

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

**ITA NOs. 1387 & 1388 /MUM/2017
(A.Ys: 2012-13 & 2012-13)**

M/s. Indo Amines Ltd. W/44, Phase-II, MIDC Dombivali (East) – 421 203 PAN: AAACI 1374 A	v.	A.C.I.T Circle – 1 1 st Floor, Mohan Plaza, Wayale Nagar, Khadakpada Kalyan (West) – 421 301
(Appellant)		(Respondent)

ITA NO. 1389/MUM/2017 (A.Y: 2013-14)

M/s. Indo Amines Ltd. W/44, Phase-II, MIDC Dombivali (East) – 421 203 PAN: AAACI 1374 A	v.	Income Tax Officer Ward 1(5) 1 st Floor, Mohan Plaza, Wayale Nagar, Khadakpada Kalyan (West) – 421 301
(Appellant)		(Respondent)

Assessee by : **Shri M.N. Nandgaonkar**
Department by : **Shri Abi Rama Kartikeyan**

Date of Hearing : **12.11.2018**
Date of Pronouncement : **30.01.2019**

ORDER**PER C.N. PRASAD (JM)**

1. These three appeals are filed by the assessee against different orders of the Ld. Commissioner of Income-tax (Appeals)-2, Thane [hereinafter in short "Ld.CIT(A)"] for the Assessment years 2012-13 & 2013-14.

ITA.No.1387/MUM/2017 (A.Y. 2012-13) (Against Order u/s. 154 of the Act)

2. This appeal is filed by the assessee against the order of the Ld.CIT(A) in sustaining the action of the Assessing Officer in rejecting the claim of the assessee for treating the payment of self-assessment tax after the due date for filing return but before the date of order u/s. 143(1) / 143(3) of the Act for the purpose of calculation of levy of interest u/s. 234B of the Act.

3. Ld. Counsel for the assessee referring to the order passed u/s. 154 of the Act by the Assessing Officer submitted that up to the date of filling of return i.e. 28.09.2012 assessee paid advance tax of Rs. 90 Lakhs and self-assessment tax of Rs. 40 Lakhs and thereafter an amount of Rs.96,88,080/- was paid on various dates from 28.02.2013 to 31.01.2013 and these payments were considered as self-assessment tax by the

Assessing Officer for the purpose of calculation of interest u/s. 234B of the Act.

4. Ld. Counsel for the assessee submitted that the action of the Assessing Officer in rejecting the assessee claim has been sustained by the Ld.CIT(A). Submissions made before the lower authorities have been reiterated before us. Ld. Counsel for the assessee placed reliance on the decision of the Ahmadabad Bench in the case of Patson Transformers Ltd v. DCIT [(2006) 6 SOT 673] and the decision of the Hon'ble Delhi High Court in the case of Dr. Prannoy Roy & Another v. CIT [254 ITR 755]. The calculation sheet is also furnished before us. According to the assessee the interest u/s. 234B of the Act should have been charged considering the amounts paid even after filing of return of income.

5. We have heard the rival submissions, perused the orders of the Authorities below. On a careful consideration of the orders passed by the authorities below and the submissions of the assessee and the decision of the Ahmadabad Bench, we find that some force in the submissions of the assessee, therefore, we restore this issue to the file of the Assessing Officer to examine the contention of the assessee with reference to the decision of the Ahmadabad Bench in the case of Patson Transformers Ltd v. DCIT (Supra) and the decision of the Hon'ble Delhi High Court in the case of Dr. Prannoy Roy & Another v. CIT (supra) and the calculation

sheet furnished by the assessee and decide the issue in accordance with law, after providing adequate opportunity of being heard to the assessee.

Grounds raised by the assessee are allowed for statistical purposes.

ITA.No. 1388/MUM/2017 (A.Y. 2012-13) (Against order u/s. 143(3) of the Act)

6. Assessee in its appeal has raised the following grounds: -

"(1) "On the facts and in the circumstances of the case & in law the learned Assessing Officer has erred in disallowing and the learned CIT(A) has erred in confirming the addition of Rs. 145693/- on account of employees contribution to PF& ESIC deposited in EPF/ESIC fund by the appellant before the due date of filing of the return.

(2) "On the facts and in the circumstances of the case & in law the learned Assessing Officer has erred in adding to the income of the appellant and the learned CIT(A) has confirming the addition of Rs. 3245939/- u/s. 41(1) of the act,.

(3) "On the facts and in the circumstances of the case & in law the learned CIT(A) has erred in directing the AO to revise the income of the appellant of AY 2014-15 to the extent of Rs. 2697100/- which was offered as income by the appellant in AY 2014-15 under the provisions of section 41(1) of the Act, by confirming the addition to the extent of Rs. 2697100/- in AY 2012-13 made by the AO being part of the total addition of Rs. 3295949/- made u/s. 41(1)

(4) "On the facts and in the circumstances of the case & in law the learned Assessing Officer has erred in adding to the income of the appellant and the learned CIT(A) has confirming the addition of Rs. 345945/- under provisions of section 40(a)(ia) of the Act."

7. At the outset, Ld. Counsel for the assessee submitted that ground No.4 of grounds of appeal is not pressed. In view of the submissions ground No.4 of grounds of appeal is dismissed as not pressed.

8. Ground No.1 is relating to disallowance made by the Assessing Officer in respect of employee's contribution of PF and ESIC deposited by the assessee before due date for filing of return of income. Ld. Counsel for the assessee submitted that this issue is squarely covered by the

decision of the Hon'ble Bombay High Court in the case of CIT v. Ghatge Patil Transports Limited [384 ITR 749].

9. Ld. DR vehemently supported the orders of the Authorities below.

10. The Bombay High Court in the case of CIT v. Ghatge Patil Transports Limited (supra) held that deduction for payment of employee's contribution cannot be disallowed in any case contribution to employee's welfare fund was made on or before for filling return of income. Respectfully following the same, we allow the ground raised by the assessee.

11. Ground Nos.2 & 3 are with reference to addition / disallowance made u/s. 41(1) of the Act.

12. Brief facts are that the Assessing Officer while completing the assessment noticed that there are outstanding liabilities towards certain creditors for the period of more than three years and since these amounts have already been claimed as deduction by the assessee in earlier years on accrual basis, the Assessing Officer was of the view that there was no reason to claim the same as a liability even after a period for lodging a claim by creditors had lapsed. Therefore, by invoking the provisions of section 41(1) of the Act the Assessing Officer brought to tax an amount of Rs.32,45,939/-. Before the Ld.CIT(A), it was contended by the assessee

that during the F.Y. 2013-14 relevant to A.Y. 2014-15 assessee had already written back and offered to tax part of sundry creditors amounting to Rs.26,97,100/- even before the completion of assessment u/s. 143(3) of the Act for the Assessment year under consideration and therefore, to that extent it cannot be added as income during this Assessment year otherwise it amounts to double addition. In respect of balance amount of Rs.5,44,899/- it was submitted that these dues are payable to the concerned creditors as on 31.03.2012 and had not seized to exist and therefore, provisions of section 41(1) of the Act are not applicable. However, the Ld.CIT(A) sustained the addition made by the Assessing Officer ignoring the submissions.

13. Before us, the Ld. Counsel for the assessee reiterated the submissions made before the Ld. CIT(A).

14. Ld. DR vehemently supported the orders of the Authorities below.

15. On a perusal of the Ld. CIT(A) order, we find that in spite of taking note of the fact that the assessee had offered and return back the sundry creditors to the extent of Rs.26,92,100/- during the F.Y. 2013-14 relevant to the Assessment year 2014-15, the Ld. CIT(A) still went on to confirm the addition which in our view is not at all justified. The observation of the Ld. CIT(A) in sustaining the addition was that the assessee has offered

these creditors to tax in subsequent years only to escape from penal provisions. This view of the Ld. CIT(A) is baseless and totally misplaced.

16. The Hon'ble Supreme Court in the case of CIT v. Sugauli Sugar Works Pvt. Ltd., [236 ITR 518] held that even if the assessee made unilateral write off still the liability does not cease to exist. The Hon'ble Supreme Court further observed as under: -

"The principle that expiry of the 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 Account 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. Apart from that, that will not by itself confer any benefit on the debtor as contemplated by the section."

17. Before us nothing has been brought on record by Assessing Officer to suggest that the liability is seized. In the circumstances, we hold that there is no cessation of liability of creditor in this Assessment year. Therefore, we direct the Assessing Officer to delete the addition made u/s. 41(1) of the Act.

18. Appeal of the assessee is partly allowed.

ITA.No.1389/Mum/2017 (A.Y. 2013-14) (Against order u/s. 143(3) of the Act)

19. The assessee has raised the following grounds in its appeal: -

(1) "On the facts and in the circumstances of the case & in law the learned Assessing Officer has erred in disallowing and the learned CIT(A) has erred in confirming the addition of Rs. 65522/- on account of employees contribution of EPF deposited in EPF by the appellant before the due date of filing of the return.

(2) "On the facts and in the circumstances of the case & in law the learned Assessing Officer has erred in adding to the income of the appellant and the

learned CIT(A) has confirmed the ad hoc disallowance of Rs.330000/- out of office expenses."

20. First ground is with regard to disallowance of employees Contribution to EPF which was paid before due date for filing of return of income. This ground is squarely covered by the decision of the Hon'ble Bombay High Court in the case of CIT v. Ghatge Patil Transports Limited (supra). Respectfully following the same, we allow the grounds of appeal of the assessee.

21. Ground No.2 is with reference to confirming the adhoc disallowance of Rs.3,30,000/- out of office expenses made by the Assessing Officer.

22. The Assessing Officer while completing the assessment disallowed 5% of office expenses on the ground that no satisfactory supporting evidence were furnished and vouchers were all self-made cash vouchers. The Ld. CIT(A) sustained the said adhoc disallowance.

23. We have heard the rival submissions, perused the orders of the Authorities below. The Assessing Officer has not pointed out any specific defect with respect to any particular voucher or expenditure. It is only a general observation made by the Assessing Officer. We find no justification in making adhoc disallowance without specifically pointing the defect on particular item of expenditure. Hence the same is deleted. Thus, we direct the Assessing Officer to delete the adhoc disallowance made.

24. In the result, appeal of the assessee in ITA.No. 1387/MUM/2017 is allowed for statistical purpose, ITA.No. 1388/Mum/2017 is partly allowed and ITA.No. 1389/Mum/2017 is allowed.

Order pronounced in the open court on the 30th January, 2019

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER
Mumbai / Dated 30/01/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum