

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'एफ', मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI**

Before Shri Saktijit Dey, Judicial Member and

Shri G. MANJUNATHA, Accountant Member,

ITA Nos.7336/Mum/2016

Assessment Year: 2012-13

United Metal & Wire Industries, 16, Latif Mansion, 56, Teli Galli Andheri(East), Mumbai-400069	बनाम/ Vs.	ITO, Ward-25(1)(5), C-10 Pratyakshkar Bhawan, 4 th Floor Bandra Kurla Complex, Bandra (East), Mumbai-400051
(निर्धारिती / Assessee)		(राजस्व / Revenue)
P.A. No.AAAFU2811K		

ITA Nos.7356/Mum/2016

Assessment Year: 2012-13

ITO, Ward-25(1)(5), C-10, Pratyakshkar Bhawan, 4 th Floor Bandra Kurla Complex, Bandra (East), Mumbai-400051	बनाम/ Vs.	United Metal & Wire Industries, 16, Latif Mansion, 56, Teli Galli Andheri(East), Mumbai-400069
(राजस्व / Revenue)		(निर्धारिती / Assessee)
P.A. No.AAAFU2811K		

निर्धारिती की ओर से / Assessee by	Shri J. P. Purohit
राजस्व की ओर से / Revenue by	Shri Rajeev Gubgotra

सुनवाई की तारीख / Date of Hearing :	11/12/2018
आदेश की तारीख / Date of Order:	01/03/2019

आदेश / O R D E R

Per G. Manjunatha, (Accountant Member)

These cross appeals filed by the assessee as well as the Revenue are directed against order of the Ld. CIT(A)-37, Mumbai, dated 28/09/2016 for Assessment Year 2012-13. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed of by this consolidated order.

The assessee has raised following grounds of appeal:-

- i. *"In the facts & circumstances of the case as well as in law the Learned CIT(Appeals) erred in confirming the addition of Rs.3,43,000/- as unexplained Cash Credit and also making an addition of interest accrued thereon.*
- ii. *In the facts & circumstances of the case as well as in law the Learned CIT(Appeals) erred in confirming the disallowance of expenses Rs.1,00,021/- being 10% of the expenses claimed"*

The Revenue has raised following grounds of appeal:-

1. *The Id. CIT(A) has erred on fact and in law and in the circumstances of the case in deleting the addition of Rs.2,30,16,415/- made by the A.O. on account of discrepancy of purchases.*
2. *The Id. CIT(A) erred in not considering that the assessee could not prove the genuineness and creditworthiness of the purchase transactions during the course of assessment proceedings.*
3. *The Id. CIT(A) has erred on fact and in law, in view of the Hon'ble Delhi High Court in the case of Commissioner of Income-Taxvs M/s La Medica, Delhi on 15 March, 2001 [2001 VAD Delhi 931, 92 (2001 DLT 406, 2001(59) DRJ 404] wherein the Hon'ble court has upheld the 100% disallowance of bogus purchases.*
4. *The Id. CIT(A) has erred on fact and in law and in the circumstances of the case in deleting and addition of Rs.1,56,77,456/- made on account of unexplained cash credit and unproved loans u/s 68 of the I.T. Act, 1961.*
5. *The appellant prays that the order of Ld.CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

2. The brief, facts of the case are that the assessee is engaged in the business of manufacturing of paper covered aluminium wires, stripes, bars, etc, filed its return of income for AY 2012-13 on 27/09/2012, declaring total income of Rs.14,16,658/-. The case was selected for scrutiny and assessment was completed u/s 143(3) of the Income Tax Act, (hereinafter "the Act") on 30/03/2015 determining total income at Rs.4,05,53,550/- by making additions towards disallowance 25% of purchase, from two parties on the ground that no details has been filed to justify purchases, additions towards unexplained cash credits u/s 68 of the Act of Rs.1,60,20,456/- and also disallowance of 10% expenses debited under the head motor car expenses, general expenses, miscellaneous expenses, conveyance expenses, labour welfare and sales promotion. Aggrieved by the assessment order, the assessee preferred appeal before the Ld. CIT(A). The Ld. CIT(A), after considering the submissions of the assessee, have recorded reasons in its order dated 28/09/2016, partly allowed appeal filed by the assessee, where he had deleted additions made towards disallowance of purchase and also allowed partial relief in respect of additions made towards unexplained cash credit u/s 68 of the Act, however confirmed the additions made towards ad-hoc disallowance of expenses.

3. Aggrieved by order of the Ld. CIT(A), the assessee as well as Revenue is in appeal before us. The first issue came up for consideration for Revenue's appeal is addition towards 25% of purchases from M/s Hindustan Copper Ltd. and M/s Sterlite Industries (I) Ltd.. During assessment proceedings, to examine purchases claimed by the assessee, notice u/s 133(6) were issued to certain parties on test check basis. In

response of notice, M/s Hindustan Copper Ltd. and M/s Sterlite Industries (I) Ltd. did not respond. Thereafter, the AO asked the assessee to file confirmation from the parties along with stock register, quantitative details, reconciliation of raw material to production and also transportation bills related to purchase. In response, the assessee has filed complete details as called for by AO, including transportation bills to prove purchase from above parties. The AO after considering submissions of the assessee came to conclusion that the assessee has failed to prove how the material shown to have been purchased specifically used in the business of the assessee giving use patterns of the material. The assessee was also unable to produce latest address and whereabouts of these dealers/sellers. The onus of proving the genuineness of expenditure was not discharged by the assessee. When expenditure is claimed to have been incurred, the initial burden will be on the assessee to prove that expenditure was genuine, but the assessee fails to discharge its onus by filing necessary evidence, accordingly, after analyzing the book results of the assessee and also considering net profit declared for the year under consideration came to the conclusion that purchases claimed to have been made from above parties are not proved and hence rejected the books of accounts u/s 145(3) of the Act and added 25% unverifiable purchases u/s 69C of the Act.

4. The Ld. DR submitted that the Ld. CIT(A) was erred in deleting the addition made by the AO towards 25% of unverifiable purchases without appreciating the fact that the assessee not even able to file latest address of the dealer when notice issued u/s 133(6) of the Act, were returned un-served. The Ld. DR further submitted that the AO brought out

clear facts to the effect that the assessee has declared nominal net profit percentage which works out 0.61% of its sales, therefore, the AO was right in rejected books of accounts and making additions towards unverifiable purchases, but the Ld. CIT(A) merely for filing certain supporting evidence accepted purchases from above parties as genuine.

5. The Ld. AR for the assessee on the other hand, strongly supported order of the Ld. CIT(A) and submitted that the Ld. CIT(A) has rightly appreciated the facts in light of various details filed by the assessee including confirmation from the parties to come to the conclusion that purchases from both parties are genuine which are supported by valid evidence. The Ld. AR further submitted that out of two parties, one is Government of India company and another is reputed public listed company belonging to Vedanta Group, therefore, the version of the AO that identity is not proved cannot be accepted. In respect of purchases, various details has been filed including stock register details, therefore, merely for the reason of non-service of notice u/s 133(6) additions could not be made.

6. We have heard both of parties and perused the material available on record. The assessee has filed various details including confirmation from two parties before the Ld. CIT(A) to prove that purchases are genuine which are supported by necessary evidence. The assessee also filed various evidences to prove that both are reputed companies involved in manufacturing copper and other products. It is also an admitted fact that M/s Hindustan Copper Ltd. is Govt. of India's company. The another dealer M/s Sterlite Industries (I) Ltd. is a public listed company belonging to Vedanta Group. Therefore, there is no question of proving the identity of such companies. The assessee

also submitted all purchases, stock, reconciliation and transport related documents before the lower authorities. In fact, the AO has never doubted on this aspect, but he has made additions only for the reason that notice u/s 133(6) issued to above parties were returned unserved except this, no observation with regard to books of accounts or stock details was made by the AO. In absence of any observations with regard to books of accounts, no adverse inference could be drawn against the assessee merely for non-service of notice u/s 133(6) of the Act, more particularly when two suppliers are reputed companies having credible business activities. It is not a case of AO that these are bogus purchases (Hawala dealers as per Sales Tax Department) as the purchases were made from large scale company one of it is owned by the Govt. of India and another one is flagship company of Vedanta Group. The assessee cannot be responsible for non-service of notice u/s 133(6) of the Act to the suppliers. The Ld. CIT(A) after considering all these facts has recorded categorically finding of the fact that no contrary evidence has been brought on record by the AO to prove that purchases from above two parties are non-genuine except non-service of notice u/s 133(6) of the Act. On the other hand, the assessee has filed complete details along with stock register exercise audit report and transportation documents to prove that these purchases are genuine. Therefore, we are of the considered view that there is no error in the findings recorded by the Ld. CIT(A) in deleting the additions towards 25% of unverifiable purchases. Hence, we reject the ground taken by the Revenue.

7. The next issue came up for consideration is additions towards unsecured loans u/s 68 of the Act. During the assessment proceedings, the AO observed that the assessee has shown outstanding unsecured loans aggregating to Rs.3,87,59,796/- from 53 parties as on 31/03/2012. The corresponding figure of outstanding unsecured loans as on 31/03/2011 was at Rs.2,80,77,650/- from 46 parties. In order to verify the genuineness of the unsecured loan, the AO called upon the assessee to submit confirmation letter from the lenders along with their ITR copies, bank statement and financial statements. In response, the assessee has not furnished certain documents. During assessment proceedings, in order to verify the correctness of certain documents filed by the assessee, the AO issued a commission to Kolkata in case of M/s Pushpanjali Commotrade Pvt. Ltd. and M/s Radiant Merchandise Pvt. Ltd. In response, the DDIT(Inv.), Unit-2(3), Kolkata, vide its report dated 13/03/2015 submitted that none of the parties were responded in response to summons issued u/s 131 of the Act, even as per report of Inspector whereabouts of this company could not be established due to non-availability of these companies at given registered office. Similarly, the AO has examined other creditors in light of the evidences filed by the assessee and came to conclusion that the assessee has failed to discharge its initial onus by filing evidence and accordingly made addition of Rs.1,60,20,456/- towards unsecured loans u/s 68 of the Act.

8. The Ld. DR submitted that the Ld. CIT(A) was erred in allowed partial relief towards additions made on account of unsecured loans without appreciating the fact that the assessee has failed to prove the identity, genuineness of transaction and

creditworthiness of the parties in respect of two unsecured loans from Kolkata based company. The Ld. DR further submitted that in respect of unsecured loans received from M/s Chandimata Management Pvt. Ltd. and M/s Max Worth Project Pvt. Ltd. , it was observed by the AO that director, Shri Umesh Singh had admitted in his statement that he was dummy person of Shri Pravin Aggarwal and Shri Pramod Ramdev Sharma himself admitted that these companies are involved in giving entries to the beneficiaries on the basis of commission. The Ld. CIT(A), without appreciating these facts has deleted addition on technical ground that the assessee has discharged its initial onus by filing confirmation and other documents. The Ld. DR further submitted that in respect of other loans received from certain individuals, none of the creditors having sufficient source of income to explain loans given to the assessee. But, the Ld. CIT(A) has deleted the addition by accepting confirmation letter filed by the assessee without recording any reasons as to how other two ingredients i.e. genuineness of transaction and creditworthiness of the creditors has been discharged by the assessee.

9. The Ld. AR for the assessee, on the other hand, strongly supported the order of the Ld. CIT(A). The Ld. CIT(A), recorded categorical findings in the light of various details filed during the course of assessment and appellate proceedings, as per which, the assessee has discharged its initial burden cast upon u/s 68 of the Act, including identity, genuineness of the transaction and creditworthiness of the parties. The Ld. AR further submitted that the assessee has filed various details including confirmation from the parties and their financial statements along with bank statement to prove that they have

sufficient source of income to explain loans given to the assessee. The Ld. CIT(A) after considering the details, rightly deleted additions made towards unsecured loans including loans taken during the previous financial year, as provisions of section 68 of the Act is applicable to only credits found in the books accounts for the year under consideration but not to the opening balance brought forward from earlier year. In so far as unsecured loans confirmed by the Ld. CIT(A), the Ld. AR submitted that in respect of three parties, the assessee has filed confirmation, however, could not file bank statement and ITR because those parties are not assessed to income tax. He further submitted that when identity has been proved merely for the reason that bank statement and copies of ITR were filed, no additions could be made when the assessee has made it clear that those parties are not assessed to income tax.

10. We have heard both parties and perused the material on record and gone through the orders of the Ld. CIT(A). The Ld. CIT(A) has deleted additions made by the AO towards unsecured loan u/s 68 of the Act on the ground that the assessee has discharged initial onus cast upon u/s 68 of the Act, by filing confirmation letters from the creditors along with their ITR copies, bank statement and financial statement, etc. The CIT(A) has deleted additions made towards loan taken from M/s Pushpanjali Commotrade Pvt. Ltd. and M/s Radiant Merchandise Pvt. Ltd. on the ground that they have furnished confirmations along with financial statement. We find that the AO has recorded categorical finding in his assessment order in the case of M/s Pushpanjali Commotrade Pvt. Ltd. and M/s Radiant Merchandise Pvt. Ltd. that above two parties are paper companies floated by

Shri Pravin Aggarwal, who is involved in providing accommodation entries to various beneficiaries. We further noticed that investigation carried out by DDIT(Inv.), Kolkata, clearly established the fact that those companies are not existing at the given address. Even the Inspector attached to the office of DDIT(Inv.) Kolkata, gave a report that the parties are not traceable. We further noticed that Shri Pravin Aggarwal himself admitted in his statement recorded u/s 131 that these companies are involved in for giving entries to the beneficiaries on the basis of commission. When all these evidences clearly shows that these are paper companies involved in providing accommodation entries, the Ld. CIT(A) was erred in deleting the addition made by AO towards loans received from above companies only for the reason that they have furnished confirmations letters along with their financial statement. We, therefore, are of the opinion that payment through banking channel or furnishing confirmations is not sufficient enough to discharge the onus cast upon u/s 68, when the parties himself admitted that they are engaged in providing accommodation entries. Under normal circumstances when identity is proved, it is for the AO to go behind creditors to ascertain true nature of transactions but credits cannot be considered as undisclosed income of the assessee. In a case like hawala operators, mere furnishing proof of identity or certain documents is not sufficient enough to come out the provisions of section 68 of the Act. In this case, the AO has brought out clear fact to the effect that those companies are paper companies involved in providing accommodation entries. Therefore, we are of the considered view that the Ld. CIT(A) was erred in deleting additions made by the AO towards loan taken from of M/s Pushpanjali Commotrade Pvt.

Ltd. and M/s Radiant Merchandise Pvt. Ltd.. Accordingly, we reverse findings of the Ld. CIT(A) and upheld additions made by AO.

11. Coming to loans taken from M/s Chandimata Management Pvt. Ltd. and M/s Max Worth Project Pvt. Ltd.. The AO has recorded categorical finding in assessment order that Shri Umesh Singh, director of the above company, in his statement recorded u/s 131 had admitted that he was dummy director only working on the instruction of Shri Pravin Aggarwal. He further admitted that these companies are just paper/shell companies used for Jama-Kharchy/shell/entry business. Further, in his statement on oath u/s 132(4) of the Act, dated 10/11/2012, Shri Pramod Ramdin Sharma has clearly admitted that M/s Chandimata Management Pvt. Ltd. and M/s Max Worth Project Pvt. Ltd. were providing accommodation entries. When all these evidences undoubtedly prove the fact that they are entry providers, the Ld. CIT(A) was erred in deleting the additions on technical ground by stating that no additions could be made u/s 68 of the Act when the credit was brought out from previous financial year. No doubt, the Hon'ble Delhi High Court in the case of CIT vs Usha Stud Agricultural Farms Ltd. (301 ITR 384)(Del.) held that credit balance appearing in the accounts of the assessee, does not pertain to the year under consideration, no additions could be made u/s 68 of the Act. The ratio laid down by the Hon'ble Delhi High Court is squarely applicable in a case where the assessee has taken loans from genuine parties which were verified in the previous financial year, but for changed circumstances, the AO has taken different view to make additions u/s 68 of the Act, then no additions could be made when the credit has been brought out from previous

financial year. In this case, it is undoubtedly proved that those companies are hawala operators involved in providing accommodation entries. When facts gathered during the course of assessment proceedings clearly proves that these are accommodation entry providers, the ratio laid down by Hon'ble Delhi High Court in above case cannot be applied to delete additions. Accordingly, we are of the considered view that Ld. CIT(A) was erred in deleting additions made towards loans from M/s Chandimata Management Pvt. Ltd. and M/s Max Worth Project Pvt. Ltd. Hence, we reverse findings of the Ld. CIT(A) and sustained additions made towards loan taken from above two companies.

12. Coming to other unsecured loan, received from certain individuals. The Ld. CIT(A) has recorded categorical finding that the assessee has filed various details including confirmation letters from the parties along with their ITR copies, bank statements, etc. The Ld. CIT(A) further observed that all the transactions were routed through account payee cheques. The source of receipt from banking channel clearly established genuineness of the credit which is reflected in the books of accounts, therefore, he came to conclusion that the assessee has discharged initial onus cast upon u/s 68 of the Act by proving identity of the creditors by giving their complete address, PAN and copies of assessment orders where ever readily available. The assessee also proved the capacity of the creditor by showing the amounts received through banking channels. When the identity and creditworthiness have been proved, merely for the reason that non-appearance of parties before the AO, no additions could be made u/s 68 of the Act. Therefore, he came to conclusion that the AO was not justified in making additions towards loans taken from

Vikash Sharma, Umarao Prasad and other parties. The Ld. CIT(A) further observed that wherever the assessee could not furnish even confirmation letters from the parties, especially in the case of Sonal S. Agarwal, Suresh Reengusia and Naresh Jain, he confirmed additions made by AO to the extent of Rs.3,43,000/-. The Ld. DR failed to controvert the findings recorded by the Ld. CIT(A) in light of evidences filed by the assessee in respect of above parties. On the other hand, Ld. AR for the assessee has also failed to file further evidence in respect of three parties, where the Ld. CIT(A) has confirmed addition to justify loans taken from the above parties. Therefore, we are of the considered view, there is no error in the findings recorded by the Ld. CIT(A) in respect of unsecured loans taken from these parties and accordingly we are inclined to uphold the findings of the Ld. CIT(A) and rejected ground taken by the Revenue as well as the assessee.

13. The next issue that came up for consideration from assessee's appeal is ad-hoc disallowance of certain expenses. The AO has disallowed 10% expenses incurred under the head conveyance and other expenses on the ground that assessee could not produce bills or other evidences and also large part of such expense have been incurred in cash. It is the contention of the assessee that expenses incurred under the head conveyance and other expenses are supported by proper evidences, therefore, merely for the reason that certain expenses have been incurred in cash, ad-hoc disallowance cannot be made.

14. Having heard both sides, we find that the Ld. CIT(A) has recorded categorical finding that the assessee neither submitted bills and other evidences nor address of person to whom such payments were made. Further, the assessee failed to prove above expenses are incurred wholly exclusively for the purpose of business of the assessee. Before us no change in facts. The assessee has failed to provide any evidence to prove that findings of facts recorded by the Ld. CIT(A) are incorrect. Therefore, we are of the considered view that the Ld. CIT(A) was right in confirming additions made by AO towards ad-hoc disallowance of expenses. Hence, we are inclined to uphold findings of the Ld. CIT(A) and reject ground taken by the assessee.

15. In the result, the appeal filed by the assessee is dismissed and appeal filed by the Revenue is partly allowed.

Order pronounced in the open Court on 01/03/2019.

Sd/-

Sd/-

(Saktijit Dey)

(G. Manjunatha)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 01/03/2019

Shekhar, P.S./नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai