

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 899/Del/2012
Assessment Year: 2008-09

ACIT, Circle-1, Muzaffarnagar	Vs.	M/s. Sikka Paper Ltd., Subhash Chowk, Shamli, Distt. Prabudhnagar, Muzaffarnagar.
GIR/PAN : AAEC3643J		
(Appellant)		(Respondent)

Appellant by	Smt. Anima Barnwal, Sr. DR
Respondent by	S/sh. K. Sampath & V. Raj Kumar, Advocates

Date of hearing	29.06.2016
Date of pronouncement	16.08.2016

ORDER

PER O.P. KANT, A.M.:

This appeal of the Revenue is directed against the order dated 17th November, 2011 of the learned Commissioner of Income Tax (Appeals), Muzaffarnagar, for assessment year 2008-09, raising the following grounds of appeal:

- i. On the facts and in the circumstances of the case the Ld. CIT (A) has erred in law by deleting the addition of Rs.95,65,382/-made by the Assessing Officer on account of bogus creditors by relying upon the ambiguous e-mail received from M/s Triveni Engineering & Industrial Ltd. and verbal explanation submitted by the appellant.*

- ii. *On the facts and in the circumstances of the case, the CIT(A) has erred in law by deleting the disallowance of Rs. 53,49,958/- made by the A.O. on account of increase in chemical expenses by ignoring the fact that the increase in chemical expenses was far more than increase in production.*
- iii. *On the Facts and in the/Circumstances of the case, the CIT(A) has erred in law by allowing the relief of Rs. 1,70,996/- out of Rs. 3,12,457/- made by the A.O. on account of scrap generated out of consumption of stores and spares by ignoring the fact that the CIT(A) has himself accepted the amount of scrap at 10% of the amount of consumption of stores and spares in the case of M/s The Ganga Kisan Sahakari Chini Mills Ltd., Moma in A.Y. 2008-09.*
- iv. *The order of the CIT(A) be set aside and that of AO be resorted.*

2. The facts in brief of the case are that the assessee company derived its income from manufacturing and trading of paper products. For the year under consideration, the return of income declaring nil income was filed on 30th September, 2008. The case was selected for scrutiny and a notice under Section 143(2) of the Income-tax Act, 1961 (for short "the Act") was issued and served within the stipulated period and the assessment was completed on 29th December, 2009 under Section 143(3) of the Act, making the following three additions

(i) Difference in creditors' account, amount	Rs. 95,65,382/-
(ii) Disallowance out of chemical expenses amounting to	Rs. 53,49,958/-
(iii) Scrap sales estimated	Rs. 3,12,257/-
Total	Rs. 1,52,27,597

3. The Assessing Officer has noted that during the assessment proceedings, the assessee could not produce books of account and another records on the ground that the same were in the possession of assessee's bankers i.e. M/s. Indian Overseas Bank, which is the main reason for making the additions in the assessment proceedings. Aggrieved, the assessee filed an appeal before the learned Commissioner of Income Tax (Appeals) and submitted necessary explanations along with documentary evidence. The learned Commissioner of Income Tax (Appeals) forwarded the submissions and documentary evidences to the Assessing Officer calling for a remand report from the Assessing Officer. After taking into consideration the remand report of the Assessing Officer and rejoinder of the assessee on the said remand report, he deleted the additions made on first two accounts and allowed part relief in case of the third addition of estimation of the sale from the scrap. Aggrieved, the Revenue is in appeal before us, raising the grounds as reproduced above.

4. In ground no. 1, the Revenue has challenged the deletion of the addition of Rs. 95,65,382/- made in respect of bogus credits. The facts in respect of the issue in dispute are that during the assessment proceedings, the assessee filed list of sundry creditors above Rs. 5 lakhs. The Assessing Officer called for information under Section 133(6) of the Act verifying the transaction from the said creditors. In case of one creditor i.e. M/s. Triveni Engineering and Industries Ltd., it was found that there was a transaction relating to sale of steam turbine by the

said party to the assessee, however, in the copy of ledger account of the assessee company in the books of account of M/s. Triveni Engineering and Industries Ltd., closing balance as on 31st March, 2008 was nil as against the credit balance of Rs. 95,65,382/- in the ledger account of M/s. Triveni Engineering and Industries Ltd. appearing in the books of account of the assessee. The Assessing Officer made addition holding that the accounts and other records could not be produced by the assessee on the ground that the same were in possession of the bank. During the remand proceedings before the Assessing Officer, the assessee explained that the assessee company made the said payment to M/s. Triveni Engineering and Industries Ltd. on 12th April, 2008 through RTGS and the said creditor had also issued receipt no. 1465 dated 16th April, 2008 for the same amount. Further, the assessee also submitted that M/s. Triveni Engineering and Industries Ltd. in their books of account adjusted an advance of M/s. Bindal Papers i.e. another sister concern and reduced the account balance of the assessee to nil. The assessee company also submitted e-mail received from M/s. Triveni Engineering and Industries Ltd. accepting the receipt of Rs. 96,10,065/- through RTGS from the assessee company on 18.04.2008, which was then, adjusted in the account of M/s. Bindals Papers Ltd. The Assessing Officer did not accept the explanation of the assessee. Learned Commissioner of Income Tax (Appeals) after considering the remand report as well as the rejoinder of the assessee deleted the addition with the observations as under:

"The facts of the case and submissions made by the appellant have been carefully considered. It is observed that that the AO had made addition of Rs.95,65,382/- on the ground that the appellant had shown the same as liability at the close of relevant accounting period whereas as per account of the appellant in the books of M/s Triveni Engineering & Industries Ltd. the same was shown at Nil. Thus the AO inferred that the appellant had shown bogus liability of Rs.95,65,382/- which stood already paid during the relevant accounting period as confirmed by M/s Triveni Engineering & Industries Ltd. On the other hand the appellant had vehemently contended that there was liability at Rs.95,65,382/- at the close of the year. The discrepancy in accounts was due to the fact that M/s Triveni Engineering & Industries Ltd. had credited the account of the appellant at Rs.95,65,382/- from the account of the sister concern, M/s Bindal Papers Ltd. However, on account of correspondence made by the appellant with M/s Triveni Engineering & Industries Ltd., the aforesaid concern vide letter dated 22-09-2011 has furnished as under:-

"This is with reference to your e-mail dated Sep 3, 2011. We hereby confirmed that we have received Rs. 96,10,055/- by RTGS on 16-04-2008 from M/s Sikka Papers Limited. However, at that time, there was outstanding in the account of M/s Bindal Papers Limited (one of your sister concern), so we adjusted the amount in the books of M/s Bindal Papers Limited and thereafter we dispatch the turbine.

The above transactions were recorded by us in the books Triveni Engineering & Industries Limited w.e.f. 01-10-2010, the Steam Turbine Business is demerged and formed Triveni Turbine Limited....."

From the-above is noticed that although there is some ambiguity in the language of the aforesaid letter, however, during the course discussion, it has been explained by the appellant that earlier (on 24-03-2008) Triveni Engineering & Industries Ltd. had adjusted the amount due from the appellant from the account of M/s Bindal Papers Ltd. (sister concern) who was having advance with Triveni Engineering

& Industries Ltd. The discrepancy in accounts has been rectified and the aforesaid concern has made adjustment in the account of M/s Bindal Papers Ltd. at Rs.96,10,055/- on 16-04-2008. It is observed that there is no difference in balances as the appellant company had debited the same in next accounting year on 12-04-2008 and the amount of Rs.96,10,055/- was debited by the bank Indian Overseas bank on 12-04-2008 through RTGS and M/s Triveni Engineering & Industries Ltd. has also issued the receipt No. 1465 dated 16-04-2008 for the same amount. The difference in figures at Rs.44,673/-(Rs.96,10,055 - Rs.95,10,055) is on account of bank charges on transaction made through RTGS. In light of the above facts, it is held that the AO was not justified in making addition of Rs.95.65,382/-. The same is directed to be deleted. Ground No. 1 is allowed."

4.1 Before us, the learned Sr. Departmental Representative relying on the order of the Assessing Officer, submitted that the learned Commissioner of Income Tax (Appeals) has relied on the e-mail of the creditor and his verbal explanation. According to the learned Sr. Departmental Representative, the assessee has not discharged its onus in terms of section 68 of the Act and therefore the addition must be sustained.

4.2 On the contrary, the learned Authorized Representative of the assessee relying on the order of the learned Commissioner of Income Tax (Appeals) submitted that there was no inconsistency in the ledger accounts of the assessee and the creditors in their respective books of account. He referred to page no. 4 of the assessee's paper book, which is a copy of the account of M/s. Triveni Engineering and Industries Ltd. in the books of account of the assessee company. According to the said copy of account, the assessee had purchased goods worth

Rs. 1,54,94,081/-, out of which, the assessee made payment of Rs.59,28,699/- and balance of Rs. 95,65,382/- was outstanding for payment. He also referred to the copy of the account of the assessee company in the books of account of M/s. Triveni Engineering and Industries Ltd., which is available at page no. 145 of the assessee's paper book. According to this account also there are sales of Rs. 1,54,94,081/- through the assessee and payment of Rs. 59,28,699/- from the assessee company but there is one more entry wherein an advance of M/s. Bindal Papers Ltd., amounting to Rs. 95,65,382/-, has been transferred and adjusted against the balance payment, thus, the outstanding payment from the assessee company was reduced to nil.

4.3 Learned Authorized Representative submitted that since the assessee was not aware of the adjustment made by M/s. Triveni Engineering Industries Ltd., the assessee company paid the outstanding balance through RTGS to M/s. Triveni Engineering Industries Ltd. in the next financial year on 12th April, 2008, for which M/s. Triveni Engineering and Industries Ltd. has also issued receipt which is placed at page no. 7 of the assessee's paper book. He further submitted that the assessee had discharged its onus in terms of Section 68 of the Act, still made efforts with the creditors and got verification for M/s. Triveni Engineering and Industries Ltd. through e-mail which were submitted before the Assessing Officer. He further submitted that the assessee duly requested the Assessing Officer in remand proceedings to call for the parity in case of

any further clarification, however, the Assessing Officer did not take any action in this respect. Therefore, the assessee cannot be penalized for the inaction on the part of the Assessing Officer and the assessee has discharged its onus. Learned Authorized Representative also referred to the e-mail corresponding between the assessee company and M/s. Triveni Engineering Industries Ltd which is available at page no. 152 to 154 of the assessee's paper book.

4.4 We have heard the rival submissions and perused the material on record. The issue in dispute has arisen between the parties due to non-production of books of account at the time of assessment proceedings. On perusal of the copy of the ledger account of the assessee in the books of account of M/s. Triveni Engineering and Industries Ltd., which is available at page 145 of the assessee's paper book and a copy of the account of M/s. Triveni Engineering and Industries Ltd. in the books of account of the assessee company which is appearing at page no. 4 of the assessee's paper book, we find that the only difference between the two account is adjustment of Rs. 95,65,382/- by M/s. Triveni Engineering Industries Ltd. of the advance of M/s. Bindal Papers i.e. the another sister concern of the assessee company. According to the assessee, it was not aware of such adjustment and, therefore, the amount was shown as outstanding for payment to the said company. The assessee has also shown evidence of payment of Rs. 96,10,055/- to the said creditor against outstanding of Rs. 95,65,382/- in the copy of e-mail produced, and also M/s.

Triveni Engineering and Industries Ltd. has accepted the receipt of this payment and stated that the same has been adjusted in the account of M/s. Bindal Paper Ltd. The reason for adjustment of receipt of payment of Rs. 96,10,055/- by M/s. Triveni Engineering and Industries Ltd. against M/s. Bindal Papers Ltd. is obvious as for the year under consideration, the advance of M/s. Bindal Papers Ltd. was adjusted against the balance of the assessee. In our view, the assessee has discharged its onus in respect of credit and the Assessing Officer has not raised any doubt in respect of the purchase from the said creditor. The identity of the said party has also been verified. The assessee has submitted the explanation for the inconsistency appearing in the ledger accounts of the parties in their respective books of account. If the Assessing Officer was not satisfied, he should have carried out further enquiries from M/s. Triveni Engineering and Industries Ltd. or from M/s. Bindal Papers Ltd., which he did not. According to us, the assessee cannot not be allowed to suffer because of no action taken on the part of the Assessing Officer for verification. In our view, the assessee has submitted evidences necessary to shift the onus to the Revenue and, therefore, no addition is warranted in the case of the assessee for unexplained credit. In view of above, we hold that the learned Commissioner of Income Tax (Appeals) has passed a reasoned order on the issue in dispute and there is no infirmity in his findings on the issue in dispute. Accordingly, this ground of appeal is dismissed.

5. In ground No. 2, the Revenue has challenged deleting the disallowance of Rs. 53,49,958/- made by the Assessing Officer on account of increase in chemical expenses.

5.1 The learned Departmental Representative, relying on the order of the Assessing Officer, submitted that the learned Commissioner of Income-tax (Appeals) has ignored the facts that increase in chemical expenses was far more than increase in production of finished products. She also submitted that no evidences justifying increase in chemical expenses were submitted before the Assessing Officer.

5.2 On the other hand, the learned Authorized Representative of the assessee relying on the order of the Ld. Commissioner of Income-tax (Appeals), submitted that at the time of assessment proceeding, books of accounts of the assessee were in possession of its bankers and therefore it could not explain the increase in expenses during assessment proceeding, however, before the learned Commissioner of Income-tax (Appeals) explanation alongwith all documentary evidence was filed, which were forwarded to the Assessing Officer for comments. The learned Authorized Representative further submitted that no discrepancy either in the vouchers or bills of the expenses or in inventory, was found by the Assessing Officer and therefore in such circumstances ad-hoc disallowance is not justified, hence the Ld. Commissioner of Income-tax (Appeals) has rightly deleted the addition.

5.3 We have heard the rival submissions and perused the material on record including the details in respect of the

expenses filed in the assessee's paper book. The Assessing Officer made addition of Rs. 53,49,958/- out of manufacturing expenses under the head chemical expenses at the rate of 10% of the total expenses of Rs. 5,34,99,583/- on the ground that the assessee company could not explain the increase in chemical expenses as compared to the production. The contention of the assessee before the Assessing Officer was that its books of accounts and other records were in possession of its banker and therefore it could not explain the increase in chemical expenses. Before the learned Commissioner of Income-tax(Appeals), the assessee submitted that increase in expenses was due to increase in production as well as due to the rate of chemicals. The assessee also submitted before the learned Commissioner of Income-tax (Appeals) that:

- (i) it had maintained regular books of accounts and other relevant records which are also Audited by the chartered accountant and
- (ii) the stock receipt and consumption register were maintained as per the requirement of excise Department and monthly returns were also filed with excise Department. The assessee also maintained Modvat register on daily basis for claim of Modvat on chemicals as prescribed were excise Department and no discrepancy was pointed out by the excise Department.
- (iii) Invoice of purchases of chemicals and GR (goods receipt) were also available with the assessee in respect of the expenses.
- (iv) The assessee also Deducted and paid TDS on freight expenses incurred on purchase of chemicals.
- (v) Trade tax forms issued for purchase of chemicals and copy of trade tax order were produced.

5.4 In remand report, the Assessing Officer submitted that the consumption has increased by 1457 MT while the production

has only increased by 4447 MT and thus the assessee failed to provide justification for access increase in consumption.

5.5 In the rejoinder report the assessee submitted further explanation in respect of increase in chemical expenses as increase in rate of chemicals, consumption of caustic lye in lieu of sodium sulphite and consumption of wheat straw in place of baggage. The assessee submitted that due to change in ratio of the raw material consumed during the year under consideration, the consumption of chemical (caustic) increased substantially. The assessee also filed written submission before the Assessing Officer alongwith charts showing increase in chemical cost as compared to the last year, the chart showing manufacturing paper from different types of raw material, and the chart showing use of more caustic lye in place of sodium sulphite.

5.6 The learned Commissioner of Income-tax (Appeals) after considering the remand report and the rejoinder of the assessee deleted the additions by giving the following observations:

"3.2 Ground of appeal No. 2 is against addition of Rs. 53,49,958/- being disallowance made out of manufacturing expenses under the head 'chemical expenses'. The appellant has furnished written submissions which are reproduced as under:-

".....That the addition of Rs. 5349958.00 out of manufacturing expense under the head of chemical expenses 10% of the total expenses of Rs.53499583.00, because the appellant company is not able to explain the same at present due to the reason that the account books and other relevant records are in possession of

the banker as mentioned in the assessment order. The expenses were increased under the head due to increase in production and rate of chemical. Further there is no addition was made under the same expenditure in the earlier years. All the expenses are fully vouched and verifiable from the books of accounts. The addition which has been made by the Assessing Officer is very excessive and arbitrary. The assessee company had maintained regular books of account and other relevant records in the ordinary course of business and the accounts books of the assessee company were duly audited by the Chartered Accountant. The manufacturing product is subject to excise duty. The stock receipt and consumption register RG 23A part I is regularly maintained by the assessee company. The monthly returns of the same as prescribed by the Excise Department are being filed regularly. The chemicals were purchased from the different parties from whom the invoices, GR etc. are available with the company. Further the forms of Trade Tax Department were also issued for purchase of the same as Form No. 31 as prescribed by the Trade Tax Department. The assessee company had also claimed modvat on chemicals for which modvat register 23 part II as prescribed by the Excise department is regularly maintained on daily basis. There is no discrepancy was pointed out by the Excise Department. The copy of accounts of chemical purchased is enclosed herewith for your kind perusal. The Trade tax department had also accepted the books of accounts of the assessee company. The assessee company had also deducted and paid TDS on freight. The details of freight paid on the chemicals purchased, details of Trade tax Forms issued for purchase of chemicals, copy of Trade Tax Order are enclosed herewith for your kind perusal.

Furthermore it is also worth it is also worthwhile to mention here that no addition on the same account has been made by the Assessing Officer in the earlier year's i.e. assessment years 2006-07 and 2007-08. The Photocopies of the same are also enclosed herewith for

your kind perusal. The addition made on this account at 10% of the total chemical consumed is very excessive and arbitrary..... "

5.7. We find that the Assessing Officer has neither been able to point out any discrepancy in the bills vouchers etc maintained by the assessee in respect of the expense as also not been able to find out any discrepancy in the records of consumption of the chemicals maintained as per the Central excise rules. The assessee has duly explained the reason for increase in consumption alongwith evidences of increase in cost of chemicals, changed method of production etc. In such circumstances, in our opinion, the ad hoc disallowances cannot be sustained. In view of the above discussion, we hold that order of the Ld. Commissioner of Income-tax(Appeals) on the issue in dispute is well reasoned and no further interference is required from our side, accordingly we confirm the finding of the learned Commissioner of Income-tax (Appeals) on the issue in dispute. The ground of the appeal is dismissed.

13. In ground No. 3, the Revenue has challenged relief granted by learned Commissioner of Income-tax (Appeals) in estimating the sale of scraps. The Assessing Officer estimated the sale of the scrap at the rate of 2% on the consumption of stores and spares of Rs. 1,70,99,597/- which amounted to Rs. 3,41,992/-. The Assessing Officer after reducing the amount of sale of scrap already declared by the assessee in return of income of Rs. 29,535/- made addition for the balance amount of Rs. 3,12,457/-. The learned Commissioner of Income-tax

(Appeals) held that the estimate by the Assessing Officer was a guesswork and not based on the result of any enquiry conducted or some comparable case and therefore he reduced the estimate of sale of scrap to 1% of the stores and spares consumed, which worked out to Rs. 1,70,996/-.

14. The learned Sr. Departmental Representative addressing the ground, submitted that Ld. Commissioner of Income-tax (Appeals) himself has accepted sale of scrap at the rate of 10% of the amount of consumption of stores and spares in another case of M/s Gandaki Kisan Sahakari Chini Mills Ltd in assessment year 2008-09, and therefore the estimation of the rate of 2% in the case of the assessee was justified.

15. The learned Authorized Representative on the other side submitted that no discrepancy in the consumption of the stores and spares was pointed out by the Assessing Officer and therefore addition was not justified. He further submitted that nothing has been brought on record by the revenue, how the case of M/s Gandaki Kisan Sahakari Chini Mills Ltd is comparable to the facts of the case of the assessee. In absence of comparability with the assessee, the result of case in reference cannot be applied over the case of the assessee.

16. We have heard the rival submissions and perused the material on record. We find that the addition in reference was made without pointing out any discrepancy in bills and vouchers and consumption of stores and spares. Further, the Revenue has not been able to substantiate before us with the annual results of M/s. Ganga Kisan Sahakari Chini Mills Ltd. for

assessment year 2008-09 that its result are comparable with the result of the assessee and in absence of which, the rate of scrap estimated in that case, cannot be applied over the case of the assessee. In our view, the estimate of sale of scrap upheld by the Ld. Commissioner of Income-tax(Appeals) is reasonable and no further interference on our part is required. Accordingly we uphold the finding of the Ld. Commissioner of Income-tax(Appeals) on the issue in dispute. The ground of the appeal is dismissed.

17. In the result, the appeal of the Revenue is dismissed.

The decision is pronounced in the open court on 16th August, 2016.

Sd/-

(H.S. SIDHU)

JUDICIAL MEMBER

Dated: 16th August, 2016.

Rk/Laptop/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(O.P. KANT)

ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi