

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI S.S. VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1042/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2007-08

M/s Bajrangbali Engineering Co. Ltd. 264, G.T. Road, Liluah, Howrah- 711 204.	Vs.	I.T.O, Ward-1(2), Kolkata AayakarBhawan, Kolkata – 700 069.
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No. : AABCB3139R		
(Assessee)	..	(Revenue/Department)

आयकरअपीलसं./ITA No.1058/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2007-08

I.T.O, Ward-1(2), Kolkata AayakarBhawan, Kolkata – 700 069.	Vs.	M/s Bajrangbali Engineering Co. Ltd. 264, G.T. Road, Liluah, Howrah- 711 204.
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No. : AABCB 3139 R		
(Revenue/Department)	..	(Assessee)

निर्धारितकीओरसे /Assessee by

: Shri S. S. Dutta, Advocate

राजस्वकीओरसे /Revenue by

:Shri Arindam Bhattacharjee, ACIT

सुनवाईकीतारीख/ **Date of Hearing :**

21/08/2017

घोषणाकीतारीख/**Date of Pronouncement**

30/08/2017

आदेश / ORDER

Per Dr. Arjun Lal Saini, AM:

These two captioned cross-appeals filed by the Assessee and Revenue, pertaining to Assessment Year 2007-08, is directed against an order passed by the Id. CIT(A), Kolkata in appeal No.443/CIT(A)-1/W-1(2)/2014-15 which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3)/254 of the Income Tax Act, 1961(hereinafter referred to as the 'Act') dated 27.03.2014.

2. Since, these two cross-appeals relate to the same assessee, same Assessment Year, identical issues are involved, therefore, these have been

clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. First we take assessee's appeal, in ITA No.1042/Kol/2016. The grounds of appeals raised by the assessee reads as under:

1.For that the Id. CIT(A)-1, Kolkata erred in law is not accepting that the amount of advance to the tune of Rs.11,44,900/- was not in the character of income rather advance obtained from the debtor to whom the assessee was obliged for supply of products but not materialized.

2.For that the Ld. CIT(A)-1, Kolkata, on misconception of facts and without looking into the materials furnished as on records thus directing an alleged infirmity of the finding on the part of the Assessing Officer is beyond the provisions of law deserving reconsideration and admissibility thereof."

3.1 The brief facts qua the issue are that assessee has considered 11,44,900/- as receipts and claimed that entire amount of such receipts were included in the total income of the assessee for Assessment Year 1981-82. But the assessee failed to prove such credit entries in the books. However, the assessee produced copy of the assessment order for Assessment Year 1981-82 but the Assessing Officer did not accept the submissions of the assessee and added the amount of Rs.11,44,900/- stating that when assessee has shown this as advance, then the same will not pertain to the character of the income.

3.2 Aggrieved by the addition made by the Assessing Officer, the assessee filed an appeal before the CIT(A) who has confirmed the addition made by the Assessing Officer. Regarding advances of Rs.11,44,900/- received from customers in earlier years, the assessee had contended that these were not taxable u/s 41(1) as such receipts were not trading receipts but were advances from M/s ABC Corporation and M/s Radheyshyam Laxmichand as advance for supply of products, for which reliance was placed upon Assessment order for A.Y 1981-82. It was in this context, the Hon'ble ITAT observed that "the

acceptance of the contention of the assessee that the entire amount of such receipts was included in the total income for the assessee in the assessment for Assessment Year 1981-82 where the assessee failed to prove such credit entries in the books on production. The acceptance of the above submission is factually incorrect.” it is pertinent to note that the Hon'ble member, ITAT observed that when once the assessee has shown this amount as advance it would not pertain to character of income. However, it is found that the assessee was unable to substantiate the genuineness of the said claim either in the assessment or appellate proceedings. Therefore, the Id. CIT(A) confirmed the addition of Rs.11,44,900/-.

3.3 The Id. Counsel for the assessee submitted before us that the balance sheet as on 31.03.2007 wherein Schedule-D of current liabilities and provisions the amount of Rs.11,44,900/- was appearing as advance against order. The Ld. Counsel for the assessee could not produce balance-sheet and Profit & Loss A/c for the assessment year 1981-82. The Id. Counsel also submitted that the Balance-sheet pertaining to Assessment Year 1981-82 is not available with the assessee, therefore, it is difficult to produce before the Bench.

3.4 On the other hand, the Id. DR for the Revenue submitted before us that the assessee has failed to produce Balance-sheet for the Assessment Year 1981-82, therefore, it is difficult to understand whether it is advance from customers or it is a liability or it is an income. Therefore, the Id. DR has defended the order passed by the Assessing Officer.

3.5 We have heard both the parties and perused the materials available on records, we are of the view that Id. Counsel has failed to produce before us the Balance-sheet and Profit & Loss A/c for the Assessment Year 1981-82, therefore, it is difficult to find out the exact character of the said amount, whether

it is advance or liability or income. Since the counsel has failed to produce Balance-sheet for Assessment Year 1981-82 therefore, it is difficult to understand the actual facts. However, the Hon'ble ITAT had already disallowed the said amount of Rs.11,44,900/- and this is the second inning therefore without any cogent evidence the addition cannot be deleted. Therefore, considering the facts and circumstances, we do not find any infirmity in the order passed by the Id. CIT(A). Therefore, we confirm the order passed by the Id. CIT(A).

3.6. In the result, the appeal filed by the assessee, is dismissed.

4. Now, we shall take up the Revenue's appeal in ITA No.1058/Kol/2016 for the Assessment Year 2007-08. The grounds of appeal raised by the Revenue read as under:

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the assessee's claim of sundry creditors amounting to Rs. 35,82,972/- is genuine, when the assessee put forth entirely different details of such creditors before the Hon'ble ITAT "B" Bench, Kolkata, than that before AO.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not justified in holding that the facts of the case is covered by the ration of the case laws in the case of CIT vs. Silver Cotton Mills Co.Ltd.(2002) 254 ITR 728 (Hon'ble Gujarat High Court) & CIT vs. Speed Ways Tyre Co. (2014) 364 ITR 431 (Punjab & Haryana High Court) when the assessee failed to provide any details of the creditors or prove genuineness of the creditors by providing confirmation from the creditors.

3. The Revenue shall always crave to adding or altering any ground on or before the date of hearing.

4.1 First of all, we notice that the grounds of appeal raised by the Revenue contains typographical error in respect of impugned addition of Rs.35,82,972/-. It should be read as Rs.34,82,972/- instead of Rs.35,82,972/-. Regarding the addition of Rs.34,82,972/- on account of sundry creditors, the assessee had already submitted an additional evidence by way of receipts of municipal

property tax issued by Bally Municipality and other documents and was filed by the assessee before the Hon'ble ITAT. On receipts of these additional evidences, the Hon'ble ITAT had restored back the matter to the file of the Assessing Officer to re-decide the matter afresh. During the assessment proceedings, the assessee submitted the details of sundry liabilities before the Assessing Officer are as follows:

Security against leasehold land	25,000/-
Audit fee	5,000/-
Municipality tax	23,81,972/-
Leasehold rend payable	11,01,000/-
Total	35,12,972/-

In support of documentary evidence of above liabilities, the assessee furnished only two municipality property tax receipts. On perusal of the receipts, it was noticed that these tax receipts were related to period from 2nd/93-94 to 2nd/03-04 of Rs.12,85,065/- and from 3rd/03-04 to 4th/06-07 of Rs.5,45,000/-. The counsel for the assessee submitted that some municipal tax receipt before the Hon'ble ITAT and some tax receipts were also filed during the earlier stage of hearing before the Assessing Officer. During the assessment proceedings, but on later stage, the counsel for the assessee himself disregarded his earlier submission and furnished a new submission in respect of outstanding liability on account of sundry creditor for goods, services and expenses. The Assessing Officer observed that on perusal of the assessment order for Assessment Year 1981-82 and Assessment Year 1982-83 respectively, it was observed that the details furnished by the assessee regarding sundry creditors were not considered as peak credit and taxed in assessment order for Assessment Year 1981-82 and Assessment Year 1982-83 as claimed by the assessee in its submission before the Assessing Officer. Moreover, the liability from

Assessment Year 1991-92 to Assessment Year 2007-08 was more or less unchanged. Therefore, the Assessing Officer observed that the assessee was in dilemma regarding the genuinity of liability of Rs.34,82,972/- on account of balance in sundry creditors for goods, services and expenses, therefore he added to the total income of the assessee.

4.2 Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Id. CIT(A) who has deleted the addition. The Id. CIT(A) observed that there is substance in the contention raised by the assessee that these liabilities were not barred by limitation and were forgone by the creditors and squared up and the assessee did not avail any benefit against the said liability. The Id. CIT(A) further observed that whether the applicability of section 41(1) would arise when liabilities accrued in earlier years continued to exist until the year under consideration. Therefore, regarding the liability of Rs.34,82,972, the Id. CIT(A) observed that the Assessing Officer came to the conclusion on presumptions rather than on the basis of any material on records and the Assessing Officer had not taken into consideration the question as to whether the assessee obtained any benefit of allowance or deduction in respect of liability amounting to Rs.34,82,972/- in earlier years. Therefore, the Id. CIT(A) observed that the reasons for Assessing Officer's conclusion that the amount of liabilities had ceased to exist and section 41(1) could be invoked in the instant case. In this case the assessee has not obtained any kind of benefit directly or indirectly. The counsel for the assessee cited the decision of the Supreme Court in CIT vs. Sugauli Sugar Works (P) Ltd. (236 ITR 518 Sc) and he contended that the expiry of the period of limitation prescribed under the law of limitations did not extinguish the debt. Therefore, considering the facts and circumstances and

citing the judgment of the Hon'ble Supreme Court, the Id. CIT(A) deleted the addition.

4.3 On the other hand, the Id DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

4.4 Having heard the rival submissions and perused the materials on record, we notice that the expiry of the period of limitation prescribed under the law of limitations did not extinguish the debt. It is well-settled principle that expiry of the period of limitation under the Limitation Act could not extinguish the debt but it would only prevent the creditors from enforcing the debt. Section 41 contemplates the obtaining by the assessee of an amount either in cash or in any other manner whatsoever or a benefit by way of remission or cessation and it should be of a particular amount obtained by him. Thus, the obtaining by the assessee of a benefit by virtue of remission or cessation is sine qua non for the application of this section. The mere fact that the assessee has made an entry of transfer in his accounts unilaterally will not enable the Department to say that Section 41 would apply and the amount should be included in the total income of the assessee. Just because an assessee makes an entry in his books of accounts unilaterally, he cannot get rid of his liability. The question whether the liability is actually barred by limitation is not a matter which can be decided by considering the assessee's case alone but it is a matter which has to be decided only if the creditor is before the concerned authority. In the absence of the creditor, it is not possible for the authority to come to a conclusion that the debt is barred and has become unenforceable. There may be circumstances which may enable the creditor to come with a proceeding for enforcement of the debt even after expiry of the normal period of limitation as provided in the Limitation

Act. The principle that expiry of period of limitation prescribed under the Limitation Act could not extinguish the debt but it would only prevent the creditor from enforcing the debt, has been well settled. If that principle is applied, it is clear that mere entry in the books of accounts of the debtor made unilaterally without any act on the part of the creditor will not enable the debtor to say that the liability has come to an end. This principle was laid down by decision of the Supreme Court in CIT vs. Sugauli Sugar Works (P) Ltd. (236 ITR 518 Sc). Therefore, after considering all the facts and circumstances and relying upon the judgment of the Hon'ble Supreme Court, we confirm the order passed by the CIT(A).

4.5 In the result, the appeal filed by the Revenue, is dismissed.

Order pronounced in the open court on this **30/08/2017**

Sd/-

(S.S. VISWANETHRA RAVI)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 30/08/2017

RS SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee- M/s Bajrangbali Engineering Co. Ltd.
2. प्रत्यर्थी/ The Revenue/Department- I.T.O, Ward-1(2), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता/** DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//

By Order

Senior Private Secretary
Head of Office/D.D.O,'
I.T.A.T., Kolkata Benches,
Kolkata