

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD

BEFORE SHRI P. M. JAGTAP, ACCOUNTANT MEMBER
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA.No.1178/Hyd/2012
Assessment Year 2005-2006

M/s. Bhagyanagar Oil Industries, Hyderabad. PAN AACFB5360J (Appellant)	vs.	The Income Tax Officer Ward-9(2) Hyderabad. (Respondent)
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For Assessee :	Mr. K.L. Rathi and Mr. Siddarth Toshnival
For Revenue :	Mr. Rajat Mitra

Date of Hearing :	09.06.2015
Date of Pronouncement :	12.06.2015

ORDER

PER P.M. JAGTAP, A.M.

This appeal filed by the assessee is directed against the order of the Ld. CIT(A)-VI, Hyderabad dated 15.06.2012 and the grievance of the assessee is projected therein in the form of following grounds :

- 1. "The learned CIT(Appeals) erred in confirming the Assessment Order passed by I.T.O under section 143(3) read with section 254 assessing Total Income of Rs.59,14,920/- as against returned income of Rs.45,008/-.*
- 2. That the assessment order passed by ITO and confirmed by CIT(Appeals) is unsustainable both on the points of facts and point of Law.*

3. *That for the learned CIT(Appeals) erred in confirming the addition of Rs.54,49,961/- u/s. 68 being the amount payable to farmers for purchase of Sunflower Seeds and the addition was made on the ground that farmers were not produced for verification.*
 4. *That the learned CIT(Appeals) erred in holding that the opening balance standing to the credit of M/s. Ammireddy Oil Limited & M/s.Krishnaveni Agrotech Products of Rs.2,27,952/- & 1,91,992/- respectively are to be added u/s. 69C although both are brought down balances.*
 5. *That the learned Authorities below should not have ignored the fundamental fact that the Assessee had filed Audit Report in Form 3CB & 3CD to prove that the Assessee has maintained complete and correct Books of Accounts. Therefore the assessment should have been made u/s. 145(1) as provisions of Section 145(3) are not applicable.*
 6. *That the Assessment is bad in law as the Assessment Order passed under Appeal has become barred by limitation on 31.03.2010 and such an Order to give effect to direction of the Hon'ble Tribunal can only be passed by invoking provisions of Section 150(1) which the Assessing Officer having failed to do, the Assessment stands barred by limitation.*
 7. *The reasons assigned by the Ld. CIT(A) are wrong, insufficient and illegal.*
 8. *Any other ground that may arise at the time of hearing of the appeal.”*
2. As submitted by the Ld. Counsel for the assessee at the time of hearing before us, Ground Nos. 1,

2, 5, 7 and 8 are general in nature which do not call for any specific adjudication.

3. The issue involved in ground No.3 relates to the addition of Rs.54,49,961 made by the A.O. under section 68 of the Act and confirmed by the Ld. CIT(A) treating the amount payable by the assessee to farmers towards purchase of sunflower seeds as unexplained cash credits.

4. Apropos, this issue raised in ground No.3, the relevant facts are that the assessee is a partnership firm which is engaged in the business of manufacture and dealers in edible oils. The return of income for the year under consideration was filed by it on 29.10.2005 declaring total income of Rs.45,008. In the assessment originally completed under section 143(3) vide order dated 28.12.2007, the total income of the assessee was determined by the A.O. at Rs.59,14,923 after making additions of Rs.54,49,961. The appeal filed by the assessee against the said order was dismissed by the Ld. CIT(A) and when the assessee filed a further appeal before the Tribunal, the Tribunal vide its order dated 12.11.2010 set aside the orders of the authorities below and restored the matter to the file of the A.O. for completing the assessment afresh, after giving proper and sufficient opportunity of being heard to the assessee. As per the directions of the Tribunal, fresh assessment proceedings were initiated by the Assessing Officer. During the course

of the said proceedings, the credit balances appeared in the books of account of the assessee in the name of seven farmers aggregating to Rs.54,49,961 were examined by the A.O. to verify their genuineness. In this regard, summons issued by him under section 131 to the seven creditors returned back un-served by the postal authorities stating that there were no such persons available on the given address. The A.O. therefore issued a commission to the ITO, Ward-1, Adoni who deputed his Inspector to conduct enquires with the concerned creditors. Such enquires made by the Inspector revealed that the address of the creditors given by the assessee as "Market Yard, Allur, Adoni" was not sufficient to trace the creditors. He also reported that it was not possible to find out the address of the said creditors as they were farmers doing cultivation in some villages. The enquiry made by the Inspector thus revealed that it was not possible to identify the creditors on the basis of information furnished by the assessee. The A.O. therefore required the assessee to produce the said creditors/farmers before him for verification along with their bank statements. The assessee however failed to do so and filed only the payment receipts duly acknowledged by the concerned creditors/farmers. The A.O. therefore held that the concerned credit balances appearing in the name of the seven farmers were not satisfactorily explained by the assessee in terms of section 68 and accordingly, the aggregate amount of Rs.54,49,961 of such credits was

added by him to the total income of the assessee under section 68 of the Act.

5. On appeal, the Ld. CIT(A) confirmed the addition made by the A.O. under section 68 observing that the primary onus to explain the relevant credits was on the assessee and the assessee having failed to discharge the said onus satisfactorily, the addition made by the A.O. under section 68 was fully justified.

6. We have heard both the sides and also perused the relevant material available on record. The learned D.R. has strongly relied on the order of the authorities below in support of the Revenue's case on this issue. However, as rightly submitted by the Ld. Counsel for the assessee, the impugned credits being trade credits of the assessee on account of purchase of sunflower seeds are not in the nature of cash credits as envisaged under section 68 and the same therefore cannot be added to the income of the assessee by invoking the said provision. Moreover, as pointed by him from the trading account of the assessee for the year under consideration placed at page No.24 of the paper book, the corresponding seeds purchased from the seven farmers for Rs.54,49,961 were sold in the year under consideration itself for Rs.58,89,195 and the said sale was duly credited to the trading account of the assessee. As rightly contended by the Ld. Counsel for the assessee, such sale not being possible without any corresponding purchases, the

purchases so made could not otherwise be treated as bogus, despite the failure of the assessee to establish the identity of the concerned creditors/suppliers. It is also observed that the resultant profit arising from the relevant transactions of purchase and sale of sunflower seed was duly disclosed by the assessee in the trading account. Having regard to all these facts of the case, we are of the view that the addition made by the A.O. and confirmed by the CIT(A) by treating the trade creditors as unexplained cash credits under section 68 is not sustainable. We therefore delete the same and allow ground No.3 of assessee's appeal.

7. The issue involved in ground No.4 relates to the addition made by the A.O. on account of credit balances appearing in the books of account of the assessee in the name of M/s. Ammireddy Oil Ltd., amounting to Rs.25,27,952 and in the name of M/s. Krishnaveni Agrotech Products amounting to Rs.1,91,992 treating the same as unexplained, which has been confirmed by the Ld. CIT(A) by treating the same as unexplained expenditure under section 69C of the Act.

8. As per the books of account of the assessee, a sum of Rs.25,27,962 was shown as payable to M/s. Ammireddy Oil Ltd., as on 31.03.2005. Enquiries made by the A.O. directly with the said party revealed that there was no such outstanding balance as on 31.03.2005 and the assessee had already paid the entire amount to M/s.

Ammireddy Oil Ltd. Similarly, the liability of Rs.1,91,992 shown in the books of account of the assessee as payable to M/s. Krishnaveni Agrotech Products was found to be non-existent by the A.O. on the basis of enquiries made with the said party who confirmed that the entire amount was received from the assessee and there was no outstanding balance as on 31st March, 2005. The credit balances shown by the assessee in the name of Ammireddy Oil Ltd., and Krishnaveni Agrotech Products therefore were treated by the A.O. as unexplained and the amounts of such credits were added by him to the total income of the assessee under section 68.

9. The additions made by the A.O. on account of credits appearing in the name of M/s. Ammireddy Oil Ltd., and Krishnaveni Agro Tech Products under section 68 were challenged by the assessee in an appeal preferred before the Ld. CIT(A). Before the Ld. CIT(A), the assessee failed to reconcile the difference appearing in the accounts of the two parties as per its books of account and as per the books of the said two parties. As regards the alternative contention of the assessee that the amounts appearing in the name of the said two parties being trade credits could not be added as unexplained cash credits by virtue of provisions of section 68, the Ld. CIT(A) found merit in the same. He however held that the corresponding amounts representing purchases made by the assessee could be added as unexplained expenditure under section 69C since the source of payment of such

expenditure was not satisfactorily explained by the assessee. He therefore confirmed the addition made by the A.O. on this issue by applying the provisions of section 69C instead of the provisions of section 68 as applied by the Assessing Officer.

10. We have heard the arguments of both the sides and also perused the relevant material on record. Although we find merit in the contention of the Ld. Counsel for the assessee that the corresponding expenditure on account of purchases having been incurred by the assessee in the immediately preceding year i.e., A.Y. 2004-05, addition under section 69C treating the same as unexplained expenditure could be made only in A.Y. 2004-05 and not in the year under consideration i.e., A.Y. 2005-06, it is observed that the amounts in question representing liabilities which had ceased to exist could be added to the total income of the assessee alternatively under section 41(1) as contended by the learned D.R. In this regard, Ld. Counsel for the assessee has also accepted, in reply to a query raised by the Bench, that the two amounts in question have not been paid by the assessee till date nor any party has demanded the said amounts appearing in the books of account of the assessee as liabilities. Since the said amounts represented liabilities of the assessee on account of purchases which had been claimed as expenditure in the earlier years, we are of the view that the provisions of section 41(1) are clearly applicable when it is established

that the said liabilities as shown by the assessee actually ceased to exist in the year under consideration itself. We, therefore, confirm the addition made on this issue by invoking the provisions of section 41(1) and dismiss ground No.4 of the assessee's appeal.

11. As regards the issue raised in ground No.6 challenging the validity of the assessment made by the A.O. on the ground that it was barred by limitation, it is observed that reliance in support of the case of the assessee on this issue is placed on the provisions of section 150(1). The said provisions however are applicable in case of notice issued under section 148 for the purpose of making an assessment or re-assessment or re-computation in consequence of or to give effect to any finding or direction contained *inter-alia* in an appellate order passed by the Tribunal. The present case however is not such a case where notice under section 148 is issued to give effect to any finding or direction contained in the appellate order of the Tribunal but it is a case of regular assessment made by the A.O. under section 143(3) afresh as per the direction of the Tribunal given in order passed under section 254. The provisions of section 150(1) thus are not applicable in the case of the assessee where the assessment is made by the A.O. under section 143(3) read with section 254 and the issue raised by the assessee in ground No.6 relying on the said provisions is devoid of any merit. We therefore, dismiss ground No.6 of the assessee's appeal.

12. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 12.06.2015.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(P.M. JAGTAP)
ACCOUNTANT MEMBER

Hyderabad, Dated 12th June, 2015.

VBP/-

Copy to

1.	M/s. Bhagyanagar Oil Industries, Hyderabad. C/o. Mr. K.L. Rathi, Advocate, 3-5-144/5, Eden Garden, Hyderabad – 500 001.
2.	The Income Tax Officer, Ward-9(2), Hyderabad.
3.	Commissioner of Income Tax (Appeals)-VI, 6A, I.T. Towers, A.C. Guards, Hyderabad – 500 004.
4.	Commissioner of Income Tax-VI, Hyderabad.
5.	D.R. I.T.A.T. “B” Bench, Hyderabad.
6.	Guard File