

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

ITA NO. 1985/MUM/2017 : **A.Y : 2013-14**

Flo-Dyne Controls (India) Pvt. Ltd. Vs. ITO - 15(1)(2),
2501, G-Square Business Park, Mumbai (Respondent)
Plot no. 25-26, Sector 30,
Opp. Sanpada Railway Station (W),
Vashi, Navi Mumbai 400703.
PAN : AABCF2339M (Appellant)

Appellant by : **Ms. Ritika Agarwal**
Respondent by : **Smt. Samatha Mullamudi**

Date of Hearing : **13/11/2019**

Date of Pronouncement : **15/11/2019**

ORDER

PER VIKAS AWASTHY, JUDICIAL MEMBER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) - 24, Mumbai (hereinafter referred to as 'CIT(A)') dated 07.12.2016 for the assessment year 2013-14.

2. Ms. Ritika Agarwal appearing on behalf of the assessee submitted that in the course of scrutiny assessment proceedings, the Assessing Officer, *inter-alia*, made addition of Rs.76,06,500/- under Section 41(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The learned AR pointed that the assessee was under financial stress, therefore, the assessee could not pay outstanding credit amount to M/s. Camy Plants. However, the assessee during

financial year 2019-20 has paid Rs.3,50,000/- out of the total outstanding credit balance of Rs.76,06,500/-. The learned AR further submitted that the CIT(A) dismissed the claim of assessee as the assessee could not furnish documentary evidences to show that the creditor was still claiming the amount. The assessee has filed application under Rule 29 of the ITAT Rules, 1963 to place on record the exchange of emails between the assessee and M/s. Camy Plants as additional evidence.

3. On the other hand, Smt. Samatha Mullahudi, representing the Department vehemently defended the impugned order. The learned DR submitted that the Assessing Officer had issued notice under Section 133(6) of the Act to the creditor of the assessee, M/s. Camy Plants. As per the ledger copy furnished by M/s. Camy Plants, the amount of Rs.76,06,500/- has been written off by the said party in the financial year 2012-13. Since the amount has already been written off, it is a case of cessation of liability. The learned DR further contended that the assessee has failed to furnish any documentary evidence before the authorities below to show that the amount is still payable and the creditor has resorted to legal recourse for recovery of the said amount.

4. We have heard the submissions made by the representatives of the rival sides and have perused the orders of authorities below. The only dispute in the present appeal is, “whether assessee’s liability Rs.76,06,500/- to M/s. Camy Plants still subsist?”

As per the assessee, the credit amount is still live and payable, whereas, as per the Department the aforesaid amount ceases to be a liability of assessee as the creditor has already written off the amount in the financial year 2012-13.

5. The assessee has filed additional evidence in the form of exchange of emails between the assessee and M/s. Camy Plants to substantiate that the said creditor is still pressing for the payment of outstanding demand. The assessee has further placed on record ledger account of M/s. Camy Plants to show that out of outstanding amount of Rs.76,06,500/-, assessee has paid Rs.3,50,000/- during the period starting from May, 2019 to as recently as October, 2019. Taking into consideration entirety of facts, we are of the considered view that the additional documents filed by the assessee are vital for proper adjudication of the issue and hence, deserves to be admitted. The application of the assessee filed under Rule 29 of the ITAT Rules, 1963 is allowed, accordingly.

6. Since the additional evidences filed by the assessee have been admitted now, and the same were not available before the authorities below, we deem it proper to restore the issue back to the file of Assessing Officer for re-examination after verification of the documents filed as additional evidence.

7. In the result, impugned order is set-aside and the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on Friday, the 15th day of November, 2019.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Date : 15th November, 2019

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "F" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai