

IN THE INCOME TAX APPELLATE TRIBUNAL
"E" Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Ramlal Negi (JM)

I.T.A. No. 2020/Mum/2014
(Assessment Year 2008-09)

Shivram Gopal Shetty A-7, Mezzanine Floor Suryadarshan Tower ESIC Hospital Road Thane-400 604. (Appellant)	Vs.	ACIT, Circle-3 Vardaan, Lower Ground Floor, MIDC Wagle Estate Thane (Maharashtra). (Respondent)
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PAN No.ACEPS2775A

Assessee by	Shri K. Gopal & Miss Neha Paranjape
Department by	Capt. Pradeep S. Arya
Date of Hearing	27.9.2016
Date of Pronouncement	19.10.2016

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 10.12.2013 passed by learned CIT(A)-1, Thane and it relates to A.Y. 2008-09.

2. The assessee is aggrieved by the decision of learned CIT(A) in confirming the addition of ₹ 86,91,832/- relating to sundry creditors made by the Assessing Officer.

3. We have heard the parties and perused the record. The assessee is a transport operator owning three heavy goods vehicle (tankers). The assessee also undertakes transportation work through hired vehicles. Receipts declared by the assessee mainly consist of freight charges received for transporting heavy goods. From the Balance Sheet of the assessee, the Assessing Officer noticed that sundry creditor balance was disclosed at ₹ 92,31,203/-. From the details of sundry creditors, the Assessing Officer noticed that the assessee has maintained Sundry creditors a/c in the name of respective truck numbers,

instead of showing the name of the persons owning the trucks. The aggregate of the amount shown against truck numbers was ₹ 86,91,832/-. When the Assessing Officer asked the assessee to submit the addresses and phone numbers of the truck owners, he could submit some details in respect of only 17 trucks. The Assessing Officer noticed that in respect of certain creditors outstanding balance was increasing year after year and in respect of other creditors balance was decreasing. The Assessing Officer took the view that the tanker holders are small time truck owners and hence they would not have kept money with the assessee without claiming the same. The Assessee explained to the Assessing Officer that all the truck owners are having running account with him and money is paid to them as and when demanded by them.

4. Having observed so, the Assessing Officer took a different stand that the assessee has followed modus operandi by taking bogus truck charges for the purpose of reducing his profit and hence the same has resulted in creation of bogus creditors. Since the payment is made to the creditors by way of cash, the Assessing Officer observed that there is no scope for cross verification. Accordingly, the Assessing Officer took the view that bogus credits of ₹ 86,91,832/- have been accumulated over a period of several years and the same represents suppressed profit of the assessee for all these years. Accordingly, the Assessing Officer took the view that the creditors balance to the extent of ₹ 86,91,832/- has remained unexplained and accordingly added the same to the income of the assessee.

5. Before learned CIT(A), assessee submitted that the Assessing Officer has not rejected the books of account nor did he find any defect therein. He submitted that the general practice prevailing in the transport business is to maintain records on the basis of vehicle numbers and hence the same cannot be found fault with. The assessee further submitted that the Assessing Officer has not verified any of the creditors nor issued notice u/s. 133(6) and accordingly contended that the Assessing Officer has taken the adverse view only on presumptions.

6. In view of the above said submissions, learned CIT(A) asked the Assessing Officer to furnish a remand report. In the remand proceedings the Assessing Officer issued notices to the ten creditors and nine letters were returned undelivered by the postal authorities with the remarks "incomplete address". The Inspector sent by AO could also not locate the address. One creditor replied and submitted that he did not maintain books of account and further submitted he did not file his return of income since his income was around ₹ 42,000/- only. Against the above said party's name the assessee has shown credit balance of ₹ 1,92,486/-. Further the Assessing Officer also called for information from the regional transport officer in respect of a Vehicle number, viz., MH-04-AC-3007 and noticed that vehicle is a Opel Astra model car. Hence the AO reported that the credit worthiness and genuineness of transactions could not be ascertained.

7. In reply to the remand report, the assessee submitted that most of the vehicle owners are in the habit of shifting their addresses after completing license period. It was submitted that the Assessing Officer did not confront his finding with the assessee. With regard to the comment of the Assessing Officer that the vehicle bearing registration number cited above was Opel Astra model car, the assessee submitted that the Assessing Officer has made inquiry with the RTO by giving wrong registration number while correct number is MH-04-AL-3007.

8. Since the assessee has failed to give correct addresses of the creditors and since notices issued by the Assessing Officer have been returned back, learned CIT(A) agreed with the view taken by the Assessing Officer and accordingly held that the Assessing Officer was justified in treating the creditors as unexplained creditors. Before learned CIT(A) the assessee submitted that the creditors balance could not be doubted with when purchase and sale are accepted. Learned CIT(A) took the view that the assessee has not made any purchase or sale and the assessee could not furnish copies of bills issued by the creditors for services rendered.

9. The assessee also contended before learned CIT(A) that opening balance of creditors could not have been added during the year under consideration, learned CIT(A) took the view that the said contention could not be accepted in the absence of documentary evidence namely bills issued by them. Accordingly he confirmed the order passed by the Assessing Officer.

10. Aggrieved, the assessee has filed this appeal before us. The Ld A.R submitted that the creditors balance should not have been doubted simply because the truck numbers were shown. He submitted that the assessee has maintained the books of accounts on his convenience. He submitted that the question of booking bogus lorry charges does not arise, since the same is linked to the freight receipts of the assessee. He further submitted that the AO did not reject the books of accounts and hence he should not have made the addition. Further the AO has also assessed "opening balance of creditors", even though the same does not pertain to the year under consideration.

11. On the contrary, the Ld D.R submitted that the assessee has not furnished the details of creditors and further the enquiries made by the AO did not yield favourable results.

12. We heard the parties and perused the record. We notice that the assessing officer did not examine the lorry freight expenses claimed by the assessee. The Ld A.R submitted that the above said expense can be linked to the lorry freight receipts. The AO has doubted the genuineness of the creditors, since the assessee has created the ledger account in the name of "Vehicle number", instead of name of the owners of vehicles. We find merit in the contentions of the assessee that the assessee followed a system which was convenient to him.

13. We further notice that the assessing officer has come to the conclusion that the assessee has booked the bogus expenses on the reasoning that the assessee could not give full details of the owners of the vehicles. However, he has failed to match the lorry freight expenses with the corresponding freight

receipts. In this line of trade, there will be generally one to one link between the freight expenses and freight receipts. Unless the AO examines this aspect, it would be difficult to establish the bogus nature of expenses. Accordingly, we are of the view that the AO was not justified in drawing adverse inferences on the basis of outstanding balance of sundry creditors.

14. With regard to the sundry creditors, we notice that the AO has mainly doubted about their genuineness on the reasoning that the assessee has shown vehicle numbers instead of name of the persons. We have earlier noticed that the same was found to be a convenient method of accounting for the assessee and, in our view, it cannot be found fault with. We have noticed that the assessing officer has assessed the entire balance as the income of the assessee. First of all, the sundry creditors balance is represented by the lorry freight expenses and hence the question as to whether they can be treated as cash credits itself is debatable one. Even though the AO did not mention section 68, the Ld CIT(A) has stated the same as cash credit. Secondly these credits are represented by corresponding debit of lorry expenses. We have earlier noticed that the lorry expenses can be linked to corresponding lorry receipts. Hence, unless one reconcile the lorry expenses with lorry receipts, it would be difficult to come to the conclusion that the expenses are bogus in nature and hence the corresponding Sundry creditors are bogus in nature.

15. In view of the foregoing discussions, we are of the view that there is no justification in sustaining the addition made by the AO. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the impugned addition.

16. In the result, the appeal filed by the assessee is allowed.

Order has been pronounced in the Court on 19.10.2016

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 19/10/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai