

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'G', New Delhi**

**Before Shri H.S. Sidhu, JM And Shri Prashant Maharishi, AM**

**ITA No. 399/Del/2017  
Assessment Year: 2012-13**

Smt. Sudha Loyalka, C/o M/s RRA TaxIndia, D-28, South Extension, Part-I, New Delhi – 110 049 (PAN – AABPL6055D) <b>Appellant)</b>	vs.	ITO, Ward 35(2), New Delhi  <b>(Respondent)</b>
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<b>Appellant by</b>	Dr. Rakesh Gupta, Adv. & Sh. Ashwani Taneja, Adv.
<b>Respondent by</b>	Sh. K. Tewari, Sr. DR

**ORDER**

**Per H.S. Sidhu, J.M.:**

This is an appeal filed by the assessee against the order dated 01.12.2016 of Id. CIT(A)-12, New Delhi for the assessment year 2012-13.

2. The grounds raised in appeal read as under:-

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO in making aggregate addition of Rs. 3,50,94,758/- on the alleged ground that sundry creditors were not proved as genuine and that too by recording incorrect facts and findings and without observing the principles of natural justice.
2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of AO in making addition of Rs. 3,50,94,758/- on the alleged ground that sundry creditors were not proved as genuine is

bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. IT(A) has erred in law and on facts in confirming the action of AO in charging interest u/s. 234A, 234B and 234C of the Act.
4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

3. The brief facts of the case are that the assessee filed its return declaring taxable income of Rs. 3,52,180/- on 27.9.2012. The case of the assessee was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act). Later the case of the assessee was selected for scrutiny through CASS for the reasons "Large amount of Sundry Creditors". Accordingly, notice u/s. 143(2) of the Act was issued on 6.8.2013 and notice u/s. 142(1) of the Act was issued on 6.6.2014. In compliance to the notices, the AR of the assessee attended the proceedings from time to time and furnished the details. During the year under consideration, the assessee has declared income from business of fabrics and readymade garments being carried on under the name and style of M/s Tirupati Industries. During the assessment proceedings, the AR of the assessee furnished copy of Balance Sheet alongwith Annexures. As against the purchases of Rs. 7,66,74,802/-, Sundry Creditors have been shown at Rs. 6,77,21,342/- which includes "Retail Creditors Control A/c at Rs.

3,48,88,095/-". On 02.12.2014, the A.R. of the assessee appeared and requested to file the list of creditors alongwith their complete postal address. On 10.12.2014, the AR again appeared and furnished the detailed list of sundry creditors giving names, address and amount payable to each of the sundry creditor aggregating to 42 in number. In order to verify the genuineness of creditors, notices u/s. 133(6) of the Act were issued on 22.12.2014 to all the 27 parties as shown in assessment order page no. 2-3 and out of 27 notices issue u/s. 133(6) of the Act, 20 notices were received back with the respective postal remarks that no such firm/left/ koi jankari nahin / not related / wrong address etc., mentioned at page no. 3-4 of the assessment order. The AO has discussed the details thereof in para 3.1 of the assessment order at page no. 3 to 16 in the case of each party by observing that against purchases of Rs. 7,66,74,802/- sundry creditors shown in the balance sheet was at Rs. 6,77,21,342/- which also included retail creditors, control accounts at Rs. 3,48,88,095/-. The AO made the total addition of Rs. 3,50,94,858/- and added the same to the total income of the assessee on account of sundry creditors not proved as genuine and difference in the account of sundry creditors not reconciled and assessed the income of the assessee at Rs. 3,54,46,940/- u/s. 143(3) of the Act vide order dated 18.03.2015. Aggrieved by the aforesaid addition, the assessee filed appeal before the Id. CIT(A) and made detailed written submissions before him. During the appellate proceedings, the Id. CIT(A) asked to

submit the addresses of the concerned parties, however, Assessee has stated vide order sheet entry dated 27.07.2016 that the addresses of the parties were not available. Assessee was also asked whether any transactions was done with the said parties during previous years. In response, AR of the Assessee stated vide order sheet entry dated 17.11.2016 that no transaction was done with these parties in any of the previous years. Assessee was not able to establish that these sundry creditors were genuine neither Assessee has offered to verify the genuineness of these parties during appellate proceedings. Ld. CIT(A) observed from the Balance-Sheet, it is apparent that liability on account of sundry creditors was Rs.6, 77,21,342/- out of which verification of 20 parties amounting to Rs.2,78,20,495/- could not be done. When the payments are pending and Assessee is not able to give the address of these parties, it shows that liability on account of these sundry creditors .were bogus and no actual liability was existing. Assessee has also claimed that she has full and 7 final payment to these parties during AY 2013- ever, from the perusal of the ledger account submitted, it was seen at all the payments are in cash and not a single payment has been made through cheque and if parties were existing, Assessee was free to provide the addresses during appellate proceedings which however has not been done. Ld. CIT(A) further observed that in order to claim that an expenditure falls u/s 37(1), burden of proving the necessary fact in this connection is on the Assessee.

Onus was on the Assessee to submit the correct addresses of parties from whom she claims to have made purchases. However, assessee has not submitted any detail in any of the aforesaid authorities either before Assessing Officer or during appellate proceedings. Ld. CIT(A) relied upon the decision of the Hon'ble Delhi High Court in the case of Modi Stone Ltd., 203 taxman 123 wherein it has been held that when no details and evidence was submitted, Assessing Officer was justified in disallowing the entire amount and relief cannot be granted on the basis of past record and nature of claim when there was no evidence / material during the year to prove the claim. Ld. CIT(A) further relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of SG Exports (P&H), 336 ITR 2 wherein, it has been held that onus is on the Assessee to prove the fact by producing cogent and convincing evidence including the identity of parties alongwith evidences of payment. There is also no basis in the claim of Assessee that Assessee has maintained complete book of account, books are audited and there are no adverse observations from auditors. It was further observed by the Ld. CIT(A) that Assessing Officer has conducted inquiry and has established that no actual purchases were made from these parties. He further relied upon the Hon 'ble Delhi High Court in the case of Goodyear India Ltd., 246 ITR 116 (Del) wherein it has been held that the broad proposition that once there is tax audit u/s 44AB, AO should not insist upon production of records or details cannot be laid down and

merely because an audit report is available, there is no fetter on the power of Assessing Officer to require the Assessee to justify its claim with reference to records, materials and evidence as such power is inherent in an Assessing Officer in the scheme of the Act. Therefore, there is no substance in the claim of Assessee. Therefore, it is apparent that these sundry creditors were not genuine and as such the purchases itself was not genuine. Assessee has stated that gross profit cannot be so high. However, Assessee fails to realize that it was Assessee's onus to establish that purchases were genuine and sundry creditors were also genuine and not. However, Assessee has not discharged her onus. Assessing Officer had issued notice u/s. 133(6) on 22.12.2014 to 27 parties out of which letters in the 20 parties were returned back unserved with the remarks of in no such firm/left/ koi jankari nahin / not related / wrong address etc. Assessing Officer has discussed the details of each of the aforesaid cases in para 3.1 of the Assessment Order. Assessing Officer requested to furnish confirmation alongwith complete postal address in the case of all the 20 parties mentioned in para 3.1 of the Assessment Order. However, no reply neither any confirmation alongwith complete postal address was submitted by the Assessee before Assessing Officer. Even during the course of appellate proceedings, no details has been submitted. AR has stated that he has no addresses of any of these parties. Ld. CIT(A) further relied upon the decision of Hon'ble Delhi High Court in the case of CIT vs. La Medica, 250

ITR 575 wherein it has been held that once it is established that purchases are bogus and raw material supplier was non-existent, the issue whether the purchases were made from other parties was irrelevant and the alleged payment could be treated as income from undisclosed sources. Therefore, in view of the facts and circumstances of the case, disallowance of Rs.3,50,94,758/- on account of sundry creditors was sustained by the Ld. CIT(A) vide order dated 01.12.2016. Aggrieved with the impugned order dated 01.12.2016, the assessee is in appeal before the Tribunal.

4. The ld. AR reiterated the contention made in the grounds of appeal and also reiterated the submissions made before the ld. CIT(A). He also submitted case laws compilation which contains 145-431 pages and relied thereon alongwith the Coordinate Bench decision in the case of Satpal & Sonsd (HUF vs. ACIT passed in ITA No. 388/Del/2015 dated 29.8.2017 and another paper book containing 1-144 pages having the copies of the accounts of the assessee etc. etc. The ld. AR further submitted that lower authorities failed in making aggregate addition of Rs. 3,50,94,758/- on the alleged ground that sundry creditors were not proved as genuine and that too by recording incorrect facts and findings and without observing the principle of natural justice. He further submitted that the lower authorities also wrongly made the addition in dispute on the alleged ground that sundry creditors were not proved as genuine which is bad in law and against the facts and circumstances of the case.

5. On the other hand, the Id. DR relied on the order of the authorities below and he further submitted that the assessee has not proved the genuineness of the sundry creditors. The assessee was also unable to give current address of the creditors and as per Inspector's report, the sundry creditors were not found in existence at the addresses provided. Therefore, the Id. Authorities below were quite justified in making the additions. In support of his contention, Ld. DR submitted that the following decisions may kindly be considered with regard to bogus purchases:

1. *N K Proteins Ltd Vs CIT (2017-TIOL-23-SC-IT)*

*where Hon'ble Supreme Court held that entire undisclosed income generated out of bogus transactions, deserves to be added to total income*

*N K Proteins Ltd Vs CIT (2016-TIOL-3165-HC-AHM-IT)*

*where Hon'ble Gujarat High Court held that addition on basis of undisclosed*

*income cannot be restricted to a certain percentage, when the entire transaction was found as bogus*

2. *CIT Vs Arun Malhotra 47 taxmann.com 385 (Delhi)/[2014] 363 ITR 195*

*where Hon'ble Delhi High Court held that where Assessing Officer having found that transaction of purchase and sale were bogus,*

*made addition under section 69A, Tribunal was not justified in deleting addition without going into evidence on record*

3. *Vijay Proteins Ltd Vs ACIT [2015] 58 taxmann.com 44 (Gujarat)*

*where Hon'ble Gujarat High Court held that where assessee inflated expenditure by showing higher purchase price through fictitious invoices in name of 33 fictitious parties, Tribunal was justified in disallowing 25 per cent of purchase price.*

4. *CIT Vs La Medica [2001] 117 Taxman 628 (Delhi)/[2001] 250 ITR 575 A (Delhi)/[2001] 168 CTR 314 (Delhi) where Hon'ble Delhi High Court held that Assessee having failed to produce evidence to prove bona fides of seller from whom it claimed to have purchased raw material, Assessing Officer treated value of raw material as assessee's income from undisclosed sources. Once it was accepted that supplies were not made by said supplier to whom payments were alleged to have been made, question of purchases having been made from some other source could not have weighed with Tribunal as a factor in assessee's favour.*

6. After hearing both the parties and perusing the entire material on record, we find that the only effective issue in the present appeal is against the addition of Rs.3,50,94,758/- made by A.O. and confirmed by Ld. CIT(A)

on the ground that closing credit balances of 26 parties could not be verified. The above addition included a sum of Rs. 5,50,000/- made by AO vide page 16 of the assessment order in the name of Erica Enterprises P Ltd. This difference is due to the cheque issued but not presented for payment. The A.O. has given the list of 26 parties under two heads i.e. one list of 20 suppliers aggregating to Rs. 2,78,20,495/- i.e. where notices were issued u/s 133(6) but were received back undelivered with the remarks that no such firm/left/ koi jankari nahin / not related / wrong address etc. given at page 3-4 of the assessment order and six suppliers aggregating to Rs. 67,24,263/- in respect of which though notices were served but confirmations were not received given at page 13-14 of the assessment order. We further find that Ld. CIT (A) has confirmed the addition vide discussion made at page 25-30 of the appeal order. These amounts added are the closing credit balances of the suppliers as on 31.3.2012 which is evident from PB 42-66. In our considered opinion, the sustaining of impugned addition is not justified due to the following reasons:-

- i). It has not been mentioned either by A.O or by Ld. CIT(A) as to under which section of the Income Tax Act, these closing credit balances appearing as on 31.03.2012 could be added. Therefore, non-mentioning the precise provision of law makes the impugned addition bad in law.
- ii) If addition has been made u/s 68, such could not be added and that too of this much of amount as there was no sum received from these parties &

that too during the year under appeal which is evident from the copies of account of these parties enclosed in the paper book at PB 42-66 which would show that either there were opening credit balances or were purchases.

iii). After perusing the PB Pg. 42-66 and PB Pg. 144, we find that purchases from these parties were aggregating to Rs 1,90,88,538/- and it has been held in the following judicial decisions that credit on account of purchases cannot be added u/s 68.

Addition under section 69 - Unexplained investment in purchases - Purchases made by assessee having been properly recorded in books of account and supported by authenticated purchase bills / vouchers for which payments were made through banking channels, and sales against these purchases are not doubted, addition under section 69 was not justified merely because suppliers could not be located and were not produced for examination - RAJESH P. SONI VS. ACIT 100 TTJ 892 (AHD 'D').

Section 68 cannot be applied for taxing unconfirmed sundry creditors - CIT vs.

Vardhman Overseas Ltd (2012) 343 ITR 0408 (Del).

Income-Cash credit-Credit purchases-Provisions of s. 68 are not attracted to amounts representing purchases made on - credit-Tribunal- has recorded a categorical finding of fact based on appreciation of materials

and evidence on record that the AO has accepted the purchases, sales as also the trading result disclosed by the assessee-It has also recorded a finding that the two amounts in question represented the purchases made by the assessee on credit-Therefore, addition of said amounts could not be made under s. 68 (COMMISSIONER OF INCOME TAX vs. PANCHAM DASS JAIN 74 CCH 0623 (All HC)

Income-Cash credit-Credit purchases-Provisions of s. 68 are not attracted to amounts representing purchases made on credit -Astt. CIT vs. Har Singar Gutkha (P) Ltd. 9 DTR 604(Lucknow)

Construction business-Trade purchases-Assessing Officer rejecting books while deciding purchase transactions not genuine but relying on return accepting profit-Assessing Officer ought to have proceeded under section 144-Addition under section 68 not justified-Income-tax Act, 1961, ss. 68, 144, 14S(3)-Amitabh Construction P. Ltd. vs. Addl. CIT 335 ITR 523 (Gharkhand) (PARA 11-15 OF THE DECISION)

Income from undisclosed sources-Addition under s. 69C-Purchases not verifiable-Alleged suppliers did not appear before the AO in response to summons issued under s. 131 despite repeated opportunities-AO treated the purchases from the said parties as non-genuine and made addition of that amount under s. 69C and also applied proviso to s. 69C-Not justified-Once sales were made by the assessee obviously purchases were made-Therefore, purchases could not be treated as unexplained expenditure and

addition thereof could not be made under s. 69C or by invoking proviso to s. 69C - Nisraj Real Estate & Exports (P) Ltd. vs. Asstt. CIT 31 DTR 456(JP 'A')

CASH CREDIT-Failure by creditors to participate in inquiry and furnish accounts-Does not mean that creditors lacked identity-No material to show that amounts advanced by creditors in reality represented money belonging to assessee-Sums cannot be treated as cash credits-Income-tax Act, 1961-CIT

v. CHANDELA TRADING CO. P. LTD. 372 ITR 68 (Cal)

Income from undisclosed sources-Addition-Alleged bogus purchases-AO was not justified in making the disallowance of purchases made by the assessee merely due to non-filing of confirmation from suppliers especially when assessee has filed certificate from the bank indicating the facts that cheques issued by it were cleared and no defect in the books of account was pointed out by AO-YFC Projects (P) Ltd. vs. Dy. CIT 46 DTR 496 (Del. 'I')

iv). We note that Opening balances amounting to Rs. 1,60,19,598/- (PB 144) (PB 42-66) which is evident from copies of account of these parties enclosed in the paper book at PB 42-66 is not justified on the ground that when assessee has not claimed any expense to that extent during the year under appeal, where is the question of making disallowance of such amount?

v). If addition has been mentioned u/s 41(1), ingredients of section 41(1), the burden of proof which is resting on revenue in view of the following judicial decisions has not been discharged.

6.1 There is no evidence that the liability has ceased to exist and that too in the year under appeal. The very fact these amounts are being shown as payable in the balance sheet of the assessee go to establish that there was no cessation of the liability as held in the following judicial decisions: -

6.2 Impugned liabilities are very much payable by the assessee as and when demanded and unless it is demanded, these are bound to be shown as outstanding. The very fact that these liabilities are appearing in the balance sheet is a strong acknowledgement of the debts payable by the assessee as has recently been held in the case of CIT vs Tamilnadu Warehousing Corporation 292 ITR 310(Mad). It has also been held in the case of Ambica Mills Ltd vs CIT 54 ITR 167 (Guj) that liability shown in the balance sheet is a clear case of acknowledging the liability and such liability cannot be treated to have ceased so as to attract section 41(1). That being so, where is the question of holding the said liabilities as ceased to exist, more so when assessee herself is acknowledging the liabilities to be paid? How can a third party that too a quasi - judicial authority hold in the absence of any material that the liability is not payable by the assessee? Therefore, the addition made on the basis of the presumption does not have either factual

or legal lags to stand. Reliance is also placed on the decision of Sita Devi Juneja 325 ITR 593(P&H).

6.3 It is settled law by umpteen number of decisions including the decision of the apex court in the case of Sugauli Sugar Works vs CIT 236 ITR 518(SC) that the cessation of the liability can be done not by the unilateral act but it can certainly be so by the bilateral act. So long as the appellant is recognizing her liability to pay to these creditors, where is the question of a quasi judicial authority to intervene & to say on behalf of sundry creditors or on behalf of the appellant that amount is not payable by the assessee? Here there is not even unilateral act, let alone the bilateral act, Therefore also, action of AO in holding the liabilities ceased to exist may please be reversed.

6.4 Even in law, the addition is not sustainable for more than one reason. Section 41(1) of the Act is a deeming fiction according to which an amount which does not have any trace of income is treated as income liable to suffer the brunt of tax. Therefore, as per the established canons of law, the burden to prove that a particular amount falls within the four corners of section 41(1) is on the shoulder of the Assessing Officer without which the addition cannot be made and if made is liable to be deleted.

6.5 The first pre-requisite for the applicability of section 41(1) is there must be a trading liability in respect of which the deduction has been claimed and allowed and burden to prove the twin conditions to the effect

of the above facts, it goes without saying, is on revenue. There is not even an iota of whisper as to whether the impugned creditors were in respect of trading liability for which any deduction was ever claimed and allowed and if allowed, in which year was it allowed so on so forth. This is evident from a plain reading of the assessment order. Therefore, Ld. A.O. miserably failed to discharge the said burden in view of the following decisions and therefore this addition is liable to be deleted on this Short ground alone. There could very well be the possibility of the loan creditors or advances from the business constituents under the head of sundry creditors for which there could never be any claim of deduction having been allowed.

6.6 The A.O. has not established with evidence that the liability in respect of the above outstanding balances has ceased to exist. AO has gone on presumption and that too by placing the burden wrongly on the shoulders of the assessee. Section 41(1) does not envisage any such presumption of cessation and fix the incidence of tax thereon.

6.7 In the absence of any material having been brought on record to establish that the deduction was claimed or credit balance has been remitted, addition cannot be made u/s 41 (1) in view of the following decisions:

- Steel and General Mills Co. Ltd vs CIT 96 ITR 438(Del)
- CIT vs Nathubhai Desha Bhai 130 ITR 238 (MP)
- Liquidator, Mysore Agencies P Ltd vs CI'I' 114 ITR 853(Karn)

- K.V. Moosa Koya & Co vs CIT 175 ITR 120,124(Ker)
- CIT vs Pranal P Doshi 201 ITR 756(Guj)

6.8 The third burden which was on A.O. was to establish that cessation if at all has happened, has happened in the year under appeal. After all, liability to tax can be fixed in the year to which it pertains and to no other year. Liability to tax any ceased liability in a particular year does not depend on the action of A.O. in selecting a case in scrutiny of that year. Merely because A.O. chose to enquire about the creditors in this year and if assessee fails to establish the existence of the liability in this year (even if it is so assumed) then also it cannot be said that the liability ceased to exist only in this year and not before. Nobody can be permitted to fix the year of taxability by a conscious design or omission, be he an assessee or an Assessing Officer. Therefore, viewed from any angle, the addition made by A.O. is liable to be deleted.

6.9 Moreover, sales made by the assessee have been accepted and also the purchase have been accepted by the sales tax authorities and so much so purchase input tax credit has been given as is evident from sales tax returns at PB 18-41 and sales tax assessment order at PB 135.

6.10 Even assuming that purchase could not be got verified, the fact that the sales have been accepted such sales obviously could not have been made without purchases. Therefore, in such situation G.P. Rate of the

earlier years can act as a guide as held in judicial decisions including 355 ITR 290 (Guj) PB 17 is the copy of G.P. chart of various years.

6.11 We note that PB 136-143 is the copy of profit and loss account and trading account of earlier years together with assessment orders u/s 143(3) in which G.P. at the rate of 3.52%,4.13%, 2.99%, 2.~9%, 2.60%,2:21 %, 1.88% for Financial years 2007-08, 2008-09, 2009-10, 2010-11, 2012-13, 2013-14, 2014-15 respectively has been accepted (PB 17).

6.12. Without prejudice to above, the assessee's sale was Rs. 6.21 Crores as is evident from profit and loss account enclosed at PB 13 and assessed income is at Rs. 3.54 Crores as is evident from the last page of the assessment order which would constitute 56% of the sale which is impossible and against all norms.

7. In view of above discussions, it is clear that the transactions were not bogus and therefore, the case laws relied upon by the Ld. DR are not applicable in this case. As far as case law relied upon by the Ld. CIT(A) as well as relied by the Ld. DR during the hearing i.e. La Medica 250 ITR 575(Del), we note that Hon'ble High Court has specifically noted in this decision that this was not the case of the assessee at any stage prior to the Hon'ble High Court whereas in this case, this was the plea taken by assessee before Ld. CIT(A) that if sale has been accepted, purchases must have been made. How can there be sale without purchases? Hence this decision does not apply.

8. In the background of the aforesaid discussions and respectfully following the aforesaid decisions, we are of the opinion that the Authorities below are not justified in making / sustaining the addition in dispute. Accordingly, the total addition of Rs.3,50,94,758/- made by the AO and confirmed by the Ld. CIT(A) is hereby deleted.

9. In the result, the appeal of the assessee is allowed.

Order pronounced on 18.07.2018.

Sd/-  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Dated: 18.07.2018

*\*SR BHATNAGAR\**

*Copy of order forwarded to:*

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Delhi Benches, New Delhi*