

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA Nos. 5391 & 6611/Del/2019
(Assessment Years: 2012-13 & 2013-14)**

Disha Impex Pvt. Ltd, N-6, Ground Floor (rear), Green Park Main, New Delhi (Appellant)	Vs.	DCIT, Central Circle-7(2), New Delhi (Respondent)
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PAN: AABCD2960L

**ITA No. 2989/Del/2019
(Assessment Year: 2014-15)**

Disha Impex Pvt. Ltd, N-6, Ground Floor (rear), Green Park Main, New Delhi (Appellant)	Vs.	ITO, Ward-7(3), New Delhi (Respondent)
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PAN: AABCD2960L

Assessee by :	Shri Ved Jain, Adv Ms. Supriya Mehta, CA Shri Shashank Sharma, CA
Revenue by:	Shri Vivek Kumar Upadhyaya, Sr. DR
Date of Hearing	04/04/2024
Date of pronouncement	10/04/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. These are the appeals filed by the assessee in ITA Nos. 5391 & 6611/Del/2019 and 2989/Del/2019 for AYs 2012-13 & 2013-14 and 2014-15, arise out of the order of Id. Commissioner of Income Tax (Appeals)-34, New Delhi dated 11.04.2019 for AY 2012-13, dated 16.05.2019 for AY 2013-14 and Id. Commissioner of Income Tax (Appeals)-15, New Delhi dated 06.02.2019 for

AY 2014-15 [hereinafter referred to as 'Ld. CIT(A)', in short] against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.02.2015 by the Assessing Officer, DCIT, circle-7(2), New Delhi for AY 2012-13, dated 29.02.2016 passed by DCIT, Circle-7(2), New Delhi for AY 2013-14 and dated 31.12.2016 passed by ITO, Ward-7(3), New Delhi for AY 2014-15.

2. Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

ITA No. 5391/Del/2019 for AY 2012-13

3. The assessee has raised the following grounds of appeal before us:-

"1. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as the 'Ld. CIT(A)'] erred on facts and in law in upholding and confirming the addition of Rs. 17,00,00,000/- under section 41(1) of the Income-tax Act, 1961, and disallowing the business expenses of Rs. 27,57,315/- made by the Ld. Assessing Officer (hereinafter after referred to as Ld. AO) vide order u/s143(3) of the Income-tax Act, 1961 (hereinafter after referred to as 'the Act').

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in upholding the addition of Rs. 12,00,00,000/- (received as advance, share of M/s Star Coal India Pvt. Ltd. to be provided to Srinivasa Minerals and Traders Ltd.), made by the Ld. AO under section 41(1) of the Income-tax Act, 1961, ignoring the detailed submissions and evidences filed.

2.1. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in observing that the Appellant did not file information pertaining to M/s Star Coal India Pvt. Ltd. during the assessment proceedings inasmuch as in the first place such information was not sought by the Ld. AO and in any case the necessary information in this regard as available with the Appellant was filed, both during assessment as well before the Ld. CIT(A).

2.2. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in observing that M/s. Star Coal India Pvt. Ltd. has not put any efforts to recover the amount from the Appellant inasmuch as the correspondence between the two parties submitted before the Ld. CIT(A), evidently shows that concerted efforts were made in this regard to recover the amount from the Appellant.

2.3 That on the fact and in the circumstances of the case, the Ld. CIT(A) has failed to take note of the fact that M/s Srinivasa Minerals and Traders Ltd.

created a dispute and as the matter was sub-judice before the Hon'ble Karnataka High Court the Appellant could not get the refund from M/s Srinivasa Minerals and Traders Ltd. nor could it refund the amount to M/s Star Coal India Pvt. Ltd.

2.4. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in observing that the during the assessment proceedings the Appellant did not file any explanation why M/s. Star Coal India Pvt. Ltd. has not asked for refund inasmuch as categorical submissions in this regard were made.

2.5. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in holding that the Appellant failed to provide the current address of M/s. Star Coal India Pvt. Ltd. inasmuch as vide its submissions the Appellant provided not only the address that it has but also the PAN as well as the audited financial statements of M/s, Star Coal India Pvt. Ltd. (showing Rs.12.00 crore as receivable from the Appellant) as filed by them in ROC. The financial statements further contain the registered address of M/s. Star Coal India Pvt. Ltd.

2.6. That on the facts and in the circumstances of the case the Ld. CIT(A) erred on facts and in law in terming the transaction of the Appellant with M/s. Star Coal India Pvt. Ltd. as a non-genuine one without providing any cogent reasons and basis and entirely based on conjectures and surmises.

2.7. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in upholding the addition made without noticing that the Ld. AO has without providing any cogent basis in the assessment order stated that the amount of Rs.12,00,00,000/- be added to the income of the Appellant by virtue of section 41(1) of the Act.

2.8. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in not considering the submission of the Appellant that the amount advanced to it, is not a trading liability and that it has neither claimed any allowance nor any deduction towards any loss, expenditure or trading liability in respect of the advance and thus no implications u/s 41(1) of the Act arise.

2.9. That the Ld. CIT(A) erred on the facts and in law in not considering the submissions of the Appellant that cessation of liability cannot be unilateral and in fact it is a bilateral act and there has been no action from M/s Star Coal India Pvt. Ltd. which suggests that it has given up the claim over the amount advanced.

3. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in upholding the addition of Rs. 5,00,00,000/- (received as advance from Mr. Rajendra Manikonda towards purchase of land) under section 41(1) of the Act.

3.1. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in not understanding and appreciating that the land to be

transferred to Mr.Rajendra Manikonda was supposed to be acquired for him from various vendors and then transferred by the Appellant by virtue of a General Power of Attorney. Therefore, it was not necessary for the Appellant to have held the land in its name and also record the same in its financial statements. The Ld. CIT(A) failed to appreciate that the role of the Appellant was of an 'Aggregator' of lands only.

3.2. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in only making a bald assertion devoid of merit that since the Appellant is in the business of transacting in immovable properties therefore, implications u/s 41(1) of the Act arise.

3.3. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in not considering the submissions of the Appellant that the amount advanced, is not a trading liability and that it has neither claimed any allowance nor any deduction towards any loss, expenditure or trading liability in respect of such amount thus no implications u/s 41(1) of the Act arise.

4. That on the facts and the circumstances of the case the Ld. CIT(A) erred on facts and in law in upholding the disallowance of legal and travelling expenses totaling to Rs. 27,57,315/- on adhoc basis, without providing any reasons/basis whatsoever for such disallowance."

4. We have heard the rival submissions and perused the material available on record. The assessee is engaged in the business of sourcing and supply of iron ore as well as helps other exporters to source iron ore etc. The return for AY 12-13 has been filed by the assessee declaring loss of ₹42,39,108/-. During the year under consideration, the assessee has brought forward outstanding advances received from parties amounting to ₹13,02,10,698/- under the head "other long term liabilities". This included a sum of ₹12 crores pertaining to M/s. Star Coal India Pvt. Ltd. The Id AO sought to treat this sum of ₹12 crores as liabilities ceased to exist and accordingly sought to bring the same to tax as income u/s 41(1) of the Act.

5. Similarly, a sum of ₹6,12,80,000/- was shown as advance received against sale of properties by the assessee, which was also brought forward from earlier years. This was also sought to be treated as income u/s 41(1) of the Act by the Id. AO on the ground that the assessee does not possess any fixed assets and accordingly could not have received any advance against sale of properties.

6. Similarly, a sum of ₹97 lakhs was received as advance against sale of materials from three parties. The Id. AO observed that confirmation was not filed from these parties and accordingly concluded that the said liabilities ceased to exist and brought the sums outstanding in their names to tax as income u/s 41(1) of the Act.

7. With regard to 1st addition of ₹12 crores, it was submitted that in February 2016, Dubai based company, ETA Dubai had expressed its desire to jointly enter into mining activity as well as procure iron ore with an investment and Profit and loss sharing ratio, which was decided as 2:1. Accordingly, ETA Dubai through its subsidiary M/s Star Coal India Private Limited entered into joint-venture with the assessee company for iron ore mines in the Chikmagalur district of Karnataka with M/s. Srinivasa Minerals and Traders Ltd. The Star Coal India Private Ltd made payment of ₹12 crores to the assessee company on 28.02.2006, the assessee company in turn entered into contract with M/s Srinivasa Minerals and Traders Ltd on the same day and paid ₹10,13,50,000/- to M/s Srinivasa Mineral and Traders Ltd. The amount of advance given by M/s. Star Coal India Private Limited to the assessee company was shown in the liability side of the balance sheet of the assessee company as on 31.03.2006 and continued to be shown as such even as on 31.03.2012. The amount given to M/s Srinivasa Minerals and Traders Ltd by the assessee company was reflected in the asset side of the balance sheet of the assessee company as on 31.03.2006 and continued to be shown as such in the balance sheet as on 31.03.2012. It was discovered that M/s. Srinivasa Minerals and Traders Ltd did not own any mine and aggrieved by such misrepresentation and to recover the money paid, the assessee company instituted arbitration proceedings. On 06.07.2008, a settlement was agreed between the assessee company and M/s Star Coal (India) Pvt. Ltd. that the repayment of Rs 12 Cr would be made in 24 equal installments as is evident from Copy of Settlement which is placed at Pages 44 to 45 of the Paper Book filed before us. Thereafter, on 30.11.2011, a settlement deed was entered into between the assessee, M/s Srinivasa Minerals and Traders Ltd. and

partners of M/s Sideswarra International on 30.11.2011 prior to commencement of arbitration proceedings. On account of above settlement, the assessee withdrew its claim for ongoing arbitration proceedings with M/s Srinivasa Minerals and Traders Ltd. The order of Hon'ble High Court of Karnataka dated 17.12.2011 in respect of arbitration proceedings is placed at Pages 55 to 60 of the Paper Book. As a part of settlement, M/s Sideswarra International acknowledged vide letter dated 29.10.2014 that Rs. 10.35 Cr. is outstanding in its books for the assessee company. A copy of confirmation obtained from M/s Sideswarra International is placed at Page 61 of the Paper Book. This was the exact amount outstanding from M/s Sideswarra International in the books of the assessee as is evident from Page 31 of the Paper Book. Thus, during the year under consideration, the assessee has an outstanding carry forward balance payable to M/s Star Coal (India) Pvt. Ltd. amounting to Rs. 12,00,00,000/- and a corresponding carry forward balance receivable of Rs. 10,34,50,000/- from M/s Sideswarra International. During of assessment proceedings, the Id. AO has placed doubts on the genuineness of the liability outstanding to M/s Star Coal (India) Pvt. Ltd. amounting to Rs. 12 Cr. The Id. AO based on surmises and conjectures has assumed that no efforts had been made by M/s Star Coal (India) Pvt. Ltd. to recover back the amount and thus this liability had ceased to exist and such amount of Rs.12 Cr. is not payable by the assessee company and proceeded to make an addition of Rs. 12 Cr by invoking section 41(1) of the Act. The Id. AO has made the addition u/s 41(1) of the Act despite the fact that neither any deduction nor any allowance has been claimed nor any trading liability has been incurred by the assessee in any of the earlier assessment years.

8. We find that the assessee had continued to show the amount received in the sum of ₹12 crores from M/s. Star Coal Private Ltd as a liability in balance sheet as on 31.03.2012. Hence, the liability does not ceased to exist at all as on 31.03.2012. Accordingly, the provisions of section 41(1) of the Act could not be invoked at all by the Id AO by doubting the genuineness of the liability. The

assessee had given valid explanation for retention of such liability in its balance sheet, which is also supported by pending judicial proceedings in the form of arbitration and out of court settlement entered thereon. It is not in dispute that assessee had not claimed any deduction or any allowance in the year in which this liability was created in earlier years. Hence, absolutely one of the main prerequisite of provisions of section 41(1) of the Act is not fulfilled at all so as to press the operation of the said section into service. Hence, we have no hesitation in directing the Id AO to delete the addition made in the sum of ₹12 crores u/s 41(1) of the Act.

9. With regard to addition of ₹5 crores made on account of advance received from Mr. Rajendra Manikonda against sale of properties, we find that Mr. Rajendra Manikonda entered into a Memorandum of Understanding (MOU) with the assessee on 17.01.2007 for acquiring 20 acres of land in Vasant Vihar at an agreed price of Rs 1,75,00,000/- per acre. For acquisition of such land, Mr. Rajendra Manikonda paid an advance of Rs.5 Cr to the assessee through its two companies, namely- SEM India Systems Pvt Ltd. and Xalted information Systems Pvt. Ltd. The amount was paid to the assessee via three cheques as is evident from the details specified at Page 121 of the Paper Book. Such amount is also appearing as outstanding in the books of the assessee as is evident from Page 30 of the Paper Book. In view of the aforesaid MOU, the assessee company started acquiring land and paid Rs. 1.36 Cr as advance to the seller, a copy of general power of attorney and agreement to sell and purchase entered into between the seller of 110 acres of land and Mr. Ashok Anand is placed at Pages 123 to 129 of the Paper Book. Also, a copy of affidavit of Mr. Ashok Anand dated 06.02.2008 stating that the agreements were entered by him for and on behalf of the assessee company is placed at Page 116 of the Paper Book. However, Mr. Rajendra Manikonda could not pay the balance amount for acquisition of 20 acres of land and thus the advance paid by him to the assessee company has been continued to be acknowledged as payable in the books of the assessee. Since the transaction could not move forward, the amount paid to the assessee

by the two companies namely-SEM India Systems Pvt Ltd. and Xalled Information Systems Pvt Ltd. continues to be shown as liability in the books of the assessee even as on 31.03.2012. Also, the amount paid as advance by the assessee for purchase of land continues to be shown as Advance for Purchase of Property as is evident from Page 31 of the Paper Book. Thus the amount outstanding is nothing but a carry forward balance of earlier years. However, the Id. AO stated that the amount of Rs.5 Cr outstanding as on 31.03.2012 appears to be a sham transaction and treated it as unexplained credits for which no liability seems to exist and thus the same was brought to tax u/s 41(1) of the Act. Aggrieved by the order of Id. AO, assessee filed an appeal before the Id. CIT(A). The assessee company submitted that the amount is still outstanding in the books of the assessee as on 31.03.2012. It was further stated that in order to recover back the amount of Rs. 5 Cr., Mr. Rajendra Manikonda through his legal counsel, served a legal notice to the assessee company. A copy of legal notice received and response thereto is placed at Pages 66 to 69 and Pages 70 to 73 of the Paper Book respectively. A notice was also received from the Official Liquidator of SEM India System Pvt. Ltd. demanding the repayment of advance amount which was paid on behalf of Mr. Rajendra Manikonda for acquiring land at Vasant Vihar. A copy of such notice received from office of Official Liquidator is placed at Page 133 of the Paper Book. Thus the contention of the Id. AO that Mr. Rajendra Manikonda has not made efforts to recover back the amount is factually incorrect. The Id. CIT(A) ignoring the detailed submissions made by the assessee, arbitrarily upheld the order of the Id. AO and confirmed the addition of Rs.5 Cr.

10. It is a fact that the assessee has received ₹5 crores as advance against the sale of property. It is also a fact that the assessee has neither claimed any allowance nor any deduction of ₹5 crores in the earlier years at the time of creation of such liability. Hence, the main ingredient of applicability of provisions of section 41(1) of the Act is not fulfilled so as to bring the operation of the said section into service. In fact, a notice has been received from the Official

Liquidator of the one of the companies M/s. SEM India systems Private Ltd demanding the repayment of advanced amount from the assessee company which was paid on behalf of Mr Rajendra Manikonda. Even this statutory notice is completely ignored by the lower authorities in the instant case. The assessee had continued to show the amounts received as advance from Mr. Rajendra Manikonda as a liability in its balance sheet as on 31.03.2012. Hence we hold that the liability had not ceased to exist. There is an acknowledgement of debt by the assessee, even as late as on 31.03.2012. While this is so, how the revenue could conclude that the said liability had ceased to exist and apply the provisions of section 41(1) of the Act without even making a preliminary verification of the fact, whether at all any deduction or allowance was claimed by the assessee in earlier years. Even if the transaction is to be construed as sham, the said transaction was not carried out during the year under consideration and the sum of ₹5 crores reflected as advance is a transaction carried forward from earlier years and veracity and genuineness of the transaction should be tested in the year of actual receipt and not in subsequent years. Even this basic established principle was not appreciated by the lower authorities in the instant case. Hence, we have no hesitation to delete the addition made in the sum of ₹5 crores u/s 41(1) of the Act.

11. With regard to advance received from three parties of ₹97 lakhs against sale of material, the assessee in the year 2007 received an advance from three parties aggregate to ₹97 lakhs towards purchase of iron ore, due to sudden fall in price of iron ore, the parties did not come forward to complete the transaction, though the assessee is willing to complete the transaction. After making ample efforts to persuade to complete the transaction and upon realisation, the transactions are not going to be completed, the entire amount of such advance was offered as income in AY 2014-15 voluntarily by the assessee. Hence, as on 31.03.2012, this sum was indeed reflected as liability by the assessee and the said liability has not ceased to exist as on 31.03.2012, so as to invoke the provisions of section 41(1) of the Act. Either way, the very same sum

has already been offered by the assessee voluntarily in AY 2014-15, which fact is not disputed before us. Hence, we direct the Id AO to delete the addition made in the sum of ₹97 lakhs u/s 41(1) of the Act for AY 2012-13.

12. Accordingly, the Ground Nos. 1 and 3 raised by the assessee are allowed.

13. Ground No. 4 raised by the assessee is challenging the disallowance of legal and professional expenses totalling to ₹27,57,315/- on ad hoc basis.

14. We have heard the rival submissions and perused the material available on record. The assessee has incurred expenses amounting to ₹67,39,291/- during the year under consideration. These expenses were sought to be disallowed by the Id AO on the ground that assessee had not carried out any business during the last 3 years. It was submitted by the assessee that even if no business is carried out, some statutory compliances have to be made by the company as long as assessee company exists and continues, and that employee benefit expenses, rent of premises, legal and professional expenses, travelling expenses, and other administrative and office expenses need to be incurred to protect the interests of the company.

15. The Id CIT(A) accordingly granted relief in respect of employee benefit cost, rent expenses, vehicle running and maintenance, other administrative and office expenses and depreciation to the tune of ₹39,81,956/- and restricted the disallowance to Rs. 27,57,315/- on account of legal and professional expenses alone. We find that the assessee during the year had earned income of ₹23 lakhs on account of interest and other income. The AO observed that this income is not derived from the operating activities of the assessee and is taxed as 'income from other sources' and since no business was carried out by the assessee, he had proceeded to disallow the loss claimed by the assessee in the return of income by effectively disallowing all the expenses claimed. As far as incurrence of legal and professional charges claimed by the assessee, the Id. AR before us submitted that assessee has been conducting business and had also

placed a bid in order to secure a tender of Steel Authority of India Ltd. However, the tender did not materialize and was cancelled. Thus, the finding of the Id. AO that the assessee had not been doing any business is not correct. The assessee had been continuously engaged in participating in tender and had been putting all efforts to keep the business alive. It is a settled position of law that it is not necessary that there should be sales/ purchase for claiming expenditure. This observation of the Id. AO is legally incorrect. An expenditure incurred is allowable expenditure in case it has been incurred wholly and exclusively for the purpose of the business. The provisions of Section 37(1) of the Act are very clear and there is no embargo placed like unless there is an income such expenditure will not be allowable. It is settled law that it is not necessary there should be receipts or sales for the commencement of business. A company may not be able to obtain or to execute a single contract for months and yet it may be deemed to carry on business if during the period of lull and inactivity, the business is kept alive and retains its registered office and holds its meetings. It is not necessary that a business to be in existence should have worked all the time. There may be long intervals of inactivity and a concern may still be a going concern though it may for some time, be quite and dormant. The mere fact that a business man has not been able to obtain a contract and the business has for some time been in that sense dormant would not mean that it had ceased to exist if the assessee continues to maintain an establishment and incurs expenses in the expectation that the work would come and the business would be successful.

16. We find from the above that assessee has been continuously making its efforts to participate in the tender to secure its business for which legal and professional charges are incurred by the assessee. The business of the assessee is still in existence. Hence, these legal and professional charges would be eligible for deduction to the assessee. Accordingly ground No. 4 raised by the assessee is allowed.

17. In the result, the appeal of AY 12-13 in ITA No. 5391/Del/2019 is allowed.

ITA No. 6691/Del/2019 for AY 2013-14

18. The ground No. 2 raised by the assessee is similar to Ground Nos. 1 to 3.3 in AY 12–13 and hence the decision rendered in AY 12-13 shall apply with equal force qua Ground No. 2 for AY 13-14, except with variance in figures.

19. Ground No. 1 raised by the assessee is similar to Ground No. 4 raised by the assessee in AY 12-13 and the decision rendered thereon shall apply with equal force qua Ground No. 1 for AY 13-14 also, except with variance in figures.

20. In the result, appeal of the assessee for AY 13-14 in ITA No. 6611/Del/2013 is allowed

ITA No. 2989Del/2019 for AY 2014-15

21. Ground No. 1 raised by the assessee for AY 14-15 is similar to Ground No. 4 raised in AY 12-13. Hence the decision rendered in AY 12-13 shall apply with equal force for AY 14–15 also qua ground No. 1, except with variance in figures.

22. In the result, the appeal of the assessee in ITA No. 2989/Del/2019 is allowed.

23. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 10/04/2024.

-Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated: 10/04/2024

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi