

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.374/Nag./2024
(Assessment Year : 2016-17)

M/s. Ashwinkumar Kailashchand Bajoriya
Murtizapur Road, Akola 444 004
PAN – ABJPB6524E

..... Appellant

v/s

Income Tax Officer
Ward-1, Nagpur

..... Respondent

Assessee by : Shri R.K. Ganeriwal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 12/02/2025

Date of Order – 21/03/2025

ORDER

The instant appeal by the assessee is emanating from the impugned order dated 06/05/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2016-17.

2. In its appeal, the assessee has raised following grounds:-

"1. The order passed by learned A.O. is illegal, incorrect, bad in law and without natural justice.

2. The addition of Rs. 29,06,000/- levied on appellant is incorrect, illegal, bad in law and without natural justice and the same is to be deleted.

3. Appellant craves a right to add, modify, alter or withdraw and of the ground/s of appeal during the course of hearing.

Appellant prays before your honour to delete the addition of ₹ 29,06,000 or the appropriate relief is to be granted as the Hon'ble ITAT may think fit."

3. The sole issue arose out of this appeal relates to whether or not the learned CIT(A) was justified in confirming the addition made by the Assessing Officer at ₹ 29,06,000, on account of cessation of liability under section 41(1) of the Income Tax Act, 1961 ("*the Act*").

4. Brief facts of the case:- During the assessment year 2016-17, the assessee was involved in carrying out business of real estate and is a partner of M/s. Bajoriya Tractor. On 04/04/2017, the assessee filed its return of income disclosing total income at ₹ 1,81,490. The case was selected for complete scrutiny through CASS. Accordingly, statutory notices were issued to the assessee through ITBA portal. The Assessing Officer called for the details / documents and evidences such as Balance Sheet, Profit & Loss Account, ledger of unsecured loan, bank account statements, ledgers sundry creditors and loans & advances taken against sale, etc., which were furnished by the assessee and the same were examined by the Assessing Officer on test check basis. The Assessing Officer, during the assessment proceedings, noticed from the Balance Sheet furnished by the assessee that the assessee has shown ₹ 69,61,000 as advance against sale, On further verification of list of the list of advance payers and the confirmations, the Assessing Officer noticed that the advance against sale was shown as opening balance in all the cases. Hence, the Assessing Officer sought explanation from the assessee and was requested to furnish details such as initial ledger in which advances were taken against sale, confirmations, mode of receipts, etc. The confirmations submitted shows name only, no complete address, phone number /email

ID/PAN details, etc., mentioned in confirmation and further it is seen that signatures put on confirmation are in the same hand writing. The Assessing Officer further noted that the advances are outstanding right from year 2010. Hence, being cessation of trading liability, provision of section 41 of the Act were applicable in assessee's case. Therefore, a show cause notice was issued through ITBA on 19/12/2018 asking assessee as to why an amount of ₹ 69,61,000, in respect of advances against sale should not be treated as deemed to be trading liability by way of remission or cessation and be treated to be profit and gains of your business and chargeable to income tax, in response to which the assessee filed certain details and the Assessing Officer recorded his findings by rejecting the claim of the assessee, which are reproduced below:-

"In response to show cause notice, the assessee filed some details such as date wise receipts of advances for plot purchases, mode of receipts and address of the purchasers. On verification of the same, it is found that the assessee vide his reply dated 21/12/2018 stated that advances are for FY 2012-13. However, list submitted on 24/12/2018 shows that advances are outstanding from F.Y. 2009-10. All these advances are received in cash. Advances of Rs.29.06,000/- received in F.Y. 2009-10, 2010-11 and 2011-12 and are outstanding till date. No prudent investor/purchaser will block his amount for so many years without yielding any pie. Either he/she would have registered the sale deed or must have taken back his/her investment. The trade liability is outstanding since right from 2009 & at the date the same is barred by limitation also, In view of the same and in absence of confirmations from the purchasers, it is considered that the trade liability in this case no longer exists. Accordingly addition of Rs.29.06,000/- is made to the total income of the assessee u/s. 41(1) of the Income Tax Act. 1961."

Consequent upon issuance of assessment order by the Assessing Officer, the assessee filed appeal before the first appellate authority.

5. The learned CIT(A) confirmed the addition made by the Assessing Officer by dismissing the appeal filed by the assessee. The decision of the learned CIT(A) is as follows:-

"5. Submissions of the appellant were carefully considered and facts on record were also perused. The lone issue that arises for consideration is the treatment of a sum of Rs.29,06,000/- shown as "advance against sale" in the Balance Sheet of the appellant as cessation of liability u/s.41(1) of the Act by the AO. According to the AO, the appellant had been showing the impugned sum as a liability over the last many years and the explanations offered for the same are found to be untenable.

5.1. The AO further noted that the claim of the appellant that the impugned sums represent advances received against sale of plot are not supported or substantiated with any documentary evidence and even the purported confirmation letter furnished by the appellant also was clearly signed by same hand with no details as to the address, PAN etc.

5.2. The AO also took note of the fact that the explanation given by the appellant regarding the period during which the said sums were first received by the appellant was also not clearly explained and or corroborated. The AO after taking due note of the fact that these sums shown as outstanding were reportedly received in cash and are outstanding since FY. 2009-10 onwards, and in view of the failure of the appellant to furnish any satisfactory explanation for the same, held that the impugned sums shown as liability in the Balance Sheet are no longer payable and hence considered them as income in the hands of the appellant u/s 41(1) of the Act.

5.3. Though the appellant had filed the present appeal against the assessment made, he has not given any explanation regarding the reasons for the non-settlement of these sums over the last so many years. Even now, the appellant has not submitted any details as to the actual settlement of these liabilities. As rightly noted by the AO, copies of confirmation purportedly signed by the named creditors are all clearly signed in the same hand and none of them have even the complete address of the said persons or their PAN number for carrying out any meaningful verification by the AO. The prima facie finding of the AO that the impugned liability is no longer payable is clearly evident from the facts and circumstances of the case. The appellant has failed to explain the reasons for such inordinate periods for which the sums are shown as outstanding and no corroborative evidence have been brought on record to substantiate their existence as on date. In view thereof, the prima facie finding by the AO that the said liability is no longer payable cannot be faulted with.

The decisions relied on by the appellant are not applicable to the facts in appellant's case where even the basic identity and confirmation of the parties stands unproved. Grounds raised by the appellant do not succeed."

Still aggrieved, the assessee is in further appeal before the Tribunal.

6. Before me, the learned Authorised Representative for the assessee (*"the learned A.R."*) assailing the impugned order passed by the learned CIT(A) reiterated the submissions made before the authorities below and further argued that the Assessing Officer has not considered the fact that the assessee has filed all confirmation and also not denied the liabilities. He submitted that the advances received by the assessee are also not covered under section 41(1) of the Act for disallowance. Hence, he submitted that the addition of ₹ 29,06,000 by the Assessing Officer and confirmed by the learned CIT(A) is bad-in-law, invalid and unjustified. He accordingly prayed that the addition be deleted.

7. The learned Departmental Representative Shri Abhay Y. Marathe, appearing on behalf of the Revenue submitted that the assessee, before the Assessing Officer, has furnished wrong information by stating that the receipt of advance are for the financial year 2012-13. However, the Assessing Officer has correctly dug out the fact that the advances are outstanding since the financial year 2009-10 and 2011-12. Hence, the Assessing Officer was correctly held it as trade liability which does not exist. Shri Marathe, thus prayed that the addition be confirmed by dismissing the appeal of the assessee.

8. I have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. The learned A.R. for the assessee explained that the assessee has re-paid the advanced

received. However, the learned A.R. for the assessee failed to adduce any corroborative evidence in support of his explanation that the assessee has re-paid the advance to the parties. While going through the assessment order passed by the Assessing Officer and the impugned order by the learned CIT(A), I find that the findings of both the authorities below are based on facts and material available on record. As correctly pointed out by Shri Marathe, that the advances remained outstanding since the year 2009-10 and 2011-12. Under these facts and circumstances of the case, I hold that the Assessing Officer was justified in making addition of ₹ 29,06,000, as cessation of liability under section 41(1) of the Act. Consequently, I find no reason which warrants me to disturb the well-reasoned order passed by the learned CIT(A). Accordingly, the impugned order passed by the learned CIT(A) is hereby upheld by dismissing the grounds raised by the assessee.

9. In the result, appeal by the assessee stands dismissed.

Order pronounced in the open Court on 21/03/2025

NAGPUR, DATED: 21/03/2025

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur