

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI N.K.SAINI, VICE PRESIDENT AND
SHRI A. T. VARKEY, JUDICIAL MEMBER**

**ITA No.336/Jodh/2018
(ASSESSMENT YEAR-2014-15)**

Income-tax Officer, Wd-1(1), Jodhpur, Rajasthan	Vs	M/s. Ashok Transport Co. Udai Service Station, Kudi Bhagtasni, New Pali Road, Jodhpur, Rajasthan (PAN: AAVFA0055E)
(Appellant)		(Respondent)

Appellant By	Sh. P.K. Singi, DR
Respondent By	Shri Rajendra Jain, Advocate
Date of hearing	08.05.2019
Date of Pronouncement	10.05.2019

ORDER

PER A. T. Varkey, J.M.

This is an appeal preferred by the Revenue against the order of Ld. Commissioner of Income Tax (Appeals)-1, Jodhpur dated 18.04.2018 for AY 2014-15.

2. The first ground of appeal of the revenue is as under:

"1. The CIT(A) has erred in law and in facts in deleting the addition of Rs.78,22,863/- made by AO on account of unexplained payable sundry creditors ignoring the fact that identity, creditworthiness and genuineness of the transactions had not been proved during assessment proceedings."

3. Brief facts of the case are that during the assessment proceedings the AO noted that the assessee has submitted only list of sundry creditors which was shown *as payable* in the audit report of Rs.78,22,863/-. According to the AO, the assessee has failed to give supporting documentary evidence i.e. copy of ITR, capital account, Balance Sheet, bank statement to prove the creditworthiness, identity and genuineness of the sundry creditors which is shown as payable in the audit report. According to AO, the assessee also failed to produce cash book, ledger, bilty, registered log book etc. and in the absence of books of account and relevant documents it could not be verified the veracity of the outstanding shown as creditors in the Balance Sheet and, therefore, the AO made an addition of Rs.78,22,863/- on account of unexplained payable sundry creditor u/s. 68 of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same. Aggrieved, the assessee is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. It was brought to our notice that during the assessment proceedings the assessee has explained not only before the AO but also before the JCIT, Range-1 that the outstanding amount of Rs.78,22,863/- is in respect of outstanding liability shown in respect of freight payable as on 31.03.2014 and it was clearly brought to the notice of the authorities below that the outstanding amount to its parties are not in the form of credits or loan at any given point of time. It was also brought to the notice of the authorities below that the outstanding amount/balances were in the nature of amount due against truck owners who had transported the goods for the assessee; and when the assessee receives the payments from principal on behalf of such transferee it is paid to the truck owners. It was brought to our notice that the assessee is only a conduit for disbursing the freight to individual truck owners and that the truck owners got the entire freight received from the respective

parties after deducting booking charges of each booking which is the assessee's income from the transportation. Therefore, according to the assessee, the temporary balance in the account of the above parties for a nominal period cannot be termed as cash credit. It was also brought to our notice that the entire details of the trade creditors (freight payable as on 31.03.2014) and list showing names of the truck owners, truck number, G.I.R. No., PAN of the Truck owners, amount of freight payable and date on which same was paid by the assessee were placed on record of the AO & JCIT during assessment proceeding itself. However, the AO has turned a blind eye on these documents and has wrongly stated that no documents were produced and on that pretext has made the addition. We note that during appeal the Ld. CIT(A) appreciating the aforesaid facts has rightly observed that these creditors are trade creditors as these payments are made on regular basis after these truck owners deliver the goods as per instruction of assessee. On this issue, we note that the Special Bench of this Tribunal comprising of five Members in the case of Manoj Agarwal Vs DCIT reported as 113 ITD 377 has explained by the Tribunal as under:

“ The argument that section 68 is not applicable where an asset is sold and the sale proceeds are credited in the books of account cannot be accepted having regard to the settled legal position that it is always for the assessee to explain the nature and source of the sums credited in his books of account. The section does not recognize any distinction between amounts credited in the books as gifts or loans or pure receipts, on the one hand, and amounts credited as sale proceeds. In either case, when called upon, the assessee is bound to explain the nature and source of the amounts credited. There may be a few exceptions to this general rule. For example, in the case of credit purchases, the account of the supplier is credited with the amount payable. In such a case, where the purchase is allowed as expenditure, it may not be possible for the Assessing Officer to again call upon the assessee to prove the nature and source of the credit, for the reason that the purchase itself was allowed as expenditure only on being satisfied that it was a genuine purchase on credit. Implicitly, the nature and source of the amount credited has also to be taken as having been explained satisfactorily. Another possible argument can be that in such a case, the amount credited is not a cash credit in the sense that some monies have been received by the assessee, but the credit represents a mere liability payable by the assessee in future. Under accounting principles, a liability can only be brought into account by making a credit entry in the books of account in favour of the person to whom the money is payable. Thus, there is marked difference between a credit representing liability payable by the assessee and a credit representing monies received from another person. It is because of this distinction,

a liability for purchase which has been credited in the account of the supplier cannot be added under section 68 of the Act, more so when the purchase has been accepted as genuine and a deduction therefor has been allowed. In all other cases including the case of a credit representing the sale proceeds of an asset, the provisions of section 68 are applicable and it is for the assessee to prove satisfactorily the nature and source of the monies.....”

5. From a bare reading of the aforesaid dictum of law as made by the Special bench, we note that there is a difference between credit representing a liability payable by the assessee and a credit representing monies received from another person. It is because of this distinction a liability which arises as a consequence of any purchase resulting in a corresponding credit to the account of the supplier cannot be added u/s. 68 of the Act, more so, when the purchase has been accepted as genuine. In other cases involving actual receipt of money, the provisions of sec. 68 are applicable and then the onus is on the assessee to prove satisfactorily the nature and source of the monies. In the present case we note that the transaction between the assessee and the truck owners is a liability which assessee had to pay arising from the trade transaction of Rs.78,22,863/- which is reflected under the head 'other payable' has arisen as a consequence of the aforesaid trade transaction and the sum of Rs.78,22,863/- represented the liability to pay the truck owners by the assessee once he receives from the principal. We note the entire turnover on transportation of Rs.11,70,63,030/- has been accepted by the AO as genuine, so question of addition of the sum of Rs.78,22,863/- which represented the liability to pay the truck owners by assessee cannot be added u/s. 68 of the Act. Therefore, we do not find any infirmity in the order of the CIT(A) and we agree that section 68 of the Act was wrongly invoked in the present case in respect of the outstanding liability payable by the assessee to the truck owners.

6. Similar view was also taken by the Hon'ble Delhi High Court in the case of CIT us. Ritu Anurag Agarwal reported as 2009 (7) TMI 1247 wherein the Hon'ble High Court held:

"This finding of AO remained undisturbed before the CIT(A) as well and has been accepted by the ITAT. Proceeding on this basis, the ITAT observed that the sales, purchases as well as gross profits as disclosed by the assessee have been accepted by the Assessing Officer. Once this is accepted, we are of the opinion that the approach of the ITAT was correct inasmuch as the Assessing Officer did not consider this aspect while making additions of sundry creditors under Section 68 of the Income Tax Act. As there was no case for disallowance for corresponding purchase, no addition could be made under Section 68 inasmuch as it is not in dispute that the creditors outstanding related to purchases and the trading results were accepted by the AO. We are, therefore, of the opinion that no substantial question of law arises for consideration in this case. The appeal is accordingly dismissed. "

7. We also rely on the decision of the Hon'ble Allahabad High Court in the case of CIT -vs.- Pancham Das Jain (205 CTR 444) wherein it was held as under:

6. We have heard Sri Shambhoo Chopra, learned standing counsel for the revenue.

7. He submitted that as the respondent-assessee was unable to produce the alleged creditors the provisions of section 68 of the Act was squarely attracted in the present case and the assessing authority has rightly added the two amounts at the hands of the respondent-assessee. According to him section 68 of the Act also covers up the case of purchases made on credit.

8. The submission is misconceived. The Tribunal has recorded a categorical finding of fact based on appreciation of materials and evidence on record that the Assessing Officer had accepted the purchases, sales as also the trading result disclosed by the respondent-assessee. It had recorded a finding that the aforesaid two accounts represented the purchases made by the assessee on credit and, therefore, the provisions of section 68 of the Act could not be attracted in the present case. We fully agree with the view taken by the Tribunal on this issue, inasmuch as, on the basis of the findings recorded by it that these two amounts represented purchases made by the respondent-assessee on credit and the purchases and sales having been accepted by the department, the question of addition of the aforesaid two amounts under section 68 of the Act did not arise inasmuch as the provisions of section 68 of the Act would not be attracted on the purchases made on credit.

9. We, accordingly, answer the question referred to us in affirmative, i.e., in favour of the assessee and against the revenue. There will be no order as to costs.”

8. We also rely on the findings recorded in the decision of the Hon'ble Punjab High Court in the case of PCIT Vs Sh. Kulwinder Singh 2017 (7) TMI 957 wherein the Hon'ble Court held as under:

4. A perusal of the order passed by the Tribunal shows that the assessee had shown numerous sundry creditors along with details in his balance sheet. The assessee being a road Contractor received material for the construction of the road. The amounts in question represented purchases made on credits. According to Section 68 of the Act, where any sum is found credited in the books of account of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source of the same or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, the sum so credited may be charged to income tax as the income of the assessee of that previous year. It has been categorically recorded by the Tribunal that the provisions of Section 68 of the Act were clearly not attracted to the amount representing purchases made on credits. Further the trade creditors in the earlier gears i.e. assessment years 2007-08 and 2008-09 stood accepted in scrutiny assessments. Thus, the genuineness of expenses under consideration could not be doubted. The relevant findings recorded by the Tribunal in this regard read thus:-

"Having heard the rival contentions in the light of the material available on record, it is seen that in para-3 of the assessment order, the AO observed that the assessee had shown numerous sundry creditors along with details as was available from the examination of the assessee's books of account vis-a-vis his balance sheet. The assessee is a road contractor. He received material for the construction of the road. The amounts in question represented purchases made on credits. The provisions of Section 68 of the Act are clearly not attracted to amount representing purchases made on credits, as is also held in 'CIT Vs. PanchamDass Jain', 205 CTR 444 (All). The assessee raised this issue by Way of written submissions (APB 37 to 160, relevant portion at para-5, on page 43) dated 10.05.2014 filed before the CIT(A). The ld. CIT(A) has, however, not addressed this grievant at all and merely upheld the addition made under section 68 of the Act On behalf of the assessee, a comparative chart of net profit rate of the assessee for the assessment years 2005-06 to 2011-2012 has been filed before us. In the earlier years also, no such addition was made. For the assessment Year 2007-08, under scrutiny assessment, the assessment was made at 8%. The position remained much the same for the assessment year 2008-09. The year under consideration is assessment year 2009-10. The material supplied to the assessee by the concerned department is part of the assessee's turnover. The net profit rate of the assessee for the year under

consideration u)as in line with the preceding assessment year. Further, the trade creditors in the earlier years, i.e. assessment years 2007-08 and 2008-09 stands accepted in scrutiny assessments. Thus, the genuineness of the expenses under consideration cannot be doubted. Moreover, the genuineness of the expenditure was not at all called into question. It was only that no-verification thereof raised doubt of the incurrence thereof. Then, even if the credits concerning the purchases and transportation of the material are not to be accepted, as discussed, still, the provisions of Section 68 of the Act cannot be invoked to make the addition.”

5. Learned counsel for the appellant-revenue has not been able to show that the findings recorded by the Tribunal are illegal or perverse or based on misreading of any material onrecord, warranting interference by this Court. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.”

9. In the light of the above judicial precedents, we confirm the order of the Ld. CIT(A) that the addition u/s. 68 of the Act was erroneously made by AO against the sundry creditors of Rs.78,22,863/- to whom the assessee had to pay the truck owners which is a liability for delivering goods and the Ld. CIT(A) has rightly deleted the same. Therefore, we dismiss this ground of appeal of the revenue.

10. Second ground of appeal of the revenue is against the action of the Ld. CIT(A) in deleting the addition of Rs.11,86,100/- on account of showing low bilty charges.

11. Brief facts of the case are that the AO noted that after receiving direction from the JCIT, Range-1, Jodhpur he asked the Ld. AR in respect of certain details about bilty charges received by the assessee. According to the AO, it was asked specifically asked as to whether bilty charges is inclusive in the receipt from the company or whether it is collected separately from the truck owners. According to AO, the Ld. AR of the assessee failed to give reply on this issue and the written reply given by the assessee was found inadequate and improper and taking note that the assessee failed to give the list of bilty received amount of Rs.11,55,100/-, the AO estimated the bilty charges received during year at 2% of Rs.11,70,63,030/- which comes to Rs.23,41,260/- and since the assessee has already declared bilty charges of Rs.11,55,100/- the difference of Rs.11,86,160/- on account of showing low biltly

charges was added in the hands of the assessee. Aggrieved, the assessee preferred appeal before the Ld. CIT(A), who was pleased to delete the same. Aggrieved, the revenue is before us.

12. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO had asked the Ld. AR of the assessee whether the bilty charges was inclusive in the receipt from the company or whether it is collected separately from the truck owner and since the Ld. AR of the assessee failed to give satisfactory answer, he had proceeded to make the addition as aforesaid. We note that the Ld. CIT(A) has called for the assessment records and the Ld. CIT(A) has made a finding of fact that bilty charges were inclusive in the receipt from the company, which finding of fact has not been challenged by the Revenue, so, this finding of fact by Ld. CIT(A) crystallises. Moreover, we note that the assessee had produced the books of account during the assessment proceedings. However, the AO for reasons best known to him has stated that the assessee failed to produce any books of account. It was submitted before us that during the assessment proceeding the books of account were also produced before the JCIT, Range-1, Jodhpur in the proceedings u/s. 144A of the Act and it was also brought to our notice that the JCIT, Range-1 after due verification from the documentary evidence, material information submitted by the assessee had given limited directions to the AO for verification. We note that the assessee had already declared bilty charges to the tune of Rs.11,55,100/- which is 0.98% of the total receipt. It was brought to our notice that in the previous assessment year 2013-14 when the freight receipt was Rs.8,10,32,496/- bilty charges was Rs.8,65,025/- which was 1.06% whereas in this assessment year 2014-15 freight receipt was Rs.11,70,63,030/- bilty charges was reflected by the assessee at Rs.11,55,100/- which is 0.99%. We note that since the assessee has produced all the books of account etc. without finding any defect or irregularities therein, the AO ought not to have gone for estimation of income, without rejecting the books as per the procedure prescribed u/s. 145(3) read with

sec. 144 of the Act, and, therefore, the action of the AO was arbitrary in nature and so vitiated, therefore, the action of the Ld. CIT(A) who after due verification made by him does not require any interference from our part and, therefore, we confirm the action of Ld. CIT(A) and dismiss this ground of appeal of revenue.

13. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 10th May, 2019

Sd/-

(N.K. SAINI)
Vice President

Sd/-

(A. T. Varkey)
Judicial Member

Dated : 10.05.2019

“J.D. Sr. PS.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, DR, ITAT, Jodhpur
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order
सहायकपंजीकार/ Assistant Registrar