

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ “ए” अहमदाबाद।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, AHMEDABAD**

*(through web-based video conferencing platform)*

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 1688/Ahd/2019  
Assessment Years : 2015-16**

Shri Girishbhai Ranchodlal Maliwad, 61, Fertilizer Park, Nizampura, Vadodara-390002 PAN : ACJPM 5021 C	Vs	The Dy. Commissioner of Income-tax, Circle 1(3), Vadodara-390007
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		None
Revenue by :		Shri S.S. Shukla, Sr DR

सुनवाई की तारीख / **Date of Hearing** : 28/09/2021  
घोषणा की तारीख / **Date of Pronouncement**: 04/10/2021

**आदेश/ORDER**

**PER RAJPAL YADAV, VICE PRESIDENT :**

The assessee is in appeal before the Tribunal against the order of the learned Commissioner of Income-Tax (Appeals)-1, Vadodara (“CIT(A)” in short) dated 09.09.2019 passed for Assessment Year 2015-16. In the solitary substantial ground of appeal, the assessee has pleaded that the learned CIT(A) has erred in confirming the ad-hoc disallowance of Rs.11,62,648/- being 25% of certain outstanding creditors.

2. In response to the notice of hearing, no one has come present on behalf of the assessee. With the assistance of the learned Departmental Representative, we have gone through the record carefully and proceed to dispose of the appeal *ex parte* qua the assessee.

3. The brief facts of the case are that the assessee is an individual. He has filed his return of income on 29.09.2015 declaring total income of Rs.51,92,900/-. The assessee, at the relevant time, was engaged in the business of civil construction as a contractor and sub-contractor in the name and style of M/s. Engineering Builders. The case of the assessee was selected for scrutiny assessment and notice under Section 143(2) of the Act was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the Assessing Officer that the assessee has shown total sundry creditors of Rs.2,89,83,434/-. The learned Assessing Officer has further observed that the details of sundry creditors exceeding the amount of Rs.5 lakhs were called for. The assessee has submitted the list of sundry creditors alongwith confirmation of the persons having closing balance of more than Rs.5 lakhs. The Assessing Officer has called for the list of 10 sundry creditors and issued notices under Section 133(6) of the Act with the direction to submit information. According to his findings, it has been found that out of 10 sundry creditors, one sundry creditor did not reply and two notices returned un-served; therefore, three sundry creditors out of ten sundry creditors, as appearing in the books of the assessee, remained unverifiable. He noted that the details of these creditors as under:-

Sr. No.	Name of the creditor	Outstanding Balance
1	Shree Globe Trade	Rs.10,84,952/-
2	Hasmukhbhai Patel	Rs.19,10,185/-
3	Vipul D. Shah	Rs.16,55,456/-
	Total	Rs.46,50,593/-

4. Thereafter, the learned Assessing Officer has disallowed 25% of the above sundry creditors amounting to Rs.46,50,593/-. He drew support from the order of the Tribunal in the case of Vijay Proteins Ltd. Vs. ACIT,

reported in (1996) 58 ITD 428 (AHD). Accordingly, an addition of Rs.11,62,648/- was made.

5. Appeal to the learned CIT(A) did not bring any relief to the assessee. The learned CIT(A) has specifically examined these three cases individually and recorded the findings. For the sake of reference, we take note of the finding recorded by the learned CIT(A) for one of the creditors namely Globe Trade, as under :-

*"4.3. I discuss one by one of about all three creditors:*

*Globe Trade:-*

*Ledger A/c - Engineering builders- appearing in the books of Globe Trade shows as under:*

<i>01.04.2014 Opening debit balance</i>	<i>Rs. 13,84,952/-</i>
<i>09.04.2014 Closing debit balance</i>	<i>Rs. 10,84,952/-</i>
<i>TDS</i>	<i>Rs.9,080/-</i>

*Conclusion:*

*Ledger details show there is no transaction between the appellant and creditor during the year. However, the appellant has deducted TDS of Rs.9,080/-. The moot question arises here is when Globe Trade did not supply labour during the year then appellant should have explained the rationale behind deduction of TDS. Undisputed];-, appellant is following mercantile system of accounting- Then it must have raised some bills before deducting TDS. On the other hand, ITR V tiled by Globe Trade shows TDS is fully claimed in ITR. Bank statement of Globe Trade (creditor) suggests credit entry of Rs.3,00,000/- followed by transfer of same amount back to appellant. In other words, appellant debited its bank account for name sake ensuring TDS compliance so as to give a colour of genuineness of transaction. Despite notice u/s 133(6) issued by me. the creditor did not submit PF certificate, Gomasta Dhara certificate, Shop and Establishment certificate, details of site where labours were supplied to appellant. These facts convince me to say that outstanding credit balance is non genuine."*

6. A perusal of the orders of both the authorities would reveal that both the Revenue Authorities failed to appreciate the true facts and correct

position of law. Let us first deal with the assessment order. A sundry creditor can either be true or false. There cannot be any ad-hoc disallowance @ 25%. If the Assessing Officer was not satisfied with the information supplied by those creditors, he should have investigated further and should have reached on a firm conclusion that the claim made by the assessee is bogus one. If M/s. Globe Trade has worked for the assessee and an outstanding balance of Rs.10,84,952/- is remained to be paid, then how the 25% can be termed as non-genuine. The learned Assessing Officer has placed reliance on the decision of the ITAT in the case of Vijay Proteins Ltd. Vs. ACIT (supra) which is altogether a different case. In that case, the assessee company was engaged in the business of producing edible oils, oil cakes etc... It has made certain purchases which were alleged to be the bogus. The Tribunal, as a matter of fact, found that there is no dispute with regard to the sales achieved by the assessee; and, for achieving those sales, purchases must have done. There can be of different source namely the assessee has shown purchase from "A" but material could have been supplied by "B". In that exercise, there can be avoidance of sales tax, excise duty etc... In that background, the Tribunal has quantified the profit element embedded in those purchases at 25% and confirmed the disallowance out of those purchases. So, the reference made by the Assessing Officer is totally misplaced in the given set of facts.

6.1 Let us revert to the findings recorded by the learned CIT(A). Though we could have discussed each three cases, but the amount involved is too small to indulge in such an exercise. A perusal of the discussion made by the learned CIT(A) with regard to M/s. Globe Trade would show that this concern has the opening balance of Rs.13,84,952/-. The assessee has made payment of Rs.3,00,000/- during the year and deducted the TDS. The closing balance was shown at Rs.10,84,952/-. The learned CIT(A) wants that

M/s. Globe Trade should submit the PF certificate of the labourers or the manpower supplied it to the assessee in the past, its PWD Registration Certificate, if any, and other details; whereas, M/s. Globe Trade has filed its return of income under Section 44AD of the Act showing income @ 8% of total turnover. It was not supposed to maintain the books of accounts and other details. If it was not having those details, how these sundry creditors appearing in the books of accounts of the assessee become bogus?! It is an irregularity, if any, at the end of the manpower supplier. The existence of the party is not in dispute. Where is the necessity to take work in this year? It can be an outstanding sundry creditor from the earlier years out of which partly paid in this year. We failed to appreciate the logic given by the learned First Appellate Authority. One of the observations made by learned CIT(A) is that a credit entry of Rs.3,00,000/- was shown in the bank statement of M/s. Globe Trade followed by transferring the same amount back to the assessee. But this aspect has not been further elaborated by reproducing the bank statement and why the learned CIT(A) has not issued a notice for enhancement of disallowance. Because, in that case, the whole amount of Rs.13,84,952/- should be considered as bogus and not 25% of that. To our mind, both the authorities have not appreciated the facts in right perspective and, therefore, no disallowance is called for. We, therefore, delete the disallowance and allow the appeal of the assessee.

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

Order pronounced in the Court on 4<sup>th</sup> October 2021 at Ahmedabad.

Sd/-

**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

Ahmedabad, Dated 04/10/2021

*Pr*

Sd/-

**(RAJPAL YADAV)**  
**VICE-PRESIDENT**

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण