

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, MUMBAI  
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER,**

**ITA No.68/Mum/2024  
(A.Y. 2016-17)**

ACIT 2(2)(1) Room No. 545, 5 <sup>th</sup> Floor Aayakar Bhavan, M.K. Road, Maharashtra - 400020	Vs.	Mediacom Communications Private Limited, 349 Business Point, Western Express Highway Andheri East Maharashtra - 400059
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAFCM6252N		
Appellant	..	Respondent

Appellant by :	Nikhil Tiwari
Respondent by :	Smiti Samant

Date of Hearing	21.05.2024
Date of Pronouncement	21.06.2024

आदेश / O R D E R

**Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order of Id. CIT(NFAC) dated 07.11.2013 u/s 250 of the Income Tax Act, 1961 for A.Y. 2016-17. The revenue has raised the following grounds before us:

*“Ground No. 1: On the facts and in the circumstances of the case and in law the Ld. CIT(A) was erred in deleting the addition of Rs. 15,14,41,639/- made u/s 41(1) ignoring the factual finding of the AO recorded in order u/s 143(3).*

*Ground No. 2: On the facts and in the circumstances of the case and in law the Ld. CIT(A) was erred in admitting in deciding the appeal admitting the additional evidence produced by the assessee without giving the opportunity to the revenue in violation of Rule 46A of the IT Rule 1962?*

*Ground No. 3: On the facts and in the circumstances of the case and in law the Ld. CIT(A) was erred in deleting the addition of Rs.15,14,41,639/- made u/s 41(1) on the ground of assessee paying of the impugned liabilities subsequent year ignoring the facts that addition u/s 41(1) in this year will not be remitted only because of later liquidation of liabilities which can only be afterthought?*

*Ground No. 4: The appellant craves the leave to add, amend, alter and/or delete any of the grounds of appeal as above.”*

2. Fact in brief is that return of income declaring total income of Rs.31,86,19,330/- was filed on 26.11.2016. The assessment u/s 143(3) of the Act was finalised on 15.12.2019. The assessee company is in the business of buying and selling media spaces in the form of spaces for advertising in print media. Further fact of the case is discussed while adjudicating the ground of the appeal of the revenue.

**Deleting addition of Rs.15,14,41,639/- u/s 41(1) of the Act:**

3. During the course of assessment the assessing officer has issued notice u/s 133(6) to the various parties to verify the claim of sundry creditors shown in the balance sheet as on 31.03.2017. However, the following parties has not replied to the notice issued u/s 133(6) of the Act.

Sr. No.	Name of the party	Credit amount (As on 31.03.2017)
1.	Kinetic Advertising India Pvt. Ltd.	8,97,07,955
2.	Bennett Coleman & Co. Ltd.	1,65,57,137
3.	Vision Time India Pvt. Ltd.	1,49,95,645
4.	Interactive Television Pvt. Ltd.	1,47,28,667
5.	The Malayala Manorama Co. Ltd.	96,67,007
6.	Netcore Solutions Pvt. Ltd.	57,85,228
	Total	15,14,41,639

On query the assessee company has not made any submission before the assessing officer, therefore, the AO has treated the aforesaid sundry creditors amounting to Rs.15,14,41,639/- as non-genuine and same was added to the total income of the assessee as per provision of Sec. 41(1) of the Act.

4. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee. The relevant extract of the decision of ld. CIT(A) is reproduced as under:

“6. Findings & Decisions:

6.1 I have gone through the assessment order and grounds of appeal The learned AO has carried out additions detailed as under:

- a) Additions u/s 41(1) of Rs.15,14,41,639/- on account of cessation of liability and,
- b) Suppression of income of Rs.40,133/-.

Aggrieved by the assessment order, the appellant has raised multiple grounds of appeal. The appellant during the appeal proceedings requested for VC which was granted and the submissions made during the said proceedings are also duly considered while deciding the appeal.

6.2 During the year under consideration, the appellant had shown closing balance of certain creditors amounting to Rs. 15,14,41,639/- as on 31.03.2016. In order to test the genuineness of the creditors claimed, the learned AO had issued notices u/s 133(6) of the Act to the concerned parties The A O in the assessment order passed has stated that the concerned parties have not replied to the notices issued The A.O also issued a show-cause notice to the appellant o 07 12.2019, for which no reply was received and hence the A. O concluded the order making additions to the tune of Rs. 15,14,41,639/-, for falling to substantiate the genuineness of the claims made

6.3 It is also noticed that there was difference in income declared in ITR as compared to the information available in 26AS. The details were queried from the appellant and there existed difference of Rs. 40,133/- which was proposed to be taxed by the A.O, vide show-cause dated: 11.12 2019. Since no reply was received from the Appellant, the A.O concluded the assessment order bringing to tax the amount of Rs. 40,133/- as additional income.

6.4 During the appellate proceedings, certain additional claims have been made as well. The grounds of appeal are summarized as under:

Ground No.	Remarks
1.	General in nature and is with respect to the additions made in the assessment order being erroneous
2.	This ground is raised in relation to non-granting of opportunity of being heard.
3.	Relates to additions made u/s 41(1) of the Act amounting to Rs.15,51,41,639/-
4.	Relates to additions made on account of mismatch in income reported in AIR
5.	Relates to levy of interest
6.	Relates in initiation of penalty

7.	<i>Additional ground/claims made in respect of deduction of education cess paid on Income Tax.</i>
8.	<i>Additional ground/claims made in respect of deduction of education cess paid on DDT.</i>
9.	<i>Additional ground/claims made in respect of excess DDT payment of Rs.1,76,84,331/-</i>

6.5 The grounds of appeal raised from 1 to 6 are w.r.t the additions made u/s 41(1) of the Act, on account of cessation of liability and additional business income on account of mismatch of income declared in ITR via-a-vis, as reported in AIR The grounds of appeal are collectively disposed off as under:

6.6 During the appellate proceedings, the appellant submitted detailed explanations in support of grounds of appeal preferred. In respect of additions made u/s 41(1) of the Act, the appellant submitted as under:

a) The provisions of Section 41(1) of the Act should not attract-The expenditure incurred and outstanding creditors are genuine Reliance is placed on the provisions of Section 41(1) of the Act and Judgement of Hon'ble Supreme Court in the case of CCIT Vs Kesaria Tea Co Limited (2541TR454)

b) It is claimed that in the present case, the learned AO has not given any such finding that the above liabilities are no longer payable The appellant also claimed that the impugned liabilities are subsequently paid off in subsequent years through proper banking channels These transactions are recorded in the audited financial statements. Extract of financial statements are also enclosed

c) It is also claimed that unless remission or cessation is proved, section 41(1) of the Act cannot be invoked. Reliance is placed on the judgements of various hon'ble Courts in this regard. Viz. CIT Vs Sugauli sugar works (P) Limited (236 ITR 518)(SC), CIT Vs Enam Securities (P) limited 21taxmann com267 (Bombay High court), CIT Vs Nitin Garg (208Taxman.16) (Gujarat HC), ITO Vs Vikram A Pradhan (ITA 2212/Mum/2012) (Mumbai Tribunal), ACIT Vs Samrat Rice Mills (P) Limited (23taxmann.com350) (Delhi ITAT) and CIT Vs vardhaman overseas Limited (3431TR408)2012 (Delhi HC)

d) It is claimed that the appellant is engaged in the business of media planning. buying and implementing media activities for its clients which interalia includes releasing advertisements in various media platforms such as press, television, radio, internet e.t.c. It is claimed that the closing balance being shown payable to various vendors is w.r.t the purchases made from these parties in earlier years, and the same was accepted by learned A.O in those years. The appellant has also enclosed screen shot of company master data from MCA website evidencing existence of creditors and sample invoices raised to them.

e) It is further claimed by the appellant that the outstanding balances have been paid off in subsequent years though banking channels and hence the same cannot be added as income u/s 41(1) of the Act.

f) *It is further claimed that few of parties have even responded to the notices issued by the A.O.*

g) *It is further claimed that the learned A.O did not provide sufficient time to submit the details. It is claimed that notice u/s 133(6) is issued on 04.12.2019 requiring responses within 2 working days, SCN is issued on 11.12.2019 and the assessment order is passed on 15.12.2019.*

h) *It is claimed that kinetic Advertising India Private Limited and Vision Time India Private Limited have received notices on 06.12.2019 and 19.12.2019 respectively and they have replied to the department on 16.12.2019 and 24.12.2019 respectively. Relevant communications are also enclosed. It is also claimed that Bennett Coleman and Co. Limited, Net Core Solutions Private Limited and Interactive Televisions Private Limited have not received the notices. It is thus claimed that non-compliance to the notice u/s 133(6) of the Act cannot be a valid and sole ground for making additions. Reliance in this regard is placed on the judgement of Hon'ble Kolkatta High Court in the case of Inbuilt Merchant Private Limited Vs CIT (ITA no. 225/2013), Mumbai Tribunal in the case of ITO VS Agripure Tradeware Private Limited (TS-377-ITAT-2021 (Mum)), Simplex casting Limited Vs DCIT (Mumbai ITAT) ITA no. 1562/Mum/2015), Harish Mohini Kathuri vs ACIT (Delhi ITAT) (ITA no. 1872/Del/2010), and Chel India Pvt Limited Vs ITO (Delhi Tribunal) (ITA no 6183/Del/2014)*

i) *The appellant has also enclosed ledger copy of balance outstanding in the case of the appellant in the creditors books of accounts, subsequent year payment details and bank statements.*

*In respect of additions made towards undisclosed business income on account of mismatch in income declared in ITR and as reported in AIR, the appellant submitted as under*

a) *The appellant claimed that it has not received the notice, dated: 11.12.2019.*

b) *It is further claimed that TDS pertaining to Edelwiss in claimed at Rs.5,895/- which is lower than the TDS credit appearing in Form 26AS Further, it is also claimed that total revenue offered from Edelweiss is Rs.19,91,723/- which is much higher than income of Rs.11,05,822/- reported in 26AS, hence the addition made is required to be deleted*

6.7 *The submissions made by the appellant have been duly considered. It is noticed that the appellant has duly clarified the issues in hand viz. Additions made u/s 41(1) of the Act and undisclosed business income taxed on variation noticed based on AIR information available. In respect of closing balances shown with various creditors, the appellant has furnished ledger extract of its balances in the creditors books of accounts and subsequent payment details evidenced by way of payments through banking channels in bank statements.*

6.8 *The A.O in the assessment order passed has made the additions solely on the ground of non-compliance to the notice u/s 133(6) issued. It is a settled law that the provisions of section 41(1) of the Act cannot be invoked unless cessation or remission is proved. In the instant case, no facts have been brought*

*on record, which could prove cessation or remission. It is further noticed that the assessment order is passed in a hurry without providing sufficient time to reply to the creditors or the appellant. The appellant has submitted relevant details viz. confirmation letters from the creditors, ledger extract of appellant in the creditors books of accounts and even subsequent payment details. The case laws relied by the appellant are found to be relevant and applicable to the facts in hand. Thus, it is reasonable to conclude that the appellant has discharged primary onus of substantiating the balances claimed towards sundry creditors claimed as payable.*

6.9 *In respect of additions made towards undisclosed income on account of mismatch in income declared in ITR and as reported in 26AS, it is noticed that the income declared from the respective party viz. Edelweiss is at Rs.19,91,723/- as against income reported in 26AS of Rs.11,05,822/- As such additions made towards undisclosed income of Rs.40,133/- is not justified.*

6.10 *In view of the above, I am of the considerate view that the amounts claimed as payable to various creditors are duly substantiated. The ledger extracts in the creditors books of accounts and subsequent payment details have corroborated the claims made by the appellant. Since, the appellant has substantiated the liabilities claimed. The additions made are unwarranted and liable to be deleted. Accordingly, the appeal is allowed on this issue.”*

5. During the course of appellate proceedings before us the ld. D.R supported the order of assessing officer.

6. On the other hand, the ld. Counsel submitted that assessing officer has made addition merely on the basis of non-compliance to the notices issued u/s 133(6) of the Act without proving cessation of liability as per Sec. 41(1) of the Act. He also submitted that AO has passed the assessment order without providing sufficient opportunity to the assessee and the assessee has submitted the relevant detail i.e confirmation letter from the creditors, ledger extract of the assessee in the creditors books of account and also the detail that outstanding balance have been paid off to all the parties in the subsequent year before the ld. CIT(A).

7. Heard both the sides and perused the material on record. The assessing officer has issued notice u/s 133(6) of the Act to the various parties shown as sundry creditors in the balance sheet of the assessee company. Some of the parties who had not responded to the notice issued by the assessing officer as referred above in this order were

treated as non-genuine and amount of credit balance shown against their name to the extent of Rs.15,14,41,639/- was added u/s 41(1) of the Act to the total income of the assessee. The assessee has brought to the notice of the Id. CIT(AI) that some of the sundry creditors parties have even not received notice issued by the assessing officer u/s 133(6) of the Act and the assessing officer has passed the assessment order on 15.12.2019 without giving proper opportunity to the assessee. The Id. Counsel also submitted that even before passing the assessment order on 11.12.2019 the assessee has submitted the details of vendors and copies of ledger account of the creditors whom the notice issued u/s 133(6) of the Act were issued. The relevant copies of details including ledger account of the creditors submitted by the assessee were placed at page no. 70 to 232 of the paper book. However, the assessing officer has not considered such relevant details and supporting evidences furnished by the assessee on 11.12.2019 before passing the order on 15.12.2019. Thereafter at the time of appellate proceedings the assessee has also provided copies of bank statement of the sundry creditors highlighting the payment of Rs.15,14,41,639/- made to the sundry creditors in assessment year 2017-18 along with copies of relevant sample invoices, copies of ledger account of the creditors etc. The revenue has not brought any contrary material on record to the undisputed fact that all the sundry creditors were repaid in the subsequent assessment year 2017-18 as per the relevant copies of ledger account showing the detail of transaction with invoice no. TDS amount transaction no. etc. were filed before the AO. Further the assessee has also provided the detail like copies of bank statements showing that all the outstanding balance in respect of sundry creditors have been paid in subsequent year through banking channel. It was not proved that there was cessation of liability as per provision of Sec. 41(1)

of the Act. Therefore, we don't find any reason to interfere in the decision of Id. CIT(A). The ground of appeal filed by the Revenue stand dismissed.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 21.06.2024

Sd/-

(Rahul Chaudhary)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 21.06.2024

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**