

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 375/Mum/2023 (A.Y. 2014-15)

Nitin Narbheram Patel

Flat No.1702/1802, Wing-F,
Pirojshah Nagar, Eastern Express
Highway, Vikhroli (E)
Mumbai-400 079

PAN: AAJPP4339A

..... Appellant

Vs.

CIT(A)/NFAC

Mumbai-

..... Respondent

Appellant by : Shri Ajay R. Singh
Respondent by : Shri Chetan M. Kacha, Sr. AR

Date of hearing : 10/04/2023
Date of pronouncement : 15/05/2023

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi (for short 'NFAC') dated 13.12.2022 u/s.250 of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2014-15. The assessee has raised the following grounds of appeal:

“1. The learned CIT (A) erred in confirming the addition of Rs.14,35,000/- u/s. 41 (1) of the Act without considering the facts of the case explained to him and further erred in making disallowance u/s. 41(1) on the ground that no specific submissions were made u/s 41(1).

2. The LD. CIT (A) erred in confirming the addition of Rs.14,35,000/- u/s. 41 (1) of the Act without considering the general conditions enumerated below which need to be fulfilled to treat cessation of liability as income u/s 41 (1) of the Act. In case of assessee there is no cessation.

(i) The assessee has to avail an allowance or deduction in an earlier year in respect of loss, expenditure or trading liability; and-

(ii) In subsequent year, the assessee has to obtain benefits in cash or any other kind in respect of such loss, expenditure and trading liability by way of remission or cessation of liability.

3. The Ld. CIT (A) erred in ignoring the fact that amount appearing on credit were never debited to the Profit and loss A/c. of the assessee to consider the same as trading liability and hence basic condition necessary to make disallowance u/s. 41(1) is not satisfied.

4. The Ld. CIT (A) erred in confirming the addition u/s. 41(1) made by the AO ignoring the fact that assessee has not written back the liability during the assessment year and liability continues to appear in his Balance sheet as such disallowance u/s. 41(1) is not warranted.

5. The Ld. CIT (A) confirmed the addition made by the AO without considering the fact that the assessee has not written back the liability during the relevant year and the amounts received continue to appear as closing liability and has been carried forward to next year and because of this the condition enumerated in ground No 2 is not fulfilled to satisfy the disallowance u/s. 41 (1) of the Act.

6. Whether on the facts learned CIT (A) erred in upholding the addition done by AO in respect of amount received on behalf of somebody else as sundry creditors and adding back the same as old unpaid liabilities u/s. 41 (1) of the Act.

7. The Ld. CIT (A) while confirming the addition of Rs.5,74,000/- as advance received from Mr Ranchod J.kalia erred in ignoring the fact that other five of the family members have confirmed advance given to assessee.

8. The Ld. CIT (A) erred in ignoring the fact that AO had failed to use powers vested in him u/s. 272A and 131 of the fact to verify the genuineness of the advance received from Mr Ranchod J kalia.

9. The Ld. CIT (A) erred in confirming the addition of Rs. 5,74,000/- amount received from Mr Ranchod J Kalia merely on the ground that assessee failed to produce any evidence.

10. Your Appellant craves, leave to amend alter or delete any of the above grounds of appeal and to add new grounds of appeal.”

2. Brief facts of the case are that the assessee individual filed his return of income on 31.01.2015, declaring total income at Rs. 35,94,190/-. Case of the assessee was selected for **limited scrutiny under CASS**. Assessee is a partner in M/s. Alumina Chemicals & Castable and M/s. Intercer Engg. Works having income from salary, house property, capital gains and income from other sources.

3. During the assessment proceedings, AO observed that assessee received Rs. 6,32,58,000/- from various parties as share application money on behalf of M/s. Earth Refining Co. Pvt. Ltd. as per table provided in Para 4.1 of the assessment order. Amounts mentioned in the table were received in the F.Y.s 2009-10 & 2010-11, still assessee was asked to substantiate the genuineness of the amount received and notices u/s. 133(6) were issued to the parties concerned. Out of these parties 2 parties did not respond and addition of Rs. 5,74,000/- and Rs. 8,61,000/- were made u/s. 41(1) on account of Mr. Jivaraj Ranchod Kalia and Manilal Ranchod Kalia respectively. Further addition of Rs. 17,22,000/- was made on account of difference in assessee's books vis-à-vis amounts confirmed by the parties. Assessee being aggrieved with this order preferred an appeal before the Ld. CIT(A), Mumbai-26. First Appellate Authority partially confirmed the order of AO and addition

of Rs. 14,35,000/- u/s. 41(1) was confirmed and for the second addition of Rs. 17,22,000/- on account of difference Rs. 5,74,000/- was confirmed.

4. Assessee being further aggrieved with this order of Ld. CIT(A), preferred present appeal before us. We have gone through the order of AO, order of Ld. CIT(A) arguments/ submissions of the assessee. Our observations keeping in view the provisions of section 68 and 41(1) of the Act along with facts of the case are as under:

A). Assessee received money on behalf of M/s. Earth Refining Co. Pvt. Ltd. on account of share capital money from F.Y. 2009-10 To 2013-14 as per para 8 on page no. 5 of the Ld. CIT(A)'s order;

B). There is no break up of amounts received during the F.Y.s 2009-10 To 2013-14 and in which capacity assessee received these amounts on behalf of M/s. Earth Refining Co. Pvt. Ltd., no where clarified in AO's order/ Ld. CIT(A)'s order;

C). These amounts were never transferred to M/s. Earth Refining Co. Pvt. Ltd. although receiving since F.Y. 2009-10 and still with assessee in relevant Assessment Year. It is not clear in which capacity assessee received and retained the money since long. Assessee's own submissions are contradictory, on the one hand before the assessee is claiming that amounts were received during the F.Y. 2009-10, where as the submissions before Ld. CIT(A) stated that even during the F.Y. 2013-14 amounts were received, whereas on the one hand assessee stated that project is no more viable to be taken up, on the other hand despite of low investor's confidence receiving amount in F.Y. 2013-14 also.

5. As these essential facts are not on record, ITAT being final fact-finding authority, without having answers to these observations made (supra), adjudication proceedings can't be completed in a judicious manner. In view

of this matter is restored back to the file of AO with a direction to verify the observations made (supra) in addition to this quantification of the amount received during the F.Y. 2013-14 after proper opportunity of being heard to the assessee. Assessee is directed to cooperate with the jurisdictional AO with relevant evidences of various amounts received during various F.Y.s.

6. In these terms appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15th day of May, 2023.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 15/05/2023

Mahesh R. Sonavane

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy. /Asstt.Registrar)
ITAT, Mumbai