

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.2703/Ahd/2016
Assessment Year: 2012-13**

Income Tax Officer,
Ward 1(1)(2), Ahmedabad ,

vs. M/s. Anil Tradecom Limited,
Anil Products Premises,
Anil Road,
Bapunagar,
Ahmedabad – 380 025.
[PAN – AAECA 7864 M]

**ITA Nos.2148/Ahd/2017 & 208/Ahd/2018
Assessment Years: 2013-14 & 2014-15**

Income Tax Officer,
Ward 1(1)(2), Ahmedabad ,

vs. M/s. Anil Tradecom Limited,
1, Pandurang Society,
Judges Bungalow Road,
Bodakdev,
Ahmedabad – 380 054.
[PAN – AAECA 7864 M]

(Appellant) (Respondent)

Appellant by : Shri Abhimanyu Singh Yadav, Sr. DR
Respondent by : None

Date of hearing : 25.05.2022
Date of pronouncement : 15.06.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

These three appeals have been filed by the Revenue against three different orders dated 26.08.2016, 24.07.2017 & 30.11.2017 passed by the CIT(A)-1, Ahmedabad pertaining to A.Ys. 2012-13, 2013-14 & 2014-15 respectively.

2. As identical grounds have been raised in all these three appeals, grounds raised ITA No.2703/Ahd/2016 for the Assessment Year 2012-13 are reproduced as under :-

“That the Id. CIT(A) erred in law and on facts in deleting the addition of Rs.4,23,32,977/- made on account of disallowance of interest u/s. 36(1)(iii) of the I.T. Act.

On the fact and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the Assessing Officer to the extent mentioned above since the assessee has failed to disclose his true income/book profit.

The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored to the above extent. The appellant craves, to leave, to amend or alter any ground or add a new ground which may be necessary.”

3. We are first taking up A.Y. 2012-13. The assessee company is engaged in the business of trading in cattle feed, maize, maize gluten & wet bran. The assessee filed its return of income on 30.09.2012 declaring total income at Rs.4,76,010/-. The Assessing Officer observed that the assessee had furnished details regarding advance in cash and kind and advance to suppliers. After taking cognisance of the reply of the assessee, the Assessing Officer made addition of Rs.4,23,32,977/- in respect of disallowance of interest payment under Section 36(1)(iii) of the Act.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR at the time of hearing taken the plea that since the assessee company ceased to function as a corporate body as the assessee company has conducted last AGM on 30.09.2014 and filed Balance Sheet on 31.03.2014 and coming under inactive status required for statutory return to be filed for last two years i.e. 2016-17 & 2017-18. Therefore, filing of the appeal before the CIT(A) by the Director who is not a legal and proper person, order of the CIT itself become *void ab initio*. Ld. DR further submitted that since the company is in liquidation process, the official liquidator needs to file the fresh appeal. Ld. DR further prayed that all appeals need to be restored to the file of concerned CIT. The written submission given by the Ld. DR dated 25.05.2022 is reproduced as under :-

“Today during the course of hearing in the above mentioned cases, the learned bench member had directed me to provide the notes which I relied upon while arguing the case on behalf of revenue.

2. Here I am providing the notes in Bullet format along with relevant case law citation as well as copy of relevant judgement;

1. It is established by revenue in hearing that assessee had stopped functioning as company from 30/9/2014 onwards; this fact is also established from Master data given by Ministry of Corporate affair on its website named MCA 21.
2. Despite this fact that company had ceased functioning as a body corporate, it failed to file intimation as provided in Section 176(3) of the income tax act.
3. Not only it failed to provide intimation, it given contradictory and misleading documents to revenue in AY 2014-15 proceedings, where it claimed that it is functioning and even provided balance sheet and books of account for AY 2015-16 and AY 2016-17, this fact is in contradiction to the known fact of its discontinuity of business operation from 30/9/2014 which is established beyond doubt. Please see page 299 to 307 of the paper book submitted by revenue in AY 2014-15.
4. Since company ceased to function on 30/9/2014, all the appeals filed by company are signed by a director who is not duly authorised by resolution of board and not as per memorandum of association and article of association of the company. The very first appeal for AY 2012-13 was filed in only April 2015.
5. Due to facts mentioned in point 4, the judgement which company obtained in its appeal are obtained by fraud as defined by Section 44 of the Evidence act 1872.
6. The provision of section 106 of the evidence act also applicable and only the erstwhile director of this company can answer that what was the motive and reason for such misleading statements made to revenue and in appeal proceedings by what authority he filed appeal.
7. The relevant issue in question here is already squarely covered by the decision of Honourable Gujarat high court in case of **Welding Rods (P.) Ltd. Vs. Indo Borax & Chemicals Ltd. on 28 December, 2001 Equivalent citations: 2002 108 CompCas 747 Guj (judgment copy attached as Annexure 1)**, in this judgement, the honourable court had decided that unauthorised filing of suit, proceedings or claim by a company director, employee or attorney without the authorisation from Board of directors is a curable defect and same can be done subsequently when question arise.

8. *Since the filing of appeal on behalf of a defunct company by a director was not legal and proper, the outcome of all decision obtained by assessee are void-ab-initio and he need to obtain new judgement in first appeal by filing of a fresh appeal. Since company is in liquidation process, the official liquidator needs to file the fresh appeal.*
9. *It is humbly prayed that all appeals need to be restored to the office of concerned CIT Appeal and while directing so, the reasons and background of case also communicated in detail.”*
6. On merits, the Ld. DR relied upon the assessment order.
7. At the time of hearing none appeared on behalf of the assessee despite giving notice to the assessee Company. The notice dated 24.12.2021 was returned as ‘left’ by the addressee i.e. the company. Since on several occasions this appeal was adjourned from the year 2018 onwards, we find that appeal may be proceeded with the submissions of the assessee filed before the CIT(A) and before the Assessing Officer which are quoted in the respective orders.
8. We have heard the learned DR. Since the company is in liquidation as per the company status report obtained from the company’s master data the status of the company is submitted as ‘active’. Therefore, the Ld. DR’s contention that filing of appeal by the Director was not proper, cannot be entertained at this juncture and hence rejected.
9. From the perusal of the order of the CIT(A) it can be seen that the CIT(A) has categorically given finding that the assessee has mixed fund being interest free and interest bearing funds and neither the Assessing Officer established the advances from the borrowed funds nor the assessee has established that the advances are from his own fund. Thus, the Assessing Officer was factually incorrect to apply the rate of interest for the purpose of disallowance under Section 36(1)(iii) of the Act. The operative portion of the CIT(A)’s order has given the proportionate interest to be considered for disallowance under Section 36(1)(iii) which comes to Rs.1,51,47,357/-. We do not find any discrepancy in the said finding of the CIT(A) and, therefore, appeal of the Revenue being ITA No.2703/Ahd/2016 is dismissed.

10. As regards ITA No.2148/Ahd/2017 pertaining to A.Y. 2013-14, the issue is identical to that of A.Y. 2012-13 and hence the said appeal filed by the Revenue is dismissed.

11. ITA No.208/Ahd/2018 for A.Y. 2014-15. Ground no.1 is identical to earlier assessment years which are decided hereinabove. Hence, ground no.1 for A.Y. 2014-15 is dismissed.

12. Ground no.2 relating to disallowance of Rs.1,85,66,229/- made under Section 41(1) on account of cessation of liability. The CIT(A) has observed that the outstanding balance is creditors account and the same is shown as liability in its books of account and, therefore, such amount was not reflected back in Profit & Loss account applying provision of Section 41(1) and, therefore, the CIT(A) held that no such addition can be made even though the date is time barred or outstanding for more than 3 years. The CIT(A) has rightly held that the said addition under Section 41(1) has to be deleted. There is no need to interfere with the findings of the CIT(A). Hence, ITA No.208/Ahd/2018 is dismissed.

13. In the result, all the three appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on this 15th day of June, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 15th day of June, 2022

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Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad