

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5535/Del./2013  
(ASSESSMENT YEAR : 2009-10)**

ITO, Ward 1 (4), vs. M/s. Anka India Limited,  
New Delhi. V & P.O. Kherki Daula,  
Gurgaon – 122 001 (Haryana)

**(PAN : AAACA2017J)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Ajay Kumar Agarwal, CA  
REVENUE BY : Shri S.K. Jain, Senior DR

Date of Hearing : 18.01.2017  
Date of Order : 28.02.2017

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

The Appellant, Income-tax Officer, Ward 1 (4), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 31.07.2013 passed by the Commissioner of Income-tax (Appeals)-IV, New Delhi qua the assessment year 2009-10 on the grounds inter alia that :-

- “1. The Ld CIT(A) has erred on facts and in law in deleting the addition of Rs.26,65,449/- (sic Rs.2,65,549/-) made on account of unverified job*

*work expenses despite the fact that the assessee had failed to prove the genuineness of the claim especially when notice u/s 133(6) were received back unserved with postal remarks "no such person".*

2. *The Ld CIT(A) has erred on facts and in law in deleting the addition of Rs.42,21,908/- made on a/c of unexplained creditors for want of verification without appreciating the fact that the assessee had failed to prove the genuineness of the claim made and identity of the creditors especially when the letters issued u/s 133(6) of the I.T. Act were received back unserved.*
3. *The appellant craves leave for reserving the right to amend, modify, alter add or forego any ground (s) of appeal at any time before or during the hearing of this appeal.”*

2. Briefly stated facts of this case are : the assessee company is into business of manufacturing and job work of shoe soles, namely Polyurethane (PO) and Thermo Plastic Rubber (TPR). Assessing Officer noticed the net profit of Rs.95,79,927/- declared from the sales of Rs.1,72,07,196/-, job work income of Rs.12,98,334/- and other income of Rs.12,46,874/- total comes to Rs.1,97,52,404/-. After adjustment of extra ordinary items of Rs.2,62,21,820/- against the net loss of Rs.1,65,07,382/- as per Note 19 of the 'Notes on Accounts' of Schedule 'L' of the balance sheet of the company, as per copies of audited profit & loss account, balance sheet and its annexures filed along with audit report and computed

the total income at Rs.2,11,28,554/-, after taking into account the inadmissible and admissible and declared nil income after setting off the brought forward losses of earlier years.

3. AO perused the details of job-work expenses and copy of ledger account and called upon Shri Pandey and M/s. Kurt O John Shoe Components u/s 133 (6) of the Income-tax Act, 1961 (for short 'the Act') for verification of job-work transaction shown by the assessee. On failure of Pandey and M/s. Kurt O John Shoe Components, to verify the transaction of job-work, AO disallowed the amount of Rs.2,66,549/- debited to the profit & loss account.

4. AO called upon an information u/s 133 (6) of the Act from sundry creditors, M/s. Vintage Enterprises and others but received back the notices unserved. However, Bengal Printing Press filed copy of assessee company's ledger accounts showing closing balance as on 31.03.2009 as nil whereas, as per details furnished by the AR for the assessee company, credit balance was shown as Rs.61,602/- in the name of Bengal Printing Press as on 31.03.2009. In the absence of any explanation, AO made an addition of Rs.42,46,140/- on account of unexplained credit.

5. Assessee carried the matter by filing an appeal before the Id. CIT (A) who has deleted the addition. Feeling aggrieved, the

Revenue has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

**GROUND NO.1**

7. Undisputed facts of this case inter alia are that the account of the assessee company are audited both under the Companies Act as well as u/s 44AB of the Act and audited reports were filed before the AO during assessment proceedings; that the assessee company being a sick unit filed reference to Board of Industrial Financial Reconstruction (BIFR) and BIFR declared the unit sick u/s 31-O of the Act and IDBI was appointed as operating agency to prepare rehabilitation scheme for the company who has admitted the application of present assessee and dealt with the creditors of the company; that BIFR has sanctioned a rehabilitation scheme for revival of the company and written back sundry creditors (approx. 85%) offered as income for the year ending 31.03.2009 and balance of 15% were paid in subsequent years in installment as approved under the rehabilitation scheme; that during the scrutiny assessment for AY 2007-08 trading result of the assessee has been

accepted; that remand report was also called upon by the Id. CIT (A) from the AO during first appellate proceedings.

8. In the backdrop of the aforesaid undisputed facts and circumstances, arguments addressed by the Id. Representatives of the parties and order passed by the Revenue authorities below, the first question arises for determination in this case is :-

*“as to whether CIT (A) has erred in deleting the addition of Rs.2,66,549/- on account of unverified job-work expenses?”*

9. AO has mainly made this addition of Rs.2,66,549/- for the reason that notice issued u/s 133 (6) of the Act to verify the job-work charges received back unserved. However, the AO has lost sight of the fact that the contractor has deducted the applicable Employee State Insurance) ESI and EPF (Employee Provident Fund) contribution on these temporary labour working in their premises and provided their number, name and respective labour. The AO has also lost sight the fact that the assessee has also deducted TDS and in the immediate preceding year i.e. 31.03.2008, the job-work expenses to the tune of Rs.3,01,402/- was allowed by the AO in the assessment order passed by the AO u/s 143 (3) of the Act.

10. When the case of the assessee is examined in the light of the aforesaid facts, we are of the considered view that when contractor has deducted ESIC and EPF on the temporary labour used in providing job-work to the assessee company and the assessee has deducted TDS and the same job-work expenses to the tune of Rs.3,01,402/- was allowed in the preceding year, there is no question to treat the job-work charges unverified by the AO.

11. Moreover, assessee's balance sheet and account books are duly audited under the Companies Act as well as u/s 44AB of the Act and no discrepancy had been found in the same by the AO. Moreover, no notice issued after a period of two years to verify the job-work accomplished by temporary workers can be expected to be served upon. On the basis of non-service of notice u/s 133 (6), presumption cannot be drawn that the job-work charges paid to the workers are not genuine. So, in the given circumstances, we do not find any illegality or perversity in the findings returned by the Id. CIT (A) in deleting the addition of Rs.2,66,549/-, consequently ground no.1 is determined against the Revenue.

### **GROUND NO.2**

10. AO has made addition of Rs.42,46,140/- on account of unverified sundry creditors for the reason that the notice issued to some creditors u/s 133 (6) of the Act either not received back or

received back with the remark that no such firm is in existence. A list of the sundry creditors claimed by the assessee company is reproduced as under for ready reference :-

	Amount of credit balance as on 31.3.2009 (Rs.)	Remarks of Postal Authorities
M/s. Vintage Enterprises	212876	'No such firm'
M/s. Huntsman International India Ltd.	2368155	'Left without address'
M/s. A.S. Shoe Accessories Pvt. Ltd.	20238	'left'
M/s. Gulshan International Pvt. Ltd.	1422403	'No such firm'
M/s. Urmi Plast	3994	'No such firm'
M/s. Hi Tech Power System	6000	'Incomplete address'
M/s. Akansha Traders	2251	'Left'
M/s. Onkar Exim Pvt. Ltd.	22447	'No such firm'
M/s. Ganpati Packaging	53294	'Not known'
M/s. Nikhil Termoplast	72880	'Unserviced'
Bengal Printing Press	61,602	
<b>Total</b>	<b>42,46,140</b>	

11. During the course of argument, assessee company filed synopsis containing detail of payment to sundry creditors in subsequent years as per BIFR sanctioned scheme, available at pages 9 and 10 of the synopsis, which is reproduced as under:-

Party Name	Closing balance as on 31.03.2009	FY 2009-10	FY 2010-11	FY 2011-12
M/s. Vintage Enterprises	2,12,876	Rs.1,81,876 paid by account payee cheques in FY 2009-10	Only Rs.31,000/- outstanding as on 31.03.2010 against Rs.2,12,876 as on 31.03.2009	
M/s. Huntsman International India Ltd.	23,68,155		First installment of Rs.5,92,094 on 21.03.2011 by banking channel. Closing balance Rs.17,76,061	Further payment of Rs.5,92,039 as on 03.10.2012 and Rs.5,92,039 as on 01.11.2012. Closing balance Rs.5,91,983 required to pay by March 2013
M/s. A.S. Shoe Accessories Pvt. Ltd.	20,238	Rs.20,000 paid on 15.05.2009 leaving closing balance of Rs.238/-	Rs.238/- written on in FY 2010-11 and offered as income	
M/s. Gulshan International Pvt. Ltd.	14,22,403			Written off in FY 2011-12 and offered income.
M/s. Urmi Plast	3,994		Rs.3,994 written on in FY 2010-11 and offered as income	
M/s. Hi Tech Power System	6,000		Rs.6,000 written on in FY 2010-11 and	

			offered as income	
M/s. Akansha Traders	2,251		Rs.2,251 written on in FY 2010-11 and offered as income	
M/s. Onkar Exim Pvt. Ltd.	22,447		Rs.22,447 written on in FY 2010-11 and offered as income	
M/s. Ganpati Packaging	53,294		Rs.53,294 written on in FY 2010-11 and offered as income	
M/s. Nikhil Termoplast	72,880		Rs.72,880 written on in FY 2010-11 and offered as income	
Bengal Printing Press	61,602		Rs.61,602 written on in FY 2010-11 and offered as income	
Total	42,46,140	2,01,876	8,14,800	11,84,078

12. Major addition out of addition of Rs.42,46,140/- on account of credit balance of Rs.23,68,155/- and Rs.14,22,403/- as on 31.03.2009 is made in case of M/s. Huntsman International India Private Limited and Gulshan International Private Limited respectively.

13. BIFR has noted in respect of scarifies of sundry creditors as under :-

*"As on 31.03.2008, the company had 93 sundry creditors with outstanding dues of Rs.394.51 lacks (PI refer to annexure). Out of the above. 25 sundry creditors amounting to Rs.322.05 lacks are considered old not seeking claims / payments and hence the company propose to settle them at 15 % of their principal sum for the financial year 2009-10. The entire payment will be completed during the FY 2011-12. In respect of 68 sundry creditors with an outstanding of Rs.72.46 lakhs. no relief and concessions are envisaged as they are treated running creditors whose services will continue to be utilized by the company during the rehabilitation period."*

14. It is a matter of record that in case of M/s. Huntsman International India Pvt. Ltd., opening balance as on 01.04.2008 was Rs.1,57,87,704/- and as per BIFR order, Rs.1,34,19,549/- (85% written off and offered misc. income) and remaining balance of Rs.23,68,155/- paid in three equal installments amounting to RS.5,92,094/- paid on 21.03.2011, 03.10.2012 and 01.11.2012, as is evident from the table drawn in preceding para 11.

15. So far as case of M/s. Gulshan International Private Ltd. is concerned, the liability of Rs.14,22,403/- has also been written off in FY 2011-12, relevant to AY 2012-13, and in case of other small creditors, the company has either paid in subsequent period or written off as detailed in the table in preceding para 11.

16. So, when the AO has accepted purchases and trading account of the assessee whose detail has been given with their last

available address particularly major creditors, M/s. Huntsman International India Private Limited and Gulshan International Private Limited, which are private limited companies, the transaction with them cannot be disputed on the basis of conjectures and surmises.

17. Moreover, the payment to the creditors has been made by account payee cheques and complete bank statement has been filed. Assessee company also filed ledger account of sundry creditor during assessment proceedings which could have been verified from Central Excise and VAT department with whom the assessee is registered. So, in the given circumstances, we are of the considered view that there is no illegality or perversity in the order of the Id. CIT (A) in deleting the addition of Rs.42,46,140/-, hence ground no.2 is also determined against the revenue.

17. In view of what has been discussed above, present appeal filed by the Revenue is dismissed.

**Order pronounced in open court on this 28<sup>th</sup> day of February, 2017.**

**Sd/-  
(G.D. AGRAWAL)  
VICE PRESIDENT**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 28<sup>th</sup> day of February, 2017  
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-IV, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.