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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : H : NEW DELHI

BEFORE SHRI A.D. JAIN, JUDICIAL MEMBER
AND
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA No.5856/Del/2012
Assessment Year : 2009-10

Vijay Kumar Ahuja,
Prop. Delhi Book Store,
19, Ansari Road, Daryaganj,
New Delhi.
PAN : AAFPA6918M
(Appellant)

Vs. ACIT,
Circle-29(1),
New Delhi.

(Respondent)

Assessee by : Shri Ved Jain, CA, Smt. Rano Jain, CA
& Shri V. Mohan, Advocate.
Revenue by : Shri Tarun Seem, Sr.DR

ORDER

PER A.D. JAIN, JUDICIAL MEMBER

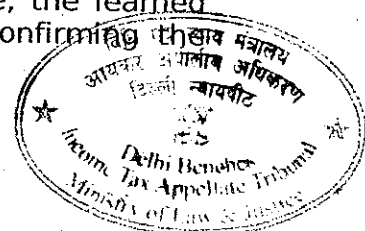
This is assessee's appeal for AY 2009-10. The following grounds have been taken:-

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on facts.

2 (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 20,21,684/- made by AO on account of trade creditors, namely Student Book Depot, Ranchi and Unicate Pub. & Dist.

(ii) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition as income of the assessee in year under consideration despite the AO stating in the order itself that these creditors have static balance for the three years.

3 (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the



addition of Rs.13,79,077/- on account of trade creditors, namely Researchco Books & Scientific International.

(ii) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition in the income of the assessee in year under consideration despite stating in the order itself that these creditors have static balance for the three years.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition ignoring the fact that the addition has been made relying upon the information collected under Section 136 without giving opportunity to the assessee of cross examination and rebutting the same.

5 (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.6,34,421/- being 1/10th of the expenses incurred by the assessee on car and telephone.

S. No.	Particulars	Amount (Disallowed) Rs.
1.	1/10 of car maintenance expenses of 7,10,692/-	71,069/-
2.	1/10 of telephone expenses of Rs. 4,10,154/-	41,015/-
3.	1/10 of travelling expenses of Rs.44,45,307/-	1,00,000/-
4.	Car Depreciation Expenses	
(a)	1/10 of Car Audi depreciation of Rs.4,72,144/-	4,7214/-
(b)	1/10 of Car Lancer depreciation of Rs.20,284/-	2,028/-
(c)	1/10 of Car Mercedes depreciation of Rs.1,49,087/-	14,908/-
(d)	1/10 of Car Honda depreciation of Rs.1,09,782/-	10,978/-
(e)	1/10 of Car Honda City depreciation of Rs.81,475/-	8,147/-
(f)	1/10 of Car Mercedes depreciation of Rs.4,17,226/-	41,722/-
(g)	1 / 10 of Car Maruti depreciation of Rs. 7, 421/-	742/-
(h)	1/10 of Car Safari depreciation of Rs.95,759/-	9,575/-
	Total	6,34,421/-

(ii) That this disallowance has been made on an adhoc basis indulging in surmises without appreciating the fact that the same have been incurred wholly and exclusively for the purposes of business only.

6(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs.1, 00,000/- on account of travelling expense.

(ii) That the disallowance had been made despite the same being incurred wholly and exclusively for the purpose of business.

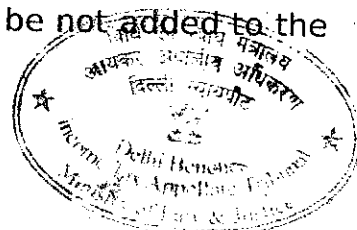
2. Ground No.1 is general.

3. Ground Nos.2 to 4 relate to the action of the Id. CIT (A) in confirming the addition of ₹ 20,21,684/-made by the AO on account of trade creditors.

4. The AO made addition on account of following creditors appearing in the assessee's books for the last three years:-

(i)	Researchco Books	6,77,124
(ii)	Student Book Depot, Ranchi	13,36,013
(iii)	Unicate Pub. & Dist.	6,85,671
(iv)	Scientific International	7,01,953

5. The AO u/s 133 (6) of the IT Act, called for information from the parties in all the four cases. In the cases of Students Book Depot, Ranchi and Unicate Publishers and Distributors, Pune, the creditors denied having done any business with the assessee during the year. In the other two cases, the parties did not furnish any reply before the AO. The assessee was asked to furnish confirmations of Students Book Depot and Unicate Publishers and Distributors. This was not done. The AO asked the assessee to show cause as to why both these creditors be not treated as bogus and the balance be not added to the



assessee's total income. As per the assessment order, the assessee did not offer any explanation. It was therefore, that an amount of ₹ 20,21,684/- was added by the AO to the income of the assessee. The Id. CIT (A) confirmed this addition.

6. In respect of the other two creditors, i.e., Researchco Books and Scientific International, these parties did not file any reply before the AO. The AO, as such, added the balance of ₹ 13,79,077/- outstanding in the assessee's books in the name of these two parties, to the total income of the assessee. The Id. CIT (A) confirmed this addition also.

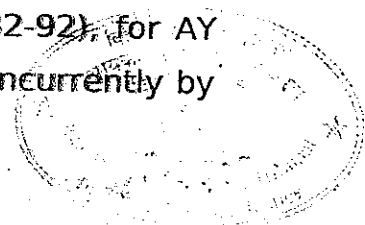
7. The Id. Counsel for the assessee has contended before us that the Id. CIT (A) has erred in confirming these additions, despite observing in the impugned order itself that these creditors had static balance for the three years; that while illegally confirming the additions, the Id. CIT (A) has erred in failing to consider the fact that the first addition was made relying on information collected u/s 133 (6) of the Act, without affording any opportunity of cross-examination and rebuttal to the assessee. It has been contended, as before the Id. CIT (A), that the additions are not justified, as the sundry creditors are still outstanding; that the trade creditors are old creditors and they do not relate to the year under consideration; that during the year under consideration, there was no transaction of the assessee with the parties in question and due to this very fact, it cannot be held that the old sundry creditors has become bogus; that there were genuine purchases from the parties and this has not been disputed by the AO; that in AY 2007-08, the year to which the sundry creditors relate, there were scrutiny assessments, in which, no defects were found.

8. The Id. DR, on the other hand, has strongly stood by the impugned order in this regard. It has been contended that as rightly found by the Id. CIT (A), the assessee failed to prove the genuineness

of the sundry creditors. Even no confirmation from the parties were furnished. Undisputedly, none of the four trade creditors of the assessee had demanded any money from the assessee for a long period of time, thereby establishing that they had either squared off or written off the balances in the name of the assessee and that if so, there was a remission or cessation of the liability of the assessee, clearly attracting the provisions of Section 41 of the Act.

9. Having considered the rival contentions in the light of the material on record regarding this issue, it is observed that the amounts in question were outstanding for the last three years. This is also available from the ledger accounts of the trade creditors of the assessee in the assessee's books of account (APB 44-57). The assessee, vide its letter dated 08.11.2011 (APB 28-29), filed before the AO, submitted the details of the sundry creditors having balances over ₹ 5 lac as on 31.03.2007, 31.03.2008 and 31.03.2009 along with their addresses. The assessee's replies dated 23.11.2011, 30.11.2011 and 16.12.2011 to the AO (APB 30 to 32) show that the books of account of the assessee were also produced for verification by the AO.

10. Further, vide reply dated 16.12.2011 (supra) (APB 32), the assessee furnished before the AO, partywise details of the import of books. Along with its reply dated 28.12.2011 (wrongly mentioned as 19.12.2011 in the index to the APB), the assessee, inter alia, filed a list of its creditors as on 31.03.2009 (i.e., for the year under consideration) (APB 35-41). The details of the four parties in question are to be found at APB 39 & 40. A list of the assessee's sundry creditors as on 31.03.2008 (AY 2008-09) as filed before the AO, is at APB 65-76. The fact that the same balances qua the parties in question are continuing is evident from a perusal of APB 73-76. The same is the position with regard to the sundry creditors as on 31.03.2007 (APB 82-92), for AY 2007-08. It has been contended that as correctly and concurrently by



both the taxing authorities, the assessee miserably failed to prove the genuineness of the sundry creditors inasmuch as, even the confirmation from any other parties was not filed; that Students Book Depot, Ranchi and Unicate Publishers and Distributors, Pune, had specifically stated in their respective replies that during the year, they did not have any transaction with the assessee; Researchco Books and Scientific International did not even file replies before the AO, indicating that they had nothing to offer in response to the notice issued to them u/s 133 (6) of the Act; that therefore, the Id. CIT (A) has rightly confirmed the addition made and that there being no merit whatsoever in the grievance of the assessee in this regard, the same be rejected, upholding the CIT (A)'s order on this issue.

11. With regard to this issue, having heard the rival contentions and having perused the relevant material placed on record, we find that undisputedly, the amounts in question are outstanding as sundry creditors for the last three years. This is evident from the ledger accounts of the creditors, as placed in the paper book at pages 44-57. As such, there is no infirmity in the stand taken by Students Book Depot, Ranchi and Unicate Publishers & Distributors, Pune, that they did not have any transaction with the assessee during the year. No credit having been given in the books of the assessee during the year under consideration, the provisions of Section 68 of the Act are obviously not attracted. Then, it is only by way of surmise that the Ld. CIT (A) has observed that:

".....the above four trade creditors has not demanded any money from the assessee for a long time and it is also apparent that the above four parties would have squared off or written off the balances in the name of the assessee and, as such, there is a remission or cessation of the liability of the assessee....."

12. However, since undisputedly, the amounts are still outstanding, it cannot be said that they have been either written off or squared off



or that any benefit has been derived by the assessee. For doing so, the provisions of Section 41 (1) of the Act are also not attracted and no addition therein is envisagable. Then, the amounts in question pertained to sundry creditors of the assessee, they being on account of purchases of the assessee. As such also, no addition is called for, since the purchases or the sales have not been disputed by the Assessing Officer. Thus, in keeping with 'CIT vs. Pancham Das Jain', 205 CTR (All) 444, no addition is called for. Then, in the books of account of the assessee, no mistake or defect, whatsoever was pointed out by the Assessing Officer. Therefore, just because confirmations were not filed, according to 'YFC Projects (P) Ltd. vs. DCIT', 134 TTJ 167 (Del), no addition can be made. Further, to support the proposition that amounts representing purchases made on credit do not attract the provisions of Section 68 of the Act, 'ACIT vs. Han Singer Gutkha (P) Ltd.', 9 DTR (Luc) (Trib.) 604 has rightly been relied on. Then, as observed, since the purchases have been accepted as genuine, balances remaining outstanding at the end of the year against such purchase cannot be treated as a bogus liability and addition made on that basis cannot be sustained as held in 'JCIT vs. Mathura Dass Ashok Kumar', 101 TTJ (All) 810. In 'CIT vs. Smt. P.K. Noorjehan', 237 ITR 570 (SC), it has been held that as per the provisions of Section 68 of the Act, it is not mandatory that in case the assessee fails to satisfy the Assessing Officer about the outstanding credits, the same are mandatorily required to be added as income of the assessee and that Section 68 of the Act gives a discretion of the Assessing Officer in this regard; and that the Assessing Officer has to take into account the overall facts. In the present case, as discussed, on considering the facts of the case, the provisions of Section 68 of the Act are not attracted and considering the overall facts, no addition is called for under the Section.



13. Further, as considered in the order dated 30.09.2011 passed by this Bench (authored by the JM) in the case of 'M/s Divine International' for Assessment Year 2001-02, in the case of the assessee these creditors represent the outstanding amount on account of the purchases. There can be three alternative allegations against the assessee. One can be that these credits represent the credit for earlier years. If that be the case, no addition can be made in this year under Section 68 of the Act. The second allegation can be that these credits represent the purchases for which payments have been made by the assessee during the year itself. If this is so, the onus will be on the department to establish that assessee has made payment to these creditors. This is not even the allegation of the assessing officer, much less his case against the assessee. The third allegation can be that these credits do not represent the purchases which have been made by the assessee. The implication of this will be that the purchases debited in the trading account are not genuine to that extent and accordingly, that the trading account is not correct. However, as discussed, the trading results of the assessee have been accepted and considering the overall facts of the case, as dwelt upon, no addition u/s 68 of the Act is called for.

14. Further, even on the principle of consistency, no addition is called for and the claim is to be allowed, as held in 'Radha Soami Satsang vs. CIT', 193 ITR 321 (SC), 'CIT vs. Neo Poly Pack (P) Ltd.', 245 ITR 492 (Del) and 'CIT vs. Dalmia Promoters Developers (P) Ltd.', 281 ITR 346 (Del).

15. Still further, evidently, it was not scrutiny assessments for Assessment Years 2007-08 and 2008-09, that u/s 143 (3) of the Act, these creditors were accepted by the department. Therefore, the facts and circumstances for the year under consideration remaining entirely



unchanged, consistency is required to be maintained for the year under consideration also.

16. For the above discussion, finding the grievance sought to be raised by the assessee in this regard to be justified, we accept the same. Accordingly, the order of the Ld. CIT (A) on this issue is cancelled and the Assessing Officer is directed to allow the claim of the assessee.

17. The only other controversy involved herein is against the action of the Ld. CIT (A) in confirming the disallowance of an amount of ₹ 6,34,421/- being 1/10 of the expenditure incurred by the assessee on car and telephone. The details of such expenditure are as follows, as given in Ground No.5 (i):-

S. No.	Particulars	Amount (Disallowed) Rs.
1.	1/10 of car maintenance expenses of 7,10,692/-	71,069/-
2.	1/10 of telephone expenses of Rs. 4,10,154/-	41,015/-
3.	1/10 of travelling expenses of Rs.44,45,307/-	1,00,000/-
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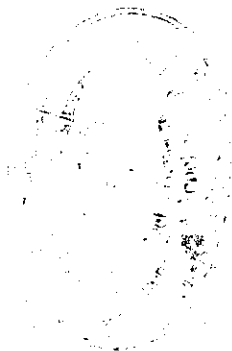
18. The disallowance was made by the Assessing Officer, treating the user of the car and the telephone by the assessee to be of a personal nature. The Ld. CIT (A) confirmed the disallowance.

19. The Id. counsel for the assessee has contended that all the expenses have been incurred wholly and exclusively for the purpose of business only and that the authorities did not point out exactly which expenses had been incurred for personal purposes and that so, no ad hoc addition can be made. Reliance has been placed on the following case laws:-

1. 'Manika Gems & Ors. vs. ACIT', 237 ITR 570 (SC);
2. 'Coco Cola (India) Ltd. vs. JCIT' 104 TTJ 254 (Pune);
3. Lavrids Khudsen Maskin Fabric (I) Ltd. vs, ACIT', 102 TTJ 882 (Pune); and
4. 'Sayaji Iron & Engg. Co.', 172 CTR 339

20. The Ld. DR, on the other hand, has placed strong reliance on the impugned order in this regard, contending that the assessee has not proved the expenses in their entirety to have been incurred for its business purpose and that therefore, the disallowance made is proper.

21. In this regard, undeniably, the element of personal user has not been dispelled by the assessee. However, that the addition is an ad hoc addition also remains undisputed. Finding, in these circumstances, that the addition made, amounting to ₹ 6,34,421/- is on the higher side, in our considered opinion, it would serve the ends of justice, if this addition is scaled down to ₹ 6 lac. This grievance of the assessee is, as such, partly accepted.





22. In the result, the appeal of the assessee is partly allowed, as indicated.

The order pronounced in the open court on 26.08.2013.

[SHAMIM YAHYA]
ACCOUNTANT MEMBER

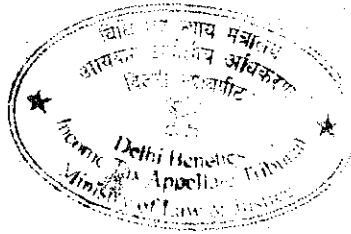
[A.D. JAIN] &
JUDICIAL MEMBER

Dated, 26/8/, 2013.

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Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT



TRUE COPY

By Order,

Deputy Registrar,
ITAT, Delhi Benches
Assistant Registrar,

आयकर अपील अदालत

Income Tax Appellate Tribunal

दिल्ली पीठ, नई दिल्ली

Delhi Benches, New Delhi