

आयकर अपीलीय अधिकरण, ' ए ' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्य के समक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos.1211 & 1212/Mds/2014

निर्धारण वर्ष /Assessment years : 2009-10 & 2010-2011

The Deputy Commissioner  
of Income Tax,  
Company Circle V(4)  
Chennai 600 034.

**Vs.** M/s. Olympic Cards Ltd,  
165, NSC Bose Road,  
Chennai 600 001.

**(अपीलार्थी/Appellant)**

**[PAN AAACO 3651L ]  
(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. Shiva Srinivasas, IRS, JCIT.  
प्रत्यर्थी की ओर से /Respondent by : Shri. R. Venkatesh, C.A.

सुनवाई की तारीख/Date of Hearing : 07-09-2016

घोषणा की तारीख /Date of Pronouncement : 21-09-2016

**आदेश / O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

The appeals filed by the Department are directed against common order of the Commissioner of Income-tax (Appeals)-V, Chennai in ITA No.738, 832/13-14(A)-V, dated 20.12.2013 for the

above assessment years passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

**2.** The first ground raised by the Revenue in these two appeals are that the Id. Commissioner of Income Tax (Appeals) erred in deleting the addition made u/s.40(a)(ia) of the Act on the ground that the expenses were paid before 31.03.2009 and disallowance u/s.40(a)(ia) of the Act can be made only for payments lying outstanding as on 31.03.2009 relying on the various judicial pronouncements. For the sake of convenience, we take up facts in ITA No.1211/Mds/2014 of assessment year 2009-2010 for adjudication.

**3.** The Brief facts of the case are that the lorry freight charges of ₹.24,47,934/- having been directly incurred on various occasions and dates for different lorry hires in the course of business, there is force in the assessee 's, submissions that Sec. 194C do not apply to such payments to various lorry freights supported with the decision of the Punjab & Haryana High Court in the case of *Bagavathy Steels reported in 326 .ITR 108*. In this case, the assessee has not deducted any TDS in respect of all the four items of expenses including that on lorry freight charges. Therefore, following the decisions in the case of *Vector Shipping and Merlyn Shipping and in the case of Sathya*

*Tours & Travels, decided by the Hon'ble "B" Bench ITA T, Chennai in ITA' No. 706 & CO No. 91/Mds/2013 The Id. Commissioner of Income Tax (Appeals) constrained to follow the jurisdictional ITA T order and also following the other judicial precedents as mentioned above directed the Id. Assessing Officer to delete the addition of ₹26,29,613/-. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).*

4. In the appellate proceedings, the Id. Commissioner of Income Tax (Appeals) deleted the addition. Aggrieved by the Commissioner of Income Tax (Appeals) order, the Revenue has assailed an appeal before Tribunal.

5. After hearing both the parties, we are of the opinion that similar issue was considered by the Co-ordinate Bench of the Tribunal in the case of *T. Palanivelu vs. Income Tax Officer, in ITA No. 618/Mds/2015, dated 29.04.2015 wherein it was held as under:-*

*3. We have heard both the sides and perused the material on record. We find that the Special Bench of the Tribunal in the case of Merilyn Shipping and Transports vs. ACIT (2012) 136 ITD 23 (Visakhapatnam) and judgment of Gujarat High Court in the case of CIT vs. M/s. Vector Shipping Services (P) Ltd in ITA No.122 of 2013 dated 09.7.2013 held that sec 40(a)(ia) is not applicable when there is no outstanding balance at the end of the close of the year relevant to the assessment yea in respect of these payment. However, the assessee*

*has not brought on record, the details of outstanding expenses or schedule of sundry creditors showing whether the impugned amount is outstanding at the end of the close of the previous year relevant to the assessment year either in the name of the party or outstanding expenses. Hence, in the interest of justice, we are remitting the issue back to the file of the Assessing Officer with direction to verify the claim of the assessee and the assessee shall place necessary evidence in support of his claim.*

*4. Further, we make it clear that if the impugned amount is not outstanding at the end of the close of the assessment year in respect of the expenses either as outstanding expenses or as sundry creditors, this amount cannot be disallowed. This ground is remitted back to the Assessing Officer for fresh consideration”.*

In view of the above order of the Tribunal, we are inclined to remit the issue to the file of the Id. Assessing Officer for fresh consideration. This ground of the Revenue is partly allowed for statistical purpose.

**6.** Next ground raised in ITA No.1211/Mds/2014 of assessment year 2009-2010 is that the Id. Commissioner of Income Tax (Appeals) erred in holding that ₹3.05 lakh, out of ₹4.08 lakh has been expended for purchase of AC, paneling and installation charges to be of Revenue in nature on the ground that they have negligible resale value and use if dismantled by relying on the Madras High Court decisions in *Madras Auto Services in 233 ITR 468* and *TVS Lean Logistics 293 ITR 432*.

- 7.** After hearing both the parties, we are of the opinion that amount incurred for paneling and installation charges of Air Conditioners in leasehold building cannot be considered as Capital Revenue in view of the judgment of jurisdictional High Court in the case of *Madras Auto Services and TVS Lean Logistics* (supra). Accordingly, we do not find any infirmity in the order of the Id. Commissioner of Income Tax (Appeals) and the same is confirmed. This ground of the Revenue is dismissed.
- 8.** Next ground in ITA No.1212/Mds/2014 of assessment year 2010-2013 is that the Id. Commissioner of Income Tax (Appeals) erred in deleting the addition made u/s.68 on the ground that Sec. 68 cannot be invoked in respect of trade creditors.
- 9.** The facts of the case are that the Id. Assessing Officer added the total of the credit side of the ledger account of the three parties i.e. Gurudev Enterprises ₹56,29,871/-, Universal Papers ₹40,37,270/- and Star Screens ₹15,47,051/-, total aggregating to ₹1,12,14,192/-. The amounts added, though described as balance, are not the balance due to the parties but the aggregate of all the credits in their respective account which includes opening balance and also bank transaction. The three trade parties had supplied products to the

assessee were registered under T.N VAT/CST act. The goods purchased as per the invoices of the parties had been received and payments were made for the supply through bank regularly and these details were with the Id. AO in as much as the details of the bank account and cash account transactions were given. In respect of each of the three trade creditors the assessee made submissions that case of M/s. Universe papers, the Assessee had purchased JK papers from said party. The said trade party is a registered TN VAT dealer having TIN No 33801242852/2008-2009 and CST NO.955249. It was submitted that the Assessee had availed Input tax credit in the TN VAT return, in electronic mode which was allowed in the electronic cross verification and also by the revenue authorities which reflects that the trade transaction had been carried out with the trade party. The TN VAT Assessment order for the impugned year was placed before Id. Assessing Officer. The payment to the creditor had been made regularly through account payee cheques mounting to Rs.20,36,552/- as may be seen from their account and bank statements. The Assessee is a listed public limited company having many divisions and managed by professionals. According to assessee identifying of the trade supplier/party is not a prerequisite to transact with them. On the other hand the product; quality, timely supply etc

are important which are carried out with appropriate check and controls of making the payment only after the supply of the goods purchased. The registered office of the business entity need not be the place of its business. Therefore, it is not possible nor a required cause on the Assessee to produce the trade parties. Further, it cannot be the case of the Id. Assessing Officer that the purchases are not made as the purchased products had been received, taken to stock and used in the process of the business of the Assessee. In these circumstances, it is highly erroneous to invoke the provisions of Sec. 68 on the aggregate of purchase credits of ₹40,37,270 for disallowance. This fact was brought to Id. AO vide letter dated 22.03.2013 filed in the proceedings. In respect of Star Screens it is a registered TN VAT dealer having TIN No 3391162131 /2008-2009 and CST NO.955049 and had supplied paper products. It is submitted that the Assessee had availed Input tax credit in the TN VAT return, in electronic, mode which was allowed in the electronic cross verification and also by the revenue authorities which reflects that the trade transaction had been carried out with the trade party. The TN VAT Assessment order for the impugned year was also placed before Id. Assessing Officer. The payment to the trade creditor had been made regularly through account payee cheques amounting to ₹5,46,382/- as

may be seen from their account and bank statements. The Assessee is a listed public limited company having many divisions and managed by professionals. Identifying of the trade supplier/party was not a prerequisite to transact with them, On the other hand the product, quality, timely supply etc are important which are carried out with appropriate check and controls of making the payment only after the supply of the goods purchased. The registered office of the business entity need not be the place of its business. Therefore it is not possible nor a required cause on the Assessee to produce the trade parties. Further, it cannot be the case of the Id. AO that the purchases are not made as the purchased products had been received taken to stock and used in the process of the business of the Assessee . In these circumstances, it is highly erroneous to invoke the provisions of Sec 68 on the aggregate of the purchase credits of ₹15,47,051/- for disallowance. This fact was brought to Id. AO vide letter dated 22.03.2013. In case of M/s. Gurudev Enterprises, the party is a supplier of paper in. The Ld AO did not give any pre-assessment notice for proposing the aggregate of the credit in the said trade creditor to be disallowed u/s 68. It was submitted that the Assessee had availed Input tax credit in the TN VAT return, in electronic mode which was allowed in the electronic



cross verification and also by the revenue authorities which reflects that the trade transaction had been carried out with the trade party. The TN VAT Assessment order for the impugned year was submitted before Id. Assessing Officer. The payment to the trade creditor had been made regularly through account payee cheques amounting to Rs.20,22,556/- as may be seen from their account and bank statements. The Assessee is a listed public limited company having many divisions and managed by professionals. Identifying of the trade supplier/party is not a prerequisite to transact with them, On the other hand the product; quality, timely supply etc are important which are carried out with appropriate check and \_ controls of making the payment only after the supply of the goods purchased. The registered office of the business entity need not be the place of its business. Therefore it is not possible nor a required cause on the Assessee to produce the trade parties. Further, it cannot be the case of the Id. AO that the purchases are not made as the purchased products had been received, taken to stock and used in the process of the business of the Assessee. In these circumstances, it is highly erroneous to invoke the provisions of Sec 68 on the aggregate of the purchase credits including opening balance of ₹56,29,871/- for disallowance. This fact was brought to Id AO vide letter dated 22.03.2013 filed in the

proceedings. The opening balance in the account is ₹1,50,000/- (credit) and the closing balance is ₹36,07,315/-(credit). However, the Id. Assessing Officer added the credit amounts in the account of the parties u/s.68 of the Act. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

**10.** In the appellate proceedings, the Id. Commissioner of Income Tax (Appeals) observed from the account statement and details filed before the him that u/s.68 of the Act the AO has added the aggregate of the credits in the account of three purchase parties amounting to ₹ 1,12, 14,192/-. These credits represent purchase of materials on various dates under various invoices from the respective parties, except that in the case of Gurudev Enterprises, the aggregate of the credit of ₹56,29,871/- taken by the AO for the addition, includes opening credit balance of ₹.1,50,000/- as on 01.04.2009. The three trade creditors are registered dealers under the TN VAT/ CST Act. The assessee had taken credit for the VAT paid on the purchases made from the three parties as per their invoices and has filed the TN VAT/CST returns through electronic mode quoting the registration number of the parties. It is shown that the

VAT credit from the three parties have been allowed to establish that the 3 trade creditors are in business and had carried on the invoice with the assessee. In support of this the assessee has also placed the TN/VAT & CST assessment order for the impugned year. In the present indirect tax administration monitored and regulated electronically, a transaction with a registered dealer quoting the number are matched to establish the claim for tax credits. In the present case, the view of the AO that the parties are registered dealers and payments to them were made through cheques cannot be conclusive proof for the genuineness of the transaction, cannot be a valid legal ground to sustain the addition. The submissions of the assessee that it is a large business entity and dealing with large number of suppliers, it is not a pre requisite to identify their address in transacting with them, especially when the goods purchased are delivered at the door filed, it cannot be said that payments have not been made; payments are delayed but made through bank. It was not the case here, that no payments have been made or that the trade creditors are carried over months and years. The Commissioner of Income Tax (Appeals) was of the opinion that the assessee had purchased from registered dealers and a registration number for the purpose of availing VAT credit was

accepted in the electronic mode involved in the process of assessment in VAT/CST Act is a valid ground in favour of the assessee's claim. The case laws relied by the assessee especially that of the Allahabad High Court in the case of *CIT vs. Pancham Dass Jain* 156 Taxmann 507 support the plea of the assessee that the requirement of proof and conditions laid in Sec. 68 cannot be enforced in respect of creditors from whom purchases have been made. Accordingly, the Id. Commissioner of Income Tax (Appeals) deleted the addition of ₹1,12,14,192/-. Aggrieved by the Commissioner of Income Tax (Appeals) order, the Revenue has assailed an appeal before the Tribunal.

**11.** Before us, the Id. Departmental Representative submitted that the Id. Commissioner of Income Tax (Appeals) failed to consider the fact that no such creditors existing in the address given by the assessee in the case of Universal Papers and Gurudev Enterprises and in respect of the third party viz Star Screens, the confirmation submitted did not clearly show the name of the person who furnished them. Further, the Id. Commissioner of Income Tax (Appeals) failed to appreciate that the assessee did not prove beyond doubt and with conclusive evidence that existing of creditors and hence, the Id.

Assessing Officer was right in law in making an addition u/sec. 68 of the Act.

**12.** On the other hand, the Id. Authorised Representative submitted that the details of enquiry conducted by the Id. Assessing Officer was not furnished to the assessee. He also submitted that these are trade creditors and also the Id. Assessing Officer considered the opening balance as unexplained credit u/s.68 of the Act without making proper enquiry and as such the submitted that the order of Commissioner of Income Tax (Appeals) has to be affirmed.

**13.** We heard the rival submissions, perused the material on record. Admittedly, the Id. Assessing Officer made enquiry regarding the nature of transactions. Some parties are not properly responded. Further, the Id. Assessing Officer has not put the enquiry report before assessee for its comments. In our opinion the enquiry report required to be furnished to the assessee for assessee's comments. Further, the Id. Commissioner of Income Tax (Appeals) observed that in respect of trade creditors of Sec. 68 of the Act cannot be applied which is also not correct. Whenever any credit appeared in the Books of account in relevant assessment year, the assessee bound to prove the identity and capacity of the parties and genuineness of the

transactions. The burden cast on the assessee is not discharged by assessee. Hence, we remit the issue to the file of the Id. Assessing Officer to prove all the incurrence before Id. Assessing Officer. Accordingly, this issue is remitted to the file of the Id. Assessing Officer for fresh consideration. The assessee shall co-operate with Id. Assessing Officer and it has to prove the transactions. The ground of the Revenue is partly allowed for statistical purpose.

**14.** In the result, the appeals of the Revenue in ITA No.1211/Mds/2014 is dismissed and ITA No.1212/Mds/2014 is partly allowed for statistical purpose.

Order pronounced on Wednesday, the 21<sup>st</sup> day of September, 2016, at Chennai.

Sd/-

जी. पवन कुमार)

**(G. PAVAN KUMAR)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

Sd/-

(चंद्र पूजारी)

**(CHANDRA POOJARI)**

**लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:21.09.2016

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |