

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

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA Nos.1388, 1389, 1390, 1391 & 1392/M/2018
Assessment Years: 2006-07, 2007-08, 2008-09, 2009-10 & 2010-11**

M/s. Reliable Paper (India) Ltd. 93, Dadiseth Agiary Lane, Kalbadevi Road, Kalbadevi, Mumbai – 400 002 PAN: AAACD9643F	Vs.	Dy. CIT, Central Circle-12, 8 th Floor, Old CGO Bldg., Annexe, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**ITA Nos.1661 & 1662/M/2017
Assessment Years: 2005-06 & 2004-05**

**ITA Nos.1443, 1444, 1445, 1446 & 1447/M/2018
Assessment Years: 2006-07, 2010-11, 2009-10, 2008-09&2007-08**

Dy. CIT/Jt. CIT(OSD), Central Circle-2(2), Pratishtha Bhavan, Room No.806/8 th Floor, Old CGO Annex Bldg., M.K. Road, Mumbai - 400020	Vs.	M/s. Reliable Paper (India) Ltd. 93, Dadiseth Agiary Lane, Kalbadevi Road, Kalbadevi, Mumbai – 400 002 PAN: AAACD9643F
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Smt. Mamta Bansal, D.R.

Date of Hearing : 24 . 03 . 2022
Date of Pronouncement : 24 . 03 . 2022

ORDER**Per Bench:**

For the sake of brevity aforesaid cross appeals bearing common question of law and facts are being disposed of by way of composite order.

2. Appellant M/s. Reliable Paper (India) Ltd., Mumbai (hereinafter referred to as the assessee) by filing aforesaid cross appeals (for A.Y. 2006-07, 2007-08, 2008-09, 2009-10 & 2010-11) sought to set aside the impugned orders of even dated 22.12.2017 passed by Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] by raising identical grounds except the difference in figures on the grounds inter alia that:

“1. On the facts and circumstances of the case and in Law the Ld. Commissioner of Income Tax (Appeals) (referred as CIT(A)) erred in confirming the ex-parte order passed by the Assessing Officer (referred as AO) on the ground or grounds as contained in the appellate order or otherwise.

2. On the facts and circumstances of the case and in law the Ld. CIT (A) erred in confirming the rejection of books of account on the ground or grounds as contained in the appellate order or otherwise.

3. On the facts and circumstances of the case and in law Hon'ble Commissioner of Income Tax (A) erred in confirming various additions in the order passed u/s 153A of the Income Tax Act, 1961 as no incriminating materials/pertaining to various additions made were found and seized during the course of search proceedings and the Learned Assessing Officer has not relied on any seized materials while making the various additions.

4. On the facts and circumstances of the; case and in law the Ld. CIT(A) erred in estimating the Gross Profit Ratio @25% without providing any comparative case on the ground or grounds as stated in the appellate order or otherwise.

5. On the facts and circumstances of the case and in law the Ld. CIT (A) erred in confirming the addition on account of purchases and Gross Profit of Rs.25,39,89,483/- on estimated GP Ratio of 25% on the ground or grounds as contained in the appellate order or otherwise.

6. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in not allowing cross examination of Bright Global Paper Pvt. Ltd. before making the addition on account of Purchases made from the said party before applying the addition on G.P. Ratio basis on the ground or grounds as contained in the appellate order or otherwise.

7. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition on account of unexplained share capital of Rs.6,49,00,000/- despite the fact that no incriminating materials pertaining to various additions made were found and seized during the course of search proceedings and the Learned Assessing Officer has not relied on any seized materials while making the various additions.

8. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition on account of unexplained cash credit on account of unsecured loan to the extent of Rs.6,25,25,750/- despite the fact that no incriminating materials pertaining to various additions made were found and seized during the course of search proceedings and the Learned Assessing Officer has not relied on any seized materials while making the various additions.

9. The Appellant craves leave to add, amend, alter, modify and or withdraw any of the above grounds of appeal, which are without prejudice to one another.

10. The appellant prays this Hon'ble Tribunal to direct the A.O. to delete the additions.”

3. Appellant DCIT & JCIT, Mumbai (hereinafter referred to as the Revenue) by filing aforesaid cross appeals (for A.Y. 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10 & 2010-11 sought to set aside the impugned orders of even dated 9.01.2017 passed by Ld. CIT(A) by raising identical grounds except the difference in figures on the grounds inter alia that:

“1. On the facts and in the circumstances of the case and in law, the Id.CIT(A) erred in deleting the additions made in order u/s. 153A rws 143(3) of the IT Act, 1961 stating that in the absence of any incriminating materials additions cannot be made following the decision in the case of M/s. Continental Warehousing Corporation (Nhava Sheva) Limited without appreciating that the Department has not accepted the decision and SLP has been filed in the Supreme Court against the said order.

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

3. Briefly stated facts necessary for adjudication of the controversy at hand are: the assessee is into the business of trading and also manufacturing of all kinds of papers. On the basis of search and seizure operation carried out under section 132 of the Income Tax Act, 1961 (for short ‘the Act) on 23.02.2010 and 20.04.2010 at the offices of assessee and its group concerns, proceedings under section 153A were initiated on the basis of incriminating material found. Assessing Officer (AO) by rejecting the books of accounts framed the assessment under section 144/153A of the Act by making various additions for A.Y. 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10 & 2010-11.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeals, who has partly allowed the same for statistical purposes. Feeling aggrieved with the impugned orders passed by

the Ld. CIT(A), both assessee as well as Revenue have come up before the Tribunal by way of filing present cross appeals.

5. Despite issuance of the notice to the assessee company none appeared on behalf of it, so the Bench decided to decide these appeals on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

6. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

7. At the very outset, it is brought to the notice of the Bench that National Company Law Tribunal (NCLT), Mumbai Bench in C.P.(IB)-3482(MB)/2019 in the matter of Oriental Bank of Commerce vs. Relilable Paper (India) Ltd. has passed an order dated 03.12.2019 under section 7 of the Insolvency and Bankruptcy Code (IBC), 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) (corporate debtor), which is available on the file and to the following effect:

“Upon perusal of the documents available on record and submissions made by the Ld. Counsel for the Financial Creditor, we are satisfied that it is a fit case for admission and to initiate CIRP against the Corporate Debtor. Accordingly, we admit this petition for initiation of CIRP against the Corporate Debtor namely Reliable Paper (India)

Ltd. and there shall be a moratorium under section 14 of the IBC, in regard to the following:

- (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;***
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;***
 - (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;***
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.***
 - (v) Notwithstanding the above, during the period of moratorium,- The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;***
 - (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;***
- (b) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.***
- (c) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.***
- (d) Mr. Girish Juneja, having Registration No. IBBI/IPA-001/IP-P00999/2017-18/11646, having address at 22, Dignity Apartments, Bon Bon Lane, 7 Bunglows, Versova, Andheri (W). Mumbai, Email Id: Junejagirish31(S)gmail.com, Contact No.7738894465 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued***

by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated under sections 15, 17, 18, 19, 20 and 21 of the IBC.

(e) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.”

8. In view of the order passed by the Hon'ble NCLT, we are of the considered view that since proceedings under IBC have already been initiated and moratorium has been declared for prohibiting all the proceedings against the corporate debtors including *“institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority”*, present appeals in the present format are not maintainable being not filed by IRP who can file the appeal with approval of committee of creditors, hence all the aforesaid appeals are liable to be dismissed for statistical purposes being not maintainable at this stage.

9. Resultantly, aforesaid appeals filed by the assessee/Revenue are dismissed for statistical purposes with liberty to file fresh appeals in proper format duly verified by person authorized to file

the return of income or to get the present appeals restored by moving an application before the Tribunal.

Order pronounced in the open court on 24th March 2022.

**Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 24.03.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.