

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.4203/M/2018
Assessment Year: 2012-13**

Dy. Commissioner of Income Tax 12(2)(2), Room No.145, 1 st Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Meritus Analytics India Pvt. Ltd. (Now known as Gain Theory Consultants Pvt. Ltd.), Gain Theory Consultants Pvt. Ltd. 8 th Floor, Commerz Intl Bus Park, Oberoi Garden City, Goregaon (E), Mumbai - 400 063 PAN: AACDM8047R
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Jothi Lakshmi Nayak, A.R.
Revenue by : Shri Arijit Chakravarty, D.R.

Date of Hearing : 05.11.2019

Date of Pronouncement : 19.12.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 27.04.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The only issue raised by the Revenue is against the order of Ld. CIT(A) giving relief to the assessee merely on the basis that assessee has made payment whereas as a matter of fact the liability has been squared up in 2017 and the assessment was completed on 25.03.2015.

3. The facts in brief are that during the course of assessment proceedings, AO observed from the perusal of balance sheet that assessee has shown Rs.1,88,54,479/- under the head current liabilities as outstanding to 'Group M. Singapore'. Accordingly, the assessee was issued a show cause vide letter dated 04.03.2015 as to why the same should not be treated as cessation of liability and should not be added to the income of the assessee which was replied by the assessee by submitting that the said amount was in fact reimbursement of expenses payable to 'Group M. Singapore' without any profit element embedded therein. The assessee submitted that assessee was a new company formed in 2002 and assessee executive Mr. M.J. Venketesh was working at Singapore. The assessee submitted that for the sake of convenience, payment of salary, work station, cost of travel and other incidental expenditure were incurred by 'Group M. Singapore' over a period of 2 to 3 years on behalf of the assessee and hence the amount payable to 'Group M. Singapore' was shown as the outstanding liability. It was also submitted that Rs.1,88,54,479/- can not be added under section 41 of the Act on the ground that this is not a trading liability and therefore section 41 of the Act can not be invoked. It was also submitted that the provisions of limitation also do not apply as the debt was recognized by both the companies as payable and receivable in their books of the accounts. The assessee's contentions did not find favour with the AO and he ultimately added the said amount as value of benefit arising out of business under section 28(4) of the Act to the income of the

assessee by framing assessment under section 143(3) of the Act vide order dated 25.03.2015.

3. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee after taking into account the submissions and contentions of the assessee and after calling for the report from the AO on the additional evidences admitted during the proceedings by observing and holding as under:

“4.4 Decision on Ground No. 1

4.4.1 I have considered the contention of the AO in the assessment order and in the remand report dated 12.02.2018. I have also considered the submissions of the appellant made in the course of the appellate proceedings.

4.4.2 In the course of the appellate proceedings the appellant produce some additional evidence as mentioned above. Considering the fact that the payment was made after the assessment order was passed, the appellant had no opportunity to produce the evidence of payment before the AO. Therefore, I admit the additional evidence filed by the appellant in the course of the appellate proceedings.

4.4.3 In my view the AO held that the liability shown in account of M Asia Pacific Holdings Pte Ltd ('Group M Singapore') had ceased to exist only on the ground that there was unusual delay. The AO did not bring any other material on record. In his remand report the AO has not disputed the fact that the payment was subsequently made. Considering the fact that the liability was discharged subsequently, I hold that the appellant did not derive any benefit mentioned in section 28(iv) of the Act. Therefore, I hold that the addition made under section 28(iv) is not sustainable. Accordingly ground No. 1 of the appellant is allowed.”

4. The Ld. D.R. vehemently submitted before the Bench that the order passed by the Ld. CIT(A) is wrong and against the facts of the present case. The Ld. DR , while bringing to the notice of the Bench, submitted that the said outstanding amount of Rs.1,88,54,479/- was shown as payable to ‘Group M. Singapore’ for various expenses incurred by the said group on behalf of the assessee over a period of 2 to 3 years. The Ld. D.R. submitted that the assessee even did not bother to seek the RBI permission

to remit the outstanding payments to the foreign entity neither during the course of financial year nor during the course of assessment proceedings. Ld. D.R. submitted that the assessee applied to RBI for permission to remit the payment on 01.05.2017 approximately 2 years after the date of assessment order. The Ld. D.R., therefore, argued that the AO has rightly made the addition under section 28(iv) of the Act. The said amount represented the benefit accruing to the assessee under section 28(iv) of the Act was rightly added to the income of the assessee. The Ld. D.R. submitted that had it been a genuine payment, the assessee would have obtained the permission well in time and would have remitted the payment but this was only done when the matter was pending before Ld. CIT(A) and the evidences of remission of payment after obtaining permission from RBI was filed before Ld. CIT(A). Though the Ld. CIT(A) has called for a report from AO on these evidences but the AO clearly doubted the genuineness of the liability by submitting that there was a huge time lag between the providing of liability and actual payment of liability. Under these circumstances the order of Ld. CIT(A) may kindly be reversed and that of the AO may be restored.

5. The Ld. A.R., on the other hand, submitted that the assessee did not apply to the RBI for obtaining permission to make payment as there was a liquidity crunch in the assessee assessee company and accordingly the permission was applied to RBI when the assessee was having funds for making the payment. The assessee also filed details of yearwise outstanding payable to overseas entities and submitted that this was a

routine phenomenon in the business of the assessee. The Ld. A.R. also took us through the provisions of section 28(iv) of the Act that the said sub section provides for charging to income tax the income in the nature of value of any benefit or perquisite whether beyond convertible into money or not which arose from the business of the assessee but in the present case the Ld. A.R. submitted that no such benefit accrued in favour of the assessee as the assessee made the payment in 2017 after obtaining permission from RBI. The Ld. A.R. submitted that assessee as well as the foreign entity recognized the said amount as payable and receivable respectively in their respective accounts and therefore the order of Ld. CIT(A) is very reasoned and correct which has recognized the fact that the said amount could not be treated as benefit accruing to the assessee in view of the fact that payment was made in the subsequent years. The Ld. A.R., therefore, prayed that the order of Ld. CIT(A) may kindly be affirmed.

6. After hearing both the parties and perusing the material on record, we observe that the payment outstanding in the books of accounts was due to 'Group M. Singapore' on account of various expenses incurred by the said entity on behalf of the assessee and the said payment was coming over from A.Y. 2011-12 as is apparent from the details filed by the assessee during the course of hearing. We observe from the said details that it is a regular phenomenon in the business of the assessee that such type of payments are outstanding right from A.Y. 2007-08 to A.Y. 2016-17. This is undisputable that the permission was applied on 01.05.2017 and the payment was made to the foreign entity

after the permission is granted by the RBI. Under these facts, we do not find any infirmity in the order of Ld. CIT(A) and are inclined to dismiss the appeal of the Revenue.

Order pronounced in the open court on 19.12.2019.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 19.12.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.