



IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.804/PUN/2025
Assessment Year : 2012-13

Vidya Online Private Limited, 4 Electronic Coop Estate, Pune-Satara Road, Pune 411009, Maharashtra PAN : AABCV4882H	Vs.	Income Tax Officer, Ward-13(5), Pune
Appellant		Respondent

Appellant by	:	Shri D.S. Rahurkar
Respondent by	:	Smt.Sailee Dhole
Date of hearing	:	05.01.2026
Date of pronouncement	:	09.01.2026

आदेश / ORDER

PER DR. MANISH BOARD, ACCOUNTANT MEMBER :

The captioned appeal at the instance of assessee pertaining to A.Y. 2012-13 is directed against the order dated 27.01.2025 framed by National Faceless Appeal Centre, Delhi emanating out of Assessment Order dated 31.03.2015 passed u/s.143(3) of the Income Tax Act, 1961.

2. Assessee has raised following grounds of appeal :

"Following grounds of Appeal are without prejudice to each other, independent distinct and separate.

1) *Ld. CIT (Appeal) earned in confirming additions of Rs.37,50,000/- u/s. 41(1) ignoring evidence before A.O.*

2) *Ld. CIT (Appeal) as erred in confirming additions of Rs. 1,92,080,966/- on account of loan from Suvarna Sahakari Bank Ltd., u/s 41(1) ignoring the information and documents collected by A.O. u/s 133(6).*

3) *The additions made u/s.41(1) are bad in law and wrongly facing onus on the Assessee.*



4) *Ld. CIT (Appeal) has erred in confirming addition of Rs.19,19,890/- u/s.68 received in the earlier year as share application money Ignoring the confirmation letter produced.*

5) *The Appellant craves leaves to add amend alter or withdraw any of the grounds of Appeal as and when occasions demands.*

6) *The Appellant craves leaves to produce such further evidence to substantiate the case as and when occasions demands.*

3. Brief facts of the case are that the assessee is a Private Limited Company engaged in the business of providing IT and IT enabled solutions by integrated technology. Income of ₹4,51,048 declared in the return of income for A.Y. 2012-13 furnished on 29.09.2012. After the case being selected for scrutiny and valid notices u/s.143(3) and 142(1) of the Act served on the assessee, ld. Assessing Officer carried out the proceedings. Various information were called for by the ld. Assessing Officer were furnished to the possible extent by the assessee and certain information were also called by the Assessing Officer directly from the third parties having credit balances in the books of assessee. Ld. Assessing Officer concluded the proceedings making the following additions and assessed income at ₹2,54,75,419 :

(1) *Addition u/s.41(1) of the Act on account of cessation of liability at ₹37.50 lakhs payable to M/s. EBZ Online Private Limited.*

(2) *Addition u/s.41(1) of the Act for the outstanding credit balance of ₹1,92,80,966 payable to Shree Suvarna Sahakari Bank Ltd.*

(3) *Addition u/s.68 of the Act for the unexplained share application money pending allotment amounting to ₹19,19,890.*

(4) *Addition of ₹73,515 on account of interest on refund not offered to tax*



4. Aggrieved assessee preferred appeal before ld.CIT(A) but failed to succeed. Now the assessee is in appeal before this Tribunal against the additions made u/s.41(1) of the Act as well as the addition made u/s.68 of the Act.

5. Ld. Counsel for the assessee submitted that the addition of ₹37.50 lakh u/s.41(1) of the Act is uncalled for because the transactions took place during F.Y. 2009-10 and not during F.Y. 2004-05 as referred by the Assessing Officer and even the limitation period of three years did not expire and the outstanding liability is still active.

6. So far as the addition u/s.41(1) of the Act at ₹1,92,80,966 is concerned, the same relates to loan taken from Shree Suvarna Sahakari Bank Ltd., Ld. Counsel for the assessee submitted that ld. Assessing Officer has independently called for the information and letter was received from the bank in which the claim of the bank for the outstanding loan is appearing and even the outstanding balance has increased on account of interest charges.

7. Thirdly, with regard to the share application money pending allotment, he submitted that this amount was not received during the year and this fact is verifiable from the Audited Balance sheet and therefore the addition u/s.68 of the Act is uncalled for as no alleged credit/share application money has not been received during the year.

8. On the other hand, ld. Departmental Representative vehemently argued supporting the order of ld.CIT(A).



9. We have heard the rival contentions and perused the record placed before us. Ground No.1 is against the addition made by the Assessing Officer u/s.41(1) of the Act at ₹37.50 lakh payable by the assessee to M/s. EBZ Online Private Limited. Ld. Assessing Officer alleged that the outstanding liability of ₹37.50 lakh pertains to F.Y. 2004-05. However, the documents placed at pages 79 to 96 clearly demonstrate that the alleged liability of ₹37.50 was credited during F.Y. 2010-11 on 09.06.2009 when the assessee company entered into the contract with M/s. EBZ Online Private Limited for purchase of Business of Customers, Contracts and Hardware and amount of ₹37.50 lakh was accounted as capital work in progress payable to M/s. EBZ Online Private Limited. Copy of business Transfer Agreement is also placed on record. The documents also states that the amount is not forgone by the software supplier EBZ Online Pvt.Ltd. and is still payable to them. Considering the fact that the transaction took place during F.Y. 2009-10 and the assessment year under consideration is 2011-12, clearly indicates that even the limitation period of three years did not expire and the very basis of the addition made by the Assessing Officer of the transaction pertains to A.Y.2004-05 is factually incorrect and that the liability of making the payment to M/s. EBZ Online Private Limited is still active and therefore the provisions of section 41(1) of the Act on account of cessation of liability cannot be invoked in the facts of the present state of affairs. Therefore, the impugned addition is deleted. Finding of ld.CIT(A) is reversed. Ground No. 1 raised by the assessee is allowed.



10. Ground No.2 is regarding the addition u/s.41(1) of the Act at ₹1,92,80,966/- on account of loan from Shree Suvarna Sahakari Bank Ltd. Section 41(1) of the Act provides 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) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.*

Explanation 1.—For the purposes of this sub-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.

Explanation 2.—For the purposes of this sub-section, "successor in business" means,—


- (i) where there has been an amalgamation of a company with another company, the amalgamated company;*
- (ii) where the first-mentioned person is succeeded by any other person in that business or profession, the other person;*
- (iii) where a firm carrying on a business or profession is succeeded by another firm, the other firm;*
- (iv) where there has been a demerger, the resulting company.”*



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11. On going through the above provision, we have to find that whether the alleged liability ceased to exist. In the instant case, ld. AO called for the information from Shree Suvarna Sahakari Bank Ltd. u/s.133(6) of the Act to which reply was received directly from the liquidator of Shree Suvarna Sahakari Bank Ltd. and for the sake of completeness reply dated 30.01.2015 is reproduced below :

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 **Shree Suvarna Sahakari Bank Ltd. (UL),**
H.O.: 43/21, Karve Road, Erandwane,
Pune 411004,
Tel.No. 25458058

Date:- 29th January, 2015

To,
Income Tax Officer,
Ward 13(5), 1st Floor,
Room No. 105,
60/61, Prapikar Sadan, Erandwane,
Pune 411 004.

Shree Suvarna Sah. Bank Ltd., H.O. (U.L.)
Inward No.-
Date- 30th Jan, 2015.
Outward No.- 108

Madam,


Subject:- Information u/s 133(6) of the Income Tax Act in connection with
A/c M/s Vidya Online Pvt Ltd. (PAN No. AABCV 4882 H)

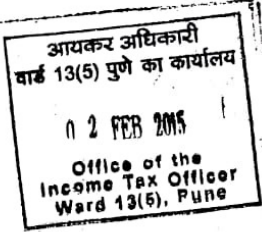
Reference:- Your letter No. Pn/ITO Ward13(5)/133(6)/2014-15/141 dated 21st January,
2015 address to Indian Overseas Bank, Deccan Gymkhana Branch, Pune.
We invite reference to your above referred letter and furnish herewith the information
called for.

1. The Specific Assets and Liabilities of Shree Suvarna Sahakari Bank Ltd have been taken over by Indian Overseas Bank, a Nationalized Bank by virtue of the order of the RBI as well as the Commissioner for co-operation, Govt.of Maharashtra dated 31/3/2009. Accordingly, Shree Suvarna Sahakari Bank Ltd is placed under liquidation since 18th May, 2009. Copies of relevant Orders are annexed.
2. M/s Vidya Online Pvt Ltd. was enjoying Cash Credit facility for Rs. 125.00 Lacs since 5/09/2000 with Shree Suvarna Sahakari Bank Ltd, Deccan Gymkhana Branch, Pune. The ledger extract of the same is annexed herewith.
3. We annex herewith xerox copies of documents/security furnished while applying for last renewal of the facility in the year 2005.
4. The subject Company still owes to the Bank a sizable amount say Rs. **3,31,24,968.86 as on 31/12/2014** and Bank has initiated a recovery action against the above Company & its directors which is still in vogue.

We trust the clarification furnished would suffice.

Yours faithfully,
Liquidator,
Encl. as above







12. Now the contents of the letter issued by the liquidator of Shree Suvarna Sahakari Bank Ltd. remains uncontroverted and that the claim of the bank against the assessee company for the outstandings has increased to ₹3,31,24,968.86 as on 31.12.2014 and is still active and recovery action has also been taken against the company. Now section 41(1) could be invoked only when the assessee is no more liable to pay the outstanding trading liability but under the given facts and circumstances since the liability as on 31.03.2012 is active and the assessee is liable to pay the alleged outstanding loan, therefore, in our considered opinion, section 41(1) should not have been invoked. Finding of Id.CIT(A) is reversed. Ground No. 2 raised by the assessee is allowed.

13. Ground No.3 only refers to additions made u/s.41(1) of the Act and is in support of ground Nos. 1 and 2. Since Ground Nos. 1 and 2 are allowed the same is also allowed.

14. Ground No. 4 relates to addition of ₹19,19,890 made u/s.68 of the Act for the share application money pending allotment. Section 68 of the Act reads as under :

“Cash credits.

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

Provided that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless,—

- (a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and*



- (b) *such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

Provided further that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) *the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) *such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

Provided also that nothing contained in the first proviso or second proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.”

15. On going through the above provision, we note that section 68 can be invoked on the credits during the previous year appearing in the books of account which have been credited/received during the year the assessee is unable to explain the nature and source of such sum to the satisfaction of the Assessing Officer. Before us, ld. Counsel for the assessee has contended that alleged sum has not been received during the year and in support reference has been made to the Audited Balance sheet placed at pages 44 to 70 of the paper book and precisely to Note No.2 to Balance sheet placed at page 47 which shows that the share application money pending allotment at ₹19,19,890 is the opening balance and no fresh amount under this head has been received during the year. Therefore, in absence of any amount received during the year towards share application money pending allotment, we are of the considered view that ld. AO erred in



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invoking section 68 of the Act. Thus, finding of Id.CIT(A) is reversed and Ground No.4 raised by the assessee is allowed.

16. Ground Nos. 5 and 6 are general and consequential in nature which needs no adjudication.

17. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 09th day of January, 2026.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 09th January, 2026.
Satisfy

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Assistant Registrar,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.