

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH ' G', NEW DELHI)**

**BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER  
AND SHRI KULDIP SINGH, JUDICIAL MEMBER**

**I.T.A. No. 3432/Del/2015**

**Assessment year : 2006-07**

Sh. Rakesh Kumar Bhargava, Vs. ITO, Ward 19(2),  
Prop. M/s. Mapytron Systems, New Delhi  
17, Narinder Bhawan,  
448, Ring Road, Azadpur  
Delhi – 110 033

**GIR / PAN:AAGPB6366G**

(Appellant)

(Respondent)

Appellant by : Ms. Ira Gupta, Adv.  
Respondent by : Shri Sujit Kumar, Sr. DR

Date of hearing : 24.08.2015  
Date of pronouncement : 17.09.2015

**ORDER**

**PER KULDIP SINGH, JM:**

Appellant assessee, by filing the present appeal has sought to set aside the impugned order dated 29.08.2014 passed by Ld. CIT(A) XXII, New Delhi for the Assessment Year 2006-07 on the sole effective ground that “Ld. CIT(A) XXII has erred in holding that credit of Rs.9,14,516/- (Rupees Nine Lac, Fourteen Thousand Five Hundred Sixteen Only) from 11 sundry creditors were bogus and thereby upheld the addition made by the A.O. of Rs.9,14,516/-.

2. The brief facts of the case are: during the processing of income tax return filed by the assessee for the Assessment Year 2006-07, declaring an income of Rs.1,38,320/-, the case was put under scrutiny through CASS and consequently, notice u/s 143(2) dated 19.10.2007 was issued. The assessee attended the assessment proceedings from time to time and claimed his sundry creditors to the following effect:-

1	M/s. Mayur Electronics	Rs.28,159/-
2	M/s. Verma Engineering Works	Rs.1,59,955/-
3	M/s. S.L.B. Exports Ltd.	Rs.48,430/-
4	M/s. J.K. Tube Co.	Rs.24,248/-
5	M/s. N.K.A. RCC Pipes Sup.	Rs.2,57,283/-
6	M/s. Ved Generators	Rs.1,49,377/-
7	M/s. Katyal B.M.S.	Rs.18,750/-
8	M/s. R. K. Enterprises	Rs.83,326/-
9	M/s. Natraj Sanitary & P	Rs.68,354/-
10	M/s. Walia Fabricators	Rsa.72,368/-
11	M/s. Rajni Build. M. Sup.	Rs.4,500/-
		Rs.9,14,750/-

3. To ascertain the genuineness and creditworthiness, the assessee was required to furnish names, complete address and amount of creditors vide questionnaire dated 07.01.2008. The assessee filed his reply dated 29.01.2008 but failed to furnish requisite information. Then, vide letter dated 01.07.2008, the assessee was asked to furnish confirmation of

creditors, which he has furnished pertaining to the period 1998-99 to 2001-02 and further submitted that all these payments are pending since 2000-01 due to delay of payment from M/s. NBC Corpn. Ltd. In order to verify the claim made by the assessee, notices u/s 133(6) of the Act were issued for confirmation from the parties concerned. Pursuant to the notices issued u/s 133(6), M/s. J. K. Tube Co. and M/s. S.L.B. Exports Ltd. have denied to have any business transaction with the assessee during the relevant period of 2005-06 and 2006-07. However, the assessee has filed confirmation regarding following sundry creditors:-

1	M/s. Mayur Electronics	Rs.28,159/-
2	M/s. Verma Engineering Works	Rs.1,59,955/-
3	M/s. N.K.A. RCC Pipes Sup.	Rs.2,57,283/-
4	M/s. Ved Generators	Rs.1,49,377/-
5	M/s. Katyal B.M.S.	Rs.18,750/-
6	M/s. R. K. Enterprises	Rs.83,326/-
7	M/s. Natraj Sanitary & P	Rs.68,354/-
8	M/s. Rajni Build. M. Sup.	Rs.4,500/-

4. The assessee has also furnished some copies of bills in support of claim of creditors but the copies of bills pertaining to M/s. Ved Generators, Sumit Katyal and N. K. Agarwal do not reflect charging of interest nor any such instruction have been given. Consequently, A.O. arrived at the conclusion that Inspector of Income Tax of the concerned ward be deputed for inquiry report of M/s. R, J, Enterprises Verma Engineering works, Natraj

Sanitary and Hardware Paints and Ved generators and the same sundry creditors are not existing at the given address. Consequently, the A.O. arrived at the conclusion that there is no liability of assessee towards the claimed sundry creditors and the claim of Rs.9,14,750/- is a bogus liability and liability which has ceased to exist. Ld. CIT(A) vide impugned order, upheld the order passed by the A.O. Feeling aggrieved, the appellant, has come up before Tribunal by way of the present appeal.

6. Ld. A.R. for the assessee challenged the impugned order by contending inter alia that A.O. as well as Ld. CIT(A) have erred in holding that all the eleven sundry creditors as claimed by the assessee, are not existing and the entries claimed by the assessee are bogus one; that the A.O. has not filed any affidavit to the effect that the assessee has failed to produce such sundry creditors, therefore, the confirmation letters as detailed at page 5 of the impugned order have been wrongly treated as stereotyped; that the assessee has not been given sufficient time to file reply nor it was asked to produce such sundry creditors nor he was confronted with the confirmations filed by sundry creditors, and prayed for setting aside the impugned order.

8. On the other hand, Ld. D.R. relied upon the order of A.O. as well as Ld. CIT(A) and contended that since out of eleven sundry creditors claimed by the assessee, two were found to be not existing and confirmations made by eight sundry creditors were found to be stereotyped, nor any material has been placed on record to support the confirmations, the assessee has no liability towards the said eleven creditors and the claim of Rs.9,14,750/- was bogus one and the A.O. has rightly made the addition of Rs.9,14,750/- and prayed for dismissal of the present appeal of the assessee.

9. Undisputedly, M/s. J. K. Tubes and S.L.B. Exports Ltd. have denied the claim of transaction with the assessee whereas, remaining nine parties were called upon to supply the information during assessment proceedings and remand proceedings u/s 133(6) of the Act. However, the notices sent to them have been received back unserved and without compliance. For ready reference, the outcome of the notices issued to the assessee is reproduced as under:-

S.No.	Name & address	status
1	Shri Yrav Dewal Prop. M/s. Natraj Sanitary Hardware & Paints, Miyawali Nagar, New Rohtak Road, Delhi-110 087	Returned back unserved by the postal authorities.
2	Shri R. K. Aggarwal Prop. M/s R K Enterprises 2nd Floor, 1528, Bhagirath Palace Delhi-110006	Returned back unserved by the postal authorities.
3	Shri Sumit Kr. Katyal Prop. M/s S K Katyal B M Suppliers Derawal Nagar, G. T. Road, Delhi 110009 And 2/21, Roop Nagar, Delhi-110007	Returned back unserved by the postal authorities.
4	Shri Ved Prakash Prop. M/s Ved Generators Shop No.9, New Market, Opp. OBC Nangloi, Delhi- 110041	Neither letter received back nor any compliance to the letter.
5	Shri Madan Lal Prop. M/s Rajni Building Material Supplier Badli Village, Outer Ring Road, Delhi.	Returned back unserved by the postal authorities.
6	Shri Narinder Kumar Aggarwal Prop. M/s N K Aggarwal A-80 DDA Colony, Khayola, Delhi-110018.	Neither letter received back nor any compliance <b>to the letter.</b>
7	Shri Mohan Lal Verma Prop. M/s Verma Engineering Works Flat No. 91, Pocket B-5, Sector-18, Rohini, Delhi- 110085.	Neither letter received back nor any compliance to the letter.
8	Shri Akash Bhargava Prop.M/sMayur Electronics & Electricals New Railway Road, Gurgaon-122001.	Returned back unserved by the postal authorities.

9	Shri H S Walia Prop. M/s Walia Steel Works & Steel by the Fabricators, Palam Vihar, Polom-Delhi Road, Gurgaon, Haryana	Returned back unserved by the postal authorities.
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10. We have heard authorized representatives of the parties to the appeal and gone through documents placed on record in the light of the facts and circumstances of the case.

11. Keeping in view the undisputed fact that the assessee has placed before Assessing Officer the confirmations made by his nine sundry creditors as required u/s 133(6) of the Act, documents relied upon by the parties and submissions made before the Bench, we are of the considered view that Ld. CIT(A) has erred in passing the impugned order dated 29.08.2014 in affirming the addition of Rs.9,14,750/- made by the A.O. vide order dated 16.12.2008 for the following reasons:-

- i) that both, the A.O. as well as Ld. CIT(A) being judicial authorities, were under obligation to adhere to the rule of natural justice by providing opportunity of being heard to the assessee to produce nine sundry creditors whose confirmations have been duly placed on record during assessment / remand proceedings;
- ii) that when the assessee has discharged its onus u/s 68 of the Act by providing confirmation letter from the sundry creditors, the onus stands shifted to the A.O. to controvert the same by bringing cogent evidence on record, that the said parties are not existing and their creditworthiness and genuineness is highly doubtful. The A.O. has rather summarily dismissed the confirmation letters on the sole

ground that the same are stereotyped and has never given findings that the confirmation filed by the assessee in respect of the nine sundry creditors are fake one and of non existing entities;

iii) that no doubt Inspector, income tax deputed by the A.O. reported that M/s. R. K. Enterprises, Natraj Sanitary and Verma Engineering works are non-existing, but the assessee has never been provided opportunity to produce them, or to fill their latest addresses but outrightly, ignored the confirmations and business transactions submitted by the assessee;

iv) that notices sent to nine parties detailed at page 20 of the impugned order are shown to have been received back unserved but thereafter, no opportunity has been provided to the assessee to provide their latest address or to produce the parties before the A.O. nor any effort has been made to serve them through substitute service;

v) that confirmation filed by assessee pertaining to nine parties / sundry creditors detailed at page 20 of the impugned order ought not to have been rejected merely on the ground that the letters sent to them by the A.O. have been received back unserved except with thorough probe;

vi) that it is abundantly clear from the facts on record that A.O. has failed to verify confirmations filed by the assessee rather rejected the same on the basis of conjectures and surmises.

12. In view of what has been discussed above, the impugned order dated 29.08.2014 passed by Id. CIT(A) affirming the addition of Rs.9,14,750/- made by A.O. vide order dated 16.012.2008 is not sustainable in the eyes of

law, hence, hereby set aside. Consequently, the case is restored to the file of A.O. for verification of confirmations filed by assessee by providing opportunity of being heard to the assessee.

12. In the result, appeal filed by the assessee is allowed for statistical purposes.

13. Order pronounced in the open court on 17<sup>th</sup> Sep., 2015.

Sd./-

( N. K. SAINI)  
ACCOUNTANT MEMBER

Date: 17.09. 2015

Sp

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

Sd./-

(KULDIP SINGH)  
JUDICIAL MEMBER

By Order  
(ITAT, New Delhi).

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	24/8		Sr. PS/PS
2	Draft placed before author	25/8, 4,7,10/9		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS	17/9/15		Sr. PS/PS
6	Kept for pronouncement	17/9		Sr. PS/PS
7	File sent to Bench Clerk	17/9		Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			