

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

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, HON'BLE JUDICIAL MEMBER**

**ITA No. 4661/MUM/2018
Assessment Year: 2013-14**

Asst. Commissioner of Income Tax – 11(1)(1), Room No. 204, Aayakar Bhavan, M.K. Marg, Mumbai - 400020	Vs.	M/s R.J. Paper Mills Pvt. Ltd., 402, Gayatri Nivas, Bhagat Singh, Road, Vile Parle (W), Mumbai - 400056 PAN: AACCR6483K
(Appellant)		(Respondent)

Revenue by : Shri S. Murli Mohan (CIT DR)

Assessee by : Shri S.D. Chheda (AR)

Date of Hearing : 21/10/2021

Date of Pronouncement: 18/11/2021

ORDER

PER BENCH

This is an appeal by the revenue against order dated 30.05.2018 of learned Commissioner of Income Tax (Appeals)-18, Mumbai for the assessment year 2013-14.

2. In ground no. 1, revenue has challenged the deletion of disallowance of Rs. 3,67,836/- towards delay in payment of employees contribution to Provident Fund (PF) and ESIC.

3. Briefly the facts are, the assessee is a resident company. For the assessment year under dispute, assessee filed its return of income on 27.09.2013 declaring nil income after set off of current year's loss. In course of

assessment proceedings, the Assessing Officer (AO) while verifying the audit report noticed that employee's contribution to PF and ESIC were deposited after the due date prescribed under the relevant Acts/Rules. Referring to the provisions contained under section 36(1(va) r.w.s. 2(24)(x), the AO called upon the assessee to show cause as to why the deduction claimed of Rs. 3,67,836/- should not be disallowed. Though, the assessee objected to the proposed disallowance, however, rejecting the submissions of the assessee, the AO disallowed the amount of Rs. 3,67,836/-. Assessee contested the disallowance before learned Commissioner (Appeals). Taking note of the fact that employee's contribution to PF and ESIC were deposited to the Government account prior to the date of filing of return of income as provided under section 139(1) of the Act, learned Commissioner (Appeals) deleted the disallowance.

4. We have considered rival submissions and perused the materials on record. Undisputedly, the AO disallowed assessee's claim of deduction in respect of employee's contribution to PF and ESIC simply for the reason that they were deposited to the Government account after the due date provided in the relevant Acts/Rules governing PF and ESIC. However, the revenue has not controverted the fact that the assessee has deposited the disputed amount before the date of filing of return of income as provided under section 139(1) of the Act. That being the factual position, as per the ratio laid down by the Hon'ble jurisdictional High Court in the decisions relied upon by learned Commissioner (Appeals), no disallowance can be made. In view of the aforesaid, we do not find any infirmity in the decision of learned Commissioner (Appeals) on the issue. Ground raised is dismissed.

5. In ground no. 2, revenue has challenged the deletion of disallowance of Rs. 6,57,47,402/- made u/s 41(1) of the Act.

6. Briefly the facts are, in course of assessment proceedings the Assessing Officer, on verifying the balance sheet of the assessee found that certain sundry creditors were continuing from the earlier years. After calling for and examining the details of sundry creditors outstanding as on 01.04.2012 and 31.03.2013, he observed that some sundry creditors are outstanding for more than three years and some are for less than three years. Aggregate amount of such sundry creditors was to the tune of Rs. 6,57,47,402/-. Being of the view that sundry creditors remaining outstanding for such a long period would essentially mean cessation of liability under section 41(1) of the Act, the AO added back an amount of Rs. 6,57,47,402/-.

7. Assessee contested the aforesaid addition before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) found that the liability relating to outstanding sundry creditors is continue in assessee's books of account and have not been written off. He observed that the sundry creditors are also appearing in the balance sheet. Therefore, relying upon certain judicial precedents, he held that there is no cessation of liability in terms of section 41(1) of the Act. Accordingly, he deleted the addition.

8. We have considered rival submissions and perused the materials on record. A reading of the assessment order would make it clear that only because certain liabilities relating to sundry creditors remained outstanding for three years or more than three years, the AO has concluded that such

liabilities have ceased to exist in terms of section 41(1) of the Act. However, a reading of section 41(1) would reveal that for invoking the provision three conditions have to be fulfilled. Firstly, the liability must be a trading liability, secondly, the person in whose book such liability appears must have obtained some benefit either in cash or in kind in respect of such liability by way of remission or cessation thereof and thirdly, such benefit must have accrued to the person concerned in the particular assessment year. In the facts of the present case, undisputedly, the liability of sundry creditors is continuing from several years. It is also a fact that such liability is not only appearing in the books of the assessee but is reflected in the balance sheet. Thus, as far as the assessee is concerned, the liability continues. Further, no material has been brought on record by the AO to suggest that the assessee has received any benefit either in cash or in kind in respect of such liability, that too, in the impugned assessment year. When the liability is continuing for past several years, it cannot be said with certainty that it has ceased to exist in the impugned assessment year in terms of section 41(1) of the Act. In view of the aforesaid, we hold that learned Commissioner (Appeals) was justified in deleting the addition, as, the provision of section 41(1) cannot be applied to the facts of the present appeal. Ground raised is dismissed.

6. In the result, appeal is dismissed.

Order pronounced in the open court on 18th November, 2021.

Sd/-

(G.S. PANNU)
PRESIDENT

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 18/11/2021

Alindra, PS

आदेश 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//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai