

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'C', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**Before Shri Sanjay Garg, Judicial Member and
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No.92/Kol/2024
Assessment Year: 2014-15**

DCIT, Circle-32, Kolkata **Appellant**
vs.
Shreekrishan Goswami **Respondent**
6, Wood Street, West Bengal-700016.
(PAN: AEOPG4309Q)

Appearances by:

Shri Subhro Das, Addl. CIT, Sr. DR appeared on behalf of the Appellant
Shri Siddharth Agarwal , AR appeared on behalf of the Respondent

Date of concluding the hearing: 26.11.2024
Date of pronouncing the order: 31.12.2024

आदेश / ORDER

Per Sanjay Garg, Judicial Member :

The captioned appeal has been preferred by the revenue against the order dated 29.11.2023 of the Ld. Commissioner of Income Tax, (Appeal), National Faceless Appeal centre (NFAC), Delhi [hereinafter referred to as the "Ld. CIT(A)"] passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for AY 2014-15.

2. The revenue has taken the following grounds of appeal:

"1. That the Ld. CIT(A) has erred in not considering the fact that the assessee has failed to produce S/creditor parties before the Assessing Officer for verification of existing liability and thus failed to discharge his onus.

2. That the Ld. CIT(A) has erred in not considering the fact that in the absence of assessee discharging the burden shifted upon him the case of cessation of liability made out by the revenue against his so as to bring back those dead debts of the assessee to tax under section 41(1), was justified.

3. That the Ld. CIT(A) has erred in not considering the fact that in the absence of confirmation of balances and in the absence of evidence of claim for repayment during the previous year, the liability balances should be

deemed to have ceased warranting the invocation of section 41(1) of the Income Tax Act.

4. That the appellant craves leave to add, alter or delete any of the grounds of appeal during appellate proceedings.”

3. A perusal of the above grounds of appeal would reveal that the revenue is aggrieved by the action of the Ld. CIT(A) in deleting the additions made by the Assessing officer (AO) in respect of the certain credits appearing in the Balance Sheet of the assessee holding that the liability of the assessee has ceased to exist invoking the provisions of section 41(1) of the Act.

4. Brief facts of the case are that during the assessment proceedings, AO asked to furnish details of "Sundry Creditors" as appeared in Balance sheet for Rs. 80,07,153.55. Assessee furnished the details as asked for. On perusal of details filed, AO noticed that the details of sundry creditors included some parties with whom there had been no transactions during the year and the balance had been outstanding for quite some time. AO issued notice u/s 136(6) to the creditors. Out of the notices issued, he did not received reply in case of 3 parties. AO concluded that assessee failed to prove the existence of liabilities in respect of the said three parties and opined that these liabilities are no longer repayable. The AO, accordingly treated the liabilities payable in respect of three parties namely, M/s. Alloy Steel Pvt. Ltd. of Rs.10,42,000/-, M/s. Rashmi Metallinks Ltd. of Rs.85,20,337/- and M/s. Rashmi Cement Ltd. of Rs.29,72,154/- had ceased to exist and made the addition of the aforesaid credits into the income of the assessee u/s. 41(1) of the Act.

5. Being aggrieved by the aforesaid action of the AO, the assessee preferred appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee made the following submissions:

“We also like to state you that the assessment of my client was completed u/s 143(3) since AY 2008-09 till date and in all previous occasion, notice issued u/s 133(6) was duly served upon the parties, parties also filed their reply and liability was admitted as admissible by department. Non receipts of reply against notice issued u/s 133(6) in case of following parties, AO applies provision of section 41(1) i.e. liabilities no longer required.

i) Oliya Steel Pvt Ltd - Addition Rs. 10,42,000/- It was submitted that notice u/s 133(6) was not received. It was further to be submitted that my client is director of Oliya Steel Pvt. Ltd. since 27.05.2005 and if notice was delivered, Oliya Steel Pvt Ltd must reply the same because Oliya Steel Pvt Ltd and my client is related person (copy of master data of MCA site is enclosed as MARK - 3). My client came to know about notice issued only when show cause notice was issued. However, during the course of hearing, statement of accounts and ITR copy was submitted. It is also be submitted that, full payment was made in FY 2015-16 and Copy of ledger along with bank statement highlighting transection is enclosed as MARK-4.

ii) Rashmi Metallinks Ltd - Addition Rs. 85,20,337/- brought forward balance. party confirmation was filed during assessment hearing. It was submitted that during the FY – 2014-15, my client has paid Rs.50,00,000/- against the liability. (Copy of ledger account along with bank statement highlighting transaction is enclosed as MARK - 5.

iii) Rashmi Cement Ltd. Addition Rs.2,97,21,541/- brought forward balance. Party confirmation along with copy of ITR was furnished before AO on 23.12.2016. Full payment was made during FY-2016-17. Copy of ledger along with bank statement highlighting transaction is enclosed as Mark-6.

It is submitted that all the balances are brought forwarded from earlier year and during assessment hearing confirmation of statement were submitted in case of Oliya Steel Pvt. Ltd. and Rashmi Cement Ltd. But AO insist for reply of notice u/s. 133(6), which could not be complied with, as assessee did not have any influence over party except Oliya Steel Pvt. Ltd. AO considered that liabilities does not exist. He thus applied provision relating to remission of liability and accordingly added Rs.3,92,83,878/- with total income of the assessee.”

6. The assessee also furnished the following documents relating to each of the creditor in support of his submissions before the Ld. CIT(A).

“1. Copy of audited Final Accounts for the AY: 2014-15 along with details of sundry creditors .

2. Documents in connection with Oliya Steel (P) Ltd. -

(i) ITR Acknowledgement for the A Y: 2014-15

(ii) Company Master Data

(iii) Confirmation of accounts

(iv) Ledger Account in the books of the assessee reflecting the payment made

(v) Bank statement showing the payment made

3. *Documents in connection with Rashmi Metaliks Ltd. -*

(i) Ledger Account in the books of the assessee for the A Y: 2014-15

(ii) Ledger Account in the books of the assessee for the A Y 2015-16

(iii) Bank Statement showing the payment made ~)

(iv) Ledger account of sundry balances written off for the A Y: 2015-16 .

(v) Final Accounts of the assessee for A Y: 2015-16

4. *Documents in connection with Rashmi Cement Ltd. -*

(i) ITR Acknowledgment for the A Y: 2014-15

(ii) Ledger Account in the books of Rashmi Cement Ltd. for A Y: 2014-15

(iii) Ledger account in the books of the assessee reflecting the payment made to Rashmi Cement Ltd. along with the bank statement.”

7. The Ld. CIT(A) considering the submissions of the assessee and the relevant documents held that in this case there was no cessation of liability in respect of the aforesaid three parties. He also noted in this respect that full payment was made by the assessee in respect of two parties and part payment was made by the assessee in respect of third party during the subsequent financial years.

8. The Ld. DR could not rebut the aforesaid factual aspect on the file.

9. After hearing the Ld. Representatives of the parties, we do not find any reason to interfere with the order of the Ld. CIT(A). The Ld. CIT(A) has rightly held that there was no cessation of liability in respect of the aforesaid three parties during the assessment year under consideration.

There is no merit in the appeal of the revenue and the same is hereby dismissed.

5. In the result, the appeal of the revenue is treated as dismissed.

Order is pronounced in the open court on 31.12.2024.

Sd/-

Rajesh Kumar]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 31.12.2024.

JD Sr. P.S

Copy of the order forwarded to:

1. **Appellant – DCIT, Circle-32, Kolkata**
2. **Respondent – Shreekrishan Goswami**
3. **CIT(A), NFAC, Delhi**
4. **Pr. CIT**
5. **CIT(DR),**

True Copy

By Order

Assistant Registrar, ITAT, Kolkata