

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 4547/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2015-16)

Reasonable Housing Ltd. Hincon House, Lal Bahadur Shastri Marg, Vikhroli (W), Mumbai-400083.	बनाम/ Vs.	DCIT-15(1)(1) Room No.470, 4 th Floor, Aayakar Bhawan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAECR4936K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Sushil Lakhani	
Revenue by:	Dr. Sanjay Sethi (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 03/02/2021

घोषणा की तारीख /Date of Pronouncement: 08/04/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 15.03.2019 passed by the Commissioner of Income Tax (Appeals) -24, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2015-16.

2. At the very outset, we find that there is delay of 26 days in filing of appeal by the assessee before us. We find that the assessee has filed an affidavit stating that it went into the clutches of Insolvency and Bankruptcy Code (IBC) in that all the employees of company had resigned and the existing counsel has been appointed by the Interim Resolution Professional (IRP). This collectively had contributed to the delay of 26 days in preferring appeal before us. We are inclined to condone the delay of 26 days and admit the appeal for adjudication.



3. The assessee has raised the following grounds: -

*“I Addition of Rs,2,24,06,551/- u/s 41(1) on Cessation of Liability
The Ld. Commissioner (Appeals) has erred in law & in facts in confirming the addition u/s 41(1) of Rs.2,24,06,551/-.
The CIT(A) order being contrary to evidence and facts of the case, should be amended or modified in the light of the ground prayed above.
The appellant crave leave to reserve to themselves the right to add to alter or amend the grounds at or before the time of hearing.”*

4. The brief facts of the case are that the assessee filed its return of income on 08-09.2015 declaring total loss to the tune of Rs.1,71,69,333/-. The return was processed u/s 143(1) of the I. T. Act, 1961. Thereafter, the case was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. On perusal of the balance-sheet, it was noticed that the assessee has shown trade payable to the tune of Rs.21,50,49,000/-. The assessee has shown the revenue from operations only to the tune of Rs.1,64,51,000/-. The trade payable in the balance-sheet was abnormally high as compared to the revenue declared during the year and earlier years. The liability for the period of w.e.f. 2009 & 2012 shown as under.:-

Sr. No.	Particular	Amount (Rs.)
1	Power construction for the month of Jan, 2010	117380
2	Power construction upto Dec, 2009	557623
3	Power construction for the month of Feb, 2010	11926
4	Power construction for the month of March, 2010	96042
5	Telephone CHGS 24.03.201 to 22.05.2010	2146
6	Telephone CHGS 20.06.10 to 20.07.2010	955
7	Telephone CHGS 23.07.2010 to 20.08.2010	1249



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8	Interest Paid on ICD to Lavasa June, 2010	7671
9	Interest Paid on ICD to Lavasa, Sep, 2010	14839
10	Lease Rent Paid to Lavasa Area, sep, 2010	25074
11	Tata Landline CHGS Period for 23.09.2010 to 22.12.2010	2497
	Interest paid on ICD to lavasa Dec, 2010	16358
	Tata landline CHGS period from 23.12.2010 to 22.01.11	1841
12	Being Interest paid on ICD for 20 days	5041
13	Being interest payable on ICD @ 14.5% less TDS 10%	6525000
14	Tata Landline CHGS period from 23.01.11 to 22.02.11	891
15	Tata Landline CHGS period from 23.02.11 to 22.04.11	678
16	Tata Landline CHGS period from 23.4.11 to 22.5.11	281
17	Tata Landline CHGS period from 23.5.11 to 22.6.11	281
18	Tata Landline CHGS period from 23.6.11 to 22.7.11	281
19	Tata Landline CHGS period from 23.7.11 to 22.8.11	303
20	Lease Rent Oct to sep, 2011, lavasa Cor. Ltd.	25074
21	Tata Landline CHGS period from 23.8.11 to 22.9.11	300
22	Tata Landline CHGS period from 23.9.11 to 22.10.11	414
23	Tata Landline CHGS period from 23.10.11 to 22.11.11	290
24	Renewal of Insurance Policy paid by lavasa Ltd.	84772
25	Tata landline charge Dec to jan 2012	624
26	Interest on icd apr to dec, 2012 @ 14% lavasa	4323632
27	Interest on icd apr to mar, 12 @ 16% lavasa	1535423
28	Electricity charges jul to dec, 2011 rhl paid lavasa	29203
29	Interest on ICD Mar, 2012 @ 16% lavasa	39344
30	Tata landline charge mar, 2012	426
31	Tata landline charges Apr to Jun, 2012	1168
32	Renewal of insurance policy paid by Icl sep, 2012	98514
33	Being construction work done by ICL, Sep, 2012	8845152
34	Paid to lavasa Cor. AGST Part Payment	19074
35	Telephone charges Jul to Sep. 2012	910
36	Telephone Charges Oct, 2012	287
37	Telephone Charges Nov, 2012	287
38	Telephone Charges Dec, 2012	287



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39	Recd. From lavasa tsds. Deposits u/s 257 of C. Act.	500
40	Ins. Policy Renewal CGL & PI, GPA Policy by ICL RHL	4504
41	Ins Policy renewal IAR/CAR/LOP/ Money/Fedality	8036
42	Total	22406551

5. All the amount has been shown outstanding as on 31.03.2015. The said amount was disallowed in view of the provisions of Section 41(1) of the I. T. Act, 1961. The total income of the assessee was assessed to the tune of Rs.52,37,220/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) and the CIT(A) dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE No. 1

6. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. Debt was due towards the Lavasa Corporation Ltd., Hincon House Lal Bahadur Shastri Marg, Vikhroli, West, Mumbai in sum of Rs.23,38,82,388.98 as on 11.04.2019. In this regard, the demand notice is on the file which lies at page no. 1 to 3 of the paper book. The Reasonable Housing Ltd. confirmed the balance due toward Lavasa Corporation Ltd. in sum of Rs.21,16,36,848.68 according to the balance-sheet. The copy of letter is on the file which lies at page no. 4 of the paper book. The Lavasa Corporation Ltd, confirmed the due amount in sum of Rs.21,16,36,848.68 as on 31.03.2015 by virtue of letter dated 20.01.2021. The said letter was based upon the statement of accounts as on 31.03.2015. Audited financial statement of Reasonable Housing Society for the year 31.3.2015 is on the file in which the amount in sum of Rs.21,16,36,848.68 is due against assessee. Anyhow the debtor as well as creditor have shown the figure in the books of accounts which is not in dispute. The same cannot be treated as cessation of liability and income of the assessee. The assessee



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has not written back the liability so the said amount nowhere treated as remission or cessation of the liability and is not liable to be chargeable u/s 41(1) of the Act. In this regard, we also find support of the decision of the Hon'ble Supreme Court in the case of **CIT Vs. Sugauli Sugar Works (P.) Ltd. (1999) 236 ITR 518, Bombay Dyeing & Mfg. Co. Ltd. Vs. State of Bombay AIR 1958 SC 328, Kesoram Industries & Cotton Mills Ltd. Vs. CIT (1992) 196 ITR 845 (Cal), CIT Vs. Jain Exports Pvt. Ltd. (2013) 35 taxmann.com 540 & CIT Vs. G. K. Patel & Co. (2013) 29 taxmann.com 248 (Guj)**. Taking into accounts of all the above facts and circumstances and by relying upon the decisions mentioned above, we are of the view that the finding of the CIT(A) is not justifiable, therefore, we set aside the finding of the CIT(A) and allow the claim of the assessee.

ISSUE NO.2 & 3

7. Issue nos. 2 & 3 are formal in nature which are not required to be adjudicated.
8. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 08/04/2020

Sd/-

(M. BALAGANESH)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 08/04/2020

Vijay Pal Singh/Sr. P.S.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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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