

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.946/Bang/2014
(Assessment year: 2008-09)

Shri Venkatesan,
No.7, Kaveri Layout,
DC post, Suddaguntepalya,
Bangalore-560029. ... Appellant
PAN: AAXPV 2457 P

Vs.

Income-tax Officer,
Ward 10(2),
Bangalore. ... Respondent

Appellant by : Shri Gangadhar Sastry, ITP.
Respondent by : Dr.P.K.Srihari, Addl.CIT(DR).

Date of hearing : 17/03/2016
Date of pronouncement : 12/04/2016

O R D E R

Per VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 14/04/2014 of the CIT(A), LTU, Bangalore, for the assessment year 2008-09.

2. The solitary ground raised by the assessee is as under:

"The CIT(A) failed to appreciate the fact that the sundry creditor in respect of M/s Beijia Industrial Company Ltd. of Rs.7,79,550/- is genuine & was established by ledger transaction."

3. During the course of assessment proceedings, the AO noted that the assessee had shown sundry creditors pertaining to M/s.Beijia Industrial Co. Ltd., of Rs.7,79,550/- and to M/s.S.I.International Co., of Rs.1,37,860/-. On query from the AO, the assessee submitted that these credits have continued even during the subsequent year and there has been no business transaction with the said creditor. The AO noted that no confirmation from these two creditors has been furnished and the creditors continued to exist without any further business transaction. Therefore, the same was added back to the total income of the assessee.

2. The assessee challenged the action of the AO before the CIT(A) and contended that sundry creditors in question did not relate to assessment year under consideration. Therefore, no addition u/s 68 can be made when the assessee has not introduced these credits during the year under consideration. The assessee has relied upon the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Usha Stud Agricultural Farm Ltd.* (301 ITR 384). The CIT(A) did not accept the contention and explanation of the assessee and confirmed the addition made by

the AO on this account.

3. Before us, learned AR of the assessee submitted that no new credit has been introduced in the books of account during the year under consideration and the entire amount of Rs.7,99,550/- is brought forward balance of the earlier years. Therefore, no addition u/s 68 can be made in the year under consideration when the credit was not introduced in the books of account during the year. In support of his contention, he has relied upon the judgment of the Hon'ble Delhi High Court in the case of *Usha Stud Agricultural Farm Ltd.*(supra).

On the other hand, learned DR has submitted that the assessee failed to fulfill requisite condition of identity of creditor and genuineness of the transaction, despite the opportunities given by the AO. Therefore, the assessee failed to discharge its onus to prove genuineness of the transaction. He has relied upon the orders of the authorities below.

4. We have considered the rival submissions as well as the relevant material on record. We find that the amount in question is a brought forward balance as shown in the account of the two parties viz., M/s.Beijia Industrial Co. Ltd., and M/s.S.I.International Co., who are stated to be suppliers of the assessee. This fact has not been disputed by the CIT(A) as recorded in para.6 of the impugned order:

"6. Before me also the appellant has not furnished any confirmation from the impugned sundry creditors and only reiterated the arguments made before the AO. Copy of ledger account of Beijia Industrial Co. Ltd. furnished for FYs 2005-06, 2006-07 & 2007-08 shows that the transactions have started in FY 2005-06 and have continued in the two following years. The ledger account of SI International Company shows no transactions during FY 2007-08 against the opening balance of Rs.1,37,860(Cr.) of 1.4.2007."

Thus it is clear that the CIT(A) has recorded the fact that the assessee has claimed this amount being a brought forward balance in the ledger accounts of the creditors of M/s.Beijia Industrial Co. Ltd., and M/s.S.I.International Co.,. The AO made the addition on the ground that the assessee failed to produce the confirmation of the creditor. It is pertinent to note that this amount was shown as credit for the financial year 2005-06 and continued as carried forward till this year, then it would not be a case of credit entries in the books of account of the assessee during the year under consideration. Therefore, when no cash credit was entered into books of account during the year under consideration, then no addition u/s 68 of the Act can be made in respect of this amount of credit balance shown in the books of account. As regards the genuineness of the transaction is concerned, if the assessee failed to prove the existence of the liability in question then the addition can be made under the provisions of sec.41(1) or sec.28 of the Act and not u/s 68 of the Act. Accordingly, we set aside this issue to the record of the AO to re-examine the same in the light of the judgment of the Hon'ble Delhi High Court in the case of *Usha Stud Agricultural*

Farm Ltd.(supra). The assessee is also directed to explain the status of the repayment of the liability.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 12th day of April, 2016

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Place : Bangalore
D a t e d : 12/04/2016

eksrinivasulu,sps

Copy to :

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- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore