

आयकर अपीलिय अधीकरण, न्यायपीठ – “A” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “A” KOLKATA*

Before **Shri Aby.T Varkey, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.427/Kol/2016
Assessment Year :2011-12

M/s Shimmer Textiles Pvt. Ltd., 11/1 Ideal Plaza, N-214, Sarat Bose Road, Kolkata-20 [PAN No.AADCS 8926 J]	V/s.	Income Tax Officer, Ward-5(1), Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri S.M. Surana, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Kalyan Nath, DR
सुनवाई की तारीख/Date of Hearing	18-10-2017
घोषणा की तारीख/Date of Pronouncement	06-12-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Kolkata dated 04.02.2016. Assessment was framed by ITO Ward-5(1), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 26.03.2014 for assessment year 2010-11.

Shri S.M. Surana, Ld. Advocate appeared on behalf of assessee and Shri Kalyan Nath, Ld. Departmental Representative appeared on behalf of Revenue.

2. The assessee has taken the following grounds of appeal:-

- “1. For that the order of the Ld. CIT(A) is arbitrary, illegal and bad in law.*
- 2. For that the Ld. CIT(A) erred in confirming the addition of Rs.26,13,757/- when there was no cessation of liability, the assessee never written off the same and continue to confirm the said liability.*

3. For that even otherwise the amount of Rs.26,13,757/- was a loan taken and the said amount was never allowed as deduction as loss, expenditure or trading liability.
4. For that on the facts and circumstances of the case the Ld. CIT(A) erred in confirming the addition of Rs.26,13,757/-.
5. For that on the facts and circumstances of the cases the order of the CIT(A) be modified and the assessee be given the relief prayed for.
6. For that the assessee craves leave to add, alter or amend any ground before or at the time of hearing.”

3. The effective issue raised by assessee in all the grounds of appeal is that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining the disallowance of ₹26,13,757/- on account of cessation of liability.

4. Briefly stated facts are that assessee is a private limited company and deriving its income from investment and house property. The assessee in its balance-sheet has shown a loan of ₹ 26,13,757/- only M/s Lahar Commodities Pvt. Ltd. (LCPL for short). On enquiry about the veracity of loan, the AO came to know that the name of M/s LCPL has been struck off from the record of ROC/MCA on 19.03.2014. Therefore, the AO was of the view the liability ceased to exist in the books of the assessee. Accordingly, the addition of Rs. 26,13,757.00 on account of cessation of liability was made by the AO to the total income of assessee.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who confirmed the order of AO ex-parte after considering the materials available on record by observing as under:-

“4.1 It appears that the assessee-company had shown a liability for loan of Rs.26,13,757/- with M/s Lahar Commodities Pvt. Ltd. in its books, though the same was not required to be paid as assessee stroked off that liability. Therefore, the AO was right in adding back that amount for cessation of liability. There is nothing on record to controvert the decision of the AO. Hence, the addition of Rs.26,13,757/- is confirmed.”

Being aggrieved by this order of Ld. CIT(A) assessee came in second appeal before us.

6. Ld. AR before us submitted that the loan liability was coming from the earlier year and the same has not been written off in the books of account in the year under consideration. Therefore, the same cannot be added to the

total income of the assessee. Ld. AR before us in support of assessee's claim filed the copy of ledger of LCPL for the earlier year which is placed on record. On the other hand, Ld. DR submitted that a notice was issued by the AO u/s 133(6) of the Act which was returned as un-served. Similarly, it is also evident that the name of assessee-company has been struck off from the records of ROC/MCA, therefore it is proved that liability has been ceased to exist. He vehemently relied on the order of Authorities Below.

In rejoinder, Ld. AR submitted that the name of LCPL was not struck off in the year under consideration. Thus, it cannot be concluded that the company is not in existence in the year under consideration.

7. We have heard the rival contentions & perused the material available on record. The issue in the instant relates to the addition made by the AO on account of cessation of liability for Rs.26,17,757.00 only. The assessee has shown loan liability of Rs.26,13,757.00 in the name of LCPL in its balance sheet as on 31st March 2011. This loan liability was coming from the earlier years as detailed under:

"Shimmer Textiles Pvt. Ltd.
2, Clive Ghat Street, 8th Floor, Kolkata-001
GENERAL LEDGER : 01/04/2001 -31/03/2002

Balance C/D :		Credit Balance	
Code	USLL 01	Name :LAHARCOMMODITIES PVT Ltd.	
01/04/2001		Opening balance	
28/08/2001	BV 1	Oriental bank of commerce	20,0002
29/08/2001	BV 2	Oriental bank of commerce	30,3200
03/09/2001	BV 1	Oriental bank of commerce	30,0000
08/02/2001	BV 3	Oriental bank of commerce	40,0000
02/09/2001	BV 3	Oriental bank of commerce	30,0000
02/09/2001	BV 6	Oriental bank of commerce	30,0000
13/09/2001	BV 1	Oriental bank of commerce	35,0000
15/09/2002	BV 1	Oriental bank of commerce	10,0200
18/03/2002	JV 2	INTEREST	25,0000
30/01/2002	JV 5	T.D.S.ON INTEREST PAYABLE	41968.00

From the above copy of the ledger we note that the loan liability shown by the assessee comprises of principal amount as well as interest amount as depicted above.

The undisputed fact is that the loan liability was very much reflecting in the balance sheet of the assessee as on 31.3.2011. There is also no ambiguity

that the name of LCPL was struck off from the list of company maintained in ROC/MCA.

In this regard it was brought to our notice that the name of the company was struck off on 19.3.2014. Therefore as per the AR the question of taxing the impugned liability in the year under consideration does not arise.

However, we further note that the learned CIT(A) has passed ex parte order as the assessee failed to appear before him on the date of hearing. We also find that the learned AR before us has filed the copies of the ledgers from the time of the loan taken from LCPL which are placed on record. On perusal of the same we note that these documents/ copies of ledgers were not filed before the lower authorities. Therefore we are of the view that the copies of the ledgers filed by the learned AR needs to be verified by the AO. We therefore are inclined to restore the issue to the file of AO for fresh adjudication in accordance with the law. Hence, the ground of appeal filed by the assessee is allowed for statistical purposes.

8. In the result, assessee's appeal stands allowed for statistical purpose.

Order pronounced in the open court 06/12/2017

Sd/-
(Aby. T. Varkey)
(Judicial Member)
Kolkata,
*Dkp

Sd/-
(Waseem Ahmed)
(Accountant Member)

दिनांक:- 06/12/2017 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Shimmer Textiles Pvt. Ltd., Rajesh Mohan & Associates Unit No. 18, 5th Floor, Bagati House, 34, Ganesh Chandra Avenue, Kolkata-13
2. प्रत्यर्थी/Respondent-ITO Ward-5(1), Aayakar Bhawan, P-7, Chowrnghee Sq. Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।