

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 2310/Mum/2021 (A.Y. 2007-08)

Alex Mathew (Prop. M/s. Communique Outdoors) C/o. Geogy Jacob, A-601 Prarthana CHS, above Prarthana Hospital, Link Road, Goregaon West Mumbai-400 104. PAN : AEWPA6596D (Appellant)	Vs.	ITO-19(2)(1) 3 rd Floor Piramal Chambers Lalbaug Parel Mumbai-400 012. (Respondent)
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Assessee by	Shri Radhakant Saraf
Department by	Shri Vivek Upadhyay
Date of Hearing	17.08.2022
Date of Pronouncement	17.08.2022

ORDER

The assessee has filed this appeal challenging the order dated 22.11.2021 passed by Learned CIT(A), National Faceless appeal Centre, Delhi and it relates to the assessment year 2007-08. The assessee is aggrieved by the decision of Learned CIT(A) in confirming the addition of Rs.26,48,233/- made by the AO u/s 41(1) of the Act.

2. The facts relating to the case are stated in brief. The assessee was proprietor of three concerns, out of which the assessee closed down two concerns. It was noticed by the AO that the assessee has set off liabilities of old concerns against the new concern. Hence, re-opened the assessment by issuing notice u/s 148 of the Act. The AO completed the assessment by adding a sum of Rs.26,48,233/- u/s 41(1) of the Act. The assessee challenged the same by filing appeal before Learned CIT(A). Before Learned CIT(A), the assessee submitted that he has repaid the creditors in the subsequent years and hence the addition u/s 41(1) is not warranted. Since the assessee did not

substantiate the said claim, the Learned CIT(A) confirmed the addition. Aggrieved, the assessee has filed this appeal before the Tribunal.

3. The Ld A.R submitted that the assessee was facing acute personal problems and hence he could not properly represent his case before the tax authorities. Accordingly he submitted that the assessee may be provided with an opportunity to submit evidences in support of the submissions made before Learned CIT(A).

4. On the contrary, the Ld D.R submitted that the assessee has not produced any evidence in support of his claim that the creditors have been repaid in the subsequent years. Accordingly, he submitted that the Learned CIT(A) was justified in confirming the addition.

5. I heard rival contentions and perused the record. The addition made by the assessing officer u/s 41(1) relates to cessation of liabilities. It is the submission of the assessee that there was no cessation as presumed by the AO and the creditors have been paid money in the subsequent years. However, as rightly pointed out by Ld D.R, the assessee has not furnished any supporting evidences to substantiate his claim. However, in the interest of natural justice, I am of the view that the assessee may be given one more opportunity to substantiate his claim before the AO. However, the same will be at a cost. Accordingly, I impose a cost of Rs.5,000/- (Rupees Five thousand) upon the assessee, which shall be paid to the credit of income tax department as other fees within two months from the date of receipt of this order by the assessee. Subject to the payment of above cost, which shall be verified by the AO, I set aside the order passed by Learned CIT(A) and restore the issue relating to addition made u/s 41(1) of the Act to the file of the AO for examining it afresh by duly considering the information and explanations that may be filed by the assessee. After affording adequate opportunity of being heard, the AO may

take appropriate decision in accordance with law. I also direct the assessee to fully co-operate with the AO for expeditious completion of the assessment.

6. The assessee has also raised a ground challenging the validity of reopening of assessment. At the time of hearing, the Ld A.R did not argue on this issue. Accordingly, the grounds relating to validity of reopening of assessment are dismissed.

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 17.08.2022.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 17/08/2022

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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