

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 3383/DEL/2023
Assessment Year: 2021-22**

Conner Institute of Healthcare and Research Centre Pvt. Ltd., B-1/1, NEA, Pusa Road, New Delhi-110005.	<u>Vs</u>	Assessing Officer, Ward-6(1), New Delhi.
PAN- AACCC4873E		
APPELLANT		RESPONDENT
Assessee represented by	Shri Mukesh Gupta, Adv.	
Department represented by	Shri Vivek Kumar Upadhyay, Sr. DR	
Date of hearing	14.02.2024	
Date of pronouncement	01.05.2024	

ORDER

PER M. BALAGANESH, AM:

This appeal, by the assessee, is directed against the order of National Faceless Appeal Centre (NFAC), dated 15.11.2023, arising out of assessment order dated 20.12.2022, passed by the Assessing Officer u/s 143(3) of the Income-tax Act, 1961, pertaining to the assessment year 2021-22.

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

"1. Whether on the facts and in the circumstances of the case the learned lower authorities has grossly erred in law and on facts in adding and confirming the addition of Rs.2,46,38,152/- u/s 41(1) of the Income Tax Act by ignoring the various facts, evidences and submissions etc. on record.

The breakup of Rs.2,46,38,152/- is as under:-

i. Interest Payable to Sh. G.L. Jain Rs.12,96,000/-

ii. Rent Payable to Sh. G.L. Jain	Rs.2,09,27,152/-
iii. Interest Payable to Sh. S.K. Jain	Rs.23,76,000/-
iv. Amount payable to Sunder Traders	Rs.39,000/-

2. Whether on the facts and in the circumstances of the case the learned lower authorities has grossly erred in law and on facts in disallowing expenses of Rs.3,06,833/- by ignoring the various facts, evidences and submissions etc. on record.

The breakup of Rs.3,06,833/- is as under:-

i. Expenses on account of Repair & Maintenance	Rs. 1,33,334/-
ii. Expenses on account of Repair & Maintenance	Rs.97,364/-
iii. Expenses on account of AMC of Air Conditioner	Rs.76,135/-

3. The appellant craves leave to add, alter, amend or forgo any of the grounds of appeal at the time of hearing."

3. We have heard the rival submissions and perused the materials available on record. The return of income for the Asst Year 2021-22 was filed by the assessee company on 15.2.2022 declaring loss of Rs 1,09,13,491/-. This return was revised on 31.3.2022 declaring loss of Rs 1,09,13,491/-. The Id. AO examined the details of Trade Payables as on 31.3.2021 and concluded that the following liabilities had ceased to exist and accordingly invoked provisions of section 41(1) of the Act and made an addition to that extent in the assessment:-

Amount payable to Sunder Traders – Rs	39,000/-
Interest payable to G L Jain	- Rs 12,96,000/-
Interest payable to S K Jain	- Rs 23,76,000/-
Rent payable to G L Jain	- Rs 2,09,27,152/-

4. The assessee submitted that the aforesaid liabilities had been duly reflected as liabilities in the balance sheet as on 31.3.2021 and that the said liabilities had not ceased to exist. The creditors had also not waived off their right to recover the monies from the assessee. Hence provisions of section 41(1) of the Act cannot be made applicable. Further assessee also clarified that no expenditure has been claimed as deduction in respect of interest payable to S K Jain and G L Jain by the assessee. It was also submitted that there was no written rent agreement entered by the assessee and that the rent payable to G L Jain was pursuant to oral agreement entered into with him. It was specifically clarified that the liabilities are payable only to the family members of the directors of the assessee company. Since the assessee company was running into losses, the family members had decided to wait for the recovery of dues from the assessee company. At the same time, they had not waived their right of recovery and assessee also continues to show the liabilities payable to them in their balance sheet as on 31.3.2021. Hence there is no question of cessation of liability or applicability of Law of Limitation as erroneously pointed out by the Id. AO. In view of the above, we hold that the provisions of section 41(1) of the Act cannot be made applicable at all in the instant case as the liabilities had not ceased to exist in the books of the assessee company. Accordingly, the modified ground no. 1 raised by the assessee is hereby allowed.

5. With regard to disallowance of repairs and maintenance of Rs 1,33,334/- ; repairs and maintenance of Rs 97,364/- and AMC of Air conditioner of Rs 76,135/- is concerned, no arguments were advanced by the Id. AR before us. Hence the modified Ground No. 2 is hereby dismissed as not pressed.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in open court on 01.05.2024.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:01.05.2024.

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI