

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.1934/Mds/2015

निर्धारण वर्ष /Assessment year : 2011-2012

BILT Industrial Packaging Co. Ltd,  
Thapar House,  
124, Janpath,  
New Delhi 110 001.

**Vs.** The Assistant Commissioner  
of Income Tax,  
Salary Circle 1,  
Coimbatore.

**[PAN AABCB 2854K]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Shri. Prakash Chand Yadav, Advocate.

प्रत्यर्थी की ओर से /Respondent by

: Smt. Vijayalakshmi, IRS, CIT.

सुनवाई की तारीख/Date of Hearing

: 09-03-2016

घोषणा की तारीख /Date of Pronouncement

: 26-05-2016

**आदेश / ORDER**

**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-1, Coimbatore in appeal No. 438A/13-14, dated 15.06.2015 for the assessment year 2011-2012 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee has raised the following grounds:-

2) *That the learned Commissioner of Income Tax (Appeals)-I, Coimbatore was wrong in upholding the decision of the assessing officer that Sundry Creditors Rs.6,13,70,840 became chargeable to tax in absence of address of the respective parties as per section 41 (1) of the Income Tax Act whereas balance amount Rs.9,40,60,914 is not chargeable to tax in spite of the fact that no remission or cessation of liabilities has taken place or value of any benefit accrued to this appellant in this year.*

3) *That the determination of income Rs 6,13,70,840/- on the ground that address of all those 100 or more parties as appearing under the grouping 'Sundry Creditors' were not furnished is contrary to the facts and circumstances of the case of the appellant company's case for this assessment year in as much as the explanation put forwarded by this appellant was not considered factually and judicially.*

4) *That the learned Commissioner of Income Tax (Appeals)-I, Coimbatore was wrong in confirming income Rs. 6,13,70,840/- as chargeable to tax u/s 41(1) of the Act in this assessment year (2011-12) in absence of any activity due to transfer of the business of the undertaking through slump sale route in assessment year 2003-04 and in absence of any other statutory or commercial reasons.*

5) *That the determination of income at Rs 6,13,70,840/ in respect of unpaid liabilities is not in connotation with the primary law as embodied either in section 5 of the Act or under the companies Act in absence of write back of any amount in audited accounts in this year or in any earlier year.*

6. *That the learned CIT(A) was wrong in not passing any order for initiation of proceedings u/s.271(1)(c) of the Act in the absence of any claim in any manner in the return of income and unilateral assessment of income u/s.41(1) of the Act”.*

**3.** The Brief facts of the case are that the assessee company is in the business of manufacturing and sale of on-line coated paper boards and filed return of income for the assessment year 2011-12 on 08.09.2011 and as per scrutiny norms the case was selected for verification of genuineness of sundry creditors and notice u/s.143(2) and u/s. 142(1) of the Act was issued calling for details of returned income. The Id. Authorised Representative of assessee appeared on various dates and submitted information. The assessee company submitted note on business activities of sundry creditors, sundry debtors and details of unabsorbed depreciation and form 3CEA in respect of computation of capital gains on slump sale. The assessee company has entered into slump sale agreement with M/s. ITC Ltd, Kolkata in the financial year 2004-05 and admitted capital gains of ₹1,08,35,83,053/- on the sale transaction of paper board undertaking and set off capital gains against brought forward unabsorbed depreciation of assessment years 1999-2000 to 2001-02 in accordance with the provisions of law and balance was carried forward from assessment year 2004-05 as unabsorbed depreciation

₹1,09,20,83,053/- and business loss of ₹80,23,16,111/-. The assessee company has not carried on any business activity or ventured into any new business line after slump sale and expenses are borne from shareholder funds for perpetual existence of company. The Id. Assessing Officer found brought forward liabilities of sundry creditors ₹ 15,54,31,754/- and called for the explanations and details of sundry creditors alongwith name, PAN, address and outstanding balance. The assessee filed list of sundry creditors with name and outstanding balance alongwith summary sheet of comparison of sundry creditors as on 31.03.2005 and 31.03.2011 alongwith other liabilities in holding group companies. The assessee submitted names and details of balance amounts but failed to produce the list of sundry creditors settled during the period 01.04.2005 to 31.03.2011. The Id. Assessing Officer issued show cause on the addition of cessation of trading liability u/s.41(1) of the Act and the assessee submitted information on 30.08.2013 explaining the details of slump sale and sundry creditors of assessment year 2004-05 and all the balances were reflected in the accounts under liabilities and has not obtained any benefit in any manner. The liabilities are carried forward from earlier years and remained unpaid in this assessment year cannot be subject to the taxation under provisions of section 41(1) of the Act and relied on the judicial decisions of Tribunal and High Court. The Id. Assessing

Officer considered the submissions and factual aspects of Application of provisions u/s.41(1) of the Act. Further exhaustively discussed from page 3 to 6 of his order and unilaterally concluded that on verification of accounts of the outstanding balance are not settled for past six years and the assessee could not substantiate the case in producing basic details of identity of sundry creditors with address, PAN number and genuine reasons for not settling the liability and made addition u/s.41(1) of the Act ₹15,54,31,754/- and passed order u/s.143(3) of the Act. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

**4.** In the appellate proceedings, the Id. Authorised Representative of assessee argued the grounds on the applicability of provisions under Sec. 41(1) of the Act. The Id. Assessing Officer ignored the facts that the company is closed after slump sale to M/s. ITC Ltd its on-line coated paper board undertaking in the assessment year 2004-05. Further assessee obtained long term capital gains on slump sale and has carried forward unabsorbed depreciation and business loss and prayed for allowing the appeal. The Id. Commissioner of Income Tax (Appeals) considered the findings of the Assessing Officer and submissions of the assessee and perused the statement of ascertained liabilities at page 3 of his order as under:-

<i>Particulars</i>	<i>As on 31.03.2005</i>	<i>Increase</i>	<i>Decrease</i>	<i>As on 31.03.2011</i>
<i>Sundry Creditors</i>	<i>7,53,77,978</i>		<i>(1,48,42,978)</i>	<i>6,05,35,001</i>
<i>Other liabilities</i>	<i>9,64,821</i>		<i>(1,28,982)</i>	<i>8,35,840</i>
<i>BILT/BPHL (Holding Companies)</i>	<i>7,10,25,874</i>	<i>2,30,35,040</i>		<i>9,40,60,914</i>
<i>Total as per B/s.</i>	<i>14,73,68,673</i>	<i>2,30,35,040</i>	<i>(1,49,71,959)</i>	<i>15,54,31,754</i>

*Summary (As on 31.03.2011)*

<i>Holding companies (does not need any address as alleged)</i>	<i>:</i>	<i>₹9,40,60,914</i>
<i>Others</i>	<i>:</i>	<i>₹6,13,70,840</i>

*Total liability as per Balance Sheet : ₹15,54,31,754/-*

The Id. Commissioner of Income Tax (Appeals) found the Id. Assessing Officer has relied on the various judicial decisions and conclude that there is cession of liability and the assessee is not able to provide complete details of sundry creditors and applied the provisions of Sec. 41(1) of the Act. The assessee company has not obtained any benefit and there is no mechanism to reduce the liability in the balance sheet and carried forward of business loss available till assessment year 2012-2013. The Id. Commissioner of Income Tax (Appeals) observed that the outstanding balance amount also includes parents company's and same has to be excluded for applicability of

provisions of Sec. 41(1) of the Act and recorded findings at para 6 of his order and partly allowed the appeal.

*“6. I have gone through the submissions made by the appellant and the order of the Assessing Officer. The Assessing Officer in his order has stated that right from the date of slump sale from the Asst. Year 2003-04, the assessee has not carried on any business activity. As seen from the analysis of the Assessing Officer, the total liability as per the Balance Sheet worked out to ₹15,54,31,754/-. Out of this an amount of ₹9,40,60,914/- is payable to M/s. Ballapur Industries Limited, M/s. BILT Paper Holdings Ltd. These two are group companies which have invested in the appellant company. Hence the amount of Rs.9,40,60,914/- cannot be made as an addition on cessation of liability u/s 41(1) of the Income Tax Act, 1961. Regarding the balance liability of Rs.6,13,70,840/-, the appellant did not furnish the complete details of addresses before the Assessing Officer. It is also a fact that the appellant company was not doing any business after the slump sale from the Asst. Year 2003-04. Even during the course of assessment for Asst. Year 2006-07, the appellant company has not produced the complete addresses of the creditors. Considering this fact, the addition made by the Assessing Officer by invoking the Section 41(5) are CONFIRMED to the extent of Rs.6,13,70,840/-. This ground of appeal is PARTLY ALLOWED”.*

Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee assailed an appeal before Tribunal.

**5.** Before us, the Id. Authorised Representative reiterated the submissions made in the assessment proceedings and appellate

proceedings with supporting judicial decisions and provisions of law. The Id. Authorised Representative alleged that the Id. Commissioner of Income Tax (Appeals) has erred in not allowing in reducing the liability to the extent of ₹6,13,70,840/- due to absence of address and the assessee company has not derived any benefits. The above sum includes more than Hundred creditors after considering slump sale value of the assessment year 2004-05 and the balances are being carry forwarded. The legal provisions does not permit writing off of liabilities and the management of the company are getting Books of account Audited every year from the year of slump sale. The assessee company has not obtained benefit of sundry creditors and prepared to make payments as per the requirements and such trading liabilities are carried forward from earlier years. The Id. Authorised Representative filed paper books with submissions of assessment proceedings and statement of depreciation on assets. The Id. Authorised Representative emphasized on the submissions made before Commissioner of Income Tax (Appeals) and relied on the decisions of Tribunal. The Id. Authorised Representative filed list of sundry creditors with names and amount as on 31.03.2011 and to substantiated the carry forward of the sundry creditors in the books, he supported the arguments relying on the decisions of Delhi High Court and Tribunal. The Id. Authorised Representative filed Audited

Accounts under Companies Act to support the claims and on perusal of profit and loss account, the assessee company has offered other income in schedule 8 and claimed deduction of administrative expenditure to support the functioning of assessee company as going concern and submitted synopsis of decisions and facts and further submitted list of creditors with address and prayed for allowing the appeal.

**6.** Contra, the Id. Departmental Representative relied on the order of Commissioner of Income Tax (Appeals), opposed the grounds and argued on the findings of the Id. Assessing Officer.

**7.** We heard the rival submissions, perused the material on record and judicial decisions cited. The crux of the issue being the Assessing Officer considered the sundry creditors are not payable in the absence of submission of information by the assessee with PAN number and address in the assessment proceedings. The assessee was provided opportunity to submit complete information of sundry creditors with ledger accounts from the earlier period assessment years 2004-05 to 2011-12. The assessee has produced information in piecemeal with name and balance amount. The Id. Assessing Officer has verified the transactions of the company in slump sale for assessment year 2004-05 and also carried forward unabsorbed

depreciation and business loss. The Id. Assessing Officer relied on the judicial decisions and presumed that the company is not doing any business activities and therefore there is no necessity of making payment of outstanding amounts of sundry creditors. The Id. Commissioner of Income Tax (Appeals) while passing the order discussed on the sundry creditors including amounts of two group companies M/s. Ballapur Industries Ltd and M/s. BILT Paper Holdings Ltd, and excluded for applying the provisions of Sec. 41(1) of the Act. The Id. Authorised Representative drew our attention to the Audited Accounts for the year ending 31.03.2011 at page 15 of paper book. On perusal of Balance sheet and profit and loss account, the assessee company has offered income under schedule 8 as interest income of ₹6,88,581/- and administrative expenses to the extent of ₹21,36,512/- and incurred loss. After slump sale the assessee is getting accounts Audited regularly and complying with provisions of Income Tax Act and Companies Act. The Id. Authorised Representative submitted and relied on the decisions:

- (1) *CIT vs. Shri. Vardhman Overseas 343 ITR 408 (Del)*
- (2) *POABS Rocks Products (P) Ltd vs. DICT 19 ITR 0546*
- (3) *CIT vs. Sugauli Sugar Works (P) Ltd 236 ITR 518 (SC)*
  
- (4) *Mahabir Cold Storage vs. CIT 188 ITR 91 (SC)*
- (5) *Glen Williams vs. ACIT in ITA No.1078/Bang/2014 (Bangalore)*
- (6) *M/s. Perfect Paradise Emporium vs. ITO in ITA No. 159/Del/2011.*

One crucial aspect on sundry creditors were the assessee company for the first time filed before Tribunal the list of Creditors to the extent of available address. The Id. Departmental Representative raised objections to fresh evidence of the impugned statement were out of creditors of ₹6,13,70,840/-, the assessee provided the address of major creditors to the extent of ₹3,09,75,646/-. The Id. Departmental Representative alleged that the said information was not submitted by the assessee company in assessment proceedings or before Commissioner of Income Tax (Appeals) and seriously argued to dismiss the additional evidence and appeal of the assessee. We are of the opinion that the assessee was provided with abundant opportunities to file information which could not be utilized for reasons known to the assessee company. The Id. Authorised Representative argued and submitted that the Tribunal shall delete the addition based on the statement filed in hearing proceedings and the judicial decisions. We find the Id. Commissioner of Income Tax (Appeals) made elaborate findings in his order that the assessee company has not submitted details with complete address of creditors and the Id. Departmental Representative objected to the creditors statement as fresh evidence and submitted to comply provisions of Rule 46A for additional evidence. We considering the apparent facts and provisions

of law are of the opinion that the additional evidence has to be examined by the Id. Assessing Officer. Therefore, we remit the disputed issue to the file of Assessing Officer for limited purpose to verify the genuineness of the statement of creditors with address and amount filed before Tribunal and assessee shall be provided with adequate opportunity of hearing and submission of relevant information on disputed issue and Id. Assessing Officer pass the order afresh on merits.

**8.** In the result, the appeal of the assessee in ITA No. 1934/Mds/2015 is partly allowed for statistical purpose.

Order pronounced on Thursday, the 26th day of May, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

**(CHANDRA POOJARI)**

**लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:25.05.2016

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Sd/-

(जी. पवन कुमार)

**(G. PAVAN KUMAR)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |