

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.371/Viz/2018
(निर्धारण वर्ष/ Assessment Year: 2012-13)

Income Tax Officer
Ward-1
Rajahmahendravaram

Vs. Sri Tadi Vasudeva Rao
M/s Kailash Agencies
31-1-16, Janda Panja Road
Rajahmundry
[PAN :ABJPT5053F]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

Cross Objection No.7/Viz/2019
Arising out of I.T.A.No.371/Viz/2018
(निर्धारण वर्ष/ Assessment Year: 2012-13)

Sri Tadi Vasudeva Rao
M/s Kailash Agencies
Rajahmundry
[PAN :ABJPT5053F]

Vs. Income Tax Officer
Ward-1(1)
Rajahmundry

आयकर अपील सं./I.T.A.No.391&392/Viz/2018
(निर्धारण वर्ष/ Assessment Year: 2011-12 & 2012-13)

Sri Tadi Vasudeva Rao
M/s Kailash Agencies
Rajahmundry
[PAN :ABJPT5053F]

Vs. Income Tax Officer
Ward-1(1)
Rajahmundry

राजस्व की ओर से /Revenue by : Smt. Suman Malik, DR
निर्धारिती की ओर से / Assessee by : Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing : 31.01.2019

घोषणा की तारीख/Date of Pronouncement : 20.03.2019

आदेश /ORDER

PER D.S. SUNDER SINGH, Accountant Member:

These appeals are filed by the revenue and the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-12, Hyderabad vide Appeal No.10376/2017-18 dated 13.04.2018, Appeal No.10375/2014-15 dated 13.04.2018 and 10376/2017-18 dated 13.04.2018 respectively for the Assessment Year (A.Y.) 2011-12 and 2012-13. The assessee filed the cross objections against the order the Ld.CIT(A) for the A.Y. 2012-13.

I.T.A. No.391/Viz/2018 and 392/Viz/2018

2. Delay The assessee received the order of the Ld.CIT(A) on 08.05.2018 and ought to have filed the appeal on or before 07.07.2018 and the assessee filed appeals on 24.07.2018, with the delay of 17 days in filing the appeal. The assessee filed condonation petition assigning medical reasons. The assessee submitted that he was suffering from jaundice and hypertension which caused delay in filing the appeal.

3. We have heard both the parties and convinced that there is reasonable cause for delay in filing the appeal. The assessee is aged 72 years. After hearing both the sides, the delay in filing the appeal is condoned.

I.T.A. No.391/Viz/2018

4. The assessee is engaged in the business of cashew trading. During the assessment year 2011-12, the assessee filed the return of income declaring total income of Rs.3,55,220/- and the assessment was completed u/s 143(3) of Income Tax Act, 1961 ('Act' in short) on total income of Rs.25,01,160/-. The Assessing Officer (AO) made the following additions to the returned income:

Total income returned by the assessee	Rs.3,55,220
Add : Addition towards excess credit balance as discussed in para 3(i) & 3(ii) above	Rs.5,07,249
Add : Addition towards unexplained credit balance as discussed in paras 4(i) & 4(ii) above	Rs.4,34,129
Add : Addition towards unexplained credit balance as discussed in paras 5(i) to 5(iv) above	Rs.3,93,218
Add : Addition towards unexplained credit balance as discussed in para 5(v) above	Rs.1,97,693
Add : Addition towards unexplained sundry credit balance as discussed in paras 6(i) to 6(iv) above	Rs.1,28,000
Add : Addition towards disallowance of sec.40(a)(ia) as discussed in paras 7(i) & 7(ii) above	Rs.3,85,650
Add : Addition towards unexplained cash deposit as discussed in paras 8(i) to 8(ii)	Rs.1,00,000

5. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) allowed the appeal of the assessee partly. Against the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Ground No.1 and 7 are general in nature which does not require specific adjudication.

7. Ground No.2 is related to the additions made by the AO u/s 68 in respect of the following creditors.

1.	Addition towards excess credit balance in M/s Bright Star Global Trading Corporation, Kollam		Rs.5,07,249
2.	Addition towards unexplained credit balance in the case of M/s Noble Cashew Industries, Kottarakkara		Rs.4,34,129
3.	a) M/s Choty Enterprises Killakollar	Rs.2,25,538	
	b) M/s Ganesh Cashew Processing, Dulaipur	Rs.53,030	
	c) M/s Momani Cashew Processing, Contal	Rs.1,14,650	
			Rs.3,93,218
	d) Rajkumar Impex Private Limited, Chennai Unexplained credit balance		Rs.1,97,693

8. The assessee went on appeal before the CIT(A) on the following additions :

(i)	M/s Bright Star Global Trading Corporation	Rs.5,07,249
(ii)	M/s Choty Enterprises	Rs.2,25,538
(iii)	M/s Ganesh Cashew Processing	Rs.53,030
(iv)	M/s Momani Cashew Processing	Rs.1,14,650
(v)	Rajkumar Impex Private Limited	Rs.1,97,693

The Ld.CIT(A) deleted the addition. Though the assessee filed appeal raising separate ground, no argument was made by the Ld.AR during the appeal hearing. Therefore, the assessee's appeal on this issue is dismissed as infructuous.

9. The next issue in Ground No.2(2) is with regard to unexplained credit balance in the case of M/s Noble Cashew Industries, Kottarakkara for an amount of Rs.4,34,129/-. The AO found that the assessee has shown the credit balance of Rs.4,34,129/- in his books of accounts against the Nil balance shown by the creditors in their books of accounts. The assessee did not reconcile the difference, therefore, the AO made the addition of Rs.4,34,129/- as unexplained credit for the A.Y. 2011-12.

10. On appeal, before the CIT(A) also the assessee could not reconcile the balance or submit the evidence to support the outstanding balance as genuine. Therefore, the Ld.CIT(A) confirmed the addition made by the AO and dismissed the appeal of the assessee. Hence, the assessee is in appeal before this Tribunal.

11. We have heard both the parties and perused the material placed on record. There was an outstanding credit balance in the name of M/s Noble Cashew Industries as on 31.03.2011 in the books of the assessee. On verification of the books of accounts of the creditor, it is found that there was no balance outstanding against the assessee, which indicates that the credit balance shown in the books of the assessee is bogus. During the appeal hearing, the Ld.AR could not place any evidence to prove the genuineness of the outstanding either before the Ld.CIT(A) or before the Tribunal. Therefore we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld. The appeal of the assessee on this ground is dismissed.

12. Ground No. 2(4), 2(5) and 2(6) are related to the additions made by the AO as under :

4. **Additions towards unexplained Sundry Creditors**

		Rs.1,28,000
B.V.V.Suryanarayana	Rs.28,000	
K.Rambabu	Rs.1,00,000	

5. **Disallowed towards u/s 40(a)(ia)**

Shipping & Delivery Charges

a) M/s Focus Trans Tech	Rs.1,32,378	
b) M/s JayanarayanShipping Company	Rs.2,53,272	
	Rs.3,85,650

6. **Additions towards unexplained Cash Deposits** Rs.1,00,000

12.1. It is observed from the order of the Ld.CIT(A) in para No.4.1 that the assessee did not contest the above additions before the Ld.CIT(A). During the appeal hearing, the Ld.AR did not make any argument on these additions. Therefore, these grounds are dismissed as not pressed.

13. Ground No.3 to 6 are general in nature and the Ld.AR did not make any argument on these issues. Therefore, these grounds are dismissed as not pressed.

In the result the appeal of the assessee is dismissed.

I.T.A No.371/Viz/2018, 392/Viz/2018 and CO 7/Viz/2018

14. The assessee filed the return of income declaring total income of Rs.7,44,270/-. The case was taken up for scrutiny and the assessment was completed on total income of Rs.97,06,390/- and the AO made the additions to the returned income as under :

Income Returned	Rs.7,44,270
Add : Addition towards unexplained sundry creditors as discussed in para No.5 above	Rs.58,09,081
Add : Addition towards unexplained sundry creditors as discussed in para No.6 above	Rs.13,36,703
Add : Addition towards unexplained sundry creditors as discussed in para No.7 above	Rs.18,16,336
Total income	Rs.97,06,390

15. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) partly allowed the appeal of the assessee. Hence, both the revenue and the assessee have filed cross appeals and the assessee has filed cross objections against the appeal of the revenue.

16. Ground Nos. 1, 9 and 10 of revenue's appeal are general in nature which does not require specific adjudication.

17. Ground No. 2 to 4 are related to the deletion of addition to the extent of Rs.58,09,081/-. During the assessment proceedings, the AO conducted

the enquiries by issuing the notice u/s 133(6) of the Act to ascertain the genuineness of the outstanding balances relating to sundry creditors as per the address given by the assessee and found that the letters issued to the creditors were returned unserved for various reasons as mentions against the remarks of the respective creditor. Therefore, the AO made the addition u/s 68 of the Act treating the same as unexplained loans as under:

Sl.No.	Name of the sundry creditor	Closing Balance as on 31.03.2012	Postal Remarks
1.	M/s Lakshmi Traders	Rs.1,55,000	Insufficient address given, hence returned
2.	Tangedu Lakshmi	Rs.5,55,000	Insufficient address given, hence returned
3.	Kandi Suryanarayana	Rs.2,68,000	No name in the village, hence returned
4.	Velugula Suryanarayana	Rs.3,30,000	Addressee not in address given
5.	KanumuriS.Venkata Rao	Rs.7,00,000	Not in village
6.	A.Radha Lakshmi Prasad	Rs.2,07,070	Not in village
7.	Koppineedi Rama Krishna	Rs.2,98,950	Such name of addressee not in village
8.	Vasudira Impex Pvt. Ltd.	Rs.32,42,561	Addressee left
9.	Sri Tirumala Venkata Ramana Cashew Products	Rs.52,500	Insufficient address given, hence returned
	Total Amount	Rs.58,09,081	

18. Against the order of the AO, the assessee went on appeal before the CIT(A) and produced the ledger extracts of the concerned accounts in the case of following creditors :

Sl.No.	Name of the creditor	Amount
1.	M/s Lakshmi Traders	Rs.1,55,000/-
2.	Kandi Suryanarayana	Rs.2,68,000/-
3.	A.Radhalakshmi Prasad	Rs.2,07,070/-
4.	Vasudira Impex Pvt. Ltd.	Rs.32,42,561/-
5.	Tirumala Venkata Ramana Cashew Products	Rs.52,500/-

From the perusal of the ledger extracts, the Ld.CIT(A) found that accounts of the above creditors are running accounts in which the transactions were recorded in the subsequent years also and most of the payments were made by cheques against the sales invoices. Hence, the Ld.CIT(A) directed the AO to delete the additions in respect of the above creditors and confirmed the balance amount since the assessee failed to furnish any evidence to prove the genuineness of the outstanding creditors.

19. Against the order of the Ld.CIT(A), the revenue filed appeal before this Tribunal and the assessee has filed cross appeal for the balance amount.

20. We have heard both the parties and perused the material placed on record. In the instant case, the credits are related to the trade transactions but not cash credits. The crux of the issue is the genuineness of purchases and if the purchases are bogus the AO required to disallow the expenditure. The AO has accepted the purchase and sales. Having accepted the purchases, the AO cannot make the addition of outstanding credit balance, since, the addition required to be made disallowing the relevant purchases which are bogus or paid outside the books of accounts. In the instant case, the CIT(A) has verified the ledger extracts and observed that out of 9 accounts 5 accounts are continuous running accounts, wherein the supplies were made in the subsequent years also and the payments were made by cheques. The AO did not gather any evidence to prove that the outstanding credits are bogus or purchases from the above parties are bogus. Once the purchases are made on credit and the payments are paid by cheques, unless there is an evidence to prove that the payment is made outside the books of accounts there is no case for making the addition u/s 68 of the Act. Therefore, we do not see any reason to interfere with the order of the Ld.CIT(A) and the same is upheld.

20.1. In respect of the assessee's appeal it is observed from the order of the Ld.CIT(A) that the assessee failed to provide any evidence or ledger extracts to prove the identity of the creditor and the genuineness of the outstanding. Though non-furnishing of account copies does not lead to addition, it is incumbent upon the assessee to prove the genuineness of the outstanding creditors. Since the assessee failed to furnish any primary evidence with regard to the identity, genuineness and the existence of the said creditor, we uphold the order of the Ld.CIT(A). Accordingly, the appeals of the revenue as well as of the assessee on this issue are dismissed.

21. Ground No.5 and 6 are related to the addition of Rs.13,36,703/- representing un-reconciled balances in the accounts of four sundry creditors. During the assessment proceedings, the AO conducted enquiries with regard to the genuineness of the outstanding creditors by issue of notice u/s 133(6). On verification of the information received from the creditors, the AO found the differences in the books of accounts of the sundry creditors aggregating to Rs.13,36,703/- as follows:

S.No.	Name of the Creditor	Balance as per assessee's books as on 31.03.2012	Balance as per Sr.creditors books as on 31.03.2012	Difference
1.	ACME Commodities Pvt. Ltd.	Rs.19,50,363	Rs.11,33,469	Rs.8,16,494
2.	Bright Star Global Trading Corporation	Rs.22,829	Nil	Rs.22,829
3.	Noble Cashew Industries	Rs.4,34,129	No transaction as per parties letter	Rs.4,34,129
4.	Vijay Kiran Agencies	Rs.2,00,000	Rs.1,36,749	Rs.63,251
		Total Difference		Rs.13,36,703

21.1. The assessee was asked to reconcile the difference and the assessee did not reconcile the difference, therefore, the AO made the addition of Rs.13,36,703/- to the returned income u/s 68 of the Act.

22. On appeal before the CIT(A), the assessee had reconciled the differences in all the creditors accounts, except Noble Cashew Industries. The Ld.CIT(A) has verified the correctness and after being satisfied, allowed the appeal of the assessee. In the case of Noble Cashew Industries, the Ld.CIT(A) observed that the difference of Rs.4,34,129/- was related to the A.Y 2011-12 and the said amount was added by the AO in the respective

assessment and the Ld.CIT(A) has confirmed the said addition. In respect of remaining 3 creditors, the assessee filed reconciliation which was examined by the Ld.CIT(A) and allowed the appeal of the assessee. For the sake of clarity and convenience, we extract para No.7.3 of the order of the Ld.CIT(A) which reads as under :

"7.3.I have carefully considered the submissions of the appellant, the order of the Assessing Officer, and the written submissions of the AR. This addition of Rs.13,36,703/- is made on account of four creditors, in respect of whom, certain differences were noted in the closing balance vis-a-vis the books of the assessee, which could not be reconciled during the assessment proceedings. During the course of appellate proceedings, vide his submissions reproduced in para 71 above, the appellant's AR has explained and reconciled the differences in respect of all these four creditors. Moreover, in respect of the credit balance at Rs.4,34,129/- pertaining to M/s.Nobal Cashew Industries, the addition of the same amount has already been made by the Assessing Officer in the preceding AY i.e., AY 2011-12, which had already been confirmed vide para 7.3 of the appellate order No.10375/2014-15, dated 13-04-2018. The credit balances in respect of the remaining three creditors have also been duly explained. I therefore find no merit in the addition made by the Assessing Officer on this account, and the addition made of Rs.13,36,703/- is therefore ordered to be deleted. The grounds related to this issue are ALLOWED."

23. Against the order of the CIT(A), the revenue filed appeal before this Tribunal. In Ground No.6, the revenue raised objection for not giving opportunity to the AO as per Rule 46A of I.T.Rules.

24. It is settled issue that the proceedings of the Ld.CIT(A) is extension of assessment proceedings and CIT(A) is permitted to make independent verification even without referring the matter to the AO. These powers are vested with the CIT(A) in section 250(4) of the I.T.Act which reads as under :

(4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).

The CIT(A) is empowered to make enquiries independently for disposal of the appeal as provided in the Act and this view is upheld by the coordinate bench of ITAT, Kolkata in Deputy Commissioner of Income tax-(1)(1), Kolkata v. Lexicon Auto Ltd.^{92 taxmann.com 84}. Therefore, we are of the considered view that once the CIT(A), after verification has satisfied the genuineness of the transaction, she is permitted to decide the appeal without referring the issue to the Ld.AO under Rule 46A. Therefore we are unable to sustain this ground of the revenue and the same is dismissed.

25. In the instant case there were differences in outstanding balance of the creditors accounts vis-à-vis the assessee. The assessee has furnished the reconciliation and the Ld.CIT(A) has verified the accounts and satisfied with regard to the correctness of the balances. Since the Ld.CIT(A) has

satisfied with regard to the correctness of the outstandings and the differences were duly reconciled, we do not see any reason to interfere with the order of the Ld.CIT(A) and the same is upheld. Accordingly, Ground No.5 & 6 of the Revenue are dismissed.

26. The next ground in Ground Nos. 7 and 8 are related to the addition of Rs.18,16,336/- on account of credit balance in the name of Rajkumar Impex Pvt. Ltd. The AO found during the assessment that in the case of Rajkumar Impex Private Ltd., Chennai, there was an outstanding balance of Rs.90,14,029/- as on 31.03.2012 and the balance outstanding as at the end of the year 31.03.2011 was Rs.71,97,693/- which shows the difference of Rs.18,18,336/-. The AO understood that the difference between the outstanding balance as on 31.03.2011 and 31.03.2012 represents unexplained cash credits, accordingly brought to tax unexplained income u/s 68 of the Act.

27. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) observed that the assessee had reconciled the difference in the assessment for the A.Y. 2013-14 and made the addition of Rs.32,211/-. Hence, viewed that the differences in the balances were

reconciled by the assessee till the A.Y.2013-14 and accordingly deleted the addition made by the AO. For the sake of clarity and convenience we extract para No.8.3 of the order of the Ld.CIT(A)

“8.3. I have carefully considered the submissions of the appellant, the order of the Assessing Officer and the written submissions of the AR. The third addition is made on account of excess credit balance of Rs.18,16,336/- in the books of M/s.Raj Kumar Impex Private Limited. The said addition has been made on the basis of the account extract furnished by the said creditor, It is seen that while completing the assessment u/s.143(3) for AY 2013-14, the Assessing Officer has himself made an addition of Rs.32,211/- only, observing as under:

“6.It is also seen from the schedule of the Trade Creditors, the assessee has shown a credit balance of Rs.10,38,555 in the name of Sri Adabala Rambabu as on 31.03.2013 and shown a credit balance of Rs.73,84,250 (Rs.12,57,795 + Rs.61,26,465) in the name of Rajkumar Impex Pvt. Ltd., Chennai. But as per the account copies obtained form the said creditors, there are certain differences were found in the above cases.

<i>Name of the Sr.Creditor</i>	<i>Closing Balance as per assessee's books</i>	<i>Closing balance as per sundry creditor's books account copy</i>	<i>Difference</i>
<i>AdabalaRambabu</i>	<i>Rs.10,38,555</i>	<i>Rs.10,58,555</i>	<i>-</i>
<i>Rajkumar Impex Pvt. Ltd. Chennai</i>	<i>Rs.73,84,250</i>	<i>Rs.1,05,75,616</i>	<i>Rs.31,91,666</i>

7. Vide this office letters dated 11-03-2016 and 16-03-2016, the assessee was asked to reconcile the above difference of Rs.20,000/-- and Rs.31,91,777/- respectively. In response to this, the assessee submitted reconciliation statement in the case of MIs. Rajkumar Impex Pvt. Ltd.. As seen from the above

statement, the assessee has reconciled to the extent of Rs5,595/- and he could not reconcile balance amount for Rs.32,211 and also stated that he has no objection for making addition of Rs32,211/- for the AV 2013-14".

Against the order of the Ld.CIT(A), the revenue is in appeal before us.

28. We have heard both the parties and perused the material placed on record. In this case, it is observed from the assessment order that the outstanding balance as on 31.03.2011 was Rs.71,97,693/- which is opening balance for the year under consideration and the closing balance as on 31.03.2012 was Rs.90,14,029/-. The difference between the balance as on 01.04.2011 and 31.03.2012 was understood as unexplained cash credits by the AO and made the addition u/s 68 of the Act. At the outset, the AO is not correct in invoking the provisions of section 68 of the Act with regard to outstanding trade creditors balances since there is no introduction of cash in the books of accounts. Invoking of section 68 is in the circumstances of introduction of fresh credits in the books of accounts, but not with regard to purchase and sales. In the instant case, the AO completed the assessment for the A.Y.2013-14. The assessee has reconciled the differences during the course of assessment proceedings for the A.Y. 2012-13 and 2013-14 which resulted in difference of Rs.32,211/- which was added to the income in the respective assessment years. Though the

assessee has not reconciled the difference before the AO, it was been reconciled by the assessee at the time of assessment for the A.Y. 2013-14 which cannot be ignored. Apart from the above, Rajkumar Impex Pvt. Ltd. is a trade creditor and the account copy of the creditor is placed before us which shows that the account is running account and there are number of transactions during the year and the payments were made by cheques. The AO did not suspect the purchases made from Rajkumar Impex Pvt. Ltd., and accepted the entire purchases and assessed the sales. Having accepted the purchases and the payments were made through cheques, there is no reason to suspect the purchases. The AO without reconciling the account, made the addition. Further in case of trade creditors, if there is a bogus purchase, the AO is required to make addition u/s 37(1), but not u/s 68 of the Act. Similarly, if the AO suspects that the payments are made outside the books of accounts, the assessing officer is free to make the addition, but no such evidence was brought on record by the AO. In the instant case, as discussed earlier, Rajkumar Impex Pvt. Ltd., is a trade creditor and the AO has accepted all the purchases and the payments which were made through cheques and no evidence was brought on record that the assessee has made the payment outside the books of accounts. Hence, there is no reason

to make the addition, accordingly, the appeal of the Ld.CIT(A) is upheld and the appeal of the revenue is dismissed.

CO No.7/Viz/2019, A.Y.2012-13

29. The assessee filed cross objections against the appeal of the revenue supporting the order of the Ld.CIT(A). Since the appeal of the revenue is dismissed, cross objections filed by the assessee becomes infructuous, hence dismissed.

30. In the result, appeal of the revenue as well as the appeal of the assessee and the cross objection are dismissed.

Order pronounced in the open court on 20th March, 2019.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated :20.03.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- Sri Tadi Vasudeva Rao, M/s Kailash Agencies, 31-1-16, Janda Panja Road, Rajahmundry
2. राजस्व/ The Revenue – Income Tax Officer, Ward-1(1),Rajahmundry
3. The Pr.CIT, Rajamahendravaram
4. The Commissioner of Income-Tax (Appeals)-12, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM