

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 473/DEL/2014 (A.Y 2007-08)

(THROUGH VIDEO CONFERENCING)

Swarn Gems P Ltd. 611, Somdutt Chamber-II 9 Bhikaji Cama Place New Delhi AAACS0391P (APPELLANT)	Vs	ITO Ward-7(4) New Delhi (RESPONDENT)
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Appellant by	Sh. K. P. Ganguli, Adv & Sh. Ashok Jain, Adv
Respondent by	Sh. Prakash Dubey, Sr. DR

Date of Hearing	28.06.2021
Date of Pronouncement	04.08.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 01/11/2013 passed by CIT(A)-X New Delhi for assessment year 2007-08.

2. The grounds of appeal are as under:-

1. *“That, a facts and in the circumstance of the case, Commissioner of Income tax (Appeal)-X, New Delhi erred both on facts and on law in confirming the addition of Rs.1,28,02,536/-as sundry creditors made by I.T.O. Ward 7 (4), New Delhi, with and considering the confirmatory letters which were filed during the remand proceeding before I.T.O.*

2. *That, a facts and in the circumstance of the case, Commissioner of Income*

tax (Appeal)-X, New Delhi erred both on facts and on law in confirming the addition of Rs.24,13,787/- as advance from customers made by I.T.O. u/s 68 of I.T.Act with and considering the confirmation filed during the remand proceeding before I.T.O.

3. That, a facts and in the circumstance of the case, Commissioner of Income tax (Appeal)-X, New Delhi erred both on facts and on law in confirming the addition of Rs. 19,78,909/- as credit balance in current account of ICICI Bank with and considering the information furnished by ICICI Bank.

4. That, a facts and in the circumstance of the case, Commissioner of Income tax (Appeal)-X, New Delhi erred both on facts and on law in confirming cum addition of Rs. 13,89,000/- as gold shortage made by ITO treating the same as exclusive.

5. That, a facts and in the circumstance of the case, Commissioner of Income tax (Appeal)-X, New Delhi erred both on facts and on law in confirming the disallowance of Rs.5,67,287/- as discount allowed made by ITO.

6. That, a facts and in the circumstance of the case, Commissioner of Income tax (Appeal)-X, New Delhi erred both on facts and on law in confirming the disallowed of Rs.3,13,682/- out of total expenses of Rs.12,54,725/- made by the ITO.”

3. The assessee company is engaged in the business of trading and manufacturing of Gems and Jewellery. Return of income was filed by the assessee company on 15.11.2007 as Nil income. The Assessing Officer observed that the assessee company made total sale of Rs. 3,37,43,519/- as against Rs. 19,84,43,576/- in the immediate preceding year. The copy of return filed by the assessee company shows loss of Rs. 1,47,68,980/- as against loss of Rs. 36,01,426/- in the immediate preceding year. The Assessing Officer

further observed that balance sheet filed by the assessee company reflects an amount of Rs. 2,46,33,326.97 under the current liabilities. Schedule G shows an amount of Rs. 1,77,92,311/- as sundry creditors. Details submitted by the company shows that Rs.1,35,34,316/- pertain to last to last years and it is also evident from the details filed that there has been no transactions with the creditors of Rs. 1,28,02,536/- during the year under consideration. Therefore, the Assessing Officer disallowed Rs. 1,28,02,536 and added in the income of the company as bogus liability created by the assessee company. Further, the Assessing Officer observed that the assessee company also shows an amount of Rs. 24,13,787/- as advance received from customers. The Assessing Officer held that since the assessee failed to get the details of those parties who confirmed the said amounts, Rs. 24,13,787 is added to the income of the assessee. The Assessing Officer also made addition of Rs. 19,78,908.87 as credit balance in current year in absence of details and confirmations. The Assessing Officer further made addition of Rs. 13,89,000/- in respect of shortage in raw material i.e. without manufacturing ornaments. The Assessing Officer also added Rs. 5,67,287/- which was claimed by the assessee as discount and Rs. 3,13,682 as expenses. Thus, the Assessment Order was passed on 30.12.2009.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. As regards to Ground No. 1 relating to addition of Rs. 1,28,02,536 as sundry creditors, the Ld. AR submitted that during the remand proceeding on demand of Assessing Officer, the assessee furnished complete address along with PAN details of sundry creditors. The Assessing Officer had also obtained most of the confirmations u/s 133(6) of the Income Tax Act, 1961 directly from Sundry creditors and also obtained the details of ITR of sundry creditor from respective wards of the Income Tax. As regards Ground No. 2 relating to addition of Rs. 24,13,787 as advances from customers, the Ld. AR submitted that the CIT(A) in the order confirmed that he has received confirmation from

all the creditors which was not at all disputed in the Remand Report by the Assessing Officer. Thus, the assessee established genuineness of all the transactions, identity of creditors and the source of the fund received. As regards to Ground No. 3 relating to credit balance in current account of ICICI Bank to the extent of Rs. 19,78,909, the Ld. AR submitted that the Assessing Officer has confirmed in his remand report dated 18.07.2012 before the CIT(A) that a confirmation of the bank is in record to justify the point of the assessee. Hence, the assessee has established genuineness of all the transactions, identity of the creditors and the source of the fund received. The Ld. AR relied upon the following decisions:

- i) CIT vs. Orissa Corporation Pvt. Ltd. 159 ITR 78 (SC)
- ii) Daulat Ram Rawat Mull 87 ITR 349 (SC)
- iii) Sarogi Credit Corpn. 103 ITR 344 (Patna)
- iv) Tola Ram Daga 59 ITR 632 (Asm)
- v) Suresh Kalmadi 32 TTJ 300 (Pune Tri.)
- vi) DCIT vs. Anand Prakash Goenka 52 ITD 73 (Cal)
- vii) ACIT vs. Mohanlal Mishrilal & Sons 52 TTJ 9 (Indore)
- viii) Labh Chand Bohra vs. ITO 189 Taxman 141
- ix) CIT vs. P. K. Noorjahan 237 ITR 570
- x) DCIT vs. Rohini Builders 256 ITR 360 (Guj)
- xi) CIT vs. Gagandeep Infrastructure Pvt. Ltd. 94 ITR 680 (Bom)
- xii) Nova Iron and Steel Ltd. vs. DCIT 60 ITR 355 (Del. Tri.)
- xiii) Prabhatam Investment Pvt. Ltd. vs. ACIT 61 ITR 352 (Del. Tri.)
- xiv) DCIT vs. Machino Techno Sales Pvt. Ltd. 60 ITR 7 (Kol. Tri.)

As regards Ground No. 4 relating to Gold shortage of Rs. 13,89,000/-, the Ld. AR submitted that the Assessing Officer confirmed in the remand report that assessee vide letter dated 16.07.2012 that the assessee company's director Ashok Kumar Jain's attendance is on note book sheet confirming satisfactory clarification which has been submitted. With regard to gold shortage in para C (iv) on page 15 of the order dated 01.11.2013, the Assessing Officer submitted that the assessee had not given any comparative figure of the percentage of

shortage in earlier year. The Ld. AR submitted the comparative figure for the year A.Y. 2005-06 and 2006-07 before us. As regards to Ground No. 5 relating to discount of Rs. 5,67,287/-, the Ld. AR submitted that the Assessing Officer confirmed in remand report that the assessee company's director submitted satisfactory clarification. As regards to Ground No. 6 relating to expenses of Rs. 3,13,682, the Ld. AR submitted that the assessee company's director submitted satisfactory clarification and Ld. AR also placed before us the vouchers for the expenses for A.Y. 2007-08. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of CIT vs. Dalmia Cement Pvt. Ltd. 254 ITR 377.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A). The Ld. DR submitted that as regards Ground No. 1, the Assessing Officer as well as the CIT(A) has taken cognizance of the evidences produced at the time of assessment proceedings and, thereof, correctly made the additions. As regards Ground No. 2, the Ld. DR relied upon the assessment order and the order the CIT(A). As regards Ground No. 3, the Ld. DR relied upon the assessment order and the order of the CIT(A) along with remand report. As regards Ground No. 4, the Ld. DR relied upon the assessment order and the order of the CIT(A). As regards Ground No. 5, the Ld. DR relied upon the assessment order and the order of the CIT(A). As regards Ground No. 6, the Ld. DR submitted that the decision of the Delhi High Court is not applicable in the present case and relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. As regards Ground No. 1, it is pertinent to note that during the remand proceedings the assessee has furnished complete address along with PAN details of Sundry Creditors. During the assessment proceedings as well as the confirmations u/s 133(6) was received directly from Sundry Creditors along with details of ITR of Sundry Creditors from the respective

words of the Income Tax. Thus, the identity, creditworthiness was established and through the details filed before the Assessing Officer as well as CIT(A). The assessee has demonstrated the genuineness of the creditors. Therefore, the CIT(A) was not right in confirming the addition of Rs. 1,28,02,536/- that of Sundry Creditors. Hence, Ground No. 1 is allowed.

8. As regards Ground No. 2, in respect of addition of advances from customers the remand report has not disputed the confirmations received from the creditors and the advances obtain was a genuine loan from the customers. Hence, the assessee has establish genuineness of all the transactions, identity of creditors and source of the funds received. The Assessing Officer has totally ignored all these facts while filing the remand report on the contrary he has acknowledged that to establish genuineness, identity and creditworthiness. The assessee has filed the documents which are relevant to these three factors. Hence, the CIT(A) has ignored the evidences and simply confirm the additions. Thus, the record shows that the assessee has establish genuineness of all the transactions, identity of the customers from whom the addition has been taken and also the source of funds received for obtaining these additions. Therefore, Ground No. 2 is allowed.

9. As regards Ground No. 3, relating to credit balance in current account of ICICI Bank. The Bank has confirmed the said credit balance with the letter before the Authorities and the same is confirmed by the Assessing Officer in his remand report dated 18/7/2012. Thus, the credit balance in current account has been established by the assessee to the proper evidences. Ground No. 3 is allowed.

10. As regards Ground No. 4 relating to Gold Shortage, the assessee has given the details of the gold transactions and the same was clarified by the Directors of the assessee. It was not disputed by the Assessing Officer in his remand report dated 16/7/2012. Therefore, the finding given by the CIT(A) is

contrary finding to that of the evidences brought on record by the assessee. Hence, Ground No. 4 is allowed

11. As regards Ground No. 5 relating to discount, the assessee has establish the same through evidences and the same was not disputed by the Assessing Officer in his remand report and in respect of Ground No. 6 relating to expenses of Rs. 3,13,682/-, the vouchers for the expenses were produced by the assessee before the Authorities. Therefore, Ground No. 5 & Ground No. 6 is allowed.

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

Order pronounced in the Open Court on this 04th Day of August, 2021.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 04/08/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

