

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH 'D', MUMBAI**

**BEFORE SHRI G. E. VEERABHADRAPPA, PRESIDENT,  
& SHRI VIVEK VARMA, JUDICIAL MEMBER**

**I.T.A. NO. 4168/Mum/2011  
Assessment Year : 2006-07**

DCIT 22(3), 3 <sup>rd</sup> floor, Tower No.6, Vashi Rly. Station Complex, Vashi, Navi Mumbai	Vs.	M/s. Rishabh Oil Industries Shop No. 18, Shanti Centre, Sec. 17, Vashi, Navi Mumbai  <b>PAN NO: AAEFR 1398 G</b>
(Appellant)		(Respondent)
Appellant by	:	Shri N. K. Mehta
Respondent by	:	Shri B. V. Jhaveri

**Date of Hearing: 06.08.2012**

**Date of Pronouncement: 05.09.2012**

**ORDER**

**Per Vivek Varma, J.M. :**

The instant appeal arises from the order of CIT(A) – 33, Mumbai, dated 15.03.2011, wherein, the department has raised the following grounds of appeal:-

1. *On the facts and circumstances of the case and in law, the CIT(A) erred in granting relief in respect of addition u/s 41(1) of Rs. 30,49,113/- on account of sundry creditors for which no confirmations were filed during the course of assessment proceedings and moreover in the remand report it was merely stated by the A.O. that the payments were made by A/c payee cheques and genuineness thereof were not verified.*
2. *On the facts and circumstances of the case and in law, the CIT(A) erred in giving the above relief merely on the ground that cheque payments were made without considering the fact that even during the remand proceedings, the assessee could not establish the genuineness of the credit balance of its creditors.*

- 3. On the facts and circumstances of the case and in law, the CIT(A) erred in granting relief on account of additions made of Rs. 20,25,535/- being difference in credit balances of sundry creditors, on the basis of remand report which merely stated that the differences have been reconciled by the assessee without actually verifying the genuineness of credits and their differences from such creditors.*
- 4. On the facts and circumstances of the case and in law, the CIT(A) erred in holding that the assessee had already declared Rs.45 lakhs during A.Y. 06-07 as a result of survey and thereby deleting Rs. 60,60,000/- on account of fall in G.P. without actually verifying as to whether the said disclosure was made out of business income when the A.O. had failed to comment on this aspect in the remand report.*
- 5. The appellant prays that the order of the CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored.*

2. The facts of the case are, that, the appellant is a partnership firm carrying on the business of crushing of oil seeds and extraction of oil. The appellant filed its return of income declaring total income of Rs. 80,95,090. The assessment has been completed on the total income of Rs. 1,93,15,840. The dispute centers on the following additions.

- i) Cessation of liability u/s 41(1) Rs. 50,64,748/- (30,49,113 + 20,25,535)
- ii) Fall in G P Rs. 60,60,000.

3. Ground nos. 1, 2 & 3.

At the time of assessment proceedings, the assessee was required to file confirmations, letters to some of the creditors were sent by the A.O., which were returned unserved. As some of these letters came back unserved, the assessee was asked to produce those creditors to file confirmations, the assessee could not produce them, at this point, the AO came to the conclusion that credit balances shown were actually relating to on non existent persons,

therefore, invoking section 41(1), the AO added back the credit balance of Rs. 30,49,113.

4. The AO also noticed that confirmations received from Apar Industries and Sarvodaya Blending Pvt. Ltd. were at variance with the credit balances shown by the assessee in its books. According to the assessee books, the credit balance against Apar Industries were at Rs. 42,51,432 but as per confirmation received from them, the credit balance were at Rs. 28,57,537, i.e. a difference of Rs. 13,93,895. Similarly, in the case of Sarvodaya, the balance shown by the assessee was at Rs. 13,53,113 and balance confirmation received from that party showed Rs. 6,80,866, i.e. difference of Rs. 6,72,265, both differences aggregating to Rs. 20,25,535 (Rs. 13,93,895 + Rs. 6,72,265).

The impugned, aggregating to Rs. 50,64,748/-, details are as follows :

A	Cessation liability u/s. 41(1)	Rs.	5064748
I	Chetan Engg. Co.	Rs.	8491
	Deepak Solanki	Rs.	17268
	Rakhee Packaging Malegaon	Rs.	657121
	Selection Hardware & Machine Tools	Rs.	19911
	Spark Metal	Rs.	39225
	Gandhear Oil Refinery (I) Ltd.	Rs.	661293
	Nilish Transport	Rs.	23000
	Sanjay Roadlines	Rs.	136460
	Srie Aruna Enterprises	Rs.	1483986
	Vinayagan Oil Industries	Rs.	23587
	Total	Rs.	3049113
B	Apar Industries	Rs.	1393895
C	Sarvodaya Blending Pvt. Ltd.	Rs.	672265

The submissions made before the CIT(A) are as under :

A) *With a view to verifying the genuineness of the creditors, letters were sent to the above mentioned persons which came back unserved. This fact was intimated to the assessee and was asked to produce these persons and file confirmations. The assessee has failed to comply. Hence additions were made on this score.*

*The assessee submitted a paper showing payments made by the above 10 parties as specified in the assessment order. Payments are made by account payee cheque, in certain cases payments have been made by the bank and the statements are filed in the paper book. The statements filed in respect of the above parties in the paper book has been verified and found to be in order.*

B) The assessee has shown Apar Industries as sundry creditors at Rs. 42,51,432. During the course of scrutiny assessment Notice u/s.133(6) sent to Apar Industries Ltd.

In response to the notice u/s.133(6), Apar Industries submitted copy of account statement the outstanding was Rs. 2,85,77,537 out of Rs. 42,51,432.

In this regard the assessee submitted confirmation copies of ledger A/c, Copies of Bill discounted by Apar Industries Ltd., of Rs. 7,16,626 & Rs. 6,82,001. The State Bank of India, Vashi – Turbhe, Branch had accepted the bill of Exchange (LC) dated 27.03.2006 & 16.03.2006 respectively. The State Bank of India, Vashi- Turbhe, Branch has directly debited from the account on the due date of the (Hundi) Bill of Exchange. A copy of the bank account statement is available in the paper book.

BI) Same is the case with Sarvodaya Blending Pvt. Ltd. Sarvodaya shows Rs 6,80,866 against which the assessee has shown Rs. 13,53,131. The assessee could not explain the discrepancy in the figures. And the difference of Rs.6,72,265 was added.

In this regard the assessee submitted confirmation copies of ledger A/c, Copies of Bill discounted by Sarvodaya Blending Pvt. Ltd. of Rs. 6,72,265. The State Bank of India, Vashi – Turbhe, Branch had accepted the bill of Exchange (LC) Dated 18.04.2006. The State Bank of India, Vashi – Turbhe, Branch have directly debited from the account on the due date of the (Hundi) Bill of Exchange. A copy of the bank account statement is available in the paper book.

The CIT(A), after considering the submissions and taking into account the evidence brought on record, deleted the addition made at Rs. 50,64,748/-.

5. Ground no. 4

This ground pertains to deletion of addition of Rs. 60,60,000 on account of low gross profit.

6. The facts as available in the orders of the revenue authorities as well as the evidence brought on record, we find that the AO noticed that there had been a sudden drop of GP by 5% as compared to the preceding year, where it was at 17.76%. According to the AO, as well as the CIT(A), no plausible explanations were given by the assessee on the reasons for fall in GP rate. The AO, therefore, computed the GP at 15.91% and added back Rs. 60,60,000. The CIT(A), in principal, sustained the addition on account recomputed GP. But, the

CIT(A) observed that the assessee had made a declaration of Rs. 45,00,000 in the current year, during survey operation and had also paid taxes. Taking that into consideration, the CIT(A) deleted the addition.

7. Against these observations on both the issues, the department is in appeal before the ITAT.

8. Before us, the DR supported the order of the AO, while on the other hand, the AR submitted that no doubt the confirmations and reconciliations were not available with it at the assessment stage, but since the same were available at that time, the comments could be called for from the AO. The CIT(A) thus called for the remand report, wherein the assessee was able to file all the required details and also filed reconciliations in the cases of Apar and Sarvodya.

9. The AR also pointed out that the CIT(A) took cognizance of the fact that the assessee had made a declaration of Rs. 45,00,000 and on that basis, the addition of Rs. 60,00,000 was deleted, as the GP, with the inclusion of Rs. 45,00,000 came to 16.29%, more than what was estimated by the AO.

10. We have heard the arguments from both the sides and have also perused the material placed on record. It is evident from the order of the CIT(A) that the assessee was unable to produce confirmations and reconciliations at the time of assessment proceedings and since the details was produced before the CIT(A), the CIT(A), called for the remand report. During the remand proceedings, the

assessee was able to reconcile the same. The CIT(A), on the basis of the remand report, where the AO accepted on facts with the observation that "*the statements filed in respect of the above parties in the paper book has been verified and found to be in order*", which were in fact, the confirmations on ten parties, amounting to Rs. 30,49,113 and reconciliations of amounts standing in the names of Apar & Sarvodya aggregating to Rs. 20,25,535, deleted the additions made by the AO at Rs. 50,64,748, u/s 41(1) of the Act. We are in agreement with the observations made by the CIT(A), that since the details and reconciliations had been provided to the AO and the AO finds then to be in order, the question of sustaining the addition does not arise.

11. We have also gone through the facts of addition of Rs. 60,60,000, we find that the AO had factored the GP at 15.91% and when the additional disclosure of Rs. 45,00,000 is given effect in the results of the assessee, the GP goes to 16.29% as, mentioned by the AR and which has not been objected to by the DR. We, therefore, agree with the conclusion drawn by the CIT(A) on this issue as well.

12. In the result, we do not find any reason to disturb the final outcome of the decision of CIT(A), deleting the additions both on the issue of 41(1) and gross profit. We, sustain the order of the CIT(A).

13. In the result, the appeal filed by the department is dismissed.

Order pronounced in the open court on this day of 05/09/2012.

**Sd/-**  
**(G.E. VEERABHADRAPPA)**  
**PRESIDENT**

**Sd/-**  
**(VIVEK VARMA)**  
**JUDICIAL MEMBER**

Mumbai, Date: **05/09/2012**

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Copy to-

- 1) Appellant
- 2) Respondent
- 3) CITA                      Mumbai.
- 4) CIT City                Mumbai
- 5) DR                        Bench Mumbai

True Copy

By Order

Dy/Asst.Registrar,ITAT MUMBAI.