

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 3577/Mum/2019
(A.Y: 2015-16)

ITO, Ward – 3(3)(2) Rm No. 602, 6 th Floor, Aayakar Bhavan, MK Road, Mumbai – 400020	Vs.	M/s Shamrock International Ltd., 83-E, Hansaraj Pragji Bldg, Dr. E Moses Road, Mahalakashmi West, Mumbai – 400001.
PAN/GIR No. : AAACS5756L		
Appellant	..	Respondent

Appellant by :	Shri T.S. Khalsa, Sr. DR
Respondent by :	Shri Bhart Gandhi, AR

Date of Hearing	10.05.2021
Date of Pronouncement	13.07.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals)-8 Mumbai, passed u/s. 143(3) and r.w.s 154 of the Income Tax Act, 1961. The revenue has raised the following grounds of appeal:

- 1. Whether on the facts and circumstances of the case and in Law, the CIT(A) was justified in deleting the addition made by the Assessing Officer under section 41(1) of the Income-tax*

Act, 1961 amounting to Rs.5,46,13,189/- as the case was covered by Explanation to section 41(1) of the IT Act" ?

2. Whether on the facts and circumstances of the case and in Law, the CIT(A) was justified in deleting the addition made by the Assessing Officer under section 41(1) amounting to Rs.5,46,13,189/-, without appreciating the fact that the creditors were confirmed in response to notice u/s 133(6) that the liabilities were not existing in their books of accounts during the relevant AY 2015-16"?

3. Whether on the facts and circumstances of the case and in Law, the CIT(A) was justified in deleting the addition made by the Assessing Officer under section 41(1) amounting to Rs.5,46,13,189/-, without appreciating the fact that in view of denial of liabilities by the parties' concerned in response to the notices issued u/s 133(6) of the IT Act, the said liabilities have ceased to exist in the books of assessee for the AY 2015-16 itself" ?.

4 Whether on the facts and circumstances of the case and in Law, the CIT(A) was justified in directing the Assessing Officer to delete the addition made by the Assessing Officer under section 41(1) amounting to Rs5,46,13,189/-, without appreciating the fact that the though for name sake the assessee has written back the creditors in the books but has also written off equivalent amount in the books in AY 2016-17 thereby "NULLIFYING" the amounts written off and written back" ?

5 Whether on the facts and circumstances of the case and in Law, the CIT(A) was justified in directing the Assessing Officer to delete the addition made by the Assessing Officer under section 41(1) amounting to Rs.5,46,13,189/-, relying on the affidavit filed by Director of assessee company and ignoring the fact that simultaneously the assessee company has written back and written off equivalent amount in its books for AY 2016-17 thereby nullifying the effect of written back amount" ?

6 "Whether on the facts and circumstances of the case arid in Law, the CIT(A) was justified in directing the Assessing Officer to delete the addition made by the Assessing Officer under

section 41(1) of the IT Act ignoring the fact that under the mercantile system of accounting, once the liabilities are ceased to exist in the books for AY 201516, the provisions of section 41(1) are attracted for the relevant AY 2015-16 itself rather than in AY 2016-17 as claimed by the assessee in its Affidavit"?

7 The appellant prays that the order of CIT(A) on the above grounds be set aside and that of Assessing Officer be restored.

8 The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.

2. The Brief facts of the case are that the assessee company is engaged in the business of trading activities in pharmaceutical and intermediate products. The assessee has filed the return of income for the A. Y. 2015-16 on 30.11.2015 disclosing a total income of Rs. Nil after setting off brought forward business loss and unabsorbed depreciation. Subsequently, the case was selected for scrutiny under the CASS and notice u/s 143(2) and 142(1) of the Act are issued. In compliance the Ld.AR of the assessee appeared from time to time and furnished the details and the case was discussed. The A.O on perusal of the financial statements found that the assessee has substantial sundry creditors outstanding (trade payables) of Rs. 16,50,48,724/-. The A.O. has issued notice u/s 142(1) of the Act to furnish the information of sundry creditors i.e name, address, PAN of the parties along with copies of ledger account with

details. Whereas, the assessee in compliance to the notice has furnished the details on 03.10.2017. The A.O. on perusal of the information submitted found that the liabilities are outstanding in the balance sheet for more than 3 years i.e between 6 to 11 years and consists of (i) Sundry Creditors –Trade payables (ii) Expenses Payable and (iii) other outstanding liability and was categorized considering the amount payable and the time period of liability outstanding at Para 4.2 of the assessment order.

3. The A.O. to verify the information furnished, has issued notice u/s 133(6) of the Act on the sundry creditors for confirmation of liability as on 31-3-2015. Subsequently, the A.O. has received the reply from the creditors referred at Para 4.4 of the assessment order. The A.O. has examined the submissions and dealt on the provisions of Sec. 41(1) of the Act to treat the outstanding liabilities as the income chargeable to tax and issued show cause notice to the assessee. Whereas, in compliance to the notice the assessee has filed a letter on 10.11.2017 referred at Para 4.6 of the assessment order with the details of sundry creditors payable including expenses and other liabilities outstanding for more than 3 years as per the books of accounts, and relied on the judicial decisions. The assessee has filed additional explanations on 15-11-2017.

4. Whereas, the A.O. find that the assessee in the financial year 2015-16 relevant to A.Y.2016-17 has written off sundry debtors balance aggregating to Rs. 3,19,59,271/- in the profit and loss account. Similarly the assessee has written back the sundry creditors amounting to the Rs. 3,91,17,794/- in the A.Y. 2016-17. The A.O. has observed that the assessee for the name sake has written back the sundry creditors and nullified the effect. Further there is a denial of outstanding balances by some of the parties and the A.O. has invoked the provisions of Sec. 41(1) of the Act and made addition of cessation of liability of Rs. 3,52,67,860/- and after setoff of brought forward business losses and unabsorbed depreciation, the A.O. has determined the total income of Rs. 3,32,76,750/- and passed order u/s 143(3) of the Act dated 26.12.2017. Subsequently the A.O. found omission of certain amount in calculation of cessation of liability u/sec41(1) of the Act and issued notice U/sec154 of the Act to the assessee proposing to rectify the mistake apparent from record and the assessee has agreed for the proposition. The A.O. calculated the correct amount of addition of cessation of liability U/sec41(1) of the Act of Rs 5,46,13,189/-and revised the total income to Rs.5,26,22,080/- and passed the order u/s 154 of the Act on 07-02-2018.

5. Aggrieved by the A.O. order, the assessee has filed an appeal with the CIT(A). In the appellate proceedings the CIT(A) considered the grounds of appeal, findings of the A.O, and the assessee submissions before the appellate authority on 11.03.2019 on the disputed issue referred at page 17 Para 3.1.3 of the CIT(A) order on the provisions of Sec. 41(1) of the Act and the details of the parties whose credit balances have been added by the A.O. The CIT(A) relied on the submissions and affidavit filed by the assessee along with the statements of sundry creditors. The Ld.CIT(A) has dealt on the submissions, provisions of law and facts from Para 3.1.7 to 3.1.11 of the order and relied on the ratio of decisions of Hon'ble supreme court, Honble High Court and Hon'ble Tribunal referred at page 38 Para 3.1.12 to 3.1.19 of the order and has deleted the addition and allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Honble Tribunal.

6. At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in granting the relief to the assessee and supported the order of the Assessing officer.

7. Contra, the Ld.AR relied on the order of the CIT(A) and submitted that the sundry creditors were written back in the subsequent assessment year A.Y.2016-17. Further supported the arguments with the paper book and synopsis and prayed for dismissal of the Revenue appeal.

8. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue being addition of sundry creditors payable including expenses outstanding by the assessing officer under sec41(1) of the Act on cessation of liability. The contentions of the Ld. DR that the CIT(A) has erred in granting the relief to the assessee overlooking the facts that the notice u/sec133(6) of the Act issued by the assessing officer was returned unserved and the parties have not filed confirmation of outstanding balances and also few parties have denied having made any transaction with the assessee. We on perusal of the assessment order at page 15 Para 4.11 & 4.12 find that the assessee in the A.Y.2016-17 has written back the sundry creditors in the profit and loss account. When the question was raised to the Ld.DR on written back of sundry creditors balance the Ld.DR relied on the findings of the Assessing officer. The Ld.AR of the assessee submitted that the sundry creditors are not disputed nor fictitious and the

Ld.CIT(A) has considered the overall facts and relied on the judicial decisions and granted relief to the assessee.

At this juncture, we considered it appropriate to refer the observations of the CIT(A) at page 58 Para 3.1.20 to 3.1.22 of the order which is read as under;

“3.1.20 It is also found here that the AO in this case has not conducted even the proceedings u/s 133(6) in a proper manner. For example, he has not levied any penalty on any party for having not complied with the notice u/s 133(6) issued by him. In fact, it seems like he has not even initiated any penalty proceedings u/s 133(6) in any of the cases. This clearly shows that he has proceeded to conduct the proceedings u/s 133(6) in a half-baked and incomplete manner. He also does not seem to have deputed his inspector to make field visits to find out the actual reasons for non-compliance of notices issued u/s 133(6). There can be many reasons for a non-compliance of notice u/s 133(6) by any particular party. The business might have been closed. The business premises might have been shifted to some other place. The party concerned could altogether be a bogus and might not have existed at all except on paper. There can be many such possibilities. A field visits by inspector might have been able to throw much light on the same. However, the AO has wound up by only issuing notices u/s 133(6) without taking it to its logical conclusion. The right step should have been to take each of these proceedings to its logical conclusion either by passing a penalty order or by taking other suitable measures under the Act. He should also have confronted the appellant on the issue of non-compliance of notices issued by him u/s 133(6). Then he should have recorded the statement of the appellants as well. A finding from the books of accounts and the bank statement of the appellant could also have helped the matter a lot. In fact, taking a clue from the bank statement of the appellant, the details of bank accounts

of these non-compliant parties could also have been ascertained and therefore, further enquiries could have been conducted in respect of those non-compliant parties. Further concrete findings could have been made in respect of these parties which could give the AO some basis for making additions in respect of the so-called unproved creditors. In the absence of any such exercise having been done by the AO to make huge additions of Rs. 5,46,13,189/- is more an exercise in vanity than we deserved attempt at finding out a real case of tax evasion.

3.1.21. Keeping in view the details discussion above of the facts and circumstances of the matter as well as the prevailing legal opinion on the matter, it is hereby held that no addition can be made solely on the basis of non-compliance of notices u/s 133(6). There has to be compulsorily some more evidence other than mere non compliance to sustain such a huge addition. As a result, the addition made of Rs. 5,46,13,189/- cannot be sustained.

3.1.22 Therefore, in view of the facts and circumstances of the case and the ratio of various judicial pronouncements as mentioned above, the A.O is directed to delete the disallowance of Rs. 5,46,13,189/- made u/s 41(1). These grounds of appeal are therefore allowed.

9. The Ld. DR could not controvert the observations of the CIT(A) with any new cogent evidence or information. We find that the CIT(A) has passed an elaborate order covering various facts, system of accounting, provisions of law and the judicial decisions and passed a reasoned order. Accordingly, we do not find any infirmity in the

order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 13.07.2021.

Sd/-
(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 13.07.2021

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai