

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.118/PAN/2016
निर्धारण वर्ष / Assessment Year : 2011-12

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| Salgaocar Mining Industries Private Limited, Salgaocar Bhavan, Altinho, Panaji, Goa- 403001. PAN : AABCS8862N | Vs. | JCIT, Margao Range, Margao-Goa. |
| Appellant | | Respondent |

आयकर अपील सं. / ITA No.135/PAN/2016
निर्धारण वर्ष / Assessment Year : 2011-12

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| ACIT, Circle-1, Margao, Goa. | Vs. | Salgaocar Mining Industries Private Limited, Salgaocar Bhavan, Altinho, Panaji, Goa-403001. PAN : AABCS8862N |
| Appellant | | Respondent |

Assessee by : Shri Sukhsagar Syal
Revenue by : Shri Prabhakar Anand

Date of hearing : 05.09.2023
Date of pronouncement : 05.10.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the cross appeals filed by the assessee as well as by the Revenue directed against the order of Id. Commissioner of

Income Tax (Appeals)-1, Panaji ['the CIT(A)'] dated 11.04.2016 for the assessment year 2011-12.

2. Briefly, the facts of the case are that the assessee is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of mining, processing, trading and export of iron ores. The Return of Income for the assessment year 2011-12 was filed on 30.09.2011 declaring total income of Rs.139,23,29,620/-. Against the said return of income, the assessment was completed by the Joint Commissioner of Income Tax, Margao Range, Margao ('the Assessing Officer') vide order dated 24.03.2014 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.201,87,55,957/-. While doing so, the Assessing Officer made addition of Rs.24,52,468/- u/s 14A, addition on account of unpaid deposits to sundry creditors of Rs.59,03,90,714/-, disallowance of Rs.2,82,83,020/- debited to the Profit & Loss Account and addition on account of discrepancy in the receipts as per Form 26AS and receipts accounted in the books of account Rs.53,00,135/-. The factual background of the above additions is as under :-

During the course of assessment proceedings, the Assessing Officer had called for the details of outstanding deposits and liabilities as on 31.03.2011. The assessee filed the details of such outstanding deposits and liabilities which are set out by the Assessing Officer vide para 5 of the assessment order. Based on the above details, the Assessing Officer had found out that the deposits were neither repaid nor sales were made against the above advances. Then, the Assessing Officer had called upon the assessee company to file the confirmation letter in respect of the parties from whom the advances were received vide letter dated 10.02.2014. However, the assessee had not furnished any confirmations in response to the letter issued by the Assessing Officer. In the circumstances, the Assessing Officer inferred that there was cessation of liability in respect of above parties and invoked the provisions of section 41(1) made addition of Rs.59,03,90,714/-.

Similarly, during the course of assessment proceedings, the Assessing Officer had called for the details of the provisions for expenses debited to Profit & Loss Account which remains unpaid as on 31.03.2011. The details of such provisions are set out by the

Assessing Officer vide para 6 of the assessment order. The Assessing Officer inferred that since the expenses were not incurred till the date, the provisions for such expense cannot be allowed as deduction. Accordingly, disallowed the provisions of expenses of Rs.2,82,83,020/-. The Assessing Officer also made addition on account of difference between the receipts as per Form 26AS and receipts accounted in the books of accounts in respect of the following parties :-

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| (i) Naivedya Logistics India Pvt. Ltd. | Rs.34,79,490/- |
| (ii) Development Credit Bank | Rs.10,53,350/- |
| (iii) Sanjana Cryogenic Storage Ltd. | Rs.7,67,295/- |
| (iv) Sandip Chandrakant Prabhu | Rs.1,63,76,407/- |

3. Being aggrieved by the above additions, an appeal was filed before the Id. CIT(A), who vide impugned order confirmed the addition in respect of the parties mentioned at Sr. No.7, 10, 19, 21 and 23 to 30 by holding that these amounts were outstanding for a long period and no transaction took place, as the appellant had failed to file the confirmations from these parties and taking note of the fact that these amounts were written off in the books of account maintained for the previous year relevant to the assessment year

2016-17. In respect of balance parties no.1 to 16, 22 excluding Sr. No.7 and 10, the Id. CIT(A) gave a categorically finding that in respect of these parties the amount outstanding was aggregating to Rs.7,70,44,710/- considering the submissions of the appellant that these parties are contractors with whom the assessee entered into a service cum purchase contract entitling the contractors to operate as well as a right to own the contract mining machineries, equipments by the assessee to contracted price in instalments. The copies of the contract with each of the parties were reproduced and proceed to hold that there was no cessation of liability and the provisions of section 41(1) have no application. In respect of balance amount of Rs.33,56,62,763/- with respect to two parties i.e. party no.17 and 18, considering the submissions of the assessee that the assessee had purchased iron ore from these parties and in subsequent period it had business transactions with theses parties held that the Assessing Officer was not justified in invoking the provisions of section 41(1) of the Act.

As regards, the provisions for expenses, considering the submissions of the assessee that the said provisions had not been

debited to the Profit & Loss Account during the previous year relevant to the assessment year under consideration, the Id. CIT(A) held that there is no question of disallowance of such provision for the assessment year 2011-12 and directed the Assessing Officer to delete the addition.

As regards to the addition on account of discrepancy between the receipts as per Form 26As and the receipts accounted in the books of accounts, the Id. CIT(A) after calling for the remand report from the Assessing Officer held that in respect of Naivedya Logistics India Pvt. Ltd. in view of the explanation of the assessee that since the transaction did not materialize, the appellant had not claimed any credit for tax deducted at source and there was no payment received by the assessee from Naivedya Logistics India Pvt. Ltd.. Similarly, in respect of discrepancy in respect of Development Credit Bank, the explanation of the assessee stands accepted. Similarly, regarding Sanjana Cryogenic Storage Ltd. also, the Id. CIT(A) accepted the explanation of the assessee that no amount was received and it did not receive any sum of money from the said Sanjana Cryogenic Storage Ltd. nor claimed credit for TDS.

In the light of this, the ld. CIT(A) directed the Assessing Officer to delete the addition of Rs.53,00,135/-.

4. Being aggrieved by that part of the order of the ld. CIT(A), which is against the Revenue, the Revenue is in appeal in ITA No.135/PAN/2016. The assessee is in appeal in ITA No.118/PAN/2016 being aggrieved by the order of the ld. CIT(A) confirming the addition on account of sundry creditors of Rs.7,07,68,721/-.

ITA No.118/PAN/2016 – By Assessee :

5. The Assessing Officer brought to tax the outstanding sundry creditors of Rs.7,07,68,721/- merely on the ground that the outstanding for a substantially long period of time, these amounts were stagnant and no transactions took place. The assessee company had failed to file the confirmation from these parties. The submission of the assessee company that these amounts were written off and offered to tax in the subsequent years, therefore, there was no necessity of making addition for the year under consideration, had not yielded any result. Even on appeal before the ld. CIT(A), the ld. CIT(A) confirmed the addition taking note of the

fact that the assessee company itself had subsequently written off of these amounts and offered to tax.

6. Being aggrieved, the assessee is in appeal before us in the present appeal.

7. Before us, the ld. AR submits that the provisions of section 41(1) have no application to the facts of the present case, inasmuch as, there is no cessation of liabilities in assessee's liabilities are shown in the books of accounts. He further submits that there was nothing on record to say that there was cessation of liability during the previous year relevant to the assessment year under consideration placing reliance on the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Bhogilal Ramjibhai Atara, 43 taxmann.com 55 (Guj.). He further submits that mere fact that the assessee is unable to file the confirmations does not lead to conclusion that the sundry creditors are fictitious placing reliance on the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Nitin S. Garg, 22 taxmann.com 59 (Guj.). Placing reliance on the decision of the Hon'ble Madras High Court in the case of CIT vs. Tamilnadu Warehousing Corporation, 292 ITR 310 (Mad.), he

submits that since the assessee company had shown the said credits in the books of account, the lower authorities were wrong in holding that there was cessation of liability.

8. On the other hand, ld. Sr. DR placing reliance on the orders of the lower authorities submits that the order of the ld. CIT(A) is based on the proper appreciation of facts and evidence on record as well as the legal position, therefore, no interference is called for.

9. We heard the rival submissions and perused the material on record. The issue in the appeal relates to the addition of Rs.7,07,68,721/- u/s 41(1) of the Act. On mere perusal of the assessment order, it would be clear that the Assessing Officer made addition of the said amount invoking the provisions of section 41(1) merely on the ground that the sundry creditors are outstanding for a period of long time and the assessee could not file the confirmations from the said parties.

On appeal before the ld. CIT(A), the ld. CIT(A) swayed away by the fact that these sundry creditors were written off and offered to tax in the subsequent assessment years.

On mere perusal of the provisions of section 41(1), it would be clear that the provisions of section 41(1) shall be attracted, in cases where there has been remission or cessation of liability during the year under consideration subject to the conditions that the expenses were allowed as deduction in the earlier years. Thus, the *sin qua non* is the remission or cessation of liability and the other requirement is that the some benefit in the form of allowance and expenditure was taken. In the present case, it is undisputed fact that the said credits are continued to be shown in the books of accounts are liability side of the Balance Sheet and there was no material on record to suggest that there was cessation of liability during the previous year relevant to the assessment year under consideration. Therefore, it cannot be said that the liability had ceased to exist in the light of the decision of the Hon'ble Madras High Court in the case of Tamilnadu Warehousing Corporation (supra). Further, the fact that the assessee could not file the confirmation letters from the creditors cannot be a ground to conclude that there was cessation of liability in the light of the law laid down by the Hon'ble Karnataka High Court in the case of CIT vs. Alvares & Thomas, 394 ITR 647

(Kar.). In the absence of any material on record suggesting that there was remission or cessation of liability during the previous year relevant to the assessment year under consideration, the outstanding creditors cannot be added to the total income in terms of provisions of section 41(1) of the Act. Reliance in this regard can be placed on the decision of the Hon'ble Gujarat High Court in the case of *Aircel Cellular Ltd. vs. CIT*, 45 taxmann.com 55 (Guj.). The ld. CIT(A) had fell in serious error in confirming the addition merely going by the fact that the assessee itself had written off of these sundry creditors and offered to tax in the subsequent years without appreciating the fact that there was no material on record suggesting that the cessation of liability took place during the year under consideration. Therefore, we reverse the findings of the ld. CIT(A) and direct the Assessing Officer to delete the addition of Rs.7,07,68,721/- made u/s 41(1) of the Act.

10. In the result, the appeal filed by the assessee in ITA No.118/PAN/2016 stands allowed.

ITA No.135/PAN/2016 – By Revenue :

11. Ground of appeal nos.1 and 5 are general in nature and does not require any adjudication.

12. Ground of appeal no.2 challenges the decision of the ld. CIT(A) deleting the outstanding sundry credit deposits of Rs.51,96,21,993/-. During the course of assessment proceedings, based on the details filed by the assessee company, the Assessing Officer found out that the sundry credit deposits of Rs.59,03,90,714/-, the details of which are set out by the Assessing Officer vide para 5 of the assessment order, there were no transactions during the year under consideration, the amounts are outstanding for a period of long time. In these circumstances, the Assessing Officer had called upon the assessee company to file the confirmation letters in respect of the parties where the outstanding amount is Rs.10,00,000/- and above. However, for the reasons best known to the assessee, the assessee did not file the confirmation letters. In these circumstances, the Assessing Officer drew an adverse inference that the outstanding sundry creditors are liable to be taxed as business income u/s 41(1), as the liabilities of creditors

had ceased to exist. On appeal before the ld. CIT(A), the ld. CIT(A) confirmed the amount of Rs.7,07,68,721/- by taking note of the fact that these amounts were written off in the books of account and offered to tax in the subsequent year and the balance amount of Rs.51,96,21,993/- was deleted by the ld. CIT(A). During the course of proceedings before the ld. CIT(A), the assessee company filed details of the outstanding amount of Rs.59,03,90,714/- out of which the ld. CIT(A), in respect of parties standing in Sr. No.1 to 16 except Sl. No.7 and 10 and Sl. No.22 found that the assessee had entered into a service cum purchase contract whereby the contractors were entitled to operate as well as a right to own the contract mining related machineries upon payments of contracted price in instalment. In respect of these parties, the assessee paid service charges to the contractor out of which amount of the machineries was deducted and balance amount was shown as liability in the books of accounts which is adjusted at the time of the transfer of the ownership. Based on this submission, the ld. CIT(A) concluded that there was no cessation of liability and, therefore, the provisions of section 41(1) cannot be invoked. Accordingly, the ld.

CIT(A) directed the Assessing Officer to delete the addition of Rs.7,70,44,710/-. In respect of balance parties, it is submitted that the assessee company had purchased iron ore from these parties and based on the submission of the assessee company that the assessee company had purchased the iron ore from these two parties and had continuous business transaction with them concluded that there was no cessation of liability, accordingly, directed the Assessing Officer to delete the addition of Rs.33,56,62,763/-.

13. Being aggrieved by this decision of the Id. CIT(A), the Revenue is in appeal before us in the present appeal.

14. The Id. CIT-DR submits that the Id. CIT(A) ought not to have deleted the addition u/s 41(1) without appreciating the facts that the sundry creditors were outstanding for a period of long time and the assessee had failed to produce the confirmation from the said parties.

15. On the other hand, Id. AR submits that there was no material on record suggesting that cessation of liability of these sundry creditors took place during the year under consideration. The assessee had continued to show these sundry creditors as liability in

the Balance Sheet. He further submits that there was nothing on record to say that there was cessation of liability during the previous year relevant to the assessment year under consideration placing reliance on the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Bhogilal Ramjibhai Atara, 43 taxmann.com 55 (Guj.). He further submits that mere fact that the assessee is unable to file the confirmations does not lead to conclusion that the sundry creditors are fictitious placing reliance on the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Nitin S. Garg, 22 taxmann.com 59 (Guj.). Placing reliance on the decision of the Hon'ble Madras High Court in the case of CIT vs. Tamilnadu Warehousing Corporation, 292 ITR 310 (Mad.), he submits that since the assessee company had shown the said credits in the books of account, the lower authorities were wrong in holding that there was cessation of liability.

16. Further, he submits that the ld. CIT(A) based on the information filed before him appreciated the fact that there was no cessation of liability and rightly held that outstanding liability cannot be taxed invoking the provisions of section 41(1) of the Act.

17. We heard the rival submissions and perused the material on record. On mere perusal of the assessment order, it would be clear that the Assessing Officer made addition of the said amount invoking the provisions of section 41(1) merely on the ground that the sundry creditors are outstanding for a period of long time and the assessee could not file the confirmations from the said parties.

On appeal before the Id. CIT(A), the Id. CIT(A) sway away by the fact that these sundry creditors of these parties were written off and offered to tax in the subsequent assessment year.

On mere perusal of the provisions of section 41(1), it would be clear that the provisions of section 41(1) shall be attracted, in cases where there had been remission or cessation of liability during the year under consideration subject to the conditions that the expenses were allowed as deduction in the earlier years. Thus, the *sin qua non* is the remission or cessation of liability and the other requirement is that the some benefit in the form of allowance and expenditure was taken. In the present case, it is undisputed fact that the said credits are continued to be shown in the books of accounts are liability side of the Balance Sheet and there was no material on

record to suggest that there was cessation of liability. Therefore, it cannot be said that the liability had ceased to exist in the light of the decision of the Hon'ble Madras High Court in the case of Tamilnadu Warehousing Corporation (supra). Further, the fact that the assessee could not file the confirmation letters from the creditors cannot be a ground to conclude that there was cessation of liability in the light of the law laid down by the Hon'ble Karnataka High Court in the case of CIT vs. Alvares & Thomas, 394 ITR 647 (Kar.). In the absence of any material on record suggesting that there was remission or cessation of liability during the previous year relevant to the assessment year under consideration, the outstanding creditors cannot be added to the total income in terms of provisions of section 41(1) of the Act. Reliance in this regard can be placed on the decision of the Hon'ble Gujarat High Court in the case of Aircel Cellular Ltd. vs. CIT, 45 taxmann.com 55 (Guj.). We also find that the findings of the ld. CIT(A) are based on the evidence filed before him that the sundry creditors were continued to be shown as outstanding in the books of account and there had business transaction with them. Therefore, the ld. CIT(A) rightly concluded

that there was no cessation of liability. In the light of above discussion, we do not find any merit in the ground of appeal filed by the Revenue. Thus, the ground of appeal no.2 filed by the Revenue stands dismissed.

18. Ground of appeal no.3 challenges the decision of the ld. CIT(A) deleting the addition on account of provision of expenses of Rs.2,82,83,020/-. On perusal of the assessment order, it would be clear that the Assessing Officer made addition on account of provision of expenses, which remain unpaid at the end of the accounting year. On appeal before the ld. CIT(A), it is submitted that no deduction was claimed on account of provision for expenses, the provision for outstanding expenses appearing in the Balance Sheet as on 31.03.2011, which had not been paid, represents the provision made in the earlier years which does not represent the provision of the current year. The ld. CIT(A) considering the explanation of the assessee directed the Assessing Officer to delete the addition. The submission of the assessee that the provision for expenses shown as on the date of balance sheet as on 31.03.2011 does not represent the provisions for current year expenses remain

uncontroverted. Therefore, in the absence of any claim for deduction towards provision for expenses, the question of disallowance does not arise. The ld. CIT(A) rightly deleted the addition and, therefore, we do not find any reason to interfere with the finding the ld. CIT(A). Thus, the ground of appeal no.3 filed by the Revenue stands dismissed.

19. Ground of appeal no.4 challenges the decision of the ld. CIT(A) deleting the addition made on account of discrepancies of receipts as per Form 26AS and receipts accounted in the books of accounts. The Assessing Officer during the course of assessment proceedings found that there was discrepancy found in the receipts shown in the Form 26As and the receipts accounted in the books of accounts in respect of the following parties :-

| | | |
|-------|---|-------------------------|
| (i) | <i>Naivedya Logistics India Pvt. Ltd.</i> | <i>Rs.34,79,490/-</i> |
| (ii) | <i>Development Credit Bank</i> | <i>Rs.10,53,350/-</i> |
| (iii) | <i>Sanjana Cryogenic Storage Ltd.</i> | <i>Rs.7,67,295/-</i> |
| (iv) | <i>Sandip Chandrakant Prabhu</i> | <i>Rs.1,63,76,407/-</i> |

20. It was submitted before the ld. CIT(A) that the assessee company had not received any receipts from the Naivedya Logistics India Pvt. Ltd. and Sanjana Cryogenic Storage Ltd.. As regards to the receipts of the Development Credit Bank, it is submitted that it

relates to the interest income shown by the development bank is in relation to one of the sister companies. The ld. CIT(A) after calling for the remand report from the Assessing Officer held that no addition can be made in respect of Naivedya Logistics India Pvt. Ltd., Sanjana Cryogenic Storage Ltd. and Development Credit Bank.

21. Being aggrieved, the Revenue is in appeal before us in the present appeal.

22. We had carefully perused the findings of the ld. CIT(A). We find that the findings of the ld. CIT(A) are based on the remand report of the Assessing Officer and found that the assessee had no relation in respect of those parties from whom receipts were shown in Form 26AS, therefore, the findings of the ld. CIT(A) cannot be said to be perverse. Therefore, we do not find any reason to interfere with the order of the ld. CIT(A). Thus, the ground of appeal no.4 filed by the Revenue stands dismissed.

23. In the result, the appeal filed by the Revenue in ITA No.135/PAN/2016 stands dismissed.

24. To sum up, the appeal filed by the assessee stands allowed and the cross appeal filed by the Revenue stands dismissed, as indicated above.

Order pronounced on this 05th day of October, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 05th October, 2023.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Panaji.
4. The Pr. CIT, Panaji.
5. DR, ITAT, Panaji.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.