

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 8021/Del/2019
(Assessment Year: 2015-16)**

Golden Moment Pvt. Ltd, C/o. R. C. Rai & Associates, 203, 2 nd Floor, Akash Deep Building, 26A, Barakhamba Road, (Appellant)	Vs. ACIT, Karnal
PAN:AADCG4401D	(Respondent)

Assessee by :	Shri R. C. Rai, CA Ms. Nagma, Adv
Revenue by:	Shri Shyam Manohar Singh, Sr. DR
Date of Hearing	13/08/2024
Date of pronouncement	10/10/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 8021/Del/2019 for AY 2015-16, arises out of the order of the Commissioner of Income Tax (Appeals), Karnal [hereinafter referred to as 'Id. CIT(A)', in short] IT/230/E/KNL/2017-18 dated 05.08.2019 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.12.2017 by the Assessing Officer, ACIT, Circle, Karnal (hereinafter referred to as 'Id. AO').
2. The Ground Nos. 1, 2 and 7 raised by the assessee are general in nature and does not require any specific adjudication.
3. The ground Nos. 3 to 5 raised by the assessee are challenging the addition of Rs 3,89,21,998/- u/s 41(1) of the Act.

4. We have heard the rival submissions and perused the materials available on record. The assessee is engaged in the business of trading of Basmati rice. The return of income for assessment year 2015-16 was filed **by the assessee declaring total income of ₹6,80,240/-** on 28.09.2015. The return was selected for scrutiny and notice u/s 143(2) of the Act stood issued and served on the assessee. The Id AO observed that the assessee had reflected sundry **creditors of ₹4,97,57,755.72 in the balance** sheet as under:-

Sr. No.	Name of the Sundry Creditor	Amount outstanding
1	Dunar Foods Ltd.	1,06,20,147.96
2	Heritage Infracon Pvt. Ltd.	1,10,44,941.25
3	Rajan Goyal & Brothers	98,64,797.95
4	Suresh Kumar & Sons	1,80,12,259.56
5.	Personality Care Apparels Pvt. Ltd	2,15,609

5. The assessee submitted the confirmation in respect of aforesaid parties vide letter dated 25.07.2017. Further the Id AO issued notice u/s 133(6) of the Act to the sundry creditors reflected in SI Nos. 1 to 4 (supra). More particularly, the Id AO proceeded to examine the veracity of the sundry creditors listed in SI Nos. 2 to 4 (supra) in detail. No response was received from the parties for notice u/s 133(6) of the Act. Summons u/s 131 of the Act was issued to all the parties and the same was served through the Inspector attached to the Circle. The Inspector submitted his report dated 07.09.2017, in which he reported that none of the parties were found to be existing on the addresses provided by the assessee. These facts were confronted by the Id AO to the assessee and assessee was also directed to furnish the following documents:-

"4.1. Copies of balance sheet and PL Account as on 31.03.2014 and 31.03.2015.

4.2. copies of your ledger account appearing in the books of the creditors for the period 01.04.2014 31.03.2016. Alongwith supportive evidence of each transaction appearing in the ledger account in the form of Bills/Invoices raised.

4.3. Mode of receipts of payment in respect of such goods showing relevant entries in the bank account about such receipts.

4.4. Complete details of goods supplied by these parties during the period 01.04.2014 to 31.03.2016 and evidence in support of mode of transport used for transporting the goods with details of location from where goods were picked up and location where the goods were off loaded.

4.5. Evidence of filing income tax returns for AY 2014-15, 2015-16, and 2016-17 by the creditors.”

6. In response to the above, the assessee produced three persons, namely Shri Vikas Mohan, Shri Sunil Kumar and Shri Anil Saxena, who claimed to be accountants working with M/s. Suresh Kumar & Sons, M/s Rajan Goyal & Brothers and M/s. Heritage Infracon Pvt Ltd, respectively. The Id AO recorded statements on oath from all these three persons. Shri Vikas Mohan stated that he has been working with M/s Suresh Kumar & Sons from April 2016 as Accountant. Shri Sunil Kumar, stated that he has been working with M/s. Rajan Goyal & Brothers as Accountant since April 2015. Shri Anil Kumar Saxena stated that he has been working with M/s. Heritage Infracon Pvt. Ltd since 2013 as accountant. The Id AO observed that Shri Sunil Kumar could not satisfactorily answer the queries raised to him and was only giving evasive replies and could not verify even simple facts on the documents shown to him. The Id AO observed that all these persons produced by the assessee did not furnish any details or evidence in the form of bills, transport details etc in respect of transactions entered with the assessee and stated that they will provide the details on or before 16.10.2017. The said submissions were recorded in the presence of **assessee's counsel**. The assessee vide letter dated 12.10.2017 requested for copy of statements recorded from three persons which were duly provided to the assessee. But no details were either furnished by those three persons as promised or by the assessee before the Id AO. However,

the AO conducted further enquiries which revealed that Shri Anil Saxena, who was produced by the assessee as an accountant of M/s. Heritage Infracon has a bank account with State Bank of India, Model Town, Karnal, which revealed his address to be M/s. Best Food Ltd, PO Box No. 5, Indri, Karnal. The Branch Manager of State Bank of India, Model Town, Karnal had confirmed that salary in the bank account of Shri Anil Saxena was credited from M/s. Best Foods Limited. The Id AO also examined income tax returns of Shri Anil Kumar Saxena for Assessment year 2015-16, wherein he had reported salary income from his employer M/s. Best Food Limited. Accordingly, the Id AO concluded that Shri Anil Saxena is an employee of M/s. Best Food Limited. Similar enquiries made by the Id AO revealed that Shri Sunil Kumar and Vikas Mohan also were employees of M/s. Best Foods Ltd and were in receipt of salary from M/s. Best Foods Ltd. Both these parties had declared their salary income in their returns, showing the employer name as M/s. Best Foods Ltd. Accordingly, the Id AO concluded that these 3 parties produced by the assessee are not genuine as they are not working as accountant with the sundry creditors being examined by the Id AO and instead they were working only with M/s. Best Foods Ltd. Hence, the Id AO observed that it has been established that these persons were planted by the assessee in order to establish the genuineness of liabilities payable to the concerned sundry creditors. The Id AO also observed that the Id counsel for the assessee and counsel for M/s. Best Foods Ltd happened to be the same person. The assessee submitted that Shri Rajan Goyal & Brothers is proprietor of m/s. Rajan Goyal and Brothers and assessment for Assessment year 2014-15 was completed u/s 143(3) of the Act and produced the copy of the assessment order. The Id AO sought to make enquiries from the Id AO of Shri Rajan Goyal i.e. ITO, Ward-2, Kaithal, who vide letter dated 11.12.2017, provided the copies of the balance sheet of M/s. Rajan Goyal & Brothers as on 31.03.2014,

alongwith its annexure and schedule. On perusal of the said balance sheet **under the head 'sundry debtors'**, there was no amount receivable from the assessee which was reflected.

7. Similar enquiries were also conducted from the AO of M/s. Heritage Infracon Pvt. Ltd, whose balance sheet did not reflect amount receivable from the assessee company as on 31.03.2014. Accordingly, the Id AO concluded that the sundry creditors shown in the balance sheet of the assessee qua these three parties are not genuine. The Id AO summarized the fact of all the enquiries made by him and issued a detailed show cause notice to the assessee. No reply was filed by the assessee for the said show cause notice. Accordingly, the Id AO concluded that assessee had adopted manipulative tactics by showing bogus liabilities in the balance sheet, submitting bogus and fabricated confirmations from the creditors, planting tutored persons claiming to be regular employees and accountants of the concern to whom the substantial amounts were shown payable, submitting bogus bills in respect of the transaction leading to bogus liabilities etc. Accordingly, the money shown as outstanding as amounts payable were treated as not genuine and treated as cessation of liability in terms of Section 41(1) of the Act **and addition of ₹3,89,21,998/-** was made by the Id AO. This action of the Id AO was upheld by the Id CIT(A).

8. The Id AR before us stated that in respect of Heritage Infracon and Rajan Goyal and Brothers, purchases made from them were in Assessment year 2013-14 and in respect of sundry creditor M/s Suresh Kumar & Sons, purchases were made from them for Assessment years 2013-14 and 2014-15. He submitted that in the years of making purchases by the assessee, the same were accepted as genuine by the Id AO. He also placed on record the scrutiny assessment order of the assessee for Assessment year 2013-14 u/s 143(3) of the Act dated 31.03.2015. The assessee from his side in

order to prove the veracity of all these creditors had submitted confirmation from the creditors, PAN of the creditors, ITR acknowledgement of the creditors, audited balance sheets as on 31.03.2015 of the creditors, assessment orders for Assessment years 2013-14 and 2014-15, as the case may be, of the creditors. The Id AR also submitted that these sundry creditors have running accounts with the assessee and they are paid in Assessment Year 2016-17. The Id AR also relied on the decision of the **Hon'ble** Jurisdictional High Court in the case of PCIT Vs. New World Synthetics Ltd in ITA No. 806/2018 dated 27.08.2018, wherein it was held that once a liability is shown as outstanding amount payable by the assessee in the balance sheet, the same cannot be treated as remission or cessation of liability u/s 41(1) of the Act. Per contra, the Id DR took us to the various enquiries carried out by the Id AO in the assessment proceedings and heavily relied on the orders of the lower authorities.

9. At the outset, we find that the sundry creditors shown in the balance sheet of the assessee in respect of said 3 disputed parties are trading liabilities. It is not in dispute that purchases made by the assessee from these parties in Assessment years 2013-14 and 2014-15, as the case may be, were accepted as genuine. It is pertinent to note that assessee is having running account and continuous transactions with the aforesaid sundry creditors. On perusal of the ledger account of the assessee as appearing in the books of M/s. Heritage Infracon Private Limited for the period 01.04.2015 to 31.03.2016, enclosed in pages 135 to 136 of the paper book, we find that the sundry creditor shown as outstanding as on 31.03.2015 were fully paid by the assessee in Assessment year 2016-17 and thereafter purchases were made from the very same party in Assessment year 2016-17. Similar is the case of M/s. Suresh Kumar & Sons, as evident from the ledger account enclosed in page 145 of the

paper book. Further we find, in the scrutiny assessment framed in the case of M/s. Heritage Infracon Pvt Ltd by ACIT, Central Circle, Karnal u/s 143(3) of the Act dated 03.04.2015 and 31.03.2014 for Assessment years 2013-14 and 2014-15 respectively, which are enclosed in pages 100 to 104 of the paper book, that the sales made by these parties to assessee company have been accepted as genuine and no adverse inference were drawn thereon. Further, M/s. Heritage Infracon Pvt Ltd was engaged in the business of wholesale trading of rice. Similarly, we find from the scrutiny assessment order framed in the case of Suresh Kumar, proprietor of M/s. Suresh Kumar & Sons for Assessment year 2013-14 u/s 143(3) of the Act dated 17.11.2015 by ITO, Ward-2(3), Ghaziabad, which is enclosed in pages 165 to 166 of the paper book, the sales made by them to assessee company was accepted as genuine and no adverse inference was drawn thereon. Similar is the case for Assessment year 2014-15 u/s 143(3) of the Act dated 14.06.2016, which are enclosed in pages 168 to 169 of the paper Book. With regard to M/s. Rajan Goyal & Brothers, though no scrutiny assessment orders framed on them were placed on record by the assessee, sale invoices raised by the said party on the assessee were furnished together with the audited financial statements and income tax return acknowledgement and tax audit report. On perusal of these documents, it is found that the said concern is also engaged in the business of trading of Basmati rice. Further notice u/s 133(6) of the Act was issued by the Id AO to the said party and the same was duly responded by the said party by furnishing the requisite details directly before the Id AO. Further, an order u/s 263 of the Act was passed in the hands of Rajan Goyal for Assessment year 2012-13, wherein the Id PCIT, Karnal sought to examine the veracity of the secured loan borrowed by M/s. Rajan Goyal and Brothers from Axis Bank **to the tune of ₹5** crores. This aspect itself goes to prove that the said party cannot be ingenuine as it had the benefit of receipt of secured loan

from a private bank to the tune of ₹5 crores. In the said revision order, the Id PCIT sought to examine the sundry creditors and sundry debtors shown in the balance sheet of M/s. Rajan Goyal & Brothers and ultimately found **everything to be perfect, except a small difference of ₹5,914/-** in respect of one sundry debtor, directing the Id AO to make addition to that effect. Even in this revision order, no adverse inference was drawn by the Id. PCIT, Karnal with regard to sale transaction made by Rajan Goyal and Brothers to the assessee company. This revision order is enclosed in pages 193 to 196 of the paper book.

10. When all these documents are staring on us, irrespective of alleged manipulative tactics adopted by the assessee with regard to planting of 3 persons who were allegedly found to be accountant employed with M/s. Best Foods Limited and not working as accountants with the disputed three creditors, the parties per se (i.e. 3 disputed sundry creditors) cannot be considered as ingenuine and the balance shown to their credit in the books of the assessee company cannot be treated as bogus. Further, we find that the assessee company had continued to show the liability as on 31.03.2015 as outstanding amounts payable to these 3 disputed creditors and the assessee has also placed on record evidences to prove that the disputed sundry creditors have been discharged in full in the immediately succeeding assessment year. When the amounts are shown as payable in the balance sheet of the assessee, the debt gets acknowledged by the assessee and there cannot be any remission or cessation of liability in terms of Section 41(1) of the Act. Further, the assessee has placed on record the confirmations given by all the 3 sundry creditors before the Id AO, which fact has been acknowledged by the Id AO himself in his assessment order. If any discrepancy is found with the confirmation and the balance sheet of those sundry creditors, suitable action should be taken in the hands of

those sundry creditors and no adverse inference could be drawn on the assessee. The assessee had discharged its primary onus. In any event, as stated supra, the provisions of Section 41(1) of the Act cannot be made applicable in the instant case. The reliance placed by the Id AR on the decision of the **Hon'ble** Jurisdictional High Court in the case of PCIT Vs. New World synthetics Ltd in ITA No. 806 of 2018 dated 27.08.2018 is very well founded and directly applicable to the facts of the assessee's case. Hence, Ground Nos. 3 to 5 of the assessee are hereby allowed.

11. Ground No. 6 raised by the assessee is challenging the addition **made on account of unsecured loan of ₹15 lakhs as unexplained cash credit** u/s 68 of the Act.

12. We have heard the rival submissions and perused the material available on record. The Id AO observed that assessee had shown unsecured loan of Rs. 15 lakhs from Silver Link Commodities Pvt Ltd. The assessee was asked to prove the 3 ingredients of Section 68 of the Act qua this loan creditor. The assessee submitted confirmation of the lender, PAN of the lender, copy of ledger account of the lender proving that the monies were received through regular banking channels. The Id AO issued summons u/s 131 of the act on 18.12.2017 on the said lender, which was duly served but it did not respond to the said summons. Accordingly, the Id AO concluded that the said loan amount as unconfirmed and unverified and proceeded **to treat the loan of ₹15 lakhs as unexplained cash credit u/s 68** of the Act. This action of the Id AO was upheld by the Id CIT(A). The Id AR submitted that the loan was repaid in subsequent assessment year and reiterated that all the documents were duly placed on record by him to prove the 3 ingredients of Section 68 of the Act. We find that the assessee had furnished the necessary documents to prove 3 ingredients of Section 68 of the Act i.e. identity of the creditors, genuineness of the transaction

and creditworthiness of the lenders. The lender is duly assessed to tax and had even furnished the confirmation. The loan was received by the assessee on 27.03.2015 in regular banking channels. The summons issued u/s 131 of the Act on the said lender was duly served on the lender, which fact is also acknowledged by the Id AO in his assessment order. Merely because the summons has not been responded by the said lender, no adverse inference could be drawn on the assessee. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Orissa Corporation Limited reported in 159 ITR 78 (SC).

13. In view of the above observations and respectfully following the judicial precedent, we find that there is no case made out by the revenue for making an addition u/s 68 of the Act. Accordingly, the Ground Nos. 6 raised by the assessee is allowed.

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

Order pronounced in the open court on 10/10/2024.

-Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 10/10/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi