

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'E': NEW DELHI)**

**BEFORE SHRI GS PANNU, VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No:- 299/Del/2017
Assessment Year: 2012-13**

ITO, Ward-17(1), Ne Delhi.	Vs.	M/s Modi Entertainment Network Ltd., 1G, Bharat Nagar, Mata Mandir ki Gali, New Delhi-110065.
PAN No: AAACM8283G		
APPELLANT		RESPONDENT

Revenue by : Shri Shubra Jyoti Chakraborty, CIT(DR)
Assessee by : Shri Deepesh Garg, Adv. &
Shri Shauriya Jain, CA

Date of Hearing : 09.05.2024
Date of Pronouncement : 27.06.2024

ORDER

PER ANUBHAV SHARMA, JM

This appeal has been preferred by the Revenue against the order dated 30.11.2016 of Commissioner of Income Tax (Appeal)-33, New Delhi, [hereinafter referred to as 'CIT(A)'] in Appeal No. 242/16-17 arising out of an appeal before it against the order dated

20.03.2015 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward 17(1), New Delhi, (hereinafter referred as the Ld. AO) for Assessment Year 2012-13.

2. The assessee had filed return of income at nil and was processed U/s 143(1) of the Act and later on taken up for scrutiny. The assessee has declared business income of Marketing and Distribution of Entertainment Satellite Television Channels. The Assessing Office examined the interest on fixed deposits and concluded that as there was no business activity during the year under consideration and there appeared to be no intention of the company to continue business in future. As there were no sales, purchases or business receipts during the year. The expenses claimed in P&L Account in regard to Audit Fees Liquidator's expenses, Prior Period Expenses of Interest and Depreciation totaling Rs. 78,07,398/- were disallowed.

2.1 Disallowance was made U/s 41 of the Act of Rs. 34,04,550/- on the basis that M/s Fashion Television India Pvt. Ltd. had confirmed that they do not have any amount receivable from the assessee as the amount paid has been written off.

2.2 Further, the addition of Rs. 36,87,19,763/- was made U/s 41 of the Act concluding that no liability towards sundry creditors existed on date. The AO observed that since the business activity of the assessee company having closed long time back and no ITR was filed after A.Y. 2008-09 wherein assessment was completed U/s 144 of the Act, and the parties shown as sundry creditors have failed to respond to notice U/s 133(6) of the Act, the amounts lying for more than 6 years unpaid have ceased to be liability.

3. The CIT(A) deleted the addition of Rs. 34,04,550/- on the basis of following finding in para 7 with its sub-pars as follows:

“7. Ground no.4 relates to an addition of Rs.34,04,515/-w/s 41(1) of the Act in respect of amount payable to M/s. Fashion Television India Pvt. Ltd. on the ground that the said liability has ceased to exist during the relevant previous year. In the assessment order the A.O. has recorded as under:-

"During the course of assessment proceedings, it was seen that the assessee company has shown Loans taken amounting to Rs. 1,46,36,068/- out of which Rs. 1,12,31,518/- pertain to M/s Indo Euro Investment Co. Pvt. Ltd and Rs. 34,04,550/- pertain to M/s Fashion television India Pvt. Ltd. Notice U/s 133(6) were sent to the parties for verification and claim of the assessee regarding the liabilities as loans towards these parties. In reply to the Notice, M/s Fashion television India Pvt. Ltd. has confirmed that they do not have any amount receivable from the assessee company as the amount paid has been written of in these circumstances, it is apparent that no liability towards M/s Fashion Television India Pvt. Ltd for the loan amount of

Rs.34,04,550/-. In this regards, the assessee company has furnished its reply vide letter dated 20.03.2015. The submission of the assessee company has been examined on merits and not found to be tenable. Accordingly I hereby add a sum of Rs.34,04,550/- to the income of the assessee company by invoking the provision of Section 41 of the Income Tax Act, 1961."

7.1 During the appellate proceedings the appellant has submitted that the said loan is outstanding since 2009. The appellant has further, submitted that as the said amount is not on account of any loss, expenditure or trading liability incurred by the appellant during any earlier year, Section 41(1) is not attracted.

7.1.1 Further, the appellant has submitted a copy of reply to notice u/s 133(6) made by M/s. Fashion Television India Pvt. Ltd. to the ITO Ward-17(1) on 27.02.2015. It is noted that the A.O. has made the addition on the strength of the same reply in which M/s. Fashion Television India Pvt. Ltd. have stated that the amount of Rs.34,04,550/- has been written off.

7.1.2 However, the A.O. has not considered the following in the above quoted reply.

"It has come to our knowledge that Modi Entertainment Ltd. has not been liquidated and we are again requesting them for our payment."

7.2 After considering the totality of circumstances, in view of appellant's liability towards M/s. Fashion Television India Pvt. Ltd. still continuing during the A.Y. in question, the addition made by the A.O. cannot be sustained. The same is deleted. Ground no. 4 is allowed."

4. The addition of Rs. 36,87,19,763/- U/s 41 of the Act, was deleted by CIT(A) by following relevant finding in paras 8.2 and 8.4 as follows:-

“During the appellate stage the appellant had submitted as under :-

a. Out of the sum of Rs.36,87,19,763/-, a sum of Rs.7,73,93,831/- has been disallowed by the appellant suo-moto u/s 41(1) during the A.Y.2013-14 as the same was written back by the appellant during A.Y. 2013-14. As per appellant's submission disallowance of the same during the A.Y. 2012-13 also will tantamount to double taxation. I agree with the contention of the appellant.

b. Amounts of Rs. 92,70,24/- payable to ESPN Software India Pvt. Ltd. Rs. 12,03,13,406/- payable to Prasar Bharti Corporation India, Rs. 67,46,925/- payable to B4U Tele Network India Pvt. Ltd. are under dispute and the details are as under:-

(i) Prasar Bharti Corporation India - Dispute/Litigation pending with the party before the Delhi High Court

(ii) B4U-Dispute/litigation with the party was pending in Arbitration.

(iii) ESPN- There was litigation pending between appellant and ESPN as on 31.03.2012 which was amicable settled in subsequent year.

The appellant has submitted that in view of the parties still battling law-suits for recovery of this amount, this amount cannot be treated as no longer payable. I agree with the contention of the appellant.

c. In respect of Rs. 1,56,12,676/- payable to Cable Distribution Network (HMA Udyog) and Rs.13,93,31,611/- payable to Integrated Technology Solutions Pvt. Ltd., the appellant has submitted that even though these loans were written off by the parties concerned in the books of accounts in view of the appellant being under liquidation, they have revived their claim once the appellant is out of liquidation, as is evident from the following.

(i) In the reply to the A.O. dated 27.02.2015 M/S. Cable Distribution Network (HMA Udyog) (a division HMA Udyog Pvt. Ltd.) has included the following:-

‘We have been recently informed that Modi entertainment Ltd is now out of liquidation proceedings. Therefore, we are now following up with

them for our payment of Rs. 1,56, 12,676.31. However, we have not yet received any sum in respect of our claim."

(ii) In the reply dated 27.2.2015 M/s. Integrated Technology Solutions Pvt. Ltd. have included the following:-

"We have been recently came to know that Modi entertainment Ltd. is now out of liquidation proceedings. Therefore, we are now following up with them for our outstanding payment of Rs. 13,93,31,610.86."

8.4 In the above facts and circumstances I am of the considered view that even though the appellant's business has ceased, the appellant continues to exist as a legal entity and the amounts payable to different parties are either being contested in law suits/arbitration proceedings or having been once written off in the books of accounts of the concerned parties have since been revived. In these circumstances the action of the A.O. to add these u/s 41(1) is pre-mature. Therefore, the addition is deleted. Ground no. 5 is allowed."

5. Accordingly, the Revenue is in appeal raising following grounds:

"1. Whether in the facts and of the case, the Ld. CIT(A) is legally justified in deleting the addition of RS. 34,04,540/- and Rs. 36,87,19,763/- u/s 41(1) of the IT Act, 1961 (the Act) even when the business activities of the assessee had ceased to exist since long as observed by the CIT(A) himself?

2. Whether in the facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting the addition of RS. 34,04,540/- and Rs. 36,87,19,763/- u/s 41(1) of the Act even when the liability to loan providers and creditors had ceased to exist and none of the loan providers and creditors had challenged cession of such liability?

3. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."

6. Heard and perused the record. Although Ld. DR has relied the findings of AO, however, could not counter the claim of Ld. AR that, after filing the last ITR, in the intervening period, the assessee

company was under financial crisis and was in major litigation, including liquidation proceedings. However, the assessee company has survived and come out of it. In this context we observe from the paper book filed by appellant that on page no. 173 there is Note 1 as part of the audited financial statement for AY 2022-23, where it is mentioned that the Provisional Liquidator appointed by order dated 2nd March 2009 has been discharged by order dated 24th September 2012. Ld. AR has also cited before us the copy of order dated 17/03/2017 of Hon'ble Delhi High Court, where by an arbitral award against the assessee and in favour of Prasar Bharti, was set aside. This shows that assessee was under distress but was contesting for its claims before courts.

7. We are of considered view that certain events can make it unviable for a company to carry on its business in present but if the company continues its existence trying to come out of ruins then, it cannot be said that there was no business activity. Merely some of the parties to whom money is shown payable have considered the amount to be no more recoverable from assessee company cannot be ground to make disallowance u/s 41 of the Act. CIT(A) has duly

taken into consideration the pleas of assessee to conclude that AO was in error to allege closure of business. Thus we find no substance in the grounds raised.

8. The appeal of Revenue is dismissed.

Order pronounced in the Open Court on 27.06.2024

Sd/-
(GS PANNU)
VICE PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 27/06/2024.
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	