

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 142/Rjt/2014
Assessment Year 2007-08**

M/s. Backbone Projects Limited., Ekta House, Jalaram 2, University Road, Rajkot PAN: AABCB1582E (Appellant)	Vs	The Additional Commissioner of Income Tax, Range-1, Rajkot (Respondent)
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**Assessee by: Shri D.M. Rindani, A.R.
Revenue by: Shri Aarsi Prasad, CIT-D.R.**

Date of hearing : 06-07-2022
Date of pronouncement : 29-08-2022

आदेश/ORDER

PER BENCH:-

This is an appeal filed by the assessee against the order of the CIT(A), Jamnagar dated 18-11-2013, in proceedings under section 143(3) of the Income Tax Act, 1961; in short “the Act”.

2. The assessee has raised the following grounds of appeal:-

“1. The learned Commissioner of Income Tax (Appeals), Jamnagar has erred in dismissing the appeal of the assessee whereby upholding the addition of Rs. 10,21,420/- made by the Assessing Officer u/s. 41(1) of the I.T. Act is unwarranted, unjustified and bad in law.

Your applicant reserve the right in addition or alteration in the grounds of appeal at the time of hearing.”

3. The brief facts of the case are that the first appeal was filed by the assessee against the addition of ₹ 10, 21, 420/- made by the AO being liability towards sundry creditors, and the said appeal was dismissed by CIT (A)-I, Rajkot, vide order dated 02-01-2012. Against the said order, the assessee filed appeal before Rajkot bench of ITAT who vide order dated 30-10-2012 set aside the order of Ld. CIT(Appeals) and the matter was restored to the file of CIT(A) with the following directions:

“To give an opportunity to the assessee to establish that the impugned liabilities actually subsisted in the year under appeal and thereafter record categorical finding as to whether the impugned liabilities actually subsisted in the year under appeal after giving an opportunity to the Assessing Officer. If the CIT(A) comes to the conclusion, on appreciation of evidence placed before him, that the impugned liabilities actually subsisted in the year under appeal, he will apply the judgment of Hon'ble High Court cited supra and decide the issue in favour of the assessee. In case he comes to the conclusion that the impugned liabilities did not subsist in the year under appeal or were fictitious, he, in that case, will dispose off the matter according to law including section 28 of the I. T. Act after giving reasonable opportunity of hearing to both the parties.”

4. Before the Ld. CIT(Appeals) in remand proceedings, the assessee submitted that in respect of balance of ₹ 10, 21, 420/-, the liability was existing and company has to pay the same, but due to financial crisis and acute liquidity problems faced by the company, these creditors have not been paid. The companies bank limit was withdrawn, letter of credit was unpaid beyond due date, term loans were overdue indicating the company's liquidity problems. Further, the assessee submitted that as regards trading liabilities, it is only upon the remission or cessation that section 41(1) of the Act comes into operation. Since the liability had not ceased, AO erred in facts and in law in invoking the provisions of section 41(1) of the Act. However, Ld. CIT(Appeals) dismissed the assessee's appeal with the following observations:

“Decision:

7. I have duly considered the submission of the appellant and also gone through the assessment order.

7.1 From the above it is quite obvious that the onus to prove that the liability was actually subsisting, has not been discharged by the appellant despite opportunity provided as per directions of Hon. ITAT. Hence, I have no option but to concur with the finding given by the CIT(A) in first appellate order which is quite exhaustive and well reasoned. Hence the AO has rightly added the creditors u/s.41(1) of the I.T. Act, 1961.

*8. In the result, the appeal is **dismissed.**”*

5. Before us, the counsel for the assessee submitted chart dated 20-08-2021 and argued that out of the out total outstanding liability of ₹ 10, 21, 420/-, there was debit balance of ₹ 1,23,512/- against some of the creditors.

Thus, after considering the same, the actual liability of the creditors as on 31-03-2007 was of ₹ 8,97,893/-. However, out of the above outstanding balance of ₹ 8,97,893/-, the assessee repaid an amount of ₹ 6,21,182/- back to the creditors in the subsequent years and an amount of ₹ 2,76,726/- was written off in the subsequent period when it was crystallised as the sum was not payable. Accordingly, this amount of ₹ 2,76,726/- was reflected in the profit and loss account, as income of the assessee, of the concerned financial year when the same was written off by the assessee in its books of accounts. Accordingly, the Id. CIT(A) erred in facts and in law in confirming addition of Rs. 10,21,420/- by invoking provisions of section 41(1) of the Act. In response, Ld. D.R. relied upon the observations made by the Id. CIT(A) in his appellate order.

6. After going through the details, we observe that the actual liability of the creditors was ₹ 8,97,893/- and not ₹ 10,21,420/-. Further we note that the fact that assessee had paid back a sum of ₹ 6,21,182/- back to the creditors in the subsequent years and an amount of ₹ 2,76,726/- was written off in the subsequent period and offered to income in the subsequent year demonstrates that there was an existing liability of ₹ 8,97,893/- against the assessee as that the end of the financial year under consideration. Therefore, in our considered view, in the instant facts, the Ld. CIT(Appeals) erred in facts and law in confirming the addition of ₹ 10,21,420/- on the ground that the assessee has not been able to prove that the liability was actually subsisting at the end of the financial year.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 29-08-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 29/08/2022

Sd/-
(SIDHHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot