

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No.557/Ind/2023
Assessment Year:2011-12

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| Patidar Builder Pvt. Ltd. E-4/382 Arera Colony, Bhopal | <u>बनाम/</u> Vs. | Assessing Officer (JCIT-Range-2, Bhopal) |
| (Assessee/Appellant) | | (Revenue/Respondent) |
| PAN: AAACP8931A | | |
| Assessee by | Shri Pankaj Shah & Soumya Bumb, ARs | |
| Revenue by | Shri Ashish Porwal, Sr. DR | |
| Date of Hearing | 23.07.2025 | |
| Date of Pronouncement | 28.07.2025 | |

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 11.12.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 04.03.2014 passed by learned ITO, 2(3), Bhopal ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2011-12, the assessee has filed this appeal.

2. The background facts leading to present appeal are such that the assessee is a company engaged in the business of builders and developers. For AY 2011-12 under consideration, the assessee filed return declaring a

total income of Rs. 12,20,243/-. The case was selected for scrutiny and the AO issued notices u/s 143(2)/142(1) which were complied by assessee. Finally, the AO passed assessment-order u/s 143(3) determining total income at Rs. 1,30,71,900/- after making certain disallowances/additions. Aggrieved, the assessee carried matter in first-appeal and got part relief. Still aggrieved, the assessee has come in next appeal before us.

3. The grounds raised by assessee are as under:

"1. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the addition made by Assessing Officer under Section 40A(3) of the Act amounting to Rs.47337/-. The Appellant prays that the addition be directed to be deleted.

2. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the addition made by Assessing Officer under Section 2(22)(e) of the Act amounting to Rs. 300000 in respect of advance salary paid to employee. The Appellant prays that the said addition be directed to be deleted

3. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the addition made by Assessing Officer under Section 41(1) of the Act amounting to Rs. 1429710 without appreciating that the no deduction was claimed in respect of said creditors and therefore they did not constitute trading liability. Accordingly the Appellant prays that the said addition be directed to be deleted

4. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the addition made by Assessing Officer under Section 36(1)(iii) of the Act in respect of interest expenses of Rs. 129648 claimed by the Appellant. The Appellant prays that the said disallowance be directed to be deleted."

Ground No. 1:

4. In this ground, the assessee challenges the disallowance of Rs. 47,337/- made by AO and upheld by CIT(A) on account of payment made in violation of section 40A(3).

5. Having heard the learned Representatives of both sides and on a careful consideration of the detail of payment filed by Ld. AR for assessee in Written-Synopsis, we find that the assessee has made a cash payment of Rs. 47,337/- to M/s Amit Building Material Supplier on 28.08.2010 towards material purchased by assessee for consumption. The supplier is a private party. Ld. AR agrees that the payment attracts disallowance u/s 40A(3) but he defends assessee's case on two-fold premises. The *first* defense pleaded by Ld. AR is such that the payment has been made towards genuine business expenses and hence disallowance should not be made. However, this pleading is made for the sake of argument only and we indicated to Ld. AR during hearing itself that his contention/claim remains unsubstantiated to which Ld. AR instantly agreed. Therefore, the pleading is rejected.

6. The *second* defense made by Ld. AR is such that the payment was made on Saturday at around 5:30 P.M. after closure of banking hours. According to Ld. AR, the banks were observing half-day working on Saturdays at the relevant time. Ld. AR submitted that the assessee deserves benefit of following exception provided in Rule 6DD(j) of Income-tax Rules, 1962:

“(j) Where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike.”

7. The contention raised by Ld. AR was opposed by Ld. DR for revenue on two-fold reasons. *Firstly*, the assessee has nowhere claimed before lower authorities that the payment was made at 5:30 P.M., this is a new claim by assessee raised for the first time before ITAT and the assessee does not have any evidence to prove the factum of payment having been made at 5:30 P.M. *Secondly*, the language of Rule 6DD(j) noted above is very clear and gives benefit to assessee only if the bank remains closed for entire day. The language does not grant exception where the bank is observing half-day working. On a careful consideration, we find a considerable merit in the pleadings made by Ld. DR for revenue. **Accordingly, the contentions raised by Ld. AR are rejected and in turn the ground raised by assessee is also dismissed.**

Ground No. 2:

8. In this ground, the assessee challenges the addition of Rs. 3,00,000/- made by AO u/s 2(22)(e) and upheld by CIT(A) in respect of advance salary paid to director of assessee.

9. The facts relating to the issue are very short and do not require any elaboration. The AO found that the assessee-company has given advance salary of Rs. 3,00,000/- to its director and made addition in assessee-company's hands treating the same as "deemed dividend".

10. Learned Representatives of both sides are *ad idem* that the provisions of section 2(22)(e) do not contemplate addition in the hands of assessee-company. Therefore, the addition made by AO in assessee-company's hands is not as per scheme of section 2(22)(e) and cannot be sustained. In view of this, we delete the addition made by AO. **This ground is allowed.**

Ground No. 3:

11. In this ground, the assessee challenges the addition of Rs. 14,29,710/- made by AO and upheld by CIT(A) u/s 41(1).

12. The AO has made this addition on Pages 4 - 5 of assessment-order in respect of following credit balances appearing in Balance-Sheet of assessee as on 31.03.2011:

| | | |
|---|-----------------------|--------------------------------|
| 1 | Aditya Digraskar | 3,45,000 + 2,55,000 = 6,00,000 |
| 2 | Shri Arun Sharma | 4,05,000 |
| 3 | Shri Shailendra Singh | 3,13,818 + 1,10,892 = 4,24,710 |
| | Total | 14,29,710 |

13. Ld. AR for assessee at first explained the nature and adjustment of these credit balances. For this, he carried us to the relevant page of assessment-order wherein the AO has himself noted that these credit balances were "advances from customers". Then, the Ld. AR referred his Written-Synopsis to show that these advances have been subsequently adjusted against sales made to the respective customers, details of sales are

filed at Pages 7-12 of Paper-Book. Having shown these factual aspects, Ld. AR made a brief submission about the provision of section 41(1) reading as under:

“Profits chargeable to tax.

41.(1) *Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year –*

(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

(b) XXX

Explanation 1. – For the purposes of this section, the expression “loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof” shall include the remission or cessation of any liability by a unilateral act by the first-mentioned person under clause (a) or the successor in business under clause (b) of that sub-section by way of writing off such liability in his accounts.”

14. Ld. AR submitted that the provision of section 41(1) applies only if the twin conditions as prescribed therein are satisfied, namely (i) an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and (ii) subsequently, the assessee obtains any benefit by way of remission or cessation of such loss, expenditure or trading liability. He submitted that the AO has made addition u/s 41(1) in respect of advances received from customers. He submitted that the assessee has not claimed any allowance

or deduction of such advances in any year. Further, the advances have been subsequently adjusted against sales made and there is no remission or cession of those advances. Thus, none of the twin conditions are satisfied and hence the AO is very much wrong in invoking section 41(1).

15. In reply, Ld. DR for revenue only relied upon AO's order and referred the following observation made by AO in assessment-order:

"The assessee's reply has been carefully examined. The assessee claimed that it has not debited these amounts as allowance/deduction in any earlier assessment years. The assessee's book results are not accepted by Department and moreover, the assessee had not shown closing stock/work in progress. The assessee claimed that we have no work in progress and when we receive money we start construction work. In this case the assessee has/not shown any work in progress or closing stock. The assessee has maintained its books of account as per its sweet will. In such circumstances the assessee did not debit its accounts by these amounts."

16. We have considered rival contentions of both sides and analysed the relevant facts in the light of provision of section 41(1). The undisputed facts emerging from discussions are such that (i) the assessee has received advances from customers against sales, (ii) the assessee has shown those advances in its Balance-Sheet as liabilities and not written off those liabilities in the books of account, and (iii) ultimately, the assessee has adjusted those liabilities against sales made to respective customers. In these set of facts, we agree with Ld. AR that the conditions of section 41(1) are not satisfied. The noting made by AO that the assessee had now shown any closing stock/work-in-progress in its Balance-Sheet is nothing to with

the issue involved. Being so, the addition made by AO by invoking section 41(1) is not sustainable and we delete the same. **This ground is thus allowed.**

Ground No. 4:

17. In this ground, the assessee challenges the disallowance of Rs. 1,29,648/- made by AO and upheld by CIT(A) out of deduction of interest expenditure claimed by assessee u/s 36(1)(iii).

18. Ld. AR drew us to Page 5 of assessment-order where the AO has made this addition. The AO has noted that the assessee has claimed deduction of interest of Rs. 1,29,649/- and on other hand the assessee has given advances to the tune of Rs. 1,41,62,214/- to certain parties for which the purpose is not explained. On this basis, the AO has disallowed interest deduction of assessee. Ld. AR drew us to certain pages in Paper-Book, namely Page 42 (audited Balance-Sheet as on 31.03.2011), Page 14-15 (Ledger A/c of Car Loan taken from bank), Page 16 (Ledger A/c of Interest on car loan). Referring to these documents, he demonstrated that the assessee was having its own funds as high as 92,06,704/- and other items are in the shape of current assets, loans & advances and current liabilities only. All these items are non-interest bearing. There is, however, a small loan of just Rs. 9,00,183/- which was only interest bearing. This loan was taken from Oriental Bank of Commerce for purchase of car of business. He submitted that out of interest expenditure of Rs. 1,29,649/- claimed by

assessee, the interest on car loan itself was Rs. 1,15,369/- and the rest of interest expenditure was just Rs. 14,280/-. He submitted that the figures of assets, liabilities and interest expenditure claimed by assessee are self-speaking and in view of these facts and figures, the AO should not have been made any disallowance.

19. Ld. DR for revenue relied upon the order of AO.

20. We have considered rival submissions of both sides and carefully perused the assessment-order passed by AO as well as the documents filed by assessee to which our attention has been drawn. On a careful consideration, we firstly find that the assessee is having sufficient non-interest bearing funds of its own and the current liabilities. The only loan taken by assessee is a car loan whose outstanding balance was just Rs. 9,00,183/-. Secondly, the interest deduction claimed by assessee is just Rs. 1,29,649/- and the major portion is Rs. 1,15,369/- referable to car loan. Thus, the facts and figures do not reflect that the assessee has used borrowed funds for giving interest-free loans and advances. In the situation, we are inclined to delete the disallowance made by AO and we do so. **Consequently, this ground is allowed.**

Additional Ground:

21. The following additional ground is raised in Written-Synopsis:

“On the facts and in the circumstances of the case and in law, the Ld. A.O. erred in disallowing interest amounting to Rs. 14,010/- paid on belated payment of TDS.”

22. Ld. AR initially submitted that the assessee has raised this very issue before CIT(A) but the CIT(A) has dismissed assigning the wrong reason that the ground was withdrawn by assessee and therefore this ground needs to be adjudicated by ITAT. However, on further deliberations, when the Ld. AR was apprised that the **ITAT, Indore’s decision in ITA No. 128/Ind/2020 - M/s. Bhopal Dugdh Sangh Sahakari Maryadit, Bhopal Vs. DCIT** is against assessee on the controversy raised, Ld. AR immediately agreed not to press this additional ground and signed with acceptance “non pressed” in the Written-Synopsis. **For this reason, the additional ground is dismissed.**

23. **In the final result, this appeal is allowed partly.**

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| Order pronounced in open court on 28/07/2025 |
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Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Indore

दिनांक /Dated : 28/07/2025

Patel/Sr. PS

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Patidar Builder Pvt. Ltd.
ITA No. 557/Ind/2023 - AY 2011-12

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore