

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 6123/Mum/2019 (A.Y. 2012-13)

M/s. Unipacific Travels and Tours Private Limited 208, 2 nd Floor, Embassy Centre, Nariman Point Mumbai-400 021. PAN : AAACU0552C (Appellant)	Vs.	ITO-3(3)(3) Aayakar Bhavan M.K.Road Mumbai-20. (Respondent)
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Assessee by	None
Department by	Shri T. Sankar
Date of Hearing	30.12.2021
Date of Pronouncement	22 .02.2022

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 17.7.2019 pertaining to assessment year 2012-13.

2. The grounds of appeal are that assessee is aggrieved by the following addition

- i) Unsecured loans Rs. 4,00,000/-
- ii) Sundry Creditors Rs. 5,37,460/-
Total : Rs. 9,37,460/-

3. Brief facts of the case are that the assessee in this case is an air ticket agent engaged in the business of commission on tickets booking. The Assessing Officer noted that the assessee has shown unsecured loans of Rs. 25,56,066/- and from shareholders and others at Rs. 92,08,369/- during the year under consideration as against Rs. 23,12,856/- and Rs. 83,67,398/- in the immediately previous year. Hence, he noted that there is additions of Rs. 2,43,210/- and Rs. 8,40,971/- in both heads. The Assessing Officer wanted the assessee to submit confirmation. The Assessing Officer noted since the

assessee has not filed confirmation from Ms. Urmila Mohan for an amount of Rs. 4,00,000/- he was of the opinion that the same is not liable to be paid under section 41(1) of the Act. Alternatively the said amount was also brought to tax under section 28(iv) of the Act.

4. The Assessing Officer also noted sundry creditors at Rs. 81,92,059/-. The assessee was asked to furnish age-wise details thereof. The Assessing Officer noted that the assessee gave details of Rs. 76,54,419/-. Since the total of sundry creditors was Rs. 81,92,059/- the Assessing Officer held that the difference of Rs. 5,37,640/- is no more a liability payable and hence, added the same under section 41(1) of the Act. He further noted that the Gross receipts of the assessee company during the year from booking of air tickets is amounting to Rs. 2,63,53,365/-. The assessee is required to get its account audited u/s 44AB of the I.T.Act and furnishing Audit report of the auditor in form 3CD on or before the specified due date. In the assessee's case specified due date was 30.09.2012. However the assessee has not filed audit report u/s 44AB, which is mandatory for gross receipts from business above Rs. 40,00,000/- . In view of this, penalty proceedings 271B is being initiated separately.

5. Against the above order assessee appealed before the learned CIT(A). Learned CIT(A) in a very laconic order which showed absolute non-application of mind, confirmed the Assessing Officer's order by holding as under :-

“During the appellate proceedings, the appellant has filed written submissions in respect of its claim. On perusal of the same, I find that the appellant has not filed any evidence regarding the same but has just relied heavily on case laws. Vide order sheet noting dated 05.02.2018 the appellant was specifically asked to file several details to substantiate the claims. However, the appellant was not able to provide the same despite several opportunities. In fact, on the last date of hearing, the Ld AR has pleaded helplessness in submitting relevant accounts or documents as well as the necessary explanation in a detailed write-up on the issues concerned.

In view of the above and due to lack of supporting evidence, I do not find any reasons to interfere with the decision of AO. This ground of appeal is therefore dismissed.”

6. Against the above order assessee is in appeal before the ITAT.
7. I have heard learned Departmental Representative and perused the records. I note that the order of learned CIT(A) is an absolutely travesty of appellate order which shows non-application of mind. On this count alone order of learned CIT(A) is liable to be set aside.
8. Furthermore, I note that the Assessing Officer has added due to non confirmation of loan of the party of Rs. 4 lakhs under section 41(1) and alternatively under section 28(iv) of the Act. As regards addition under section 28(iv) of the Act is concerned, the addition involved is not at all sustainable on the touchstone of Hon'ble Supreme Court decision in the case of CIT v/s Mahindra & Mahindra Ltd., [2018] 302 CTR 201 wherein such addition has been held to be unsustainable in as much as it was expounded by Hon'ble Supreme Court that this section is not applicable for non-cash transaction. In the present case, it is a non cash transaction for the year.
9. As regards the issue of section 41(1) of the Act is concerned there is due prescription of the Act under section 41(1) as to what can be the subject matter of section 41(1) of the Act. Section 41(1) is applicable when liability being a trade liability which has been taken into account as expenditure in the profit and loss account but the liability for that expenditure is no more payable. Without any discussion in this regard the Assessing Officer's order is not sustainable. There is no mention that the amount involved was for the trade liability. Further, mere non confirmation cannot lead to a conclusive proof that there is cessation of liability. Similar is the situation of the addition of sundry creditors. There is no mention by the Assessing Officer as to whether credit was in the nature of trading liability. The liability involved is very much appearing in the balance sheet. There is nothing on record to suggest that there is cessation of liability.

10. In the background of the aforesaid discussion in my considered opinion addition made by the Assessing Officer are not at all sustainable in law. Hence, I set aside the orders of authorities below and direct that addition be deleted.

11. In the result, this appeal by the assessee stands allowed.

Order pronounced in the open court on 22.02.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 22/02/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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