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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **INCOME TAX APPEAL No. 1173/2018**

Date of decision: 29th October, 2018

PR. COMMISSIONER OF INCOME TAX DELHI-17

..... Appellant

Through: Mr. Zoheb Hossain, Sr. Standing
Counsel with Mr. Deepak Anand, Jr. Standing
Counsel for Revenue.

versus

SH. RAJESH KUMAR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

SANJIV KHANNA, J. (ORAL):

CM No. 44972/2018

The delay is condoned for the reasons stated in the application.

ITA No. 1173/2018

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act for short) in the case of Sh. Rajesh Kumar arises from order of the



Income Tax Appellate Tribunal (Tribunal for short) dated 25th January, 2018. The appeal relates to the Assessment Year 2010-11.

2. The impugned order, while disposing of the appeal preferred by the Revenue, affirms the order dated 5th June, 2016 of the Commissioner of Income Tax (Appeals) whereby addition of Rs.3,17,12,394/- made by the Assessing Officer, on account of unconfirmed trade creditors and expenses, was reduced to Rs.28,65,804/-. In other words, addition of Rs. 2,88,46,590/- was deleted.

3. Learned counsel for the Revenue submits that the aforesaid addition was justified and rightly made by the Assessing Officer invoking Section 68 of the Act as the respondent-assessee had failed to file confirmations from trade creditors etc. It is also submitted that the decision and finding recorded in the order of the Assessing officer for the Assessment Year 2011-12 would not justify deletion of addition in this year. The two years were separate and independent.

4. The Assessing Officer while making the addition had passed a short and cryptic order, which reads;-

“8. The assessee has shown trade creditors of Rs. 3,07,43,243/- and Rs. 9,69,151/- respectively in the case of M/s Daily Foods and M/s Surya Trading Company respectively. The assessee was asked to provide confirmations of trade creditors. In response, the assessee vide letter dated 06.03.2013 submitted that "despite best efforts, the assessee has not been able to obtain confirmations from the trade creditors and expenses payable". In the absence of



confirmation of trade creditors of Rs. 3,07,43,243/- and Rs. 9,69,151/-, the same are added to the total income of the assessee. Penalty u/s 271(1)(c) are being initiated for furnishing inaccurate particulars/concealment of income.”

The order does not refer to and elucidate whether or not the assessee had produced invoices, bills, manner and mode of payment to the trade creditors. Details and nature of expenses incurred was not elucidated. Reference was made to the closing account balance i.e., the amount which was outstanding at the end of year and payable to the trade creditors.

5. On appeal preferred by the respondent-assessee, the Commissioner of Income Tax (Appeals) had examined the said aspect and the findings recorded are as under:-

“8.....Ground no. 5 which relates to the addition of Rs. 3,17,12,394 arose from the fact that in its books of accounts the appellant had shown the trade creditors and expenses payable to the tune of Rs. 3,17,12,394. During the course of assessment proceedings the AO asked the appellant to file the confirmation of trade creditors, since no confirmation were filed accordingly he added a sum of Rs. 3,17,12,394 to the appellant's income.

Aggrieved by the above action of the AO, the appellant made a detailed submission the gist of which is as under:

“.....With regard to the addition of Rs. 3,07,43,243 your goodself has directed the assessee to file copy of questionnaire issued by the AO and reply filed by the assessee in the course of assessment proceedings for AY 2011-12. In compliance with



your directions, the assessee is filing herewith copy of questionnaire dated 06.11.2013 issued by the AO and copy of assessee's reply 28.11.2013 and 20.12.2013, whereby the assessee filed copy of ledger account and confirmation of the sundry creditors for AY 2011-12. It is submitted that the opening balance as on 01.04.2010 and closing balance as on 31.03.2011 in the account of the following four parties has been accepted as genuine by the AO in AY 2011-12.

- (i) Abloo Dairy
- (ii) Bahadur Dairy
- (iii) Sagir Dairy and
- (iv) Ram Pal Dairy

The contention of the assessee is that during the course of assessment proceedings for AY 2010-11, the assessee had filed copy of ledger account of sundry creditors for the period 01.04.2010 to 31.03.2011 to show that the outstanding balance as on 31.03.2010 was liquidated in subsequent year AY 2011-12. Now as a later development, the assessment for AY 2011-12 has been completed and the balances in the account of sundry creditors and unsecured loans have been accepted. A copy of assessment order for AY 2011-12 has already been filed before your goodself and each placed at P. 360 to 361 of PB.....

FINDING

9. I have gone through the above submissions of the appellant and have considered the facts and evidences on record.

From the details filed during the course of appellate proceedings, it is seen that out of total creditors of Rs. 3,17,12,394 the appellant owes a sum of Rs. 3,10,74,661 towards the following entities:



S.No	Particulars	Amount (In Rs.)
1	Sagir Dairy	78,23,855
2	Ram Pal Dairy	78,05,672
3	Abloo Dairy	79,79,590
4	Bahadur Dairy	50,10,200
5	Matadin Plastic	1,02,149
6	Shubi International	1,25,124
7	Jyoti Metal (India)	9,29,760
8	Steam Radiators Corp.	3,29,160
9	Committted Cargo Care P. Ltd	35,573
10	Nova Home Appliances P. Ltd	3,04,179
11	Chetra Trading LLC	6,29,399
	Total	3,10, 74,661

It is seen that the parties at S.No. 1 to 6 were those parties with whom the appellant had continuous dealing for purchases and payments made to them have also been made in subsequent assessment year i.e. 20 11-12 and the assessment of that assessment year was also subject to scrutiny assessments under section 143(3), hence the payments to parties at S.No. 1 to 6 amounting to Rs. 2,88,46,593 appears to be genuine, accordingly, the addition cannot be sustained. As regard the creditors at S.No. 7 to 11 amounting to Rs. 22,28,071 since no confirmation are made available either during the assessment proceedings or in the appellate proceedings hence, the appellant has not discharge its onus, therefore, I sustain the addition to the extent of Rs. 22,28,071.

In addition to above, since in respect of balance creditors of Rs. 6,37,733 (Rs. 3,17,12,394 minus Rs. 3,10,74,661) no details are made available during the appellate proceedings, hence the onus



has not been discharged by the appellant ergo the addition of Rs. 63,77,333 also stands confirmed.

Thus from the above discussion, in respect of ground of appeal no. 5, the total addition of Rs. 28,65,804 (Rs. 22,28,071 plus Rs. 6,37,333) stands confirmed and appellant gets relief of Rs. 3,10,74,661."

6. In fact the Commissioner of Income Tax (Appeals) had increased the addition made by the Assessing Officer on account of unsecured loans from Rs.1,13,10,000/- to Rs.1,71,4,000/-, i.e., by Rs.37,94,000/-, which addition was not challenged by the respondent-assessee before the Tribunal.

7. The Revenue as noticed above had challenged deletion of addition of Rs.2,88,46,590/- on account of unexplained trade creditors and expenses.

8. The findings of the Commissioner of Income Tax (Appeals) have been affirmed by the Tribunal *inter alia* recording that M/s Sagir Dairy, M/s Ram Pal Dairy, M/s Abloo Dairy, M/s Bahadur Dairy, M/s Matadin Plastic and M/s Shubi International, had continuous and regular dealings and transactions with the respondent-assessee. Business transactions had continued in the next Assessment Year 2011-12, when balance outstanding payments were made. The Commissioner of Income Tax (Appeals) had examined the evidence and material produced to establish and show identity, nature and genuineness of the expenditure. However, in respect of four parties, namely, Jyoti Metal (India), M/s Steam Radiators Corp, M/s Committed Cargo Care Private Limited, M/s Nova Home Appliances Private Limited and M/s Chetra Trading LLC, no confirmations were filed during the course of the assessment proceedings and in the appellate



proceedings. The contention of the Revenue that the Assessing Officer was not allowed any opportunity to counter the claim of the respondent-assessee during the proceedings before the first appellate authority was rejected, observing that transactions were examined in the next year and were ascertained and found to be genuine and with known parties. Thus, failure to seek remand report of the assessing officer, who had in the next year examined the same issue and had on verification accepted genuineness of the expenditure, would not warrant interference.

9. Before us the Revenue has not filed copy of the Assessment Order for the Assessment Year 2011-12. Papers or documents which were filed before the Commissioner of Income Tax (Appeals) or the Tribunal have also not been filed. In the absence of said papers/documents and in view of the factual findings recorded by the Commissioner of Income Tax (Appeals) and also noticing the short order passed by the assessing officer, we are not inclined to interfere with the factual findings.

10. The appeal is dismissed with no order as to costs.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

OCTOBER 29, 2018

MR