

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.359/Ahd/2024
(Assessment Year: 2017-18)

Deputy Commissioner of Income Tax (Exemptions), Circle-1, Ahmedabad	Vs.	Lok Jagruti Kendra, L J College Campus, Vastrapur, Gujarat-380015
[PAN No.AAATL0854D]		
(Appellant)	..	(Respondent)

Appellant by :	Shri S. N. Divatia & Shri Samir Vora, A.Rs.
Respondent by:	Shri B.P. Srivastava, Sr. DR

Date of Hearing	19.09.2024
Date of Pronouncement	25.09.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Department against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 28.12.2023 for Assessment Year 2017-18.

2. The Department has taken the following grounds of appeal:-

“1. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 4,51,76,262/-, assuming the facts that ‘no payment towards the unfinished work was actually made in the year 2002 and also the same has not been claimed as an expenditure even in F.Y. 2002-03 and dispute is pending before the mediator’ contrary to the findings recorded by Assessing Officer in Para 15.1 and Para 13.1 Assessing Officer respectively and without confronting any additional evidence to the Assessing Officer.”

3. The brief facts of the case are that the assessee is a Trust established to work for social, economic, political cultural and intellectual development of people through educational activities of all kinds. During the course of

assessment, the Assessing Officer analyzed the Balance Sheet of the assessee as of March 31st, 2017, which reflected a significant amount of Rs. 4,60,08,917/- under "Sundry Creditors" and Rs. 4,96,50,747/- under "Loans and Advances." Upon reviewing the ledger accounts submitted by the assessee, the Assessing Officer noted that there were no closing balances for sundry creditors, and only Rs. 4,40,944/- was recorded under loans and advances. The audit report indicated that the trust operates on a cash accounting system, raising concerns about the discrepancies related to the reported liabilities. In response to the observations made by the Assessing Officer, the assessee submitted that there are no bogus liabilities under sundry creditors, and submitted that the reported figures relate to creditors for goods and services received during the Fiscal Year 2016-17. The Assessing Officer was of the view that specific amounts were attributed to advance payments for orders, but the significant liability attributed to Bhavya Developers and Organisers Ltd., amounting to Rs.4,51,76,262/-, lacked supporting documentation. The Assessing Officer found the explanation of the assessee unsatisfactory, and noted the absence of any evidence to substantiate this substantial liability. The Assessing Officer was of the view that despite multiple opportunities for clarification, the assessee failed to provide adequate documentation regarding transactions with Bhavya Developers and Organisers Ltd. Notably, the PAN associated with this entity was found by the Assessing Officer to correspond to a different company, raising further doubts about its legitimacy. The absence of a valid PAN for Bhavya Developers indicated it might not exist as a legitimate entity, leading to the conclusion that the liability was likely to be fictitious. The Assessing Officer observed that further examination revealed

contradictions in the accounts of the assessee, including discrepancies in the fixed asset schedule related to a building under construction. The claim of an outstanding liability for a long period dating back since 2002, combined with the lack of evidence regarding any construction work or payments made, suggested an attempt to mislead the Department. Accordingly, the Assessing Officer held that the liability of Rs. 4,51,76,262/- was a bogus entry, benefiting the trust by allowing claims for application of income toward charitable purposes. Since the trust had not genuinely applied these funds for charitable activities, this amount was added back to the total income, leading to an adjustment in the exemption claimed by the assessee.

4. In appeal, on review of the relevant factors, including surrounding circumstances, objective of the Trust, evidence, and available materials, Ld. CIT(Appeals) observed that the assessment order revealed that the balance sheet submitted by the assessee as of March 31st 2017, reflected a significant sum of Rs.4,60,08,917/- as sundry creditors under "Current Liabilities," alongside loans and advances totaling Rs.4,96,50,747/-. The assessee provided a ledger account for sundry creditors indicating no closing balances as of that date, while the ledger for loans and advances showed a closing balance of Rs.4,40,944/-. The audit report indicated that the Trust was operating on a cash basis, which raised discrepancies regarding the recording of these transactions. To address these discrepancies, AO issued a notice under section 142(1) of the Act requesting detailed information about transactions with Bhavya Developers, including ledger confirmations, invoices, and other supporting documents. The AO subsequently made an addition of Rs.4,51,76,262/-, on the ground

that the liability owed to Bhavya Developers & Organizers Ltd was bogus due to the absence of ledger confirmation and discrepancies in the PAN, which actually pertained to a different entity. The AO concluded that the lack of documentary evidence meant the liability was non-genuine, adding it to the total income of the assessee. The rationale behind this decision of the Assessing Officer stemmed from the Trust's obligation to utilize its income solely for charitable purposes, as mandated under section 12AA of the Act. It was emphasized that failure to apply income for charitable activities could jeopardize the Trust's exemption claims under section 11. In response, the assessee had contended that the liability did not pertain to the year under appeal and asserted that no work had been conducted during that period. The assessee argued that the outstanding liability was an old one, and its status could not be deemed bogus without contrary evidence, especially since the AO had not disallowed it in prior years. The assessee submitted that the liability had been carried forward since 2005, and the accounts for previous years had been audited and accepted without issues. The assessee submitted that treating the liability as genuine in past years while deeming it bogus for the current year was inconsistent and unjust. The assessee further highlighted that no expenditure had been claimed against this outstanding amount in the current year, reinforcing their stance that the AO's findings were unfounded. Ld. CIT(Appeals) observed that from the facts placed on record, during earlier assessments, queries related to this outstanding amount were addressed, with the assessee providing explanations and ledger accounts to clarify the nature of the entry. The sustained outstanding balance was not a sufficient ground to classify the same as non-genuine or to imply cessation of the liability without new evidence with the Assessing

Officer. The assessing officer's acknowledgment of the transaction as genuine and pertaining to prior years undermined the argument of the assessee for disallowance in the current year. Consequently, Ld. CIT(Appeals) held that the AO's classification of the liability as bogus for the assessment year 2017-18 could not be upheld. As a result, the appeal was allowed by Ld. CIT(A), directing the AO to recompute the exemption under section 11 in light of the annulled disallowance of the outstanding liability. While passing the order Ld. CIT(Appeals) made the following observations:

“6.2.5 I have carefully considered the matter. It is an undisputed fact that the outstanding liability in the books of accounts of the appellant of Rs. 4,51,76,262/- in the name of Bhavya Developers & Organisers Ltd. pertains to the year 2002. The AO himself has stated that “there is no doubt that the transactions had taken place with the said party which cannot be denied on the basis of facts on record and on the basis of assessee's submissions. It is also factually established that the dispute is pending before a mediator. Since no payment towards the unfinished works was actually made in the year 2002, the same has not been claimed as an expenditure even in FY 2002-03 relevant to AY 2003-04. The outstanding balance has not been questioned / disallowed on any ground in any of the intervening year by the AO.

*6.2.6 When the AO has himself accepted the transaction as genuine and pertaining to as earlier year, the disallowance of the outstanding liability as ‘bogus’ cannot be upheld for the AY 2017-18. The assessment of this liability as bogus for this AY is therefore deleted. The ground of appeal in this respect is therefore **allowed**.*

*6.2.7. Regarding the calculation of exemption u/s 11 by restricting the actual application during the year, since the disallowance of liability has already been annulled in the preceding paragraph, the AO is directed to recompute the exemption u/s 11 to the appellant accordingly. This ground of appeal is also **allowed** accordingly.*

*7. In the result, appeal is **allowed**.”*

5. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals), allowing the appeal of the assessee. Before us, the DR placed reliance on the observations made by the assessing officer in

the assessment order. In response, the Counsel for the assessee reiterated the arguments made before CIT which are to the effect that the outstanding liability of Rs.4,51,76,262/- which related to Bhavya Developers & Organisers Ltd. does not pertain to the assessment year (AY) 2017-18 and stressed that no work was carried out in the impugned year under consideration. The Counsel for the assessee submitted that the ledger account clearly supports the assertion of the assessee that no expenditure has been claimed for this outstanding liability in the current year. Consequently, the Counsel for the assessee argued that Ld. CIT(Appeals) has not erred in facts and in law in holding that the liability cannot be categorized as bogus for this particular assessment year in question. Furthermore, the Counsel for the assessee submitted that a carry-forward balance for any liability cannot arise in a subsequent year unless it was expressly determined in the year it was first incurred. The Counsel for the assessee submitted that Ld. CIT(Appeals) has correctly noted that the action of the AO in treating this liability as genuine in prior years while labeling it bogus for the current year is clearly inconsistent. Ld. CIT(Appeals) has correctly observed / held that the AO's stance, which also involved alleged failures to furnish a correct PAN and ledger confirmations, overlooks the fact that the accounts from earlier years were audited and submitted without rejection or findings of unreliability. Accordingly upon review of all documents submitted by the assessee, Ld. CIT(Appeals) has correctly confirmed that the outstanding liability does indeed originate from 2002. The AO has acknowledged the legitimacy of the transactions in question, stating that the existence of the liability cannot be denied based on the facts presented. Further, the Counsel for the assessee also submitted that the

dispute between the assessee and Bhavya Developers over this matter is currently pending mediation. Since no payments were made for the unfinished work in 2002, this liability was not claimed as an expenditure for the financial year 2002-03, which corresponds to AY 2003-04. Notably, the outstanding balance has not been challenged or disallowed by the Department in any of the intervening years. Given that the AO has accepted the transaction as genuine and pertaining to an earlier year, the disallowance of the outstanding liability as bogus for AY 2017-18 cannot be justified. Therefore, Ld. CIT(Appeals) has correctly held that the classification of this liability as bogus for this assessment year is liable to be annulled, and the appeal of the assessee has been correctly allowed by Ld. CIT(Appeals).

6. On going through the facts of the instant case, and the basis on which the appeal of the assessee has been allowed, we find no infirmity in the order of Ld. CIT(Appeals) so as to call for any interference. In our considered view, Ld. CIT(Appeals) has correctly observed that that is disputed the fact that the outstanding the appellate in the books of accounts of the assessee of Rs.4,51,76, 262/- in the name of M/s. Bhavya Developers pertains to the year 2002. The AO has himself stated that there is no doubt that the transaction has taken place in the said party and it is also an established fact that the dispute between the assessee and Bhavya Developers is pending before a mediator. Since no payments towards the unfinished work was actually made by the assessee in the year 2002, the assessee has not been claimed as an expenditure by the assessee even in Financial Year 2002-03 relevant to assessment year 2003-04. Further, the outstanding balance has also not been questioned / disallowed on any

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ground in any of the intervening years by the assessing officer. Therefore, once the assessing officer has himself accepted transaction as genuine and pertaining to an earlier year, in our view, Ld. CIT(Appeals) has correctly observed that the disallowance of the outstanding liability as bogus cannot be upheld for the impugned year under consideration that is assessment year 2017-18.

7. Accordingly, in light of the above observations, the appeal of the Revenue is dismissed.

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

This Order pronounced in Open Court on	25/09/2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 25/09/2024

TANMAY, Sr. PS

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad