

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 09TH DAY OF JUNE, 2015

PRESENT

THE HON'BLE MR. JUSTICE MOHAN M SHANTANAGOUDAR

AND

THE HON'BLE MR. JUSTICE ARAVIND KUMAR

ITA NOS.719/2009 & 803/2009

BETWEEN:

SRI P.M. ABDULLA
PROPRIETOR
RUBBER AGENCIES
SAITU BUILDING
GANDHINAGAR
SULLIA-574 239 (D.K).

.....APPELLANT

(BY SRI.V.K. GURUNATHAN A/W SMT. JINITHA
CHATERJEE, ADVOCATES FOR SRI S PARTHASARATHI
ADVOCATE)

AND:

THE INCOME TAX OFFICER
WARD-I
PUTTUR.

.....RESPONDENT

(BY SRI.K.V. ARAVIND, STANDING COUNSEL)

THESE APPEALS ARE FILED UNDER SECTION 260A
OF INCOME TAX ACT, 1961 PRAYING TO FORMULATE THE

SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO. 389 & 390/BNG/2008 (BY REVENUE) & C.O.NOS. 32& 33/BNG/2008 (in ITA NOS. 389 & 390/BNG/2008 (BY ASSESSEE), DATED 30-06-2009.

THESE APPEALS BEING HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ARAVIND KUMAR J.**, DELIVERED THE FOLLOWING:

JUDGMENT

These appeals by the assessee is directed against the order passed by Income Tax Appellate Tribunal (ITAT), Bangalore Bench, in ITA No.389-390/Bang/08 dated 30.06.2009 whereunder the appeals filed by the revenue came to be allowed and the orders passed by CIT (A) deleting the addition made under section 68 of the Act came to be set aside and the matter has been remitted to the assessing officer to examine the addition representing the closing balance of 15 creditors on confirmations being filed by the assessee and to pass orders thereunder.

2. This court by order dated 18.12.2009 has admitted the appeal to consider the following substantial questions of law:

- (1) Whether the Tribunal was justified in law in upholding the application of section 68 in respect of trade credits outstanding at the end of the year on account of purchases, when the purchases have not been disputed and the trading results have been fully accepted and also the outstanding credits have been confirmed by the parties who were paid in full after the end of the accounting year?
- (2) Without prejudice, even if Section 68 is held to be applicable, can an addition be made in the relevant years with regard to the opening balance in the hands of the creditor in respect of transactions of the preceding year?

- (3) Whether the Tribunal was justified in law in holding that the provisions of Section 69C of the Act would also apply when the expenses incurred towards purchases were not disputed and the payments made were also recorded in the books of accounts?”

3. Sri.Gurunathan, learned counsel appearing on behalf of Sri.Parthasarathi, Advocate has fairly submitted he would not press his arguments insofar as substantial questions of law 1 and 2 framed by this court on 18.12.2009. His submission is placed on record.

4. We have heard the arguments of Sriyuths Gurunathan, learned counsel appearing on behalf of appellant-assessee and Sri.K.V.Aravind, learned standing counsel appearing for the respondent-revenue.

BRIEF BACKGROUND:

5. Assessee is a wholesale dealer in raw rubber and for the assessment years 2003-04 and 2004-05 filed return of income which were selected for scrutiny and after issuance of notice under section 143(2), the assessment orders came to be framed on 23.03.2006 and 28.12.2006 whereunder a sum of ₹42,08,460/- and ₹49,48,475/- respectively was added by the assessing officer as unproved sundry creditors assessed under section 68 of the Income Tax Act, 1961 (for short 'Act').

6. Being aggrieved by these assessment orders, assessee preferred appeals before CIT(A). For the assessment year 2003-04 CIT(A) deleted entire addition made by the assessing officer except for ₹6,00,000/- pertaining two sundry creditors and for the assessment year 2004-05 the entire addition made by the assessing officer was deleted by order dated 18.12.2007.

7. The revenue being aggrieved by these orders filed an appeal before the Income Tax Appellate Tribunal (for short 'ITAT') contending that the addition made by the assessing officer under section 68 of the Act ought not have been deleted by the appellate authority. The assessee preferred cross objections supporting the order of CIT(A) and contending that the deletion was based on evidence and proof adduced before the CIT(A) and as such sought for dismissal of the appeals filed by the revenue. The ITAT after considering the rival contentions and on perusal of material on record, by common order dated 30.06.2009 partly allowed the appeals filed by the department and held that in respect of parties (Sundry Creditors) other than relating to whom additions made by the CIT(A) are to be restored to the assessing officer by casting initial burden on the assessee to discharge such burden by filing

confirmation letters of Sundry Creditors and reserving liberty to assessing officer to make verification of the confirmation if felt so necessary and also opining that the assessing officer may call upon the assessee to adduce evidence in the form of producing such parties. For the assessment year 2004-05 the matter was restored back to the file of assessing officer in respect of addition representing the closing balance of fifteen creditors with the liberty being granted to the assessee as well as assessing officer as granted for the assessment year 2003-04.

RE: SUBSTANTIAL QUESTION OF LAW NO.3:

8. In order to answer the above question of law, it would be necessary to state the facts in brief which has led to the filing of these two appeals.

9. For the assessment year 2003-04 the assessee has declared a gross profit of ₹5,97,168/- on total sales of ₹7,23,69,380/-. It was noticed by the assessing officer that assessee had shown liability of ₹81,91,755.80 towards sundry creditors in the Balance Sheet. Hence, communication was forwarded to those sundry creditors under section 133(6) of the Act by the assessing officer calling upon them to either furnish the copy of the accounts for the financial year 2002-03 as appearing in their books or to confirm the amount outstanding. Some of the creditors denied the business transaction of the assessee and some letters addressed to the creditors were received back unserved. Hence, the assessing officer extended an opportunity to the assessee to prove the sundry creditors by producing the relevant material. Despite offering opportunity the same was not proved. Hence, summons under section 131 came to be issued to the assessee and in response

to the same, confirmation letters from those sundry creditors on whom letters under section 133(6) had been issued and who had not responded came to be filed. The assessing officer vide assessment order dated 23.03.2006 has completed the assessment and categorized the sundry creditors under four categories namely, (1) Creditors who have denied the transaction with the assessee (2) Confirmations filed by the assessee in respect of sundry creditors who were not produced before the assessing officer (3) sundry creditors who were unserved and in respect of whom the assessee has neither filed confirmation letter nor produced them before the assessing officer for verification and (4) sundry creditors in respect of whom full address was not furnished. Hence, the assessing officer added the amounts under the head 'Sundry Creditors' in respect of the creditors mentioned in his order to the income of the assessee, amounting to

₹42,08,460/- . The CIT(A) except sustaining the addition to the extent of ₹6,00,000/-, deleted all other additions made by the assessing officer. The tribunal as indicated in its order vide paragraph 2.37 has remitted the matter back to the assessing officer for the reasons indicated thereunder and to examine the matter in the background of directions issued therein.

10. Likewise, for the assessment year 2004-05 the addition of ₹49,48,475/- made by the assessing officer towards unproved sundry creditors vide assessment order dated 28.12.2006 came to be deleted in its entirety by the CIT(A) on the ground that the assessing officer has neither disputed the purchases nor sales amongst other grounds as indicated in the order dated 18.12.2007. The ITAT vide paragraph 4.3 has remitted the matter back to the assessing officer as already noted hereinabove.

11. It is the contention of Sri.Gurunathan, learned counsel appearing for the assessee that assessee has discharged the initial burden and if the revenue disbelieved the confirmation on account of some valid reason, the burden was on the revenue to issue commission and make further enquiries to satisfy itself about the claim. He would elaborate his submission by contending that tribunal erred in holding Section 69C can be invoked in respect of sundry creditors which are not proved though assessing officer had not made any whisper about invoking the provisions of Section 69C. He would contend that expenses incurred towards purchase have been recorded in the books accounts of the assessee and no part of expenses could be said as unexplained for invoking the provisions of section 69C. Hence, he prays for dismissing the appeals filed by the revenue. In

support of his submissions he has relied upon the following Judgments:

1. **(1998) 145 CTR (SC) 309** –
Commissioner of Income Tax Vs BEDI
& Co. Pvt. Ltd.
2. **(2012) 83 CCH 275 GUJ HC** –
Commissioner of Income Tax Vs
Bholanath Poly Fab Pvt. Ltd.
3. **(1996) 133 CTR (SC) 82** –
Life Insurance Corporation of India Vs
Commissioner of Income Tax
4. **(1986) 52 CTR (SC) 138** –
Commissioner of Income Tax Vs Orissa
Corporation (P) Ltd.
5. **(2005) 195 CTR (Bom) 199** –
Babulal C. Borana Vs Income Tax
Officer and ors.

12. In the instant case, the tribunal has found on factual scrutiny that the sundry creditors indicate in the books of accounts of the assessee was not proved in its entirety and the same being question of fact it was required to be examined by the assessing officer and

thereby reserving liberty to the revenue as well as assessee to prove the genuineness of sundry creditors has remitted the matter to the jurisdictional assessing officer.

13. The assessment order would also indicate that in respect of the sundry creditors as reflected in the balance sheet of the assessee was not proved by the assessee though sufficient opportunity was granted. The order of the assessing officer does not indicate about any explanation having called for by the assessing officer from the assessee and such explanation having been not accepted so as to treat the same as income of the assessee for such financial year. However it requires to be noticed from the order of the tribunal that after analyzing the case laws it has been held that section 68 read with section 69C can be invoked in respect of sundry creditors which are not

proved by the assessee before the assessing officer. As such we are of the considered view that the principles contained in section 68 as well as section 69C would be squarely applicable to sundry creditors in case of a trader, as obtained in the facts of the present case. Infact, credit purchases are nothing but expenditure and if sundry credits are not proved by the assessee addition can be made by the assessing officer by resorting to section 69C. Accordingly substantial question of law No.3 is being answered in favour of the revenue.

14. For the reasons aforestated, we proceed to pass the following:

ORDER

1. Appeals ITA Nos.719/2009 and 803/2009 filed by the assessee-appellant are hereby dismissed by answering the

substantial question of law No.3 in favour of revenue and against the assessee.

2. Order dated 30.06.2009 passed by the Income Tax Appellate Tribunal in ITA Nos.389-390/Bang/08 is hereby affirmed.

3. Costs made easy.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SBN