

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F', NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No. 6650/Del/2016
Assessment Year: 2013-14

DCIT, CIRCLE-19(2), NEW DELHI ROOM NO. 221, 2 ND FLOOR, C.R. BUILDING, I.P. ESTATE, NEW DELHI	Vs.	M/S PASUPATI FABRICS LTD., 112, F-14, CONNAUGHT PLACE, NEW DELHI (PAN: AAACP1338B)
(Appellant)		(Respondent)

Department by	Sh. Sunder Pal, Sr. DR.
Assessee by	Sh. Rajan Bhatia, Adv.

ORDER

PER H.S. SIDHU, JM

This appeal is filed by the Revenue against the Order dated 14.10.2016 passed by the Ld. CIT(A)-12, New Delhi relating to assessment year 2013-14 on the following grounds:-

- i. In the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 2,78,25,006/- made under section 41(1) of the Income Tax Act, 1961,.

- ii. The appellant craves to be allowed to add any fresh ground(s) of appeal and / or delete or amend any of the ground(s) of appeal.

2. The brief facts of the case are that assessee filed its e-return on 21.01.2014 declaring NIL income. The case of the assessee was selected for scrutiny assessment under CASS and Statutory notices u/s. 143(2) of the Income Tax Act, 1961 (in short "Act") dated 02.09.2014 was issued. Subsequently, notices u/s. 142(1) of the Act was issued on 29.5.2015 and various information were called for in response to which the Ld. AR of the assessee attended the proceedings and submitted the documents / evidences in support of its claim as called for during the proceedings. The Assessing Officer as against the NIL returned income has assessed the income at a loss of Rs. 8,28,836/- u/s. 143(3) of the Act vide order dated 05.01.2016 and made the addition of Rs. 2,78,25,006/-. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 14.10.2016 has allowed the appeal of the assessee. Aggrieved with the impugned order, Revenue is in appeal before the Tribunal.

3. On the other hand, Ld. DR relied upon the order of the Assessing Officer. He submitted that the assessee company itself had admitted that the amounts were outstanding for more than five-six years and therefore, the assessee company obtained a benefit in the course of its business which was assessable under section 41(1) of the Income Tax Act, 1961. He further submitted that the assessee company did not write

back the liability to the profit and loss account for the year under consideration. Thus, it was submitted that there was a remission or cessation of trading liability which resulted in a benefit to the assessee and by relying upon the decision of Hon'ble Supreme Court of India in the case of CIT vs. TV Sundaram 222 ITR 344 (SC), the trade liability / sundry pertaining to the 268 parties mentioned at assessment order at page no. 2 to 11 which amounting to Rs. 2,78,25,006/- was rightly made by the Assessing Officer and needs to be upheld.

4. Ld. counsel for the assessee relied upon the order of the Ld. CIT(A) and stated that the issue in dispute is squarely covered by the decision of the Hon'ble Delhi High Court in the case of CIT vs. Vardhman Overseas Ltd., 343 ITR 408, which the Ld. CIT(A) has relied upon in his impugned order and deleted the addition in dispute, which does not need any interference.

5. We have heard both the parties and perused the records especially the impugned order. We find that Ld. CIT(A) has elaborately discussed the issue in dispute vide para no. 9.1 to 10 at page no. 7 to 9 of the impugned order. For the sake of clarity, we are reproducing the relevant finding of the Ld. CIT(A) as under:-

"9.1 Appellant company was incorporated in 1991. Due to heavy losses, Assessee was declared a sick industrial unit on 2004 and BIFR recommended the winding up of the

Appellant Company to the Hon'ble High Court. Hon'ble Delhi High Court had appointed a Provisional Liquidator for winding up of the company on 09.07.2010. Appellant had preferred an appeal before Appellate Authority for Industrial and Financial Reconstruction (AAIFR), New Delhi which has stayed the order of Hon'ble High Court till further orders and the matter is under consideration of AAIFR. It had filed its ITR on 21.1.2014 for AY 2013-14 declaring NIL income. During the course of assessment proceedings, Assessing Officer observed that assessee company had shown trade payable at Rs. 9,36,79,214/-. Appellant Company filed a chart containing 311 parties and the period related to FY 1999-2000 onwards. However, it could not file confirmations with respect to the various trade creditors. Assessing Officer disallowed the amount of Rs. 2,78,25,006/- on account of 268 creditors as appellant company could not submit any detail or confirmation regarding the same.

Assessing Officer held that the assessee company was no longer liable to pay the amount to these parties and the debts have become more than 5-6 years old and, therefore, there was a remission or cessation of trading liability which has resulted in benefit to the assessee. Assessing Officer has relied on the judgment of Hon'ble Supreme Court in the case of CIT vs. TV Sundaram Iyengar & Sons Ltd., 222 ITR 344. Assessee is in appeal against the same.

9.2 Appellant has submitted that the amount of Rs. 2,78,25,006/- is outstanding in the balance sheet as on 31.3.2013 and the debts is payable by the appellant company as the debts has not been written off in the books of the accounts.

9.3 I have carefully considered the observations of the Assessing Officer and submissions of the Appellant. Appellant is a sick industrial unit and BIFR has recommended for winding up of the company. At present, the matter

is sub-judice before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) which has stayed the order of Hon'ble Delhi High Court till further orders. Therefore, in view of the facts and circumstances of the case, it cannot be said that liability has ceased to exist in Appellant's case as neither the liability has been written back by the Appellant in its Profit and Loss Account nor the winding up process has been completed. Hon'ble Delhi High Court in the case of CIT vs. Vardhman Overseas Ltd., 343 ITR 408 has held that there is no cessation of liability when Assessee has not unilaterally written back the amounts on account of sundry creditors in its P&L account. The facts of the judgment of Hon'ble Supreme Court in the case of T.V. Sundaram Iyengar are different as in that case, Assessee had written back the amounts as income in its Profit & Loss Account. Therefore, in view of the aforesaid judgement of Hon'ble Delhi High Court and the facts and circumstances of the case, the

addition of Rs. 2,78,25,006/- made by Assessing Officer is deleted.

10. In the result, the appeal is allowed.”

5.1 After perusing the aforesaid finding of the Ld. CIT(A), we find that Assessee is a sick industrial unit and BIFR has recommended for winding up of the company. It is also noted that at present, the matter is sub-judice before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) which has stayed the order of Hon'ble Delhi High Court till further orders. Therefore, it cannot be said that liability has ceased to exist in Assessee's case as neither the liability has been written back by the Assessee in its Profit and Loss Account nor the winding up process has been completed. We further note that the Hon'ble Delhi High Court in the case of CIT vs. Vardhman Overseas Ltd., 343 ITR 408 has held that there is no cessation of liability when Assessee has not unilaterally written back the amounts on account of sundry creditors in its P&L account. It is also noted that the facts of the judgment of Hon'ble Supreme Court in the case of T.V. Sundaram Iyengar are different as in that case, because the Assessee had written back the amounts as income in its Profit & Loss Account. Therefore, in view of the aforesaid judgement of Hon'ble Delhi High Court and the facts and circumstances of the case, the addition of Rs. 2,78,25,006/- made by Assessing Officer was rightly deleted by the Ld. CIT(A), and therefore, there is no illegality or infirmity in the finding of the Ld. CIT(A) on the issues in dispute, hence,

we uphold the action of the Ld. CIT(A) on the issues in dispute and reject the grounds raised by the Revenue.

6. In the result, the Appeal of the Revenue is dismissed.

Order pronounced on 04-06-2019.

Sd/-

**[B.R.R. KUMAR]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 04/06/2019

SRBhatnagar

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1. Appellant 2. Respondent 3. CIT 4. CIT (A) 5. DR, ITAT

By Order,

Assistant Registrar, ITAT, Delhi Benches