

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'SMC' BENCH, KOLKATA**

Before Shri J. Sudhakar Reddy, Accountant Member

**I.T.A. No. 794/KOL/ 2015
Assessment Year : 2009-2010**

Rungta Engineering Co. (P) Limited,.....Appellant
C/o. Salarpruria Jajodia & Company,
7, C.R. Avenue,
Kolkata-700 072
[PAN : AABCR 4956 N]

-Vs.-

Income Tax Officer,.....Respondent
Ward-3(2), Kolkata,
8/2, Esplanade East, 3rd Floor,
Kolkata-700 069

Appearances by:

Shri S. Jhajharia, A.R., for the assessee
Md. Ghayas Uddin, JCIT, Sr. D.R., for the Department

Date of concluding the hearing : January 30, 2017
Date of pronouncing the order : February 08, 2017

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-I, Kolkata dated 26.03.2015 for the assessment year 2009-10 on the following grounds:-

1. For that in view of the facts and in the circumstances, the AO is wholly unjustified in making an addition of Rs.11,18,000/- as undisclosed income u/s 68 and in view of the facts and in the circumstances the Ld. CIT(A)-I, Kolkata is wholly unjustified in deleting the addition only to the extent of Rs.10,80,000/- and retaining the addition of Rs.1,00,000/- and in view of the facts and in the circumstances the sum of Rs. 1,00,000/- having been also received towards advances for sale of scrap and all the necessary evidences in this regard having been

produced before the AO and the Ld. CIT(A)-I, Kolkata, such addition retained by the Ld. CIT(A)-I, Kolkata may kindly be deleted.

2. For that in view of the facts and in the circumstances, the AO is unjustified in making an addition of Rs.6,84,008/- in respect of outstanding liability carried forward from earlier years and in view of the facts and in the circumstances the Ld. CIT(A) is wholly unjustified in retaining a sum of Rs.3,70,000/- in respect of M/s. Apee Fasteners and such action of the AO is wholly bad, illegal, unjustified and uncalled for and in view of the facts and in the circumstances the Ld. CIT(A) is wholly unjustified in confirming the addition to the extent of Rs.3,70,000/- and in anyway without prejudice and even otherwise the amount being only carried forward during the year from earlier year and the amount having not been received in the books of account during the year, the action of the AO as well as the Ld. CIT(A) in making such addition in A.Y 2009-10 is wholly bad, illegal, unjustified and uncalled for and in view of the facts and in the circumstances such addition of Rs.3,70,000/- may kindly be deleted.

2. Brief facts in the case of the assessee are that the assessee is a Company engaged in the business of manufacturing and trading of railway truck terminal. It filed its return of income on 25.09.2009 declaring total income of Rs.42,614/-. The Assessing Officer completed the assessment under section 143(3) on 27.12.2011 determining the total income at Rs.24,61,320/-, *inter alia*, making an addition of Rs.11,80,000/- being advances received by the assessee against orders. The Assessing Officer observed as follows:-

The assessee-company is engaged in the business of manufacturing and trading of railway truck terminal. The debtor list consists of railways and big Indian and multinational companies. In view of the above, advance taken against order from aforesaid ten parties were doubtful. The assessee-company was duly given the opportunity on 20.12.2011 to substantiate the genuineness of the advance taken by producing before the undersigned aforesaid ten persons with their trade license, identity proof, address proof, copy of I.T. return, copy of final account and bank

statement. Neither the aforesaid documents nor those ten persons were produced. Instead the AR submitted the copy of ledger account for the financial year 2009-10 and 2010-11 along with the copies of relevant sale bill. The accounts were subsequently settled by cash. The assessee-company made no effort to produce the aforesaid ten persons with their trade license, identity proof, address proof, copy of I.T. return, copy of final account and bank statement for verification. In view of the above, it appears that the transactions were not genuine. The identity of the ten persons, the genuineness of the transactions and their creditworthiness has not been established. I am, therefore, not satisfied with the nature and sources of such credit of Rs.11,80,000/-. The entire amount is therefore added to the business income as per the provision of section 68.

3. Further an amount of Rs.3,70,000/- claimed by the assessee as a liability was disbelieved by the Assessing Officer and added as bogus liability. On appeal, the first appellate authority called for the remand report and deleted the addition of Rs.10,80,000/- out of Rs.11,80,000/- made by the Assessing Officer as advances against orders received and confirmed an addition of Rs.1,00,000/-. He also confirmed the addition of Rs.3,70,000/- on the ground that this is a bogus liability. Aggrieved, the assessee is in appeal before the Tribunal.

4. I have heard Mr. S. Jhajharia, Id. counsel for the assessee and Shri Md. Ghayas Uddin, JCIT, Sr. D.R. on behalf of the Revenue. On a careful consideration of the facts and circumstances of the case and a perusal of the papers on record and the orders of the authorities below, I hold as follows:-

The only addition that was sustained by the Id. CIT(Appeals) out of Rs.11,80,000/- added by the Assessing Officer was an advance against orders received from one Mr. Chedilal Sharma. The Assessing Officer wrongly mentioned this name as Shri Modi Lal Sharma. The advance in question was received during the financial year 2008-09 relevant to assessment year 2009-10. The amount was adjusted against sales in the

financial year 2009-10 relatable to the assessment year 2010-11. The assessee has furnished copies of bills, challans, etc.

5. Under these circumstances, I find that the issue narrows down to the year of taxability. While the Assessing Officer made the addition during the assessment year 2009-10, the assessee offered the same as tax, as "scrap sales" during the year 2010-11. Scrap sales is a revenue receipt. Hence, I am of the considered opinion that the addition in question cannot be sustained. In the result, Ground No. 1 of the assessee's appeal is allowed.

6. In Ground No. 2, the addition is sustained by the Id. CIT(Appeals) on the ground that the assessee has only provided ledger account for the period 01.04.2011 to 31.03.2013 in support of his contention that the liability was genuine and still outstanding. The addition was confirmed because no confirmation of the creditor was filed. In my view, such an addition cannot be sustained. The liability of the assessee did not cease and hence no addition can be made under section 41(1) of the Act. The fact that the assessee has received the amount in question is not disputed. In fact, the amount in question was not received in this year but was received only in the previous year. There is no cessation of liability. Under these circumstances, the addition is deleted.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on February 8th , 2017.

Sd/-

**J. Sudhakar Reddy
(Accountant Member)**

Kolkata, the 8th day of February, 2017

Copies to : (1) **Rungta Engineering Co. (P) Limited,
C/o. Salarpruria Jajodia & Company,
7, C.R. Avenue,
Kolkata-700 072**

(2) **Income Tax Officer,
Ward-3(2), Kolkata,
8/2, Esplanade East, 3rd Floor, Kolkata-700 069**

- (3) Commissioner of Income-tax (Appeals)-1, Kolkata,*
- (4) Commissioner of Income Tax, Kolkata*
- (5) The Departmental Representative*
- (6) Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Kolkata Benches, Kolkata

Laha/Sr. P.S.