

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.333/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. RMG Alloy Steel Limited (Formerly Known as M/s. Remi Metal Gujarat Ltd.) Welspun House, 4 th Floor, Kamala Mills Compound, Senapati Bapat Marg, Lower Parel, Mumbai-400013.	बनाम/ Vs.	Dy. CIT Central Circle-3(4) Nariman Point, Mumbai- 400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACR2121C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Shri D. G. Pansari (DR)
Assessee by:	Shri Farrokh Irani/ Mitesh Shah

सुनवाई की तारीख / Date of Hearing: 07/02/2019

घोषणा की तारीख /Date of Pronouncement: 30/04/2019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 22.11.2016 passed by the Commissioner of Income Tax (Appeals) -51, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2012-13.

2. The assessee has raised the following grounds: -

“The ground or grounds of appeal are without prejudice to one another.

1. a) *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the addition of 2,73,60,397/- made by the AO to the income of the Appellant in respect of sundry creditors outstanding more than 3 years invoking the provisions of section 41(1) of the Income Tax Act, 1961.*

b) *The Id. CIT(A) failed to appreciate that no benefit has been obtained in respect of such sundry creditors by way of remission or cessation thereof nor the liabilities of sundry creditors have ceased to exist.*

c) *In reaching to the conclusion and confirming such addition, the Id. CIT(A) omitted to consider relevant factors, considerations, principles and evidences while he was overwhelmed, influenced and prejudiced by irrelevant considerations and factors.*

2. *The Id. CIT(A) erred in holding that the ground raised disputing initiation of penalty proceedings u/s.271(1)(c) of the Income Tax Act, 1961 is premature. The Appellant denies its liability for such penalty.*

The Appellant craves leave to add, alter, amend or delete any or all of the above grounds of appeal.”

3. The brief facts of the case are that the assessee filed its return of income on 25.09.2012 declaring total loss to the tune of Rs.51,47,05,922/-. Thereafter, the case was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee company is engaged in the business of manufacturing of seamless pipes tubes rolled products case products. On verification it was noticed that the purchase has been charged to profit and loss account in the earlier year which has not been paid for more than 3 years from the following parties.

Sr. No.	Name of the Party	Amount in Rs.
1	Paragon Construction	12,63,217
2	Electronic & Engineering	8,75,766
3	Ami Builders	18,83,196
4	Essar Steel Ltd.	8,32,667
5	Foerxter Elect & Engg. Co.	3,79,700

6	Gannon Dunkerly & Co. Ltd.	1,29,05,788
7	Hydra Tech Engineers	16,597
8	Indomag S. T. Ltd.	87,53,323
9	Kirloskar Brothers Ltd.	2,88,803
10	See Tech Solutions Pvt. Ltd.	1,50,020
11	Yantraman Lubricants	11,320
	Total	Rs.2,73,60,397

The AO issued the notice to justify as to why the provisions of Section 41(1) could not be attracted for sundry creditors outstanding more than 3 years. The assessee confirmed the transaction of major parties such as M/s. Welspun Corp Ltd., M/s. Super Transport Organization, Welspun Steel Ltd. The explanation was not proper being the produce from these parties in question. The assessee neither produced the reason for non-payment like legal dispute nor has assessee's produced any confirmation for the parties to whom balance is payable for more than 3 years. The assessee made no effort to write back those liabilities as such act would have created liability in the case of assessee. The AO was of the view that the not produced more than 3 years payments, therefore, the AO raised the addition of Rs.2,73,60,397/- u/s 41(1)(a) of the Act and assessed the income at loss in sum of Rs.(-)48,73,45,525/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the order, therefore, the assessee has filed the present appeal before us.

ISSUE NO. 1

4. Under this issue the assessee has challenged the confirmation of the addition of Rs.2,73,60,397/- which was irrespective of sundry creditors outstanding more than 3 years by invoking the provisions of Section 41(1) of the Act. At the very outset, the Ld. Representative of the assessee has

argued that the assessee did not obtain benefit by virtue of remission or cessation of liability, therefore, the u/s 41(1) of the Act was not applicable in view of the law settled in **CIT Vs. Sugauli Sugar Works P. Ltd. (1983) 140 ITR 286 (Cal)** hence the addition raised in view of the provisions u/s 41(1) of the Act on account of sundry creditors is liable to be deleted in accordance with law. However, on the other hand, the Ld. Representative of the Department has strongly relied upon the order passed by the CIT(A) in question and also placed reliance upon the law settled in the case of **CIT Vs. T.V. Sundaiam Iyengar & Sons Ltd. (1996) 88 Taxman 429 (SC)**. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.: -

“8. I have considered the facts of the case, submissions and contentions of the appellant, as also the order of the AO. The assessee has made voluminous submissions and also relied on various citations, however, assessee has not touched the substance of the issue. The main important issue as to how this liability in respect of so many parties was not cleared over last three years and whether the purchases made with these parties were otherwise genuine. During the course of appellate proceedings, I specifically asked the Ld AR as to whether on this date this liability has been cleared and the amounts have been paid to respective parties. However, the 14 AR very categorically stated that such liability is still existing in the books and has not been paid. If that be the case, these amounts are still outstanding over the period of last seven years and if the assessee has not cleared these liabilities in last seven years, it is highly unlikely to be cleared in the near future. In the circumstances, the disallowance made u/s 41(1) is upheld. The ground taken by the assessee is dismissed.”

5. On appraisal of the above mentioned finding, we noticed that the assessee nowhere cleared the purchase credit in sum of Rs.2,73,60,397/- for the last 7 years and failed to confirm transaction from parties and nowhere leads any evidence with regard to any legal dispute. Here it is to be seen whether the clause 41(1) of the Act is liable to be applicable to the facts and

circumstances of the present case. In the section 41(1) of the Act is hereby reproduced as under for ready reference.-

“Section 41(1)

[(1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,—

(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

b. the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.

Explanation 1 - *For the purposes of this subsection, the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof" shall include the remission or cessation of any liability by a unilateral act by the first mentioned*

person under clause (a) or the successor in business under clause (b) of that sub-section by way of writing off such liability in his accounts.

Explanation 2 - *For the purposes of this subsection, "successor in business" means –*

i. where there has been an amalgamation of a company with another company, the amalgamated company;

ii. where the first-mentioned person is succeeded by any other person in that business or profession, the other person;

iii. where a firm carrying on a business or profession is succeeded by another firm, the other firm;

iv. where there has been a demerger, the resulting company.”

6. On appraisal of the above mentioned section, it is apparent on record that the assessee should be benefited on account of remission or cessation of trading liability if any. In the instant case, the assessee has shown his liability to pay the amount to the creditors being trading liability. The assessee nowhere benefited at all. Since the trading liability was not cleared for a long time then in the said circumstances the assessee nowhere entitled to get the benefit of the same and to treat the said liability its own income. In the books of account the assessee has shown its trading liability and nowhere treated the trading liability its own income or benefited in any manner. The facts of the present case is quite similar to the facts of the case relied by the Ld. Representative of the assessee in case of **CIT Vs. Sugauli Sugar Works P. Ltd. (1983) 140 ITR 286 (Cal)**. In the case titled as **CIT Vs. T.V. Sundaiam Iyengar & Sons Ltd. (1996) 88 Taxman 429 (SC)**, the assessee got benefit of waiving of loan which was treated as income u/s

28(iv) of the Act. In view of the said circumstances, we are of the view that the finding of the case titled as **CIT Vs. Sugauli Sugar Works P. Ltd. (1983) 140 ITR 286 (Cal)** is quite applicable to the facts of the present case, hence, we set aside the finding of the CIT(A) on this issue and allowed the claim of the assessee. Both the issues are decided in favour of the assessee against the revenue.

7. In the result, the appeal filed by the **assessee is hereby ordered to be allowed.**

Order pronounced in the open court on 30/04/2019.

Sd/-
(SHAMIM YAHYA)
लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 30/04/2019
Vijay /Sr. P.S.

Sd/-
(AMARJIT SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai