

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH " C "**

**BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

I.T.A. No.555/Bang/2014 (Assessment Year : 2008-09)		
M/s. Awesome Sports Wear, (Fashion Exotica) C/O Mr. Mohan Lakhani, Bharat Consultants & Finance, No.212, Swiss Complex, 2 nd Floor, Race Course Road, Bangalore-560 001 PAN AAFF 3328G	Vs.	Asst. Commissioner of Income Tax, Circle 6(1), Banglaore.
Appellant		Respondent.

Appellant By : Shri V. Srinivasan, C.A.

Respondent By : Dr. K. Shankar Prasad, JCIT (D.R)

Date of Hearing : 7.1.2015.

Date of Pronouncement : 28.1.2015.

O R D E R

Per Shri Jason P. Boaz, A.M. :

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-III, Bangalore dt.21.3.2013 for Assessment Year 2008-09.

2. The facts of the case, briefly, are as under :-

2.1 The assessee, a firm carrying on the business of manufacture and export of ready made garments, filed its return of income for Assessment Year 2008-09 on 29.8.2008

declaring loss of Rs.11,61,615. The case was selected for scrutiny and the assessment was completed under section 143(3) of the Income Tax Act, 1961 (herein after referred to as 'the Act') vide order dt.27.12.2010, wherein the income of the assessee was determined at Rs.2,33,60,450 as against returned loss of Rs.11,61,615 in view of the addition made by the Assessing Officer in treating the unexplained sundry creditors amounting to Rs.2,45,22,066 as unexplained credits under section 68 of the Act.

2.2 Aggrieved by the order of assessment for Assessment Year 2008-09 dt.27.12.2010, the assessee preferred an appeal before the CIT (Appeals) - III, Bangalore. The learned CIT(A) vide order dt.21.3.2013 dismissed the assessee's appeal for non-compliance with the notices for hearings issued by the learned CIT(A).

3. Aggrieved by the order of the CIT (Appeals) - III, Bangalore dt.21.3.2013 for Assessment Year 2008-09, the assessee has preferred this appeal before the Tribunal raising the following grounds :-

" 1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT (Appeals) is not justified in disposing off the appeal ex-parte on the ground of non-compliance by the appellant under the facts and in the circumstances of the appellant's case.

2.1 The learned CIT (Appeals) failed to appreciate that the appellant was prevented by reasonable cause in not appearing before the learned Assessing Officer as owing to huge and mounting losses, the appellant had closed down its business and hence, the appellant could not be effectively represented before the Id. CIT (Appeals) and accordingly, it is prayed that the order of the learned CIT (Appeals) may be set aside.

3. *The learned CIT (Appeals) is not justified in sustaining the addition of Rs.2,45,22,066 as unexplained credit under the facts and in the circumstances of the appellant's case.*

4. *Without prejudice to the right to seek waiver with the Hon'ble CCIT / DG, the appellant denies itself liable to be charged to interest under Section 234B of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

5. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

4. Grounds at S.Nos.1 and 5 being general in nature and not being urged before us, are dismissed as infructuous.

5. In Ground No.4, the assessee denies itself liable to be charged interest under section 234B of the Act. The charging of interest is consequential and mandatory and the Assessing Officer has no discretion in the matter. The charging of the same has been upheld by the Hon'ble Apex Court in the case of Anjum Hon'ble Ghaswala & Others reported in 252 ITR 1. We, therefore, uphold the action of the Assessing Officer in charging the said interest. The Assessing Officer is, however, directed to recompute the interest chargeable under section 234B of the Act, if any, while giving effect to this order.

6.1 Thus, Grounds raised at S. Nos. 2, 2.1 and 3 are the only effective grounds in this appeal wherein the assessee has challenged the confirmation of the addition of Rs.2,45,22,066 made by the Assessing Officer in respect of sundry creditors. It is submitted by the learned Authorised Representative of the assessee that the assessee

has suffered losses in the succeeding years due to which, the business of the assessee had to be closed down. Since the business was not in existence, the partners of the assessee firm could not represent the assessee before both the Assessing Officer and the learned CIT(A). It is in these circumstances, that the addition was made by the Assessing Officer under section 68 of the Act on account of the failure on the part of the assessee to furnish evidence / details to establish the genuineness of the sundry creditors. The learned Authorised Representative prayed that the assessee be given another opportunity before the Assessing Officer to submit proof in support of the genuineness of the sundry creditors reflected in the Balance Sheet for the year under consideration.

6.2 Per contra, the learned Departmental Representative supported the impugned order of the learned CIT(A), submitting that the assessee was afforded adequate opportunities both by the Assessing Officer and the learned CIT(A). He submitted that the plea of fresh opportunity being granted to the assessee at this stage was not justified.

6.3 We have heard the rival contentions and perused and carefully considered the material on record. We find that the assessment was made by the Assessing Officer due to the non-compliance with notices and requirements of proving the genuineness of the sundry creditors appearing in the assessee's balance sheet in the period under consideration. It is also seen that the appeal filed before the learned CIT(A) was also

disposed off on account of failure of the assessee to file the details in assessment proceedings. Even before the learned CIT(A), the assessee did not avail of the opportunities of hearing afforded to it to submit the details and prove the credits and thus, the entire addition has been confirmed for want of details / evidences filed by the assessee. Before us, the assessee has prayed for another opportunity to submit the details before the authorities below and pleads that the defaults by it in the earlier proceedings was due to reasonable cause. After careful consideration and appreciation of the facts and circumstances of the case, we find that the plea of the assessee for being afforded another opportunity to prove the credits is justified. This is because the Assessing Officer has made an addition of the entire credit balance of sundry creditors as unexplained cash credits under section 68 of the Act, which includes opening balances as well. It is well settled that no addition can be made as unexplained cash credits in respect of opening balances of the sundry creditors, as only the credits arising during the year can be considered for making additions. Be that as it may, we decline to express any opinion on the merits of the case at this stage as we are confining ourselves to the prayer of the assessee for another opportunity to plead its case. We are making these observations only to point out that the addition made by the Assessing Officer, prima facie appears to be excessive and therefore in the interest of equity and justice, the assessee ought to be given a second chance. In this view of the matter, we are inclined to set aside the orders passed by the authorities below and restore the matter to the file

of the Assessing Officer to consider the issue relating to the addition of Rs.2,45,22,066 under section 68 of the Act, afresh after affording the assessee adequate opportunity of being heard and the liberty to produce such material / details / evidence in support of the genuineness of the sundry creditors as it may deem fit and to thereafter decide the matter in accordance with law. It is ordered accordingly.

7. In the result, the assessee's appeal for Assessment Year 2008-09 is allowed for statistical purposes.

Order pronounced in the open court on 28th Jan., 2015.

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Sd/-

(JASON P BOAZ)
Accountant Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, - Bench.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore