. Sr. DR that the appellant/assessee had failed to explain the sundry creditors before the Authorities below. The sundry creditors are in the nature of credits in the Books of account and it is the duty of the appellant/assessee to explain and demonstrate the genuineness thereof, if questioned.

7. We are of the considered view that the idle/unaltered/static sundry creditors treated as non-genuine require further verification /investigation. Therefore, in the interest of justice and facts in entirety, we are of the considered opinion that the appellant/assessee deserves reasonable opportunity of being heard to make shortcomings or non-compliances. In view thereof, without offering any comment on merit of the case, we deem it fit to set aside the impugned order and remit the matter back to the file of the AO for de-novo consideration. The appellant/assessee should ensure compliances during the set-aside proceeding before the AO. The AO is also required to provide reasonable

opportunities of being heard to the appellant/assessee before deciding the case on merit.

8. In the result the appeal is allowed for statistical purposes.

Order pronounced in open Court on 28th August, 2024.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated: 28/08/2024
Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(Appeals)
5. CIT-DR

ASSISTANT REGISTRAR
ITAT, NEW DELHI