

**IN THE INCOME TAX APPELLATE TRIBUNAL "A"**  
**(Virtual Court Hearing), BENCH KOLKATA**

**Before Sri J. Sudhakar Reddy, Accountant Member & Sri S. S. Godara, Judicial Member**

**I.T.A. No.2139/KOL/2018**

Assessment Year: 2014-15

**ACIT, Circle-11(2), Kolkata.....Appellant**

**M/s. Mackintosh Burn Ltd.....Respondent**

**D-1/1, Gillander House, 8, N.S. Road,**

**B.B.D. Bag, Kolkata-700001.**

**[PAN : AACCM2160J]**

&

**I.T.A. No.1940/KOL/2018**

Assessment Year: 2014-15

**M/s. Mackintosh Burn Ltd.....Cross-Objector**

**D-1/1, Gillander House, 8, N.S. Road,**

**B.B.D. Bag, Kolkata-700001.**

**[PAN : AACCM2160J]**

**ACIT, Circle-11(2), Kolkata .....Respondent**

**Appearances by:**

*Shri Imokaba Jamir, CIT(DR), appeared on behalf of the Appellant.*

*Shri Somnath Ghosh, Advocate, appeared on behalf of the Respondent.*

Date of concluding the hearing : December 10, 2020

Date of pronouncing the order : March 3, 2021

**ORDER**

**Per J. Sudhakar Reddy :-**

These are cross-appeals directed against the order of the Commissioner of Income Tax (Appeals)-4, Kolkata (hereinafter the 'Id. CIT(A)') passed u/s 250 of the Income Tax Act, 1961 (the 'Act'). The delay of one day in filing of the appeal by the Revenue is condoned.

2. The grounds raised by the Revenue are as follows:

*1. That on the facts and in circumstances of the case the Ld. CIT(A) has erred in partly allowing the appeal of the assessee on the issue of Unascertained Liabilities in spite of observing that most of these liabilities would never materialize and again observed that some liabilities out of these would definitely materialize, which shows that the decision taken by the Ld. CITA) is self-contradictory.*

*2 That on the facts and in circumstances of the case the Ld. CIT(A) has erred in allowing 50% relief to the assessee on the addition of Rs. 14,34,82,518/- in regard to advances received from Government Authorities, while rejecting the books of accounts of the assessee. Further the Ld. CIT(A)*

has remarked that the AO has taken the parties as non-existent, which is not correct as per the Remand Report submitted by the AO.

3. That on the facts and in circumstances of the case the Ld. CIT(A) has erred in allowing 50% relief to the assessee on the addition of Rs. 46,84,08,872/- being amounts shown by the assessee under the head other long term liabilities, on assumption basis, while rejecting the books of accounts of the assessee.

4. That on the facts and in circumstances of the case the Ld. CIT(A) has erred in allowing the ground of appeal of the assessee on the issue of stale cheque liability of Rs 53,75,000/- while in his remand report the AO has reported that the genuinity of the parties could not be verified and established despite providing adequate opportunities to the assessee.

5. That the appellant craves to add, alter/or amend any of the grounds of appeal during the course of hearing."

3. The grounds raised by the assessee are as follows:

"1. That on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming 50% of the disallowance made in the assessment order on outstanding accumulated balance of material advances as on 31.03.2005 received from the State governments (Rs. 4,89,20,514/-) which were carried forward in the books of account of the appellant as on 31.03.2014.

2 That on the facts and in the circumstances of the case and in law, the Ld. CIT(A), in connection with ground no. (1), erred in rejecting the books of accounts of the appellant on the contention that appellant had not followed proper accounting for old outstanding liabilities by not settling the same.

3 That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming 50% of the disallowance made in the assessment order on outstanding accumulated balance of mobilisation advances as on 31.03.2005 received from the State Governments (Rs. 9,45,62,004/-) which were carried forward in the books of account of the appellant as on 31.03.2014.

4 That on the facts and in the circumstances of the case and in law, the Ld. CIT(A), in connection with ground no. (3), erred in rejecting the books of accounts of the appellant on the contention that appellant had not followed proper accounting for old outstanding liabilities by not settling the same.

5 That on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming 50% of the disallowance made in the assessment order on outstanding accumulated balance of Other payable accounts' as on 31.03.2005 (Rs. 46,84,08,872/-) which were carried forward in the books of account of the appellant as on 31.03.2014 and onwards.

6 That on the facts and in the circumstances of the case and in law, the Ld. CIT(A), in connection with ground no. (5), erred in rejecting the books of accounts of the appellant on the contention that appellant had not followed proper accounting for old outstanding liabilities by not settling the same.

7. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not deleting the addition made in the assessment order towards interest on income tax refund for AY 2009-10 (Rs. 83,44,069/-), without appreciating that the appellant had neither received the said interest during the relevant previous year nor received any communication from the Department during the relevant previous year showing adjustment of above refund against the outstanding demand for any other assessment year(s) and the said fact has been accepted by the AO in his remand report.

8. That the appellant craves leave to add to and or amend, alter, modify or rescind the grounds hereinabove before or at the time of hearing of the appeal."

4. The assessee is a public sector company and is in the business of civil and structural contractors and filed its return of income on 26.11.2014. The revised return was filed on 29.03.2016 declaring total income of Rs.23,99,88,870/-. The Assessing Officer completed the assessment u/s 143(3) of the Act on 30.12.2016 determining total income of Rs.87,42,12,860/-.

5. The assessee carried the matter in appeal before the First Appellate Authority and the CIT(A) granted part relief. Both the assessee as well as Revenue are aggrieved by this order and have filed cross-appeals.

6. We first take up the Revenue appeal. Ground No.1 to 3 are on the issue of grant of part relief to the assessee by the Id. CIT(A) on the addition made on account of unascertained liabilities, advances received from Government authorities. The Assessing Officer discussed the issue at page 4 para 7 as under:

"7. Cessation of Unascertained Liabilities

"During the course of assessment proceedings on perusal of Independent Auditors Report it was seen that in page 25 at 4(g) the auditors has comment that "in relation to balances pertaining to the period before 1st April 2005 appearing under following heads in the balance sheet the names of persons to whom such amounts are payable could not be furnished by the company":

**Note 6: Other Long Term Liabilities**

Advance from contractor Rs. 4,89,20,514.00

Other Payables Rs. 46,84,08,872.00

**Note 10 : Other Current Liabilities**

Advance from contractees Rs. 9,45,62,004.00

In this regard the assessee company was asked in this office letter No. 820 dated 30.11.2016 [vide Point (c)] to explain and ascertain regarding whether the said liabilities has ceased or not. The assessee was asked to submit comments by 12.10 on 09. 12.2016 the date of next hearing fixed vide the above letter dated PM on 30.11.2016. The A/R of the assessee appeared on 09.12.2016 and submitted time petition which was considered and further date was fixed on 13.12.2016 vide order sheet Notings dated 09.12.2016. The A/R of the assessee appeared on 13.12.2016 and furnished an explanation on the other issues and remained silent on the issues of aforesaid unascertained liabilities. In view of that it is evident that the assessee had nothing to explain on the aforesaid liabilities and furnish any specific evidence on such liabilities. Therefore the assessee's liabilities on advance from contractor of Rs.4,89,20,514/-, other payables of Rs.46,84,08,872/- and advance from contractees of Rs.9,45,62,004/- totalling Rs.61,18,91,390/- is treated as unascertainable liabilities and ceased to exist and added to assessee's total income for the year under consideration. Penalty proceedings u/s 271(1)(c) of the Income Tax Act has been initiated separately for furnishing inaccurate particulars of income."

7. The Id. CIT(A) in his order held as follows:

**“10.3 Findings of CIT(A)-** From the remand report submitted by the A.O.. it is seen that regarding addition of Rs.14,34,82,518/- all the advances have Therefore, the A.O.'s been received from Government Authorities. Therefore, the A.O's observation that the parties are not existing and, therefore, the advances are not genuine, does not seem to be correct. However, it is seen that all the advances are outstanding for more than 10 years. It is apparent that the assessee is deliberately not closing these accounts and most of the liabilities would never materialize. However, some liabilities out of these would definitely materialize and the assessee would have to pay part of these liabilities. Therefore, in my opinion, the assessee is not following proper accounting for the old outstanding liabilities by not settling these accounts. Therefore I hereby reject the books of the assessee and am estimating the profit of the assessee. In my opinion, the books of the accounts of the assessee should be rejected and 50% of these outstanding amounts should be added to the total income of the assessee. The A.O. is directed to act accordingly.

*Regarding addition of Rs.46,84,08,872/- being amounts shown by the assessee under the head other long term liabilities. It is seen that these liabilities are also outstanding since 31st March, 2005. However, the assessee it seems is not following correct accounting process by settling the old accounts payable. Normally most of the old payables did not materialize. Therefore, in my opinion, the books of the accounts of the assessee are not reliable and seem need to be rejected. The A.O. is directed to add 50% of such outstanding shown under this head as lot of these outstanding would final not materialize regarding the Assessing Officer's attempt to tax this amount u/s 41(1). In view of the case laws relied by the Id. A/R the amount cannot be taxed u/s 41(1) unless the assessee suo moto writes back this amounts in its books of accounts. In the result, ground no.2(a) & 2(b) are partly allowed.”*

8. The issue is whether the addition in question can be made u/s 41(1). The Id. CIT(A) has already concluded that no additions can be made u/s 41(1) of the Act. He agreed that the propositions of law cited by the assessee are in its favour and hence addition u/s 41(1) of the Act is bad in law. While doing so, the Id. CIT(A) has surprisingly restricted the disallowance to 50% of the outstanding balance on an ad hoc basis. This is not permitted in law. The Id. CIT(A) rejected the books of accounts. When the Assessing Officer has not rejected the books of accounts of the assessee, we find no proper reason recorded by the Id. CIT(A) for rejecting the books of accounts. No defects have been pointed out in the books of accounts. The company is a Government company and its accounts are audited both by the statutory auditors as well as C&AG. Such audited books cannot be rejected in such a casual manner. Ad hoc disallowances are arbitrary and cannot be upheld. Under the circumstances, we are of the considered opinion that the entire disallowance made by the Assessing Officer of Rs.61,18,91,390/- on the ground of cessation of unascertained liability is hereby deleted. The ground of the revenue is dismissed and the ground no.1 to 6 of the assessee's appeal are allowed.

9. Ground No.4 in the Revenue appeal is against the deletion of addition made by the Assessing Officer on the ground that the assessee has stale cheques. The facts of the addition are given at para 8 of the assessment order which reads as follows:

***"8. Disallowance of Stale Cheque:***

*During the course of assessment proceedings on perusal of Independent Auditors Report it was seen that in page 26 at 6(d) the auditors has comment that "Attention is invited to Note 19(a)/3) of the Balance Sheet wherein cheques aggregating to Rs 53.75, lacs are lying as Stale Cheques Liability. The company has not been able to furnish the identity of the persons to whom such cheques were issued. "*

*In this regard the assessee company was asked in this office letter No. 820 dated 30.11.2016 [vide Point (c)] to explain and ascertain regarding whether the said liabilities has ceased or not. The assessee was asked to submit comments by 12.10 PM on 09.12.2016 the date of next hearing fixed vide the above letter. The A/R of the assessee appeared on 09.12.2016 and submitted time petition which was considered and further date was fixed on 13.12.2016 vide order sheet Notings dated 09.12.2016. The A/R of the assessee appeared on 13.12.2016 and furnished an explanation on the other issues and remained silent on the issue of aforesaid liabilities on stale cheque. In view of that it is evident that the assessee had nothing to offer on the aforesaid liabilities and furnish any specific evidence on such liabilities. Therefore the assessee's liabilities on stale cheque amounting Rs 53,75,000/- is treated as unascertained liabilities and ceased to exist and added to assessee's total income for the year under consideration. Penalty proceedings u/s 271(1)(c) of the Income Tax Act has been initiated separately for furnishing inaccurate particulars of income."*

10. The ld. CIT(A) has dealt this issue and held in para 4.2 at page 5 are as follows:

*4.2 The ld. AR has submitted that the assessee from time to time transfers the stale cheque money back to its accounts if the amount has not been claimed. The Ld. AR has also stated that if at all the addition was to be made it cannot be made in the current year but should be made in the year in which these liabilities have arisen. The AR has quoted the judgment of DLF Ltd. ITA 2677/Delhi/2011 and Goodricke Group Ltd. 338 ITR 116(Cal.). I have perused the assessment order. The assessee is a public sector company, audited by C&AG. The assessee has been following regular system of crediting stale cheques back to the accounts as and when it thinks that the liability has ceased to exist. Therefore, in view of the consistent accounting system followed by the assessee and also due to judgment cited (supra) the additions could not have been made in the current year. In view of the above, I agree with the contention of the A/R. Therefore, ground no.2(c) is allowed."*

11. The ld. DR could not point out any factual error in this conclusion of the ld. CIT(A). Thus we uphold this finding and dismiss this ground of the revenue.

12. Ground No.5 of the revenue is general in nature.

13. In the result, the appeal of the Revenue is dismissed.

14. Ground No.7 of the assessee's appeal is on the addition made in the assessment order of interest on income-tax refund.

15. The assessee's case is that the interest of income tax refund is reflected as income during the assessment year 2017-18 i.e. when the interest was received and hence an addition of the same amount in the assessment year 2014-15 would tantamount to double addition. The ld. DR submits that the issue should be remanded to the file of Assessing Officer for verification.

16. In view of the above submissions, we restore this issue to the file of the Assessing Officer for verification. In case the interest to income tax refund has been considered as income of the assessee for the assessment year 2017-18, then no separate addition can be made in this year.

17. In the result, the appeal of the assessee is allowed in part.

***Kolkata, the 3<sup>rd</sup> March, 2021.***

Sd/-  
**[S. S. Godara]**  
Judicial Member

Sd/-  
**[J. Sudhakar Reddy]**  
Accountant Member

Dated : .02.2021  
RS

*Copy of the order forwarded to:*

1. ACIT, Circle-11(2), Kolkata
2. M/s. Mackintosh Burn Ltd
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

True copy

By order

Assistant Registrar , Kolkata Benches