IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "E" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No. 5331/Mum/2025
Assessment Year : 2014-15

Efkon India Private Limited *(Successor of I-Pay Clearing Services Private Limited)*, 1st Floor, Block B, Vatika Towers, Golf Course Road, Sector 54, Gurugram, Haryana-122002. PAN : AAACI9818F	vs.	DCIT, Circle-14(1)(2), Aayakar Bhavan, Mumbai-400020.
(Appellant)		(Respondent)

For Assessee :	Ms. Bhumika Majethiya
For Revenue :	Shri Hemanshu Joshi, Sr.DR

Date of Hearing :	27-10-2025
Date of Pronouncement :	13-01-2026

O R D E R

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['Ld.CIT(A)'], dated 10-06-2025, pertaining to Assessment Year (AY) 2014-15 wherein the assessee has taken following grounds of appeal:

"On the facts and circumstances of the case and in law, the Learned AO/ CIT(A) has

General Ground

1 erred in law and on facts in assessing the gross total income at Rs 1.11.15.520 as against the total loss of Rs 2.35,22,245, by making additions under Section 41(1) and disallowances of foreign exchange loss

Adjustment made u/s 41(1) of Rs 11.80,72,895/- to total income

2 erred in confirming addition by the Learned AO under Section 41(1) of Rs 11,80,72 895 on account of outstanding sundry creditors pertaining to Efkon AG.

3 erred in law and on the facts of the case by making an adjustment of Rs 11,80 72,895 under Section 41(1) of the Act without appreciating that there was no remission or cessation of Efkon AG's liability which is sine qua non for applicability of Section 41(1).

4 erred in not appreciating that Appellant's liability to Efkon AG continued during the year which is recognized by the auditors in the Appellant's books of accounts and confirmed by Efkon AG and hence Section 41(1) is not applicable in the absence of remission or cessation of liability.

5 erred in not appreciating that following the dispute with ICICI attaining finality, the Appellant has written off Rs 27.76,25.539 due to Efkon AG in the subsequent years (AY 2022-23 and AY 2024-25) and offered it to tax in its return of income and hence an addition under Section 41(1) will result in the Appellant being double taxed;

Objection against disallowances of foreign exchange loss of Rs 1,79,79,775/-

6 erred in law and on facts in disallowing a proportionate foreign exchange loss of Rs 1,79,79,775 out of the total claimed loss of Rs 3,12,30,777, calculated per Accounting Standard 11 (AS-11), on the ground that such disallowances was a consequential adjustment arising from the write-off of Rs. 11,80,72,895 to Efkon AG under Section 41(1) of the Act.

Incorrect levy of interest 234A

7. erred in levying interest under Section 234A of Rs 36,06,431 in the income tax computation as per final assessment order, without appreciating that the return of income was filed by the Appellant within the due date.

Incorrect levy of interest 234B

8 erred in levying interest under Section 234B of Rs 11,33,088 in the income tax computation as per final assessment order

Initiation of penalty proceedings

9 erred in initiating penalty proceedings under section 271(1)(c) Each of the above grounds of appeal is without prejudice to and independent of one another.

The Appellant craves leave to add, alter amend or delete the above grounds of appeal at or before the time of hearing of the appeal, so as to enable the Hon'ble Income tax Appellate Tribunal to decide this appeal according to law."

2. Briefly stated, facts of the case are that the assessee filed its return of income declaring total loss of Rs. (-)2,35,22,245/-. The return of income was selected for scrutiny and notices u/s. 143(2) and 142(1) of the Act were issued and after calling for necessary information and

documentation, the AO completed the assessment u/s. 143(3) of the Act vide order dt. 29-12-2016, wherein the AO brought to tax an amount of Rs. 11,80,72,895/- invoking the provisions of section 41(1) of the Act and an amount of Rs. 1,79,79,775/-, which was disallowed on account of foreign exchange loss and the assessed income was determined at Rs. 1,11,15,520/-.

3. During the course of assessment proceedings, the AO, on perusal of the assessee's balance sheet, noticed that the assessee-company has shown trade payable of Rs. 20,50,92,015/- and creditor for capital amounting to Rs. 17,57,37,018/- and in its Profit & Loss Account, the assessee has claimed foreign exchange loss of Rs. 5,79,91,832/- and in this regard, necessary information was sought from the assessee. In response, the assessee submitted that the trade payable of Rs. 20.50 crores and creditor for capital of Rs. 17.57 crores are due to M/s.Efkon AG, a group concern of the appellant.

4. Regarding foreign exchange loss of Rs. 5.79 crores, it was submitted that foreign exchange loss of Rs. 2.67 crores arises from un-realised foreign exchange loss in relation to fixed assets, which has been *suo moto* disallowed by the assessee while filing the return of income and only an amount of Rs. 3.12 crores has been claimed, which relates to trade payables.

5. The AO further observed that the assessee has provided Inter Corporate Deposit (ICD) of Rs. 7.01 crores and advances of Rs. 4.79 crores to its holding company, M/s.Efkon India Private Limited, and observed that the assessee-company has receivable of Rs. 13,12,96,029/- from M/s.Efkon India Private Limited and has payable of Rs. 38,08,29,033/- to

its ultimate holding company M/s.Efkon AG. As per the AO, the assessee has enough resources and money to clear-off the credit money/liability outstanding in its Books of Account and it is not acceptable by any reason to keep liability from a creditor in its Books of Account and at the same time give loans and advances to the related party. Thereafter, the assessee-company was issued a show cause to justify the advances given where it has liability outstanding from the related party and why cessation of liability of outstanding creditors u/s. 41(1) of the Act to the tune of loans and advances given should not be done.

6. In response, the assessee submitted that it had entered into an agreement on 04-11-2002 and 04-02-2003 with ICICI Bank Ltd., to provide technology and manage the operations and processing of the smart card-based loyalty program for Hindustan Petroleum Corporation Ltd (HPCL) and as per the agreement, the assessee was to develop a software for post-paid Smart Card Loyalty Program akin to a credit card under the name "Drive Smart Software". It was submitted that assessee's group company, M/s. Efkon AG, possessed knowledge, development expertise and experience in specialized technical software packages for Drive Smart and Modules of Multi Application Terminal Software. Hence, the assessee entered into an agreement with M/s. Efkon AG for purchase of software applications and availing maintenance and consultancy services from M/s. Efkon AG for Drive Smart and Modules of Multi Application Terminal Software. It was submitted that ICICI Bank abruptly terminated the agreement with the assessee. ICICI Bank was the only customer of the assessee-company and the termination of the agreement by ICICI Bank led to paralysis of the assessee's operations which resulted in a loss of over Rs. 50 crores. It was submitted that the assessee-company had filed a suit before the Hon'ble Bombay High Court on 01-01-2012, claiming

compensation of Rs. 95 crores from ICICI Bank. However, since the agreement between the assessee and ICICI Bank had an arbitration clause, the Hon'ble Bombay High Court referred the dispute to arbitration which was pending as on 31-03-2014. It was further submitted that since the services availed by the assessee from M/s. Efkon AG were related to the ICICI contract, the assessee kept payment to M/s. Efkon AG (its group company) in abeyance pending resolution of the dispute with ICICI Bank. It was submitted that the aforementioned dispute had adversely affected the assessee's business and cash flows, which in turn prevented the settlement of its liabilities towards M/s. Efkon AG. It was submitted that as of 31-03-2014, the assessee was optimistic of a favourable outcome in arbitration, anticipating that the proceeds awarded would be used to settle the outstanding liabilities to M/s. Efkon AG. It was submitted that M/s. Efkon AG was the largest creditor of the assessee, contributing to 99.98 percentage of its total creditors. It was accordingly submitted that the abrupt termination of the ICICI agreement severely impacted the assessee's business and working capital cash flow. Hence, a payment to M/s. Efkon AG would worsen the assessee's financial condition and hence the assessee was dependent on the arbitration reward for making good its liability to M/s. Efkon AG. It was submitted that the assessee had the intention of settling the payables due to M/s. Efkon AG and which is also evident from the Balance Sheet, where the appellant had recognized M/s. Efkon AG as a creditor. It was further submitted that the assessee continues to record its liability in its Balance Sheet and necessary confirmation from the said party has been taken on record confirming the existence of outstanding debt. It was submitted that the assessee had made payment during the year 2008 to 2013 to the said creditor, however, due to litigation with ICICI Bank, the assessee-company's adverse cash flow condition, it could not make any further payment. It was further

submitted that the assessee has neither written-off the creditor nor there has been any remission/cessation of liability and has continued showing the liability in its Books of Account and this proves that the assessee acknowledges its liabilities. As regards the advances to M/s.Efkon India Private Limited, it was submitted that the assessee has charged interest on such ICD advances and has offered the same in its return of income and, therefore, it is not the case that the assessee has utilized the limited money available with it to advance free interest free loans instead of clearing liabilities towards M/s. Efkon AG and these two transactions are totally separate transactions which are not related to each other.

7. The submissions so filed by the assessee were considered by the AO, however, the same were not found acceptable. As per the AO, from the details submitted by the assessee-company, it can be seen that the assessee-company is in litigation on the issue that the ICICI Bank and HPCL have illegally, unlawfully and abruptly violated the service provider agreement signed between them, which resulted a business loss of over Rs. 50 crores due to investment made by the assessee. However, in the details given, ICICI Bank claims to have already paid the outstanding amount of Rs. 10 crores. Further, the AO observed that the status of the litigation is not clear, therefore, the assessee's claim that the reason for non-payment to the creditor was the dispute because of which its revenues were affected, cannot be accepted. The AO further observed that without prejudice to the litigation matter, it does not substantiate the reason to lend money to related party without clearing off the creditor. As per the AO, the main purpose of section 41(1) of the Act is to ensure that the assessee does not get away with a double benefit, once by way of deduction in an earlier assessment year and again by not being taxed on the benefit received by him in a later year with reference to the liability earlier allowed

as a deduction. It was held by the AO that in this case, by fictitious accounting, the assessee has not written-off its liability and as a consequence, has been booking foreign exchange loss over the years on this creditor. The main reason for keeping creditors outstanding should be the inability to pay back the creditor, however, the assessee has not paid back the amount despite having the amount, which it has given to the related party i.e., M/s. Efkon India Private Limited. There was no legal or professional requirement either to make ICD and advances to the related party i.e., M/s. Efkon India Private Limited, without squaring off the creditor i.e., M/s. Efkon AG. The assessee has not brought forward any business obligation either to do so. Under the garb of accounting, the assessee has been gaining unwanted advantages i.e., forex loss etc., which is not allowed as per the Income Tax provisions.

8. The AO accordingly held that the amount payable to M/s. Efkon AG to the extent of loans and advances given to M/s.Efkon India Private Limited i.e., 11.80 crores is considered as written-off and added to the total income of the assessee u/s. 41(1) of the Act. The AO further observed that the assessee has claimed foreign exchange loss of Rs. 3,12,30,777/- in its computation of income for valuation of creditors of Rs. 20,50,92,015/- and, therefore, proportionate foreign exchange loss needs to be disallowed, which was determined at Rs. 1,79,79,775/-.

9. Against the said findings of the AO, the assessee carried the matter in appeal before the Ld.CIT(A). The submissions made before the AO were reiterated. It was further submitted before the Ld.CIT(A) that on 13-11-2017, the arbitrator ruled in favour of the assessee-company and instructed ICICI Bank to pay Rs. 50 crores with interest. Thereafter, the Hon'ble Bombay High Court stayed the arbitration order and later vide

order dated 16-07-2019 has ruled in favour of ICICI Bank. Thereafter, the assessee appealed before the Hon'ble Supreme Court, which upheld the High Court's decision in favour of the ICICI Bank in its order dt. 03-01-2022. It was accordingly submitted that the dispute between the assessee and ICICI Bank has now reached its finality with the Hon'ble Supreme Court, ruling against the assessee-company. Consequently, the assessee company has written-off an amount of Rs. 27.86 crores outstanding towards M/s. Efkon AG in its financial statements prepared for the financial year 2021-22 relevant to AY. 2022-23 and for the financial year 2023-24 relevant to AY. 2024-25 and has offered the said amount to tax in its return of income filed for the respective assessment years and copy of returns of income were submitted before the Ld.CIT(A). It was further submitted that the balance outstanding of Rs.13.36 crores along with any revaluation of liability as of 31-03-2025, will be written-off in the current financial year and the same would be offered to take in its return of income. It was submitted that in view of the same, where the amount has already been offered to tax by the assessee in the subsequent assessment year, the addition u/s. 41(1) of the Act would result in double taxation in the hands of the assessee-company which cannot be sustained in the eyes of law and in support, reliance was placed on the decision of the Co-ordinate Benches of the Tribunal in the case of National Building Corporation vs. Addl.CIT, Range-19(1), Mumbai [2017] 84 taxmann.com 235 (Mumbai-Trib) and in the case of Galaxy International Overseas vs. ITO [2024] 165 taxmann.com 78 (Rajkot-Trib); Further submissions were made on non-applicability of provisions of section 41(1) of the Act in absence of any remission or cessation of liability which is sine *qua* non for applicability of section 41(1) of the Act and the fact that the assessee has recognized its liability in its Books of Account as well as submitted confirmation letter from M/s. Efkon AG, acknowledging the outstanding

amount due by the assessee to M/s. Efkon AG. The Ld.CIT(A), however, confirmed the findings of the AO and against the said order, the assessee is in appeal before us.

10. During the course of hearing, the ld AR submitted that the AO has invoked the provisions of section 41(1) towards the liability due towards Efkon AG and has made consequential disallowance of foreign exchange loss and thus, both the matters are inter-linked and connected. It was submitted that the assessee has continued to reflect its liability towards Efkon AG in its books of accounts and thus acknowledges its debt towards Efkon AG. It was submitted that Efkon AG has also confirmed in writing that the same is receivable from the assessee company. It was accordingly submitted that there is no remission or cessation of trading liability which is a pre-condition for invocation of provisions of section 41(1) of the Act. It was further submitted that pursuant to dispute with ICICI attaining finality, the assessee has written off Rs 27,76,25,539/- in its books of accounts and the same amount has already been offered to tax in its return of income for A.Y 2022-23 and A.Y 2023-24. It was submitted that the amount already offered to tax is more than what has been brought to tax by the AO in the impugned assessment year and therefore, on this account as well, the addition so made by the AO is not sustainable as the same will amount to double addition which cannot be sustained in the eyes of law. Further, reliance was placed on written submissions filed before the Ld.CIT(A). It was accordingly submitted that the addition so made and sustained by the Ld.CIT(A) be directed to be deleted.

11. The Ld.DR has been heard who has relied on the order of the AO as well as that of the Ld.CIT(A).

12. We have heard the rival submissions and perused the material available on record. The matter relates to amount payable by the assessee to Efkon AG and invocation of provisions of section 41(1) of the Act and the consequential disallowance of foreign exchange loss on account of restatement of the foreign exchange liability towards Efkon AG. In the books of accounts, it is noted that the assessee continues to reflect its liability and acknowledges its debt towards M/s. Efkon AG. The said liability has been restated at the year end to reflect changes in foreign exchange liability in accordance with accepted accounting principles and corresponding foreign exchange loss is booked in its profit/loss account. M/s. Efkon AG has also confirmed the same in writing as receivable from the assessee company. In light of these undisputed facts, we find that there is no remission or cessation of trading liability and the rigours and conditions so specified in section 41(1) are clearly absent in the instant case. The Courts have held time and again that the rigours of section 41(1) have to be necessarily satisfied in order to invoke the said provisions. The fact that the assessee has placed certain funds with another relates entity and has not repaid the aforesaid creditor doesn't by any stretch of imagination leads to a situation where it can be held that the corresponding liability ceases to exist and authorizes the AO to go ahead and hold that to the extent of amount advanced to related entity, the corresponding liability is written off by the assessee. The act of write-off of any liability has to be tested based on positive act by way of actual entries in the books of accounts and so long as liability continues to exist in books of accounts, there cannot be any presumption of write off as so held by the AO in the instant case. The restatement of foreign exchange liability in the books of accounts and corresponding recording of foreign exchange loss in the books of accounts is an accepted accounting methodology duly recognized under mercantile system of accounting following the accounting

standards so prescribed. The reasoning adopted by the AO which has been summarily upheld by the Ld.CIT(A) therefore cannot be accepted. Further, it is noted that the assessee has explained the reasons for non-payment of dues on account of dispute with ICICI. It has been submitted by the assessee that since the services availed from M/s. Efkon AG were related to the ICICI contract, it kept payment to M/s. Efkon AG in abeyance pending resolution of the dispute with ICICI Bank. It was further submitted that subsequent to said dispute attaining finality with the decision of the Hon'ble Supreme Court, the assessee has taken steps and has actually written off an amount of Rs 27.86 Crores in subsequent financial years in its books of accounts. Therefore, the question of application of section 41(1) arises in subsequent assessment years and not in the year under consideration. The assessee has further submitted that the amount so written off in its books of accounts have been suo-moto offered to tax in its return of income for assessment year 2022-23 and 2024-25. The same again supports the case of the assessee as the amount already offered to tax cannot be brought to tax in the impugned assessment year 2014-15 and the decisions of the Co-ordinate Bench also supports the case of the assessee. Given that these submissions have been made by the assessee before the ld CIT(A) in terms of final settlement of dispute with ICICI, the actual write off in books of accounts and amount offered to tax in the subsequent assessment years and there is no specific finding recorded by the ld CIT(A), the same being factual in nature need appropriate verification and we accordingly deem it appropriate to set-aside the matter for the limited purposes of verifying the same and where the same is found to be in order and the amount has already offered to tax in subsequent assessment years as so claimed by the assessee, the AO is directed to allow necessary relief to the assessee. The grounds of appeal No. 2-6 are thus disposed off accordingly.

13. In Ground No. 7, the assessee has challenged levy of interest u/s. 234A and it has been submitted that the AO has wrongly levied the interest without appreciating that the return of income has been filed within due date. The AO is directed to verify the date of filing of the return of income and where the same has been filed with due date so prescribed for the impugned assessment year, is hereby directed to allow necessary relief to the assessee.

14. Ground No. 1 is general in nature and ground No. 8 is consequential in nature and doesn't require any separate adjudication.

15. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 13-01-2026

Sd/-	Sd/-
[MS. KAVITHA RAJAGOPAL]	[VIKRAM SINGH YADAV]
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated: 13-01-2026

TNMM
Copy to :

1) The Appellant
2) The Respondent
3) The CIT concerned
4) The D.R, ITAT, Mumbai
5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai