

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI

**BEFORE MS KAVITHA RAJAGOPAL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 922/MUM/2024
Assessment Year: 2016-17**

Rapport Outdoor Advertising Pvt. Ltd., 4 th Floor, Chhibber House, Sakinaka, Mumbai – 400 072 (PAN : AAACF0807B)	Vs.	Deputy Commissioner of Income Tax – 3(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Rajan Vora, CA
Shri Nishit Shah
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 19.06.2024
Date of Pronouncement : 28.08.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1059376210(1), dated 04.01.2024 passed against the assessment order by Deputy Commissioner of Income Tax-3(3)(1), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 28.12.2018 for Assessment Year 2016-17.

2. Grounds taken by the assessee essentially relates to addition of ₹6,55,67,436/- towards trade payables by invoking provisions of Section 41(1) considering cessation of liability by holding that assessee has not proved them as genuine since their existence was not established and the differences could not be reconciled.

3. Brief facts of the case are that assessee is engaged in business of outdoor and rural advertising, acting as agents, consultants and contractors. Assessee procures outdoor advertisement from vendors and further provides the same to advertisers and customers on need basis. Return of income was filed on 30.11.2016, reporting business income of ₹ 7,01,34,992/-. In the course of assessment, ld. Assessing Officer called for details in respect of creditors and trade payables shown as outstanding in the balance sheet of the assessee. Assessee furnished the details sought by the ld. Assessing Officer which included details of trade payable balances, i.e., name of the creditors, amount of balance outstanding, address of the creditor, ppermanent Account Number (PAN) and other details as requested. Ld. Assessing Officer issued a show cause notices u/s. 133 (6) to the 37 creditors on 17.12.2018. Most of them were not complied by the concerned creditors. Assessee was asked to show cause why the entire creditors and trade payables should not be held as nongenuine for which time of three days was given to the assessee. Assessee claims that owing to voluminous details which requires elaborate time to collate all the details, the same could not be furnished, except for providing copies of sample invoices of the vendors. Assessment was completed by making the addition of ₹ 6,55,67,436/- by passing an order on 28.12.2018 by holding the creditors as bogus.

3.1. Assessee categorised the total additions, so laid into three categories viz:

- a) creditors in respect of whom no response on notices issued u/s. 133(6) were received – Rs.4,78,63,686/-.
- b) Creditors whose closing balances differed from the balances shown by the assessee – Rs.1,49,89,250/-

c) Creditors who confirmed that no transactions were made with the assessee during the year – Rs.27,14,500/-

4. Aggrieved, assessee went in appeal before the ld. CIT(A). Before the ld. CIT(A), assessee filed additional evidences providing party-wise reconciliation of the balances of the creditors in assessee's books vis-à-vis creditors' books along with supporting documents, since adequate time and sufficient opportunity was not granted by the Ld. Assessing Officer during the course of assessment proceedings. On these additional evidences, ld. CIT(A) called for remand report. Pursuant to this direction by ld. CIT(A), Ld. Assessing Officer issued a notice dated 20.11.2019 on the assessee to take up the remand proceedings, fixing the date of hearing on 10.12.2019. Copy of the said notice is placed in the Paper Book.

4.1. In the course of the remand proceedings, Ld. Assessing Officer issued fresh set of notices to the creditors u/s. 133(6), to which most of them responded. By way of a supplementary Paper Book, assessee has placed on record all the responses made by the creditors, before the ld. Assessing Officer during the remand proceedings. Thereafter, nothing came up from the ld. Assessing Officer on the conclusion of the remand proceedings.

4.2. Subsequently, the appeal was transferred to the National Faceless Appeal Centre (NFAC). In the faceless appellate proceedings, assessee made its submissions on 23.10.2023, in which it was pointed out that assessee had filed additional evidences and 04.10.2019 and a remand report was called from the ld. Assessing Officer who had undertaken the verification exercise but no conclusive report was placed on record by the Ld. Assessing Officer of the remand

proceedings undertaken by him. Assessee has placed on record e-response acknowledgement for its submission made on 23.10.2023 before the ld. CIT(A). Ld. CIT(A) confirmed the additions made the Ld. Assessing Officer and passed the impugned order on 04.01.2024 disregarding both, the additional evidence furnished by the assessee and the ground-wise submissions placed on record.

5. Ld. Counsel for the assessee submitted that there is a gross violation of principles of natural justice by the ld. Assessing Officer, who did not provide sufficient time and opportunity to make the submissions in respect of the addition made. According to the Ld. Counsel, ld. Assessing Officer, in the assessment proceedings had issued notices u/s.133(6) to the creditors at the fag end of the limitation of completing the assessment because of which necessary compliances could not be made. In order to cover up the requirements to establish the claim of assessee, all the relevant documents and explanations were placed before the ld. CIT(A) as additional evidences, for which the remand report was called for. Ld. Assessing Officer did initiate the remand proceedings by issuing notice dated 20.11.2019 and also issued fresh set of notices u/s.133(6) to the creditors who responded directly to the Assessing Officer in remand proceedings and substantiated the outstanding balances payable by the assessee and the transactions undertaken in that respect. According to the Ld. Counsel, the remand proceedings did not reach its finality and conclusion, since there is nothing in record to show that a remand report by ld. Assessing Officer was placed before the ld. CIT(A).

5.1. It is claimed by the ld. Counsel that assessee had placed on record, all the relevant documents and explanations before the ld. CIT(A), which has not been taken into consideration before dismissing

the appeal and sustaining the addition. Ld. Counsel has evidently demonstrated by placing on record copies of responses made by the creditors directly to the ld. Assessing Officer against notices issued u/s.133(6). Then there is no cessation of liability and assessee is liable to pay the creditors and discharge its liability. Assessee has also placed on record an elaborate chart giving details and documents alongwith explanations for each of the creditors which are placed on record. Accordingly, on the strength of all these documents and explanations, ld. Counsel claims that transactions undertaken by the assessee are genuine and the creditors are also genuine. The addition has been made merely because certain parties did not respond to the notices issued u/s. 133(6) which cannot be the sole reason to make such additions u/s. 41(1), unless it is established that the liability has actually ceased to exist. Assessee continues to be liable to pay the outstanding balances duly reported in the Balance Sheet for which corroborative evidences are placed on record. According to the ld. Counsel, genuineness of the trade liability could have been considered in the year in which they were claimed as liability. In the present case in the year under consideration, the issue is in respect of addition made u/s. 41(1) by treating it as remission of liability, though in fact there is no such remission.

5.2. According to the ld. Counsel, addition has been made on assumption without bringing any cogent positive material on record to demonstrate that the liability has ceased to exist for the amounts outstanding to the creditors despite the fact that all these liabilities are appearing in the balance sheet of the assessee, acknowledging the debt payable by the assessee to the respective creditors.

5.3. Ld. Counsel placed reliance on the decision of Hon'ble Supreme Court in the case of Sugauli Sugar Works (P) Ltd. vs. Commissioner of Income Tax, 80 (1999) 236 ITR 518 (SC) to submit that cessation of liability can be done not by the unilateral Act but it can be so done by the bilateral Act alone. So long as the assessee is recognising the liability to pay to the creditors, there should not be any question by the authority to intervene and assume that the amount is not payable by the assessee. On such presumptions by the authority about the cessation of liability, there is not even a unilateral Act let alone the bilateral Act.

5.4. In the alternate, it was also submitted that since the additional evidences placed on record by the assessee before the ld. CIT(A) as well as in the remand proceedings, and the same were not considered by the respective authorities, the matter may be remanded back to the Jurisdictional Assessing Officer (JAO) for verification of the same by granting reasonable opportunity of being heard to the assessee. Ld. Counsel insisted that the matter may be remanded back to the file of JAO and not to the faceless assessment centre by placing reliance on the decision of Hon'ble Jurisdictional High Court of Bombay in the case of Ashok Chaganlal Thakkar [2024]159 taxmann.com 559(Bom), wherein the Hon'ble High Court remanded the matter to the jurisdictional Assessing Officer on the basis that it will be easier for the jurisdictional Assessing Officer to call for the records and make necessary enquiries.

6. Per contra, ld. Sr.DR placed reliance on the orders of the authorities below.

7. We have heard both the parties and perused the material on record. Ld. Assessing Officer has made the addition u/s. 41(1) holding the creditors as bogus. Assessee had supplied partial details in the course of assessment proceedings which were called for at the fag end of the limitation period of completing the assessment. Before the ld. CIT(A), assessee furnished all the relevant documentary evidences in the form of additional evidences for which remand report was called for from the ld. Assessing Officer. It is worth noting the fact that remand proceedings were initiated by the ld. Assessing Officer directly by issuing a notice dated 20.11.2019. A fresh set of notices u/s. 133 (6) were issued by the Ld. Assessing Officer to the creditors which were all responded directly to him as is evidenced by the supplementary paper book furnished by the assessee before us. In the course of first appellate proceedings the adjudication process shifted from the physical mode of hearing to the faceless regime. Assessee has evidently demonstrated with corroborative documentary evidence that it had filed the necessary and relevant documentary evidences before the ld. CIT(A), vide its application dated 04.10.2019 on the application made by the assessee u/r. 46A and the paper book. Ld. CIT(A) had issued a letter dated 07.11.2019 to the Assessing Officer calling for a remand report. The said letter is placed in the paper book at page 77 which is duly stamped and signed by receiving officer in the office of the ld. Assessing Officer. Further, in the faceless regime, assessee had once again uploaded the details in respect of all the creditors along with supporting documentary evidences in digital mode on 23.10.2023 duly acknowledged by e-proceedings acknowledgement placed on record at page 84 of the paper book.

8. We note that despite all the submissions placed on record by the assessee before the ld. CIT(A) both in the physical mode of hearing as

well as in the faceless regime, ld. CIT(A) has failed to consider the submissions on record and passed the impugned order. In this respect, observation of ld. CIT(A) that assessee is unable to submit any evidences to prove the existence of the parties and has failed to reconcile the discrepancies is uncalled for. It is also not understandable as to why Ld. CIT(A) did not follow up with the ld. Assessing Officer for completion of the remand proceedings and obtain a remand report, though the same were initiated for the purpose of verification and examination of additional evidence furnished by the assessee u/r. 46A of the Rules. Even at the level of ld. Assessing Officer, there is a failure on his part of not completing the remand proceedings and furnishing remand report as called for by the higher authority, i.e., ld. CIT(A). Such an approach by the adjudicators both ld. CIT(A) and ld. Assessing Officer entrusted with the administration of the Act, is highly deprecated.

9. The additional evidences furnished by the assessee before the ld. CIT(A), as well as the responses made by the creditors against the fresh set of notices issued u/s. 133(6) in the course of remand proceedings undertaken by the ld. Assessing Officer at the instance of ld. CIT(A) have remained to be taken into consideration on the issue raised before us. In this given set of circumstances, we find it appropriate to set aside the impugned order and remand the matter back to the file of ld. Assessing Officer, for passing a fresh assessment order.

9.1. Considering the decision of Hon'ble Jurisdiction High Court of Bombay in the case of Ashok Chaganlal Thakkar (supra), we remit the matter to the file of jurisdictional Assessing Officer (JAO) to examine the additional evidences brought on record to establish the claim of

the assessee towards creditors and trade payables which are outstanding and reflected in the balance sheet which otherwise have been held by the Ld. Assessing Officer for addition u/s. 41(1) on account of cessation of liability. In terms of the decision of Hon'ble Bombay High Court, we direct the JAO that if he has to reject the evidences filed by the assessee, he shall bring contrary material on record by taking such steps as required by conducting necessary enquiry and verification. We also direct the JAO to give reasonable opportunity of being heard to the assessee and make any further submissions. Accordingly, grounds taken by the assessee are allowed for statistical purposes.

10. In the result, appeal of the assessee is allowed for statistical purpose.

Order is pronounced in the open court on 28 August, 2024

Sd/-

(Kavitha Rajagopal)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 28 August, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai