

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

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND  
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.1116/Del/2012  
Assessment Year : 2007-08

Shri Pawan Kumar Malhotra, Vs. Income Tax Officer,  
Prop. M/s Neumann Ward-1(5),  
Engineering Works, Faridabad.  
16/4, Mathura Road,  
Faridabad (Haryana).  
PAN : ABOPM2836N.  
(Appellant) (Respondent)

Appellant by : Shri K.C. Singhal, Advocate.  
Respondent by : Shri Amrit Lal, Senior DR.

ITA No.4065/Del/2009  
Assessment Year : 2007-08

Shri Pawan Kumar Malhotra, Vs. Income Tax Officer,  
Prop. M/s Neu Mann Ward-1(5),  
Engineering Works, Faridabad.  
16/4, Mathura Road,  
Faridabad (Haryana).  
PAN : ABOPM2836N.  
(Appellant) (Respondent)

Appellant by : Dr. Rakesh Gupta and  
Shri Somil Agrawal, Advocates.  
Respondent by : Mrs. Nandita Kanchan, CIT-DR.

Date of hearing : 16.05.2016  
Date of pronouncement : 19.05.2016

ORDER

PER G.D. AGRAWAL, VP :-

**ITA No.1116/Del/2012 :-**

This appeal by the assessee for the assessment year 2007-08 is directed against the order of learned CIT(A), Faridabad dated 1<sup>st</sup> December, 2011.

2. The assessee has raised the following grounds :-

*"1. On the facts & circumstances of the case and in law, the CIT(A) was not justified in sustaining the impugned addition of Rs.5,71,59,665/- u/s 41(1) of IT Act 1961 in as much as there was no material on record to prove that there was cessation of liability. He was not legally justified in presuming that conditional surrender impliedly amounted to cessation of liability.*

*2. That on the facts & circumstances of the case and in law, the impugned addition of Rs.5,71,59,665/- is not legally justified under any other section.*

*3. That impugned addition could not be legally justified by the CIT(A) merely on the basis of conditional surrender since there is no estoppel against law.*

*4. On the facts & circumstances of the case and in law, the CIT(A) was not justified in rejecting the application of the appellant under Rule 46A of IT Rules 1962.*

*5. That CIT(A) was not justified in sustaining the levy of interest u/s 234B.*

*6. The appellant craves to add, or amend the grounds of appeal, if required and necessary.*

*It is therefore prayed that the impugned addition sustained by the CIT(A) be deleted or such other suitable relief be allowed which the Hon'ble Bench may deem fit."*

3. The facts of the case are that the assessee derives income from the business of manufacturing of sheet metal components. For the year under consideration, the assessee declared the total income of

₹4,76,763/-. During the course of assessment proceedings, the assessee was asked to produce confirmations of creditors, the details of which are given in paragraph 4 of the assessment order, which read as under:-

4. *During the course of assessment proceeding the assessee was asked to produce the confirmation of following creditors :*

S.No.	Name of Creditors	Credit balance as on 31.03.2007
1.	Nidhi Enterprises	14120359.31
2.	Ankit Industrial Corp.	3543984.95
3.	Ayushi Steels Co.Pvt.Ltd.	11232284.98
4.	Bhagwati Trading Co.	10916484.98
5.	S.B. Indl.Corp.	17346552.00
	Total	57159665.46

4. The assessee, instead of furnishing the confirmation, has stated that he is not in a position to confirm these creditors and, therefore, he offered to surrender these credits amounting to ₹5,71,59,665/- as his income subject to no penal action. The Assessing Officer completed the assessment by making the addition of ₹5,71,59,665/-. Though in the assessment order he initiated the penalty proceedings, but, the same were dropped vide order dated 24<sup>th</sup> March, 2009. The assessee also accepted the assessment order and did not file any appeal. However, the CIT initiated proceedings u/s 263 vide show cause notice dated 31<sup>st</sup> August, 2009. Thereafter, the assessee filed the appeal before the CIT(A) against the assessment order dated 12<sup>th</sup> March, 2009 with the application for condonation of delay. The CIT, vide order dated 9<sup>th</sup> September, 2009, set aside the penalty order dated 24<sup>th</sup> March, 2009 by which the Assessing Officer has dropped the penalty proceedings initiated u/s 271(1)(c) of the Act.

5. Learned CIT(A) condoned the delay and admitted the appeal. However, on merits, he sustained the addition u/s 41(1) holding that the outstanding liabilities ceased to exist. He held that as soon as inquiries were initiated by the Assessing Officer asking the assessee to furnish the confirmation of the creditors, the assessee surrendered the amount. It impliedly means that the outstanding amounts were no longer payable. The assessee, aggrieved with the order of learned CIT(A), is in appeal before us.

6. The learned counsel for the assessee argued at length so as to justify that the addition sustained by the learned CIT(A) u/s 41(1) is uncalled for. He also relied upon several decisions. Learned DR, on the other hand, relied upon the order of the Assessing Officer as well as learned CIT(A) and he stated that the assessee did not furnish any detail before the Assessing Officer but, on the other hand, he surrendered the amount. On these facts, learned CIT(A) was fully justified in drawing the inference that the liability has ceased otherwise the assessee would have furnished the necessary confirmation from the creditors.

7. We have considered the submissions of both the sides and have perused the material placed before us. In our opinion, the matter needs further examination at the end of the Assessing Officer. The Assessing Officer started the investigation into the matter by asking the assessee to furnish the confirmation from certain creditors. The assessee, instead of furnishing the confirmation, surrendered the amount. Therefore, the Assessing Officer stopped further investigation into the matter and completed the assessment by accepting the surrender made by the assessee. The assessee had also accepted the assessment order but due to subsequent development, the assessee

filed the appeal. Once the assessee is agitating the addition, it would be in the fitness of things that the Assessing Officer is allowed an opportunity to investigate the matter which he intended to do but had stopped because of surrender of income by the assessee. We, therefore, set aside the orders of authorities below on this point and restore the matter to the file of the Assessing Officer and direct him to readjudicate the issue afresh after making proper investigation in the matter as he deems fit. Needless to mention that he will allow adequate opportunity of being heard to the assessee while readjudicating the issue.

8. In the result, the appeal of assessee is deemed to be allowed for statistical purposes.

**ITA No.4065/Del/2009 :-**

9. This appeal by the assessee for the assessment year 2007-08 is directed against the order of learned CIT, Faridabad dated 9<sup>th</sup> September, 2009 passed u/s 263 of the Act wherein the CIT has set aside the order of the Assessing Officer dated 24<sup>th</sup> March, 2009.

10. While deciding the assessee's appeal vide ITA No.1116/Del/2012, we have set aside the issue of addition of ₹5,71,59,665/- u/s 41(1) to the file of the Assessing Officer. Once the addition itself has been set aside to the file of the Assessing Officer, order u/s 263 has become infructuous because, by order u/s 263, learned CIT has set aside the penalty order dated 24<sup>th</sup> March, 2009 wherein the Assessing Officer has dropped the penalty proceedings initiated u/s 271(1)(c). Once the addition in respect of which the penalty proceedings u/s 271(1)(c) have been initiated is set aside, it cannot be said that the penalty order dated 24<sup>th</sup> March, 2009 was erroneous and prejudicial to the interests

of the Revenue. In the present circumstances, we, therefore, quash the order passed by the learned CIT u/s 263 dated 9<sup>th</sup> September, 2009. However, before we part with the matter, we may mention that the Assessing Officer will be at liberty to reinitiate penalty proceedings u/s 271(1)(c) of the Act while giving effect to our order in ITA No.1116/Del/2012, if the facts so warrant.

11. In the result, both the appeals of the assessee are deemed to be allowed.

Decision pronounced in the open Court on 19.05.2016.

Sd/-  
**(CHANDRA MOHAN GARG)**  
**JUDICIAL MEMBER**

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

VK.

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1. Appellant : **Shri Pawan Kumar Malhotra,**  
**Prop. M/s Neumann Engineering Works,**  
**16/4, Mathura Road, Faridabad (Haryana).**
2. Respondent : **Income Tax Officer, Ward-1(5), Faridabad.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar