

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI JASON P. BOAZ ACCOUNTANT MEMBER
AND SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

ITA No. 2212/MUM/2012
(Assessment Year : 2008-09)

The Income Tax Officer 20(3)(4),
511, Piramal Chambers,
Lalbaug, Mumbai 400 012
Vs.

... Appellant

M/S. Vikram A. Pradhan,
104, Gyandeeep Society,
1st Floor, Gulmohar Cross Road No.7,
JVPD Scheme , Mumbai -49
PAN:AINPP9962D

..... Respondent

Appellant by : Shri M. V.Rajguru
Respondent by : None.

Date of hearing : 17/08/2016
Date of pronouncement : /08/2016

ORDER

PER JASON P. BOAZ, A.M:

This appeal by Revenue is directed against the order of the CIT(Appeal)-31, Mumbai dated 31/1/2011 for assessment year 2008-09.

2. The assessee is an individual engaged in the business of sale of various educational products to schools through his proprietary concern M/s.Brainwave Interactive & Brainwave Visualizers and production of films in another proprietary concern M/s. Brainwave Production. The assessee filed his return of income for assessment year 2008-09 on

23/3/2009 declaring an income of Rs.5,53,180/-. The return was processed under section 143(1) of the Income Tax Act, 1961(in short 'the Act') and the case was subsequently taken up for scrutiny. The assessment was concluded under section 143(3) of the Act vide order dated 15/12/2010, wherein the income of the assessee was determined at Rs.81,96,760/- in view of the following additions/disallowances:-

- | | |
|--|------------------|
| (i) Addition on account of difference in sales | : Rs.19,10,929/- |
| (ii) Addition on account cessation liability under section 41(1) | : Rs.33,44,827/- |
| (iii) Addition on account of difference in cash Expenses | : Rs.27,74,461/- |

2.2 Aggrieved by the order of assessment dated 15/12/2010 for assessment year 2008-09, the assessee preferred an appeal before the CIT(Appeals)-31, Mumbai challenging the aforesaid three additions list at para 2.1 of this order(supra). The Id. CIT(Appeals) disposed of the assessee's appeal vide the impugned order dated 31/1/2011 allowing the assessee partial relief.

3.1 The Revenue being aggrieved by the order of the CIT(Appeals)-31, Mumbai dated 31/1/2011 for assessment year 2008-09 has preferred this appeal raising the following grounds:-

" I The learned.CIT(A) has erred on fact and in law and in the circumstances of the case in deleting the addition of Rs.33,44,827/- made by A.O as cessation of liability invoking provisions of section 41 (1) of I.T.Act.

II The learned CIT(A) has failed to appreciate that the assessee has not discharged burden of proving that liability exists by any evidence whatsoever and even most elementary act i.e. submitting confirmations from the concerned creditors were not filed

III The learned CIT(A) on the facts and circumstances of the case has not appreciated that the assessee shifted his business from Indore to Mumbai, the creditors are admittedly based in Indore. Even in

most cases liability ., is 7-8 year old and its recovery by legal means stands barred by limitation

IV The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the AO be restored.

IV The appellant craves leave to amend or alter any ground or to submit additional new ground which may be necessary.”

3.2 As per the record, this appeal was fixed for hearing on at least 20 occasions. On the days on which the Bench did not function, the case was adjourned through information on the Notice Boards. It is seen that on all the dates the case was called for hearing, none was present for the assessee, nor any adjournment sought. Even notices issued by RPAD have been returned unserved. When the case was called for hearing on 17/08/2016, again none was present for the assessee but the Ld. Departmental Representative was present and ready to argue for Revenue. In these circumstances, we are of the view that the assessee is not interested in seriously pursuing this appeal and we, therefore, proceed to dispose off this appeal with the assistance of the Ld. Departmental Representative and the material on record.

3.3 From a perusal of the grounds raised, it appears to us that the only issue for consideration and adjudication before us is with respect to the issue of the deletion by the CIT(Appeals) of the addition of Rs.33,44,827/- made by the Assessing Officer as cessation of liability invoking the provisions of section 41(1) of the Act. In these grounds, apart from assailing the decision of the CIT(Appeals) in ordering deletion of the addition of Rs.33,44,827/- under section 41(1) of the Act, it has been contended that the assessee has not discharged the burden of proving that liability exists by any evidence whatsoever since even confirmation from the concerned creditors was not filed. It is

further contended that since these creditors was admittedly in most cases 7-8 years old, its recovery by legal means stands barred by limitation. The Ld. Departmental Representative was heard in support of the grounds raised and prayed that in the light of the above submissions, the finding of the CIT(Appeals) be reversed and the order of the Assessing Officer be restored.

3.4.1 We have heard the Ld. Departmental Representative in support of the grounds raised on the issue of deletion of the addition of Rs.33,44,827/- made by the Assessing Officer under section 41(1) of the Act on the grounds of cessation of liability and carefully considered the material on record. The facts of the matter as emanate from the record are that in the course of assessment proceedings the Assessing Officer observed that the assessee's balance sheet for the year under consideration i.e. 31/3/2007 reflected creditors aggregating to Rs.33,44,827/-. On being queried in the matter, the assessee submitted that the same are old creditors pertaining to the period when he carried out business in Indore and have been carried forward for the last 7-8 years and not paid so far due to certain dispute with the creditors. The Assessing Officer, however, brushing aside the averments of the assessee considered the entire creditors balance outstanding aggregating to Rs.33,44,827/- as income of the assessee by invoking the provisions of section 41(1) of the Act as cessation of liability for the reasons that the said creditors are old from last 7-8 years, pertain to the assessee's old place of business i.e. Indore and the same have remained unpaid for many years.

3.4.2 On appeal, before the Ld. CIT(A) the assessee reiterated that the creditors outstanding balances of Rs.33,44,827/- as reflected in the assessee's balance sheet as on 31/3/2007 were mostly 7-8 years old, pertaining to the period when the assessee was doing business in Indore and were not paid so far due to certain disputes with the creditors. According to the assessee, the aforesaid liability of the assessee is liable to make the payment thereof as and when the disputes are resolved and the amount is crystallized, and therefore, there is no cessation of liability as held by the Assessing Officer to warrant invocation of the provisions of section 41(1) of the Act in the year under consideration and prayed that the entire addition be deleted. The Ld. CIT(A) after considering the material on record and referring to the judicial pronouncements of the Hon'ble Apex Court in the cases of CIT vs. Sugauli Sugar Works (P) Ltd. (1999) 236 ITR 518 (SC) and U.O.I vs. J.K.Synthetics Ltd. (199 ITR 14) (SC) held that in the case on hand there is no write back of the liability payable to various creditors which is duly disclosed in the assessee's Balance Sheet as on 31/3/2007. The Ld.CIT(A) also observed that no independent inquiries were carried out by the Assessing Officer to establish that these creditors have written off the debts appearing in their respective account. In that view of the matter, the Ld. CIT(A) went on to hold that the Assessing Officer was not justified in unilaterally deciding that the liabilities existing in the Balance Sheet of the assessee to the extent of Rs.33,44,827/- had ceased to exist within the meaning of section 41(1) of the Act and directed that the entire addition on this account be deleted.

3.4.3 According to the averments of the assessee before the Ld. CIT(A), the addition under section 41(1) of the Act to the extent of Rs.33,44,827/- cannot be sustained since the outstanding balance of the creditors involved appear as acknowledged outstanding creditors in the assessee's Balance Sheet as on 31/3/2007. In the case on hand, as observed by the Ld. CIT(A), we find that the Assessing Officer has failed to cause enquiries to be made with or notices issued to creditors to ascertain from them whether they have remitted the dues from the assessee in their books of account. The fact that the creditors outstanding balances were not written back in the assessee's books of account, but rather stood reflected in the assessee's Balance Sheet as on 31/3/2007 clearly establishes that is no cessation of liability. On the contrary, it is an acknowledgement by the assessee of existing debts it owes to its creditors. We observe that no material has been brought on record by the Assessing Officer to show that there was remission or cessation of liability. When the Assessing Officer was of the view that there was cessation of liability in the case on hand, it was incumbent upon him to cause necessary enquiries to be made in order to bring on record material evidence to establish the requirement for invoking the provisions of section 41(1) of the Act. The very fact that the assessee reflects these amounts as creditors in his Balance Sheet as on 31/3/2007, is an acknowledgement of his liability to these creditors and this also automatically extends the period of limitation under section 18 of the Limitation Act. Once the assessee acknowledges that the debts to creditors are outstanding in his Balance Sheet, that he is liable to pay his creditors, Revenue cannot suo-moto conclude that the creditors have remitted their liability or that the liability has otherwise

ceased to exist, without bringing on record any material evidence to the contrary. In the case on hand, the creditors aggregating to Rs.33,44,827/- continue to be reflected in the assessee's Balance Sheet as on 31/3/2007. In this factual matrix of the case, as discussed above, we are of the opinion that the Assessing Officer has not brought on record any material evidence to establish that there was cessation of liability in respect of the outstanding creditors balances represented in the assessee's Balance Sheet as on 31/3/2007, and concur with the finding of the Ld. CIT(A) that the addition of Rs.33,44,827/- under section 41(1) of the Act as cessation of liability being unsustainable, is to be deleted. In coming to this finding, we draw support from the decision of the Hon'ble apex Court in the case of Sugali Sugar Works (P) Ltd. (1999) 236 ITR 518(SC); the ratio laid down therein being squarely applicable to the case on hand. Consequently, Revenue's grounds at S.No.I to V are dismissed.

4. In the result, Revenue's appeal for assessment year 2007-08 is dismissed.

Order pronounced in the open court on 24/08/2016

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER
Mumbai, Dated 24/08/2016

Sd/-
(JASON P. BOAZ)
ACCOUNTANT MEMBER

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai