

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'C', KOLKATA
(Before Shri M. Balaganesh, A.M. & Shri S.S.Viswanethra Ravi, J.M.)**

ITA No. 1442/Kol/2012 : Asstt. Year : 2007-2008

I.T.O.,Ward-48(1) Kolkata	Vs	Sri Puspal Kumar Das (PAN: AIEPD 1515H)
(APPELLANT)		(RESPONDENT)

**Department by : Shri Uday Kr. Sardar, JCIT
Assessee by : Shri Soumitra Choudhury, Advocate**

Date of Hearing : 15.10.2015	Date of Pronouncement : 10-12-2015
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ORDER

Per Shri S.S.Viswanethra Ravi, J.M.

This is an appeal preferred by the Revenue against the order dated 18.06.2012 passed by the CIT(Appeals)-XXX, Kolkata in Appeal No.239/CIT(A)-XXX/Wd-48(1)/2009-10 for the assessment year 2007-08 framed under section 143(3) of the I.T.Act.

2. The Revenue has raised the following grounds before us.

“01. That the Ld. CIT(Appeal) has erred in law as well as on facts in deleting the addition made under the head ‘bogus purchase’ of Rs.1014942 by holding that where sale is genuine, purchase cannot be bogus, whereas no stock register and quantity wise details of purchase and sale is not available.

02. That the Ld. CIT(Appeal) has erred in law as well as on facts in deleting the addition made under the head ‘cessation of liability’ on account of creditors of Rs.1667546 who could not be traced out by the Assessing Officer and even the assessee.”

3. Ground no.1 of the appeal by the Revenue is against addition of Rs.10,14,942/- as bogus purchases. Brief facts relating to this ground are that the addition has been discussed in para (4) of the Assessment Order and from the discussion made by the A.O., it is observed that during the course of assessment proceedings, the A.O. had issued notices under section 133(6) to various parties in order to verify their transactions of sales by them to the assessee which will be corresponding Purchases by the Assessee. The AO noticed certain discrepancies which could not be satisfactorily explained by the Assessee. The discrepancies noticed by the AO was as under:

TABLE-8:

SI. No.	Name of the Party	Purchases shown or Purchase discrepancy (in Rs.)	Reference
1	M/s.R.K. Dutta & Company	72,001	TABLE-1,SI.No.1
2	M/s.Jayshree Trading Co.	32,904	TABLE-1, SI.No.2
3	M/s.Binod Kumar Agarwala & Co.	71,989	TABLE-1, SI.No.3
4	M/s. Kamal Statiner Stores	30,194	TABLE-1, SI.NoA
5	M/s. Chowdhury Hardware Stores	93,300	TABLE-1, SI.No.5
6	M/s. R. K. Podder.& Bros.	1,16,744	TABLE-1, SI.No.6
7	M/s. Sreema Hardware	4,000	TABLE-1, SI.No.7
8	M/s. Gupta Trading Concern	17,000	TABLE-1, SI.No.8
9	M/s. Mritunjoy Treeding Co.	56,190	TABLE-1, SI.No.9
10	M/s. Chatterjee Kundu & Co.	2,848	TABLE-5, SI.No.2
11	M/s. Mehta Enterprise	1,01,455	TABLE-7,SI.No.1
12	M/s. Combat Chemicals Pvt. Ltd.	1,24,618	TABLE-7, SI.No.2
13	M/s. Raj & Raj Pvt. Ltd.	<u>2,91,699</u>	TABLE-7,SI.No.3

TOTAL 10,14,942”

The AO noticed that on Inspector's visit at the addresses in respect of Sl. Nos. 1 to 9, given by the assessee, the parties could not be traced. In regard to Sl. No. 10 and 11, the parties have shown purchases by the assessee lesser by Rs.2,848/- and Rs.1,01,455/- respectively. In regard to Sl.Nos.12 to 13, the notice under section 133(6) could not be served on the parties at the addresses given by the assessee.

4. After considering the explanation provided by the assessee, the A.O. held that these transactions totaling to Rs.10,14,942/- were bogus and he based his findings on the following observations :

“1. It is seen that no specific details or explanations have been offered in respect of discrepancies, mentioned above. Therefore, the said explanation is treated as very general in nature.

2. The assessee is not claiming that the purchases were made from the genuine purchasers. He received purchase bills from different entities on good faith, as submitted. It has not been specified how the orders were placed, how the goods were received and from whom the bills were received. He has also admitted that it is not possible for him to prove that the purchasers or the addresses mentioned on the bills existed during the period under consideration. The onus is on the assessee to substantiate every expenditure claimed and every liabilities shown by him. The assessee has failed to discharge the onus;

3. Books of accounts for A. Y.2007-08 were produced only once during the course of, hearing. The discrepancies found during verification, as mentioned in TABLE -3 above could not be explained. The said books of accounts have not been produced for the second time even after repeated reminders.

4. The Books of accounts for A.Y.2008-09 have not been produced also, after repeated reminders. The assessee has not shown any intention to submit specific clarification in respect of findings observed during the proceedings.”

4. Before the Id. CIT(A), it was submitted that the above addition had been made as bogus purchases by the A.O. without considering the fact that the goods were either sold to CESC Ltd. which is the only party to whom the assessee had supplied goods and that these goods were appearing in the closing stock as per Stock Register and without these purchases it would not have been possible for the assessee to sell these goods. It was further submitted that that addition was made without giving adequate opportunity to the assessee.

5. The Id. CIT(A) called for a remand report from the AO. The CIT(A), after considering the submissions of the assessee, remand report of the AO and assessee's rejoinder and other evidences on record, gave his findings.

5.1 The CIT(A) was of the view that the AO considered purchases as bogus on the ground that purchases were made from the aforesaid parties in two year i.e. 2006-07 and 2007-08 totalling to Rs.12,62,135/- against which only a cash payment of Rs.16,500/- was made in 2007-08. The remaining payments were made entirely in cash in the

subsequent year i.e. A.Y. 2008-09, after which there was no transaction with these parties. The main contention of the assessee against the above was that these are genuine purchases against which supplies have been made by it to CESC Ltd. Further that the purchased items have been entered in the Stock Register of the assessee and therefore without purchases no sales could have been made.

5.2 The assessee has also provided the details of the items purchased from these parties and supplied to M/s. CESC Ltd. In the Remand Report, the A.O. has acknowledged that the entries for (cash payments were made of the accounts for these parties and all these accounts were squared up in Financial Year ending on 31.03.2008. In respect of the remaining four parties out of the above mentioned list, the A.O. has made addition on the ground of non-reconciliation of the accounts with the assessee. The same are discussed as under:

(i) Discrepancy of Rs.848/- in respect of account of M/s. Chatterjee Kundu & Co. wherein purchases shown by the party were of Rs.10,61,354/- as against shown by the assessee of Rs.10,64,202/-.

(ii) Discrepancy of Rs.1,01,455/- in the case of M/s. Mehta Enterprise which has shown sales of Rs.1,642/- against Rs.1,02,597/- shown by the assessee.

(iii) M/s. Combat Chemicals Pvt. Ltd. and M/s. Raj & Raj Pvt. Ltd. in respect of whom it is claimed that notices u/s.133(6) could not be served as the notices were returned un-served by the Postal Department.

5.3. The CIT(A) was of the view that the addition has been made by the A.O. taking the dual grounds of the transactions not capable of being verified as the Inspector could not serve the notices u/S.133(6) and that nominal payments have been made against purchases in two year i.e. A.Y.2006-07 and 2007-08 whereas almost the entire outstanding balances have been paid in cash by 31.03.2008. In this regard, while the transaction could not be verified as these parties were not traceable upon local enquiry of the Inspector, however, it is seen that the assessee is a supplier providing stationery items to M/s. CESC Ltd. which he purchased from various parties in the market. The assessee has provided details of the items purchased by him and subsequently supplied to M/s. CESC Ltd. It is seen that these are petty items of office stationery and office maintenance including office furniture etc. It is also seen that assessee has also provided the valuation of item wise details of closing stock amounting to Rs.6,88,565/- as on 31.03.2007. While the A.O. has observed that verification could not be done from the above mentioned parties, however the addition in respect of disallowing the purchases from these parties does not stand test as the disallowance brings into question the sales being shown by the assessee, as his activities are, in trading nature and the entire supplies are being made to one concern i.e. M/s. CESC Ltd.

5.4. The CIT(A) posed the question as to how if the purchases are being disallowed to the extent of Rs.10,14,942/- what will happen to the corresponding sales being shown. The CIT(A) therefore held that the A.O. was not justified in considering the entire purchases as bogus from these nine parties. The CIT(A) also observed that it was the other parties who were suppressing their sales. However, since the assessee

is disclosing more purchases, there is no justification for the above addition. The CIT(A) held that the AO at best could have rejected the books and estimated income of the assessee but he has not done so. Adding the entire sales as income could give absurd results. The CIT(A) accordingly deleted the addition of Rs.10,14,156/-.

6. Aggrieved by the order of the CIT(A) the revenue has raised Gr.No.1 before the Tribunal. We have heard the rival submissions. The learned DR relied on the findings of the AO. The learned counsel for the Assessee reiterated submissions made before CIT(A) and relied on the order of the CIT(A).

7. We have given a very careful consideration to the rival submissions. It is clear from the order of the CIT(A) and the evidence on record that there was no valid basis to treat the entire purchases as bogus as was done by the AO. If purchases are being disallowed to the extent of Rs.10,14,942/- what will happen to the corresponding sales being shown. The CIT(A) therefore was right in concluding that the A.O. was not justified in considering the entire purchases as bogus from these nine parties. The fact that the other parties avoided notices u/s.133(6) of the Act could be because they were not disclosing sales made to the Assessee in their books of accounts. The AO at best could have rejected the books and estimated income of the assessee but he has not done so. Treating the entire purchases as bogus and making addition would result in absurd results in that the entire sale proceeds would get taxed as income. In the given facts and circumstances of the case, the addition made was rightly deleted by the CIT(A). We find no ground to interfere with the order of the CIT(A). Consequently, Gr.No.1 raised by the Revenue is dismissed.

8. Ground no.2 of the appeal by the Revenue is against addition of Rs.16,67,546/- u/s.41(1) as cessation of liability. The addition has been discussed by the A.O. in para 4 part B of the order. The A.O. had held that it was found during the assessment proceedings that the assessee had shown total liabilities of Rs.16,67,546/- which were found to be non-existing. He held that the assessee failed to substantiate that these liabilities actually existed on 31.03.2007. The A.O. therefore held that these were bogus liabilities. He went on to hold that -

"Application of Section 41(1) presupposes genuineness of allowed in earlier years. The fact that the assessee has claimed the said sum as expenditures in earlier years cannot be denied. As the liability ceased to exist as on 31.03.2007, as found during the proceeding, the sum of Rs.16,67,546/- is added to the total income of the assessee u/s. 41(1) of the I.T. Act,1961."

8.1 Before the Id. CIT(A), it was submitted that the A.O. was wrong in adding above amount of Rs.16,67,540/- u/s.41(1) as cessation of liability and on the facts of the case he has not considered that the said sundry creditors were all paid in the next two Financial Years and therefore the addition is not justified. The assessee also submitted copies of accounts of these creditors in its Books of Accounts to substantiate his claim that no addition should have been made by the A.O. u/s. 41(1). A remand report was called for from the AO for verification of the details of the payments claimed to have been made in respect of these creditors from the Books of Accounts of the assessee. In response to the above directions the final report of the A.O. dated 14.02.2012 was received by the CIT(A) in respect of the matter remanded to him for verification.

8.2 The assessee gave his rejoinder to the above Remand Report and the same was filed on 10.05.2012 in which the A.O. has himself acknowledged that payments were found to have been made to these parties from the Books of Accounts of the assessee and all in cash and the accounts were allegedly in Financial Year ending on 31.03.2008. The assessee also claimed that from the Assessment Order for A.Y. 2008-09 no addition has been made by the A.O. on account of payments to these sundry creditors. Therefore, if the payments were taken to be genuine in the next Financial Year then they cannot be added in the earlier Financial Year as cessation of liability. The assessee further submitted that the sundry creditors cannot be added by the A.O. if there is no remission of cessation of trading liability and in the above contention the assessee relied on the decision of Hon'ble Supreme Court in the case of CIT v. Sugauli Sugar Works (P) Ltd., 236 ITR 518. The assessee therefore submitted that there was no basis for this addition made by the A.O.

8.3 The CIT(A) was of the view that the A.O. had carried on verification in respect of certain transactions/purchases made by the assessee from nine different parties and in view of the fact that the notices for verification u/s.133(6) issued by the A.O. could not be served by the Inspector in view of the fact that these parties should be located by him on the addresses given by the assessee. The A.O. therefore added the purchases from the parties made in the current year from these parties as bogus purchases. However, in respect of the outstanding balances the same have been considered for addition u/s.41(1) by him in the Assessment Order. The details of these parties

and the outstanding balances considered by the A.O. are reproduced as under:

TABLE -9

SI. No.	Name of the Party	Sundry Creditors shown (in Rs.)	Already disallowed in TABLE-8 above	Addition amount (in Rs.)
1	M/s.R.K. Dutta & Company	1,98,421	72,001	1,26,420
2	M/s.Jayshree Trading Co.	2,30,058	32,904	1,97,154
3	M/s.Binod Kumar Agarwala & Co.	2,34,062	71,989	1,62,073
4	M/s. Kamal Statiner Stores	2,36,029	30,194	2,05,835
5	M/s. Chowdhury Hardware Stores	1,91,516	93,300	98,216
6	M/s. R. K. Podder.& Bros.	1,55,549	1,16,744	38,805
7	M/s. Sreema Hardware	79,169	4,000	75,169
8	M/s. Gupta Trading Concern	63,563	17,000	46,563
9	M/s. Mritunjoy Treeding Co.	86,135	<u>56,190</u>	<u>29,945</u>
			<u>TOTAL</u>	<u>9,80,180</u>

8.4 As mentioned above, the A.O. had already disallowed the purchases shown from these parties in the current year on the similar grounds as bogus purchases and has considered the difference in respect of the outstanding balance of these creditors on 31.03.2007 as cessation of liability u/s.41(1). It is however seen that the A.O. has while disallowing the same not only confused himself but has also not understood the applicability of section 41(1). While making the addition, he has observed that these were bogus liabilities, since these parties were not found to be existing at the given address. He however went to mention that application of section 41(1) presupposes genuineness of expenditure claimed in earlier year and held that there is no

denying that the assessee had claimed the expenditure in earlier years. He then went on to hold that these liabilities ceased to exist on 31.03.2007 as found during assessment proceedings and therefore disallowed the same u/s.41(1). From the above, it is clear that he has not understood the purposes or working of section 41(1) which is in respect of cessation of a liability at a particular point and time which can be considered for adding back in the relevant Financial Year. In this case, while firstly he is raising the doubt that these are all bogus liabilities since the creditors were found to be non-existing at the given addresses, on the other hand, he is holding that these liabilities ceased to exist on 31.03.2007 i.e. at the end of the Financial Year. If liabilities are bogus there is no question of their ceasing to exist. Cessation of the same presupposes that these liabilities actually existed. Secondly it is not for the assessing authority to decide that a particular liability had ceased to exist at a particular point in time but the conclusion must be based on evidence that the cessation had taken place in that relevant financial year. In the assessee's case, neither of the two conditions exist. Furthermore, as submitted by the assessee, the Supreme Court in CIT v. Sugauli Sugar Works (P) Ltd., *supra* has held that-

"In the absence of the creditor, it is not possible for the authority to come to a conclusion that the debt was barred and had become unenforceable. There may be circumstances which may enable the creditor to come with a proceeding for enforcement of the debt even after expiry of the normal period of limitation as provided in the Limitation Act. The principle that expiry of period of limitation as prescribed under the Limitation Act cannot extinguish the debt but it will only prevent the creditor from enforcing the debt is well settled."

8.5 This view of Hon Apex Court has been followed by the Delhi High Court in Commissioner of Income –vs- Shri Vardhman Overseas

Ltd 343 ITR 408 and several other High Courts. In the assessee's there was no remission or cessation of liability therefore section 41(1) was not attracted. Section 41(1) refers to taxation of benefit in cash or otherwise by way of remission or cessation of any trading liability therefore the condition to be fulfilled first is that the liability is to should be existing or genuine and that there is evidence that the same had been unequivocally remitted or had ceased to exist in favour of the assessee and the A.O. himself had claimed that these liabilities are bogus and even otherwise there is no evidence to show that these liabilities had ceased to exist merely non verification of the creditors is not evidence to show that the liability had ceased to exist. In respect of the allegation that these parties were bogus creditors, it is seen that only an addition in respect of the liability or purchases arising in the current year can be added by the A.O., if at all. On the other hand, in respect of the bogus creditors/bogus purchasers the A.O. has already made the addition in respect of bogus purchases which has been considered for decision in ground of appeal No.1 in this appeal and the remaining addition in respect of outstanding balance is not justified in view of the above discussion. Furthermore even if it is presumed that the creditors are bogus the addition can only be considered in the year in which the expenditure was incurred and not in the year when the balance is outstanding disallowance is therefore not justified and the same was deleted by the CIT(A).

9. Aggrieved by the order of the CIT(A) the revenue has raised Gr.No.2 before the Tribunal. We have heard the rival submissions. The learned DR relied on the findings of the AO. The learned counsel for the Assessee reiterated submissions made before CIT(A) and relied on the order of the CIT(A).

10. We have given a very careful consideration to the rival submissions. In our view the addition was rightly deleted by the CIT(A) for the following reasons:

- (i) There was no evidence to show cessation of liability.
- (ii) Assessee still shows the liability in its books of accounts which itself is *prima facie* evidence that the liability exists.
- (iii) The transaction of purchase, if regarded as bogus then there is no liability in law and hence the question of applying section 41(1) will not arise for consideration.
- (iv) The sums in question has been repaid in the subsequent assessment years, thereby rendering the theory of cessation of liability not sustainable.

We therefore concur with the view of the CIT(A) and dismiss Gr.No.2 raised by the revenue also.

11. In the result, the appeal filed by the Revenue is dismissed.

Order Pronounced in the Open Court on 10th December, 2015.

Sd/-
(M. Balaganesh)
ACCOUNTANT MEMBER

Sd/-
(S.S.Viswanethra Ravi)
JUDICIAL MEMBER

Dated: 10/12/2015

Talukdar/Sr.PS

Copy of order forwarded to:

- 1 Sri Puspall Kumar Das, 21/2, Swami Vivekananda Road, Howrah –
711 112
- 2 I.T.O., Ward-48(1), Kolkata
- 3 The CIT(A),
- 4 CIT,
- 5 D.R.

True Copy,

By order,

Asstt. Registrar, ITAT, Kolkata