

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**Before Shri Saktijit Dey, Hon'ble Vice President
&
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 9459/Del/2019 : Asstt. Year: 2016-17

The ACIT, Circle -21(1), New Delhi	Vs	Real Impact Pvt. Ltd., A2/38, 3 rd Floor, Safdarjung Enclave, New Delhi 110029
(APPELLANT)		(RESPONDENT)
PAN No. AAECR 6354 B		

**Assessee by : Sh. Manpreet Singh Kapoor, CA
Revenue by : Sh. Amit Katoch, Sr. DR**

Date of Hearing: 03.10.2023	Date of Pronouncement: 08.12.2023
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ORDER

Per Dr. B. R. R. Kumar:-

The present appeal has been filed by the Revenue against the order of Ld. CIT(A)-7, New Delhi dated 11.09.2019.

2. The Revenue has raised the following grounds of appeal as under:-

1. *"The CIT(A), in facts and circumstances of the case, has erred in accepting the additional evidence filed under Rule 46(1)(d) without giving independent finding and without appreciating the fact that several opportunities as per assessment order were given to be assessee to file all necessary documents."*

2. *The CIT(A), in facts and circumstances of the case, has erred in accepting the assessee contention that the payment in respect of M/s. For-A Company Ltd. has already been made during the impugned year despite the fact that as per Para 4.3 of the appellate order, the CIT(A) mentions that the payment was made in subsequent years which is perverse.*

3. *The CIT(A), in facts and circumstances of the case, has erred in accepting the assessee contention that all details in respect of M/s. For-A Company Ltd. were submitted during the assessment proceedings despite the fact that no confirmation has been obtained by the assessee from the said entity along with relevant details of purchase and custom duties paid."*

4. *"The CIT(A), in facts and circumstances of the case, has erred in observing in para 4.4 of the appellate order that the AO has overlooked the evidences furnished by the assessee despite the fact that the entity M/s. For-A Company Ltd. was appearing as creditor in the books of the assessee as on 31.03.2016 which is perverse."*

5. *"The CIT(A), in facts and circumstances of the case, has erred in accepting the assessee submission in para 3.1 of the appellate order that the creditors could not have received notices issued u/s 133(6) despite the fact that the assessee's own submission that these creditors could have shifted and it was a duty of the assessee to submit confirmations during the assessment proceedings."*

6. *"The CIT(A), in facts and circumstances of the case, has erred in accepting the contentions of the assessee as per para 4.5 of appellate order without even calling for the details from the creditors or making independent enquiry as to the genuineness of the additional information submitted under Rule 46A during the appellate proceedings."*

7. *"Whether in facts and circumstances of the case, the observation of CIT(A) vide para 4.7 of the appellate order is perverse despite the fact that the assessee has clearly filed written submissions during the appellate proceedings the assessment year wise cessation of liability in respect of some creditors. Further the CIT(A) has not enquired whether the suggestion of creditors has been treated as income in the subsequent years."*

8. *"The CIT(A), in facts and circumstances of the case, has erred in accepting the assessee submission that the balance creditors amounting to Rs. 35,97,680 should not be treated as creditors as on 31.03.2016 despite the fact that the payments as per para 4.10 of the appellate order have been made in the subsequent years and that it was the duty of the assessee to furnish confirmation from these balance creditors during the assessment proceedings before the AO."*

9. *"Whether in facts and circumstances of the case, the observation of CIT(A) in para 4.10 of the appellate order that addition should not be made in respect of balance creditors is perverse despite the fact that these sundry creditors were outstanding as on 31.03.2016 and that it was the duty of the assessee to provide confirmations irrespective of the fact of what has happened after 31.03.2016."*

10. "The CIT(A), in facts and circumstances of the case, has erred in merely accepting the submissions of the assessee without conducting any independent enquiry to verify the genuineness of the submissions made by the assessee which is against the ratio as laid down by Hon'ble Delhi High Court in the case of CIT vs. Jansampark Advertising & Marketing Pvt. Ltd."

3. The assessee is a private limited company, during the year under consideration the company was engaged in the Service Sector. The assessee filed its return of income on 29.11.2016 declaring an income of Rs.3,47,32,676/-. The return was processed u/s 143(1) of the Income Tax Act, 1961. The case was selected for Limited scrutiny on the following issues:

(a) Whether the sundry creditors are genuine.

(b) Whether outward foreign remittance is from disclosed sources and appropriate withholding and reporting on obligations have been complied with.

4. The Assessing Officer examined a creditor namely "M/s. For-A Company Ltd." whose credit balance as on 31.03.2016 was Rs.4,29,67,923/- and other 33 creditors having closing balance of Rs. 2,29,36,006/- by issuing notices u/s. 133(6). Owing to the non compliance by these 33 creditors and owing to non furnishing of requisite details with regard to M/s. For-A Company Ltd, the Assessing Officer added the outstanding amount of Rs.6,59,03,929/- to the total income of the assessee.

5. Aggrieved, the assessee filed appeal before the Id. CIT(A).

6. The assessee has filed application for furnishing the additional evidence under rule 46A dated 24.04.2019. The request was made before the CIT(A) for furnishing the additional evidence by way of complying the circumstances following under clause b of sub-rule 1 of Rule 46A of Income Tax Rule, 1962.

7. The Assessing Officer has furnished his remand report vide letter dated 06.05.2019 and submitted that the additional evidences furnished by the assessee cannot be submitted under Rule 46A of Income Tax Rule, 1962.

8. After receiving the rejoinder from the assessee against the remand report of the Assessing Officer, the Id. CIT(A) held that the assessee was prevented by sufficient cause from producing the evidence before the AO, and since the evidences are crucial for adjudication of appeal the same have been admitted.

9. Heard the arguments of both the parties and perused the material available on record.

10. We have gone through the order of the Id. CIT(A) in detail. The confirmation of M/s. FOR-A Company Limited from whom the assessee has purchased the equipment during the F.Y. relevant to the A.Y.2016-2017 is on record. M/s FOR-A Company Limited is a company incorporated in Tokyo and all the payments have been made in foreign currency to said company. The assessee has furnished the copy of bank statement and the details of payment which was made and M/s. FOR-A Company

Limited has also duly confirmed the same. The assessee has made the payment of the outstanding balance of Rs. 4,29,67,929/- to M/s. FOR-A Company Limited which was duly reflected in the bank statement of subsequent year. The assessee has already produced the confirmation of Sundry Creditors along with their PAN card, specifically bank statement and ledger account which was duly reflected in the payment of these creditors. Hence keeping in view the entire facts on record, we hold that no addition can be made on the outstanding balance pertaining to M/s. FOR-A Company Limited. The appeal of the Revenue on this issue is dismissed.

11. The assessee was enquired by the Id. CIT(A) to provide complete details of Sundry Creditors justifying each in respect of identity, creditworthiness and genuineness. The assessee filed primary details before the AO. Subsequently, the AO issued notices u/s 133(6) to creditors to confirm transactions with documentary evidence through e-mail ID. The notices were issued through ITBA Portal. The confirmation/reply were not received from all the parties regarding outstanding balances as on 31.03.2016. It was submitted that the AO had not issued any show cause notice before making any addition or intimation to the assessee for non-reply from the various parties and made addition without confronting the assessee about the non-receipt of the replies by the Assessing Officer. Absence of reply from the creditors do not entitle the Assessing Officer to treat the creditors as bogus without bringing any evidence on record to prove the payable are not indeed not required to be paid.

12. Further, the assessee has submitted the details of payment in also the remission carried on in the subsequent years. The details are as under:-

S.No	Name of Creditors	Amount as on 31.03.2013	Pending since	Cleared on	Remarks
1	Amit Cine Services	5,24,115/-	01.04.2016	17.03.2018	Paid on 17.03.2018
2	P.M Communication	1,45,892/-	01.04.2016	01.03.2018	Cessation of liability as on 01.03.2018
3.	Power Expenses	9,50,371/-	01.04.2016	31.03.2018	Paid on 31.03.2018
4.	Rajwati Devi	2,32,084/-	01.04.2016	31.03.2018	Paid on 30.03.2018
5.	RGB Vision	1,99,084/-	01.04.2016	01.03.2018	Cessation of liability as on 01.03.2018
6.	S.S Media Communication	3,69,520/-	01.04.2016	01.03.2018	Cessation of liability as on 01.03.2018
7.	Sarav Video Centre	7,29,042/-	01.04.2016	31.03.2017	31.03.2017
8.	Softaline Studio Services	2,48,310/-	01.04.2018	31.03.2017	Paid on 30.3.2017
9.	Suraj Technosonics	1,98,648/-	01.04.2018	06.09.2016	Paid on 06.09.2016

13. Hence keeping in view the facts of the case, decision of the Id. CIT(A), applicability of provisions of section 41(1) and the judgments in CIT v. Vardhman Overseas Ltd. in ITA No,

774/2009 decided on 23.12.2011, (2012) 343 ITR 408 (Del), the Delhi High Court, referring to the judgment in the case of Jay Engineering Works Ltd. v. CIT (2009) 311 TR 299 (Del) and applying the ratio laid down the case of CIT v. T. V. Sundaram Iyengar & Sons Ltd. (1996) 222 ITR 344 (SC) under sec. 28 of the IT Act, considered the applicability of clause (a) of sub-section (1) of section 41 as to what constitute remissions or cessation of trading liability, we decline to interfere with the order of the Id. CIT(A).

14. In the result, the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 08/12/2023.

**Sd/-
(Saktijit Dey)
Vice President**

**Sd/-
(Dr. B. R. R. Kumar)
Accountant Member**

Dated: 08/12/2023

NV, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, DELHI**