

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Pawan Singh (JM)

I.T.A. No. 5373/Mum/2012
(Assessment Year 2008-09)

Rumanek Estates Pvt. Ltd. New Exmpire Cinema Building Murzban Road, Fort Mumbai-400 001. (Appellant)	Vs.	ACIT 1(1) Room No. 467 Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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PAN No.AABCR0998N

Assessee by	None
Department by	Shri B.s. Bist
Date of Hearing	26.7.2016
Date of Pronouncement	26.7.2016

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 18-06-2012 passed by Ld CIT(A)-3, Mumbai and it relates to the assessment year 2008-09. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of outstanding amount pertaining to "INR charges" as income of the assessee u/s 41(1) of the Act.

2. None appeared on behalf of the assessee, even though the assessee was given last opportunity on 21-06-2016. Hence we proceed to dispose of the appeal ex-parte, without the presence of the assessee.

3. We heard Ld D.R and perused the record. The AO noticed that the assessee has shown a sum of Rs.5,16,374/- pertaining to "INR Hire charges" as outstanding liability under the head Sundry creditors. The same pertained to the

financial years 1996-97 to 1999-2000. Since the amount was outstanding for the past several years, the AO took the view that the said liability is no longer payable and accordingly assessed the same u/s 41(1) of the Act. The Ld CIT(A) also confirmed the same and hence the assessee has filed this appeal before us.

4. From the perusal of the assessment order, we notice that the assessee has contended that the above said amount was payable to Films Division of Information & Broadcasting Ministry of Government of India. The assessee has stated that the said amount remained unpaid, since the dispute between the assessee and the Government has not been resolved till date. Accordingly it was submitted that the liability has not ceased to exist and hence the provisions of sec. 41(1) are not applicable. In this regard, the assessee has placed reliance on the decision rendered in the case of ACIT Vs. Glenmark Pharmaceuticals (2010)(8 taxmann.com 55) (Mum). The said submissions did not find favour with the tax authorities. The Ld CIT(A), however, placed reliance on the decision rendered by Hon'ble Supreme Court in the case of CIT Vs. T.V.Sundaram Iyengar & Sons (88 Taxmann 429) and confirmed the addition made by the AO.

5. In the case of T.V. Sundaram Iyengar & sons (supra), the Hon'ble Supreme Court was concerned with unclaimed trade deposits, where as in the instant case, the issue is related to the money due to the Films Division of I & B ministry of Government of India. Hence, in our view, the above said decision of Hon'ble Supreme Court will not apply to the facts of the instant case. The assessee has claimed that the dispute is still unresolved and hence the liability still persists. We notice that the AO has not brought any material on record to contradict the said submissions. In that case, in our view, the outstanding liability cannot be said to have ceased. Accordingly, we are of the view that the tax authorities are not justified in assessing the same u/s 41(1) of the Act. Accordingly, we set

aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the impugned addition.

6. In the result, the appeal filed by the assessee is allowed.

Order has been pronounced in the Court on 26.7.2016

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 26/7/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

PS