

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

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1404/PUN/2023
Assessment year : 2018-19**

DCIT, Circle – 4, Pune	Vs.	Patson Agro Exports Pvt. Ltd. Nakoda Court, Sanghvi Compound, Shivajinagar S.O (Pune), Pune – 411005
		PAN: AAHCP2450M
(Appellant)		(Respondent)

Assessee by : Shri Kishor B Phadke
Department by : Shri Ajay Kumar Keshari – CIT
Date of hearing : 16-04-2025
Date of pronouncement : 23-04-2025

ORDER

PER R. K. PANDA, VP :

This appeal filed by the Revenue is directed against the order dated 30.10.2023 of the Ld. CIT(A) / NFAC, Delhi relating to assessment year 2018-19.

2. Facts of the case, in brief, are that the assessee is a company and has not done any business during the year. It filed its return of income on 31.10.2018 declaring loss of Rs.76,45,908/-. Subsequently the assessee company revised its return of income on 30.03.2019 declaring loss of Rs.8,26,54,558/-. The case was selected for scrutiny. Accordingly, statutory notices u/s 143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') were issued and served

on the assessee, in response to which the AR of the assessee appeared before the Assessing Officer and filed the requisite details from time to time.

3. During the course of assessment proceedings the Assessing Officer asked the assessee to furnish the details in respect of Sundry creditors. From the details furnished by the assessee, the Assessing Officer noted that the assessee company has not provided PAN and addresses of a number of creditors whose total outstanding is Rs.4,01,34,549/-. He therefore, specifically asked the assessee to furnish the complete details of sundry creditors along with their PAN, address, details of transactions made along with banking transactions and confirmations up to 16.03.2021. However, the assessee failed to furnish the PAN, address, details of transactions made along with banking transactions and confirmations amounting to Rs.4,01,34,549/-. Therefore, the Assessing Officer held that the sundry creditors remained unexplained. He further held that the sundry creditors claimed as outstanding liability in the books of the assessee has actually ceased to exist for all practical purposes as there are no more claimants towards the same. He referred to the provisions of section 41(1) of the Act and the decision of Hon'ble Supreme Court in the case of CIT vs. T V Sundaram Avenger and Sons Ltd. reported in 222 ITR 344 (SC) wherein it has been held that unexplained liabilities are assessable as income of the assessee. He therefore, again asked the assessee to show cause as to why the addition should not be made. The assessee in response to the same submitted as under:

"In these regards we would like to put our say as follows

1. Trade payables:

Dear Sir, during the assessment proceedings on 18 February 2021 we had provided you list of trade payables. By mistake some of the parties from whom we had received loan/advances were included. Therefore, in our last submission on 29 March 2021, we had submitted correct list of trade payable with total value of Rs 1,08,21,182/- out of these total trade payables we could not provide PAN details of trade payables valuing Rs 5,05,362/- Therefore, we would like to request you consider correct values of trade payables.

We would also like to inform you that assessment of our company was concluded for the Assessment Year 2016-17 and during the assessment proceedings, the assessing officer had disallowed trade payable valued Rs.61,43,296/- we are providing you copy of the assessment order passed by "Assistant Commissioner of Income Tax Circle 4 Pune" for your reference.

Further from the list provided by us on 18 February 2021 which included party named Patson Metallic Private Limited, outstanding balance Rs.1,86,31,765/- we are providing you balance confirmation along with PAN and statement of account from the Party We request you to kindly consider that in the assessment proceeding.

As we are non-operational company, it become very difficult to obtain the balance confirmation from all of the trade receivables."

4. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He noted that the assessee has furnished the details but has not filed any documentary evidence from which it can be substantiated that the plea of the assessee company is genuine. He, therefore, made addition of Rs.4,01,34,549/- u/s 41(1) of the Act.

5. The Assessing Officer further noted from the Profit and Loss Account that the assessee has claimed bad debts amounting to Rs.5,87,62,191/- in the Profit and Loss Account. The assessee furnished the details in respect of bad debts wherein

name of the company and PAN number were submitted. However, the assessee did not furnish the nature, reason for write off and documentary evidence. He, therefore, specifically asked the assessee to furnish the complete details of bad debts along with documentary evidence to substantiate the claim of bad debts. The assessee in response to the same furnished the following reply:

1. "Trade receivables

Sir in the draft assessment order received from your office, you have made an addition of Rs.5,87,62,191/- on account of non-submission of documentary evidence for claim of bad debts. Sir, we would like to inform you that in the submission made by us on 29 March 2021, we had provided detailed list of party balances as bad debts. Further in the statement we had made it clear how long the money is outstanding. We have also received notice from Reserve Bank of India for these receivables for having open status as on 10 May 2020. This itself is an evidence that the amount claimed as bad debts is factually bad debts.

We request you to kindly consider this claim while concluding the assessment."

6. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and made addition of Rs.5,87,62,191/- by disallowing the bad debts u/s 37(1) of the Act.

7. In appeal the Ld. CIT(A) / NFAC restricted the addition of sundry creditors made by the Assessing Officer u/s 41(1) of the Act to Rs.2,12,70,466/- by observing as under:

"5.2 Findings and Decision:-

I have carefully considered the facts of the case as well as submissions filed by the appellant. I find no force in the arguments of the Appellant. The basis of making this addition is the table given on page 4 and 5 of the assessment order. In this table the Assessee has given explanation for the following entries against the Sr. of the table in assessment order :-

Sr. No.	Name of Party	PAN	Outstanding Balance	Explanation
1	ABC Tin No.28690210435	Not available	9,490	No explanation given
2	B. KANTHA RAO	Not available	41,89,255	No explanation given
3	BLUE WATER LOGISTICS	Not available	1,79,799	No explanation given
4	B S Ply Wood Doors Centers	Not available	148,498	No explanation given
5	Farmer Payment	Not available	4,558	No explanation given
6	Freight payable	Not available	3,33,230	No explanation given
7	Millenium Shipping	Not available	20,32,099	No explanation given
8	M YAKAIKH RAYAPARTHI	Not available	41,07,941	No explanation given
9	Patson Metalic Pvt Ltd	Not available	1,86,31,765	Confirmation of balance given, shown as a loan from sister concern
10	Ramkrishna Traders	Not available	224,606	No explanation given
11	R. Srinivasa Rao	Not available	898,976	No explanation given
12	Sachin Traders	Not available		No explanation given
13	Shanmugha Salt & Chemicals	Not available		No explanation given
14	Shree Scientific	Not available		Added in the preceding Year
15	Sri Durga Packers & Movers	Not available		Added in the preceding Year
16	Sri Rama Plywood / A. Chandra Shekar	Not available		No explanation given
17	S VEERA REDDY	Not available		No explanation given
18	Transportation Payable	Not available		No explanation given
19	Unique Fire Guards	Not available		Added in the preceding Year
20	WATERMAN ENGINEERING	Not available		Added in the preceding Year

Since the Appellant has furnished the above before the AO and the addition was made by the AO in respect of the specific entries, the Appellant was supposed to file confirmation from each of the above. If it was contended that these are loans then the evidence in this respect had to be submitted along with confirmed copies of accounts. This has not been done by the Assessee. Simply giving another list of the outstanding sundry creditors is not enough. Accordingly, the addition of Rs.4,01,34,549/- is restricted to Rs.2,12,70,466/-

In light of these facts, the contention of the Assessee fails and the ground of appeal no. 1 is partly allowed.

8. So far as the disallowance of bad debts is concerned, the Ld. CIT(A) / NFAC restricted such disallowance from Rs.5,87,62,191/- to Rs.18,44,764/- by observing as under:

“6.2 Findings and Decision:-

I have carefully considered the facts of the case as well as submissions filed by the appellant. I find force in the arguments of the Appellant. The section 36(1)(vii) basically stipulates two conditions for allowing the deduction for write-off as bad debt:-

- *The amount has been taken into account in computing the Income of the Assessee in any preceding years (section 36(2)(i))*
- *It has been written off in the books of accounts of the Assessee.*

The Appellant has referred to the decision of SUPREME COURT OF INDIA in the case of T.R.F. Ltd. v. Commissioner of Income-tax, [2010] 190 Taxman 391 (SC) wherein it was held as under-

Section 36(1)(vii) of the Income-tax Act, 1961-Bad debts - Assessment years 1990-91, 1993-94 and 1994-95 - Whether after 1-4-1989, it is not necessary for assessee to establish that debt, in fact, has become irrecoverable, it is enough if bad debt is written off as irrecoverable in accounts of assessee Held, yes Whether where Assessing Officer had not examined whether, in fact, bad debt or part thereof was written off in accounts of assessee, matter was to be remitted back to Assessing Officer for de novo consideration of above mentioned aspect only - Held, yes

In the above case matter has been remitted back to the AO to examine whether the balances have been written off by the Assessee. Here, there is no doubt that the balances have been written off by the Assessee, and hence this case is perhaps not applicable here. From the details given by the Assessee it clear that the following amounts do not satisfy the criteria of the section 36(2)(i) of the Income-Tax Act:-

<i>Sr No</i>	<i>Head</i>	<i>Name</i>	<i>Description</i>	<i>Amount</i>
2	Advance to supplier	Bafna Motors Pvt. Ltd	supplier	71,341
13	Advance to supplier	Sagar Tyres	supplier	6,200
14	Advance for expenses	Suresh Seethalam	Employee	8,04,418
18	Balance with Tax authority	Telangana VAT	VAT authority of Telangana state	9,62,805
				18,44,764

Accordingly, the disallowance of Rs.5,87,62,191/- made by the AO is restricted to Rs.18,44,764/- as above. The grounds of appeal no. 2 is thus, partly allowed.

9. Aggrieved with such order of the Ld. CIT(A) / NFAC, the Revenue is in appeal before the Tribunal by raising the following grounds:

- 1) *Whether in the facts and circumstances of the case and in law the Ld CIT(A) is correct in restricting the disallowance in respect of the trade payables without substantiating the same with necessary evidences and reasons?*
- 2) *Whether in the facts and circumstances of the case and in law the Ld. CIT(A) is correct in partially allowing the claim made by the assessee u/s 36(1)(vii) of the Act without appreciating the fact that the assessee had not submitted any supporting documents/evidence which could establish that it had actually fulfilled both conditions governing the grant of deduction in respect of bad debt under clause (vii) of section 36(1), viz (i) the debt should have been taken into account in computing the income of the assessee for the accounting year or for an earlier accounting year (ii) the debt should have been written off from the books of account of the assessee.*
- 3) *Whether in the facts and circumstances of the case and in law the Ld. CIT(A) is correct in partially allowing the claim made by the assessee u/s 36(1)(vii) of the Act without bringing on record any fresh evidence or without refuting the reasons given by the AO for making the disallowance?*

10. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. The Ld. Counsel for the assessee at the time of hearing filed an application requesting the Bench to accept certain additional evidences which read as under:

“Subject: Request for acceptance of additional evidence

Reference: ITA No. 1404/PUN/2023 (Department's Appeal) AY 2018-19

Hearing for the above-referred appeal is scheduled today. The issue involved in the appeal is the allowance of Bad Debts by the learned CIT(A). Appellant producing copies of ledger extract of sundry debtors, which are "additional evidence" since, were not available before the I-T Authorities (fully or partly). Appellant requests the Honourable ITAT Bench to permit production of above documents submitted in Paper Book II. These details, unfortunately, remained to

be submitted completely before the learned CIT(A) since, the impact of the matter could not be envisaged by the Appellant at that time.

All these above referred documents in Paper Book II, have a substantial bearing on the case. The appellant prays that in the interest of justice, the additional evidence may be admitted and the issue may be decided after considering the additional evidence. The appellant relies on the ratio laid by the Hon'ble Supreme Court in the case of Tek Ram vs CIT (2013) 357 ITR 133/(2014) 44 taxmann.com 367 (SC) wherein it was held that where documents filed by the assessee before Court had some relevance, the same should be considered while deciding the appeal.

Kindly permit the Appellant to produce these documents and oblige.”

11. So far as the first issue i.e. the order of the Ld. CIT(A) / NFAC restricting the addition of Rs.4,01,34,549/- to 2,12,70,466/- is concerned, we find the Ld. CIT(A) / NFAC despite observing that “*the assessee was supposed to file the confirmations from each of the above, however the assessee has not done the same*” has substantially reduced the addition made by the Assessing Officer. A perusal of the last para of the order of the Ld. CIT(A) / NFAC shows that the same is contradictory to the observations made by him and relief granted by him. Under these circumstances and in view of the contradictory order of the Ld. CIT(A) / NFAC, we deem it proper to restore this issue to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate its case and decide the issue afresh as per fact and law. We hold and direct accordingly. The first issue raised by the Revenue is accordingly allowed for statistical purposes.

12. So far as the second issue i.e. the order of the Ld. CIT(A) / NFAC in restricting the bad debts from 5,87,62,191/- to Rs.18,44,764/- is concerned, we find

the Ld. CIT(A) / NFAC while sustaining the addition of Rs.18,44,764/- has not given any reason for deletion of addition to the extent of Rs.5,69,17,427/-. Since the order of the Ld. CIT(A) / NFAC is a cryptic one and he has not given any finding regarding the deletion of addition of Rs.5,69,17,427/- and considering the fact that the assessee has filed an application seeking admission of certain additional evidences, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to adjudicate the issue afresh and in accordance with law after providing due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the Revenue on the second issue are accordingly allowed for statistical purposes.

13. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 23rd April, 2025.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 23rd April, 2025
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	17.04.2025		Sr. PS/PS
2	Draft placed before author	21.04.2025		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			