IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI

BEFORE,
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No.7497/Del/2019
(ASSESSMENT YEAR 2012-13)

Late Sh. Mahender Kumar Mittal Through L/H Smt. Shashi Mittal (Wife) E-38, 2nd Floor Greater Kailash-II New Delhi-110 048 **PAN-AAIPM 8990M**	Vs.	Income Tax Officer Ward-30(1) New Delhi
(Appellant)		**(Respondent)**

Appellant by	Sh. Raj Kumar Gupta, CA Sh. J.P.Sharma, CA
Respondent by	Sh. Subhra Jyoti Chakraborty, CIT-DR & Sh. Vivek Vardhan, Sr. DR

Date of Hearing	15/03/2024
Date of Pronouncement	29/04/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-31, New Delhi ["Ld. CIT", for short], dated 25/06/2019 for Assessment Year 2012-13. Grounds taken in this appeal are as under:

"1. The under the facts and circumstances, both the lower authorities grossly erred in law as well as on merits in making and sustaining addition of Rs.1,34,97,009/- for the following creditors:-

S.K. Enterprises	*Rs.16,40,265/-*
Amitabh Enterprises	*Rs.17,48,316/-*
Shiv Shakti Card	*Rs.11,20,431/-*
Renuka Enterprises	*Rs.21,99,935/-*
Sikka Paper Pvt. Ltd.	*Rs.67,88,062/-*
Total	***Rs.1,34,97,009/-***

1.1 That under the facts and circumstances, the findings of Ld. CIT(A) that these are bogus sundry creditors which have ceased to exist is legally and factually incorrect and unsustainable in law as well as on merits.

1.2 That under the facts and circumstances, without confronting with the report of ITI and in the absence of proper and sufficient opportunity to rebut the same, no cognize of the ITI report can be taken. Also, under the facts, the report of the ITI is not as per law therefore even otherwise also it is not an admissible evidence against the assessee.

1.3 That without prejudice, Ld. CIT(A) exceeded his jurisdiction in sustaining the addition made by the A.O. u/s. 68 of the I.T. Act as the addition u/s. 41(1) of the Act. After giving a finding that the addition cannot be made u/s. 68, the Ld. CIT(A) was required to delete the addition threshold.

2. That under the facts and circumstances both the lower authorities grossly erred in law as well as on merits in making addition of Rs.35,54,572/- for the following tow sundry creditors, more so, when no enquiry was made in respect of these creditors and no adverse material exists on record against the genuineness of these two creditors.

Cardline Products	*Rs.33,41,957/-*
Heera Lal & Sons	*Rs.2,12,615/-*
Total	***Rs.35,54,572/-***

2.1 That without prejudice, even on merits, addition of Rs.35,54,572/- for the two creditors is unsustainable.

2.2 That without prejudice, Ld. CIT(A) exceeded his jurisdiction in sustaining the addition made by the A.O. u/s 68 of the I.T. Act as the addition u/s. 41(1) of the Act. After giving a finding that the addition cannot be made u/s.68, the Ld. CIT(A) was required to delete the addition threshold.

3. That under the facts and circumstances the Ld. A.O. erred in making addition of Rs.20,00,000/- as unexplained receipt, being the amt. received

from debtor namely National Enterprises and Ld. CIT(A) further erred in not deleting the addition but in sending back the issue to the A.O. for further verification as per directions given in the CIT(A) order."

2. The brief facts of the case are that the assessee filed return of income declaring total income at Rs.NIL. The case was selected for scrutiny under CASS. The assessment proceedings initiated against the assessee and an order u/s 143(3) of the Income Tax Act, 1961 ('Act' for short) came to be passed on 27/03/2015 by making addition of Rs.1,68,38,416/- treating the same as undisclosed income and further made addition of Rs.20,00,000/- on account of unexplained credits.

3. Aggrieved by the assessment order dated 27/03/2015, the Assessee preferred an appeal before the CIT(A). The Ld. CIT(A) vide order dated 25/06/2019 sustained the addition of Rs.1,68,38,416/- u/s 41(1) of the Act which was made u/s 68 of the Act by the A.O. and further remand the issue pertaining to the addition of Rs.20,00,000/- and directed the AO to allow set off brought forward losses of Rs.27,22,426/-.

4. Aggrieved by the order of the Ld. CIT(A) dated 25/06/2019 the assessee preferred the present appeal on the grounds mentioned above.

5. Ground No.1 to 1.3 are regarding sustaining addition of Rs.1,34,97,009/- made by the AO u/s 68 of the Act in respect of following creditors:-

S.K. Enterprises	Rs.16,40,265/-
Amitabh Enterprises	Rs.17,48,316/-
Shiv Shakti Card	Rs.11,20,431/-
Renuka Enterprises	Rs.21,99,935/-
Sikka Paper Pvt. Ltd.	Rs.67,88,062/-
Total	**Rs.1,34,97,009/-**

6. Facts of the issue are that the balance sheet of the assessee shown outstanding sundry creditors at Rs.1,70,51,581/-. The ld. AO called for names and addresses of the parties, which has been provided by the assessee. As per the Ld. AO, assessee has purchased only goods worth of Rs.47.06 lakhs, whereas the outstanding creditors were Rs.1.70 crores. To ascertain the genuineness of the creditors, notice u/s 133(6) of the Income Tax Act, 1961 (in short "the Act") was issued to all the parties. All the notices sent were returned as un-served with the remarks *"left without address or remained closed from long time".* Later, the ld. AO asked the assessee to produce those sundry creditors before him or produce the address of above sundry creditors, which was

not complied by the assessee. Later, an Inspector was deputed to make local enquiries and find out the whereabouts of the above creditors. The inspector vide his report dated 6.12.2015, 7.2.2015 & 9.2.2015 has stated that *"no concern is running at the given address or it is closed/left for more than 3 to 4 years".* Later, the ld. AO vide order sheet entry dated 13.3.2015 asked to show cause that why the same may not be treated and added to the taxable income since he has failed to produce the details and confirmation in this regard despite giving several opportunities. However, assessee could not produce the PAN, address or confirmation from said parties. Hence, the ld. AO treated these credits as unexplained credit u/s 68 of the Act to the tune of Rs.1,68,38,416/-. On appeal, ld. CIT(A) observed that actual amount outstanding from these 5 parties was only Rs.1,34,97,009/- and it is not Rs.1,68,38,416/- and there were two more parties namely Cardline Products at Rs.33,41,957/- and Heeralal & Sons at Rs.2,12,615/-, for which details are also not filed and these credits are outstanding since long time. Hence, the CIT(A) invoked the provisions of section 41(1) of the Act instead of Section 68 of the Act applied by the ld. AO and sustained the addition of Rs.1,68,38,416/-, which is challenge under those grounds.

7. We have heard the rival submissions and perused the materials available on record. Admittedly, in this case, the ld. AO has invoked the provisions of section 68 of the Act by observing that the assessee has not given satisfactory explanation with regard to

identity of parties, genuineness of transaction and capacity of creditors. Contrary to this, ld. CIT(A) sustained the addition by invoking the provisions of section 41(1) of the Act holding that these credits have been outstanding since long time. Before us, the assessee submitted that in case of S.K. Enterprises at Rs.16,40,265/-, it is emanated from the purchase transaction and the purchase has been accepted by the department in this assessment year. Once the purchase is accepted, other part of the entry being creditor cannot be overlooked. Otherwise, it gives distort picture of the Assessee's income for the assessment year under consideration. It is also submitted that it was the running account of that party maintained by assessee in a continuous manner and these amounts have been paid in subsequent assessment years which has been duly accepted by the department. Specifically in assessment year 2014-15, assessment order was passed u/s 143(3) of the Act and there cannot be any application of section 41(1) of the Act and there was no cessation of liability. We find merit in this argument of ld. A.R. The assessee makes purchases from the said party and was maintaining running account. The assessee has been pleading before the lower authorities that the assessee made payment of Rs.37.04 lakhs in assessment year 2013-14 and later fully paid in assessment year 2014-15 through bank account to the tune of Rs.56.99 lakhs and cash payment of Rs.94,483/- and the assessment was completed u/s 143(3) relating to assessment year 2014-15. These creditors were duly registered with the VAT authorities and the assessee has

paid the VAT on these transactions which is not disputed. As rightly pointed out by the ld. A.R., the authorities have not brought anything on record to prove that the liability is ceased to exist and neither of the parties has written off the same in their books of accounts. Further, balance sheet of this assessment year has been duly signed by the assessee itself thereby acknowledged the debt and in such circumstances, the lower authority is precluded in applying the provisions of section 41(1) of the Act. More so, lower authority was not sure whether section 68 of the Act to be applied or section 41(1) of the Act. In such dichotomy neither provisions of section 68 nor 41(1) of the Act could be applied by the Revenue Authorities. Accordingly, we delete this addition made in respect of S.K. Enterprises.

8. With regard to Amitabh Enterprises at Rs.17,48,316/-, the ld. A.R. made a submission before us that the purchase was made prior to 01.04.2009 and no purchase was made in the assessment year under consideration. There was no assessment u/s 143(3) of the Act in the assessment year 2013-14 and on the other hand, there was only intimation sent u/s 143(1) of the Act. Since there was no transaction in the assessment year under consideration, the assessee has not updated the address in his books of accounts. When the inspector has visited the premises, it was reported that the firm was not operative from that address in the year 2015. However, the transaction took place prior to 01.04.2009 and the non-existence of this firm in 2015 cannot be reason to sustain

addition and the report of the inspector cannot be relied in its entirety since there was no basis for such information so recorded by him by following the due procedure as stipulated in Code of Civil Procedure. Hence, unless and until there is an evidence to show that these credits are ceased to exist, there cannot be any addition u/s 41(1) of the Act, accordingly we delete the addition.

9. With regard to Shiv Shakti Card of Rs.11,20,431/-, it was submitted by the ld. A.R. that the purchase was made in this assessment year under consideration to the tune of rs.11,16,320/- and there was no cessation of credits in the assessment year under consideration. Full payment has been made in the assessment year 2013-14 and the purchase has been accepted in assessment year 2012-13. Being so, it cannot be added u/s 143(3) of the Act as discussed in earlier para 7 above and for the reasons mentioned thereon, we delete the addition.

10. With regard to Renuka Enterprises at Rs.21,99,935/-, the said outstanding was of prior to 01.04.2009. Complete payment has been made in assessment year 2013-14 and no assessment was made u/s 143(3) on the same in the assessment year 2013-14. Only intimation u/s 143(1) of the Act was made. Hence, as discussed in earlier para 7 above and for the reasons mentioned thereon, we delete the addition.

11. With regard to Sikka Paper Pvt. Ltd. of Rs.67,88,062/-, this was relating to purchases made prior to 01.04.2010. As on 01.04.2010, the balance was at Rs.1,47,88,062/- out of which assessee made payment of Rs.80 lakhs through RTGS in the assessment year 2011-12. Balance left was Rs.67,88,062/-. The assessee has filed confirmation dated 22.7.2016 before ld. CIT(A), showing the balance as outstanding since 31.03.2012. The confirmation was also having PAN number of the creditors. As discussed in earlier para, the assessee signed the balance sheet, which was the acknowledgement of debt and the ld. AO has not brought anything to show that it was ceased to exist in the assessment year under consideration. In such circumstances, it is not possible to hold that debt ceased to exist. Accordingly, by placing reliance on the Judgment of ***Hon'ble Supreme Court in the case of CIT Vs. Balkrishna Industries Ltd reported in 300 CTR 29***, wherein held that *"if there is no remission or cessation of liability, amount in question cannot be treated as income u/s 41(1) of the Act".* Similarly, ***Hon'ble Supreme Court in the case of CIT Vs. SI Group India Ltd.*** held that *"since record before authorities did not disclose that, there was no remission or cessation of liability, one of the requirements spelt out for applicability of section 41(1) of the Act had not been fulfilled in facts of present case. Addition is deleted".* Accordingly, in our opinion, in all these cases mentioned above, it cannot be held that there is cessation of liability. Accordingly, ground No.1 to 1.3 of the Assessee's appeal is deleted.

12. The Ground No.2 of Assessee's appeal is with regard to sustaining addition of Rs.35,54,572/- in respect of following parties:

Cardline Products	Rs.33,41,957/-
Heeralal & Sons	Rs.2,12,615/-
Total	Rs.35,54,572/-

13. At the time of hearing, the ld. A.R. submitted that the ground No.2 is wrongly drafted by including creditors of Heeralal & Sons in the grounds at Rs.2,12,615/- stating that the addition made u/s 68 of the Act is not justified. However, at the time of hearing, he made it clear that he is pressing the ground with regard to Cardline Products at Rs.33,41,957/- and pleaded that the credits in the name of Heeralal & Sons to be excluded and not pressed. Accordingly, we consider the ground relating to sustaining addition of Rs.33,41,957/- standing in the name of M/s. Cardline Products, since there is no addition in the name of Heeralal & Sons by ld. AO and sustaining addition in the name of Heeralal & Sons at Rs.2,12,615/- by the CIT (A) is unwarranted. Accordingly, this addition is to be deleted. Directed accordingly.

14. With regard to Cardline Products at Rs.33,41,957/-, it was submitted that the total outstanding is Rs.33,41,957/-. Out of the same, Rs.10,17,006/- is relating to the purchases made in the assessment year under consideration. The complete payment has been made in the assessment year 2013-14 to the tune of

Rs.33,41,957/- and the return has been filed by the assessee and accepted for the assessment year 2013-14 while processing the return u/s 143(1) of the Act and there is no evidence brought on record by ld. AO to show that this credit has ceased to exist in assessment year 2012-13.

15. Considering the argument of ld. A.R., as discussed in earlier para, we delete this addition, accordingly ground No.2 to 2.2 of appeal of the assessee is allowed.

16. The Assessee has not pressed the Ground No. 3, hence, the same is dismissed.

17. In the result, the appeal filed by the assessee is partly allowed.

Order Pronounced in the Open Court on 29th April, 2024.

Sd/-	Sd/-
(DR. B.R.R. KUMAR)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 29/04/2024
Pk/R.N, Sr.ps
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR