

**THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER &
SHRI KHETTRA MOHAN ROY, ACCOUNTANT MEMBER**

**ITA No.3634/Del/2024
(Assessment Year 2008-09)**

M/s R.L. Traders 2046, Katra Tobacco Khari Baoli Delhi - 110006	Vs.	ITO, NFAC, New Delhi
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AAAFR5508C		
Appellant	..	Respondent

**ITA No. 3763/Del/2024
(Assessment Year 2008)**

Income Tax officer, Ward 47(1), 1310, 13 th Floor, E-2 Block, Civic Centre, New Delhi - 110002	Vs.	R.L. Traders 2046, Katra Tobacco Khari Baoli Delhi - 110006
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AAAFR5508C		
Appellant	..	Respondent

Appellant by :	Sh. K.R. Manjani, Adv, & Sh. Tarun Aswani, Adv
Respondent by :	Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing	03.06.2025
Date of Pronouncement	06.06.2025

ORDER

PER KHETTRA MOHAN ROY, AM:

The cross appeals preferred by the assessee and the revenue are directed against the common order dated 04.04.2024 passed by the Ld. National Faceless Appeal Centre (NFAC) arising out of the Assessment Order dated 22.12.2010, passed by the ACIT, CC-17, New Delhi, under Section 144 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for the Assessment Years 20-08-09 & 2008.

ITA No.3763/Del/2024 (Department’s Appeal)

- “1. Whether the Ld. CIT(A)-26 has erred in the eyes of law in deleting the additions on account of lower GP offered by the assessee and has not provided the manufacturing account despite the ample opportunity being given by the AO.
2. i. Whether the Ld. CIT(A)-26 has erred in the eyes of law in deleting the additions on account the bogus creditors entries on the basis that the same has been squared up by the assessee in the subsequent years without considering the facts that this is an organized way of the assessee to avoid penalties on the assessed income.
ii. Whether the Ld. CIT(A)-26 has erred in the eyes of law in deleting the additions on account the bogus creditors entries on the basis that the same has been offered as income in the subsequent years without considering the facts that this may be an afterthought of the assessee to avoid penalties on the assessed income.
- III. Whether the Ld. CIT(A)-26 has erred in the eyes of law in deleting the additions on account the bogus creditors entries on the basis that the payment to 4 foreign creditors were made subsequently by the appellant by way of banking channels without considering the facts that this may be an afterthought of the assessee to avoid penalties on.
4. Whether the Ld. CIT(A)-26 has erred in the eyes of law in deleting the additions on account of disallowance of interest to partner, however, the status of the assessee has been taken by the AO as AOP in absence of relevant documents.”

2. The fact of the case is as follows:

“2.2 The appellant filed return of of income on 29.09.2008 in the status of Firm, declaring NIL income. The case was selected for compulsory scrutiny and a notice u/s 143(2) was issued on 10.07.2009.”

3. The Ld. CIT(A), DR relied on the assessment order and submitted that the order of CIT(A) be reversed.

4. Per contra, the Ld. AR relied on the order of CIT(A) and prayed that the same may be sustained, we adjudicate the matter ground wise.

Ground No. 1:

5. The Ld. CIT(A) has granted relief by holding as follows:

“5.1.6 In view of the above facts and circumstances, I am of the considerate view that the assessing officer did not provide GP details and the nature of the activity of the person, who was relied upon by the AO to the appellant for applying the GP at the rate of 21% in the hands of the appellant. Further, it is submitted by the appellant that, there was no adjustment made by the AO in the earlier years on that account. In the absence of finding out any defects or incorrectness of the said account, the estimation of GP by the assessing officer by applying the GP rate of 21% of the appellant's turnover is not tenable and accordingly the said addition made to the tune of Rs. 14,28,495/- is not sustainable and is hereby deleted. Thus, the appellant succeeds on this ground.”

Ground 2: Sundry creditors:

6. The Ld. AR submitted as under:

5.2.3 On rejoinder to the said remand report of the AO, the appellant has submitted that, payments were made subsequently to the said creditors by way of banking channels. Further, the creditors, whose business were closed and the payments were outstanding was suo-moto offered as income in the subsequent years u/s 41(1) on account of cessation of liabilities.

5.2.4 The said submission of the appellant and the remand report of the assessing officer has been considered. It is observed that the following creditors' account has been squared up by the appellant in the subsequent years.

1. Valluar Soap Net Powder.
2. Shyam International (current name given by the appellant subsequently as Shagun International)
3. Rare Earth Overseas (current name given by the appellant subsequently as rare overseas)
4. Global express (India).

5.2.5 Further, the appellant has offered the following creditors as income u/s 41(1) of the Income Tax Act in the subsequent years. The details of the said creditors are as under:

1. Adel Hamad Co Ltd.
2. Yasin Nasir Co Ltd.

5.2.6 The appellant during the course of appellate proceedings has submitted that the following parties has confirmed their accounts in response to the notice issued by the assessing officer u/s 133(6) of the Income Tax Act.

1. B.M. Traders
2. Rahoboth Industries

5.27 In view of the above, it has been observed that the appellant has not explained/ completely satisfied the genuineness the following creditors by way of submitting necessary documentary evidences, confirmations and subsequent transactions/repayments made.

- | | |
|---------------------------|-----------|
| 1. Pylon Traders. | 697848/- |
| 2. K.S. Consumer Product. | 75000/- |
| 3. Sahar International. | 1227293/- |
| 4. Karuna Industries. | 368878/- |

Therefore, I am of the considerate view that, the disallowance made by the AO u/s 68 of the Income Tax Act on the above stated creditors is sustainable. Accordingly, the AO is directed to delete the additions made account of other creditors mentioned in the para 5.2.4, 5.2.5 and 5.2.6.”

“5.2.10 In view of the above, I am of the considerate opinion that the disallowance made by the assessing officer u/s 41(1)(a) of the Act on those 4 foreign creditors is not sustainable due to the fact that the payments were made to those creditors subsequently by the appellant by way of banking channels with approval of the RBI and the appellant has also submitted the relevant purchase vouchers for the purchase of the items from the foreign parties and also shown corresponding sales in the books of accounts which has not been

completely negated by the assessing officer. Accordingly, the addition made u/s 41(1)(a) of the Act on the said 4 foreign creditors is not sustainable.

5.2.11 In case, any adverse reports received against those 4 foreign creditors subsequently from the FT&TR division of the department by the assessing officer, the assessing officer is entitled to make necessary additions to the total income of the appellant accordingly.”

7. The Ld. DR could not point out as to how any of the observation of the CIT(A) is erroneous.

Ground No. 3 Interest to partner:

8. The Ld. DR did not make any submission on this count.

9. We find that the Ld. CIT(A) has examined the factual matrix and has correctly applied legal proposition to grant relief to the assessee. The same needs no interference from our end. The appeal of the Revenue is dismissed.

ITA No.3634/Del/2024

“1. The Ld. CIT(A) has erred on facts as well as in law in sustaining the addition in respect of M/s Pylon Traders K.S. Consumers Products and Karuna Industries in spite of the fact that they have been paid through banking channel and the transaction is through proper documents.

2. The parties shown in paras 5.2.4 to 5.2.7 are irrelevant and seem to have wrongly been typed; need to be ignored.”

10. The assessee is challenging the portion of disallowance sustained by the Ld. CIT(A) on account of Section 41(1). For this purpose he has submitted the paper book containing the following documents:

“1. Written Submission dated 04.07.2019 filed before CIT (A)-28, New Delhi

2. Ledger A/c, Bank Statement, and confirmation in regard to M/s Pylon Traders

3. Ledger A/c, Bill, and bank statement in regard to M/s K. S. Consumers Products.
4. Ledger A/cs and Bills in regard to Karuna Industries.”

11. From the various evidence it is substantially proved that there has been no cessation of liability to apprehend to Section 41(1) of the creditors are genuine and the transactions are occurring with them on regular basis. Thus, the addition is unwarranted irrespective of these 3 creditors since these are link balances. However, the assessee has remained silent in respect of Sabar International for which addition has been confirmed by the CIT(A). It may be noted that assessee has also not raised any grievance upon the said addition. Accordingly, we direct that the deletion of addition in this 3 sundry creditors only. The appeal of the assessee is allowed.

12. In the result, the appeal of the Revenue is dismissed and appeal of the assessee is allowed.

Order pronounced in the open court on 06.06.2025

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Sd/-
(Khettra Mohan Roy)
ACCOUNTANT MEMBER

Dated 06.06.2025
Rohit, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI