

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.1439/Del./2020
(ASSESSMENT YEAR : 2016-17)**

ACIT, Circle 2 (2), New Delhi.	vs.	Ansal Landmark (Karnal) Township Pvt. Ltd., 11 th Floor, Narain Manzil, 23, Barakhamba Road, New Delhi – 110 001.
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(PAN : AAKCA2414K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Pradeep Dinodia, CA
Shri R.K. Kapoor, CA
REVENUE BY : Shri Kanav Bali, Sr. DR

Date of Hearing :	15.11.2022
Date of Order :	15.12.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of the Id.
CIT (Appeals)-32, New Delhi dated 28.02.2020 for the assessment year
2016-17.

2. The grounds of appeal taken by the Revenue read as under :-

“1. Whether on the facts and circumstances of the case, Ld. CIT (A) erred in deleting addition of Rs.3,68,14,376/- u/s 41(1) of the Act made on the account of forfeiture of booking amount without appreciating the facts that nature and genuineness of liability, identity of third parties, genuineness of repayment etc. were not proved before the AO during assessment proceedings. Ld. CIT (A)

also failed to appreciate terms and conditions of allotment in the agreement between assessee and its customers, which forms the basis of forfeiture of booking amount.

2. Whether on the facts and circumstances of the case, Ld. CIT (A) erred in deleting addition of Rs.57,92,682/- u/s 41(1) of the Act made on the account of security deposits without appreciating the facts that nature and genuineness of liability, identity of third parties, genuineness of repayment etc. were not proved before the AO during assessment proceeding.

3. Whether on the facts and circumstances of the case, Ld. CIT (A) erred in deleting addition of Rs.9,12,666/- u/s 41 (1) of the Act made on the account of static creditors without appreciating the facts that identity of creditors, genuineness of transactions etc. were not proved before the AO during assessment proceedings.”

3. Brief facts of the case are that the assessee is engaged in the business of real estate development as developer of residential, commercial and Industrial buildings, colonies, malls, and deals in properties whether belonging to the company or not and to enter into alliances, joint ventures, partnerships or any form of association with companies, partnership firms, individuals or any other business entities. Return of Income declaring a total loss of Rs.6,88,46,135/- was filed on 13.10.2016. The case was selected for complete scrutiny under section 143(3) of the Income-tax Act, 1961 (for short 'the Act'). The AO has completed the assessment u/s 143(3) of the Act vide order dated 28.12.2018 assessing the total loss at Rs.2,53,26,411/- against the returned loss of Rs.6,88,46,135/- after making following additions of total amount Rs.4,35,19,724/- u/s 41 of the Act :-

S.No.	Particulars	Amount (Rs.)
1	Booking Amount – Alleged being forfeited – Addition u/s 41 on account of cessation of liability	36814376
2.	Security Deposits – Addition u/s 41 on account of cessation of liability	5792682
3.	Static Creditors– Addition u/s 41 on account of cessation of liability	912666
	Total	43519724

4. Apropos addition of Rs.3,68,14,376/- - Booking Amount : During the course of assessment proceedings, AO noticed that assessee company had shown Rs.4,16,84,832/- as an amount payable to customers whose booking has been cancelled. AO noted that these amounts were outstanding in the books of the assessee company since long back. Assessee was asked to submit details in this regard. From the details submitted, AO noted that assessee company has received most of the booking amount in FY 2006-07 to 2008-09 even some of the booking amount has been taken in FY 2000-01. These booking had already been cancelled long back and booking amount has been forfeited. AO asked the assessee to explain and justify the reasons of withholding the booking amount since long back. Assessee replied that only booking amount was received and no further payment was received. AO found that the assessee could not explain and justify the reasons for withholding the booking amount despite of cancellation of booking long back. AO

further noted that in some cases, assessee has not furnished the address and PAN of the customers. AO asked the assessee to furnish the confirmation from the customers who have paid more than Rs.1 lakh but the assessee company failed to furnish the requisite confirmation. After further enquiry and receipt of response from the assessee, AO noted that assessee has refunded the booking amount in very few cases. He noted that the assessee had not furnished any court order to support its contention that some of the customers went to the court and the assessee was asked by the court to refund the booking amount. In this regard, AO held that para 8 & 9 of the terms and conditions for allotment is very much relevant on this issue. He reproduced the same as under :-

"8. The Company and the intending allottee(s) hereby agree(s) that the amount paid with the application for booking and in installments as the case may be, to the extent to 20% of the basic sale price of the unit and 20% of basic price in case of plot will collectively constitute the earnest money. This earnest money shall stand forfeited in case of non fulfillment of these terms and conditions and those of Allotment Letter/Agreement as also in the event of failure by the intending allottee(s) to sign the Allotment Letter/Agreement within the time allowed by the Company.

9. The timely payment of installments on due dates is the essence of this contract. It shall be incumbent on the intending allottee(s) to comply with the terms of payment and other terms and conditions of sale, failing which the allotment of the intending allottee(s) shall stand cancelled and the earned money shall be forfeited. However, the company reserves its right in its sole discretion of set aside the cancellation subject to payment of simple interest which shall not be less than 18% per annum on the amount of delayed payment."

5. Thereafter, AO made the addition as under :-

“3.7 From the above Terms & Conditions which are bounding on the allottee(s) it appears that the assessee company has right to forfeit the booking amount upto 20% of the basic sale price of the unit in case the allottee/customer fails to make payment of installment as determined at the time of booking. In the cases under reference, the assessee company, in fact, cancelled the booking and sold out the flats/plots to the other customers long back and forfeited the booking amount as per terms and condition of the allotment letter. Here, the assessee company has deliberately did not offer the forfeited amount in relevant financial year. The assessee company has deliberately suppressed the taxable receipts on account of booking cancellation and showed the same as amount payable.

3.8 In view of the above facts, the amount of Rs.3,68,14,376/- (Rs.4,16,84,832/- total booking amount - Rs.48,70,456/- amount refunded) is added back to the total income of the assessee company. Having regard to the nature of addition made to the declared income as discussed above, I am satisfied that the assessee company has furnished inaccurate particulars of its income on this issue. Hence, penalty proceedings u/s 271(1)(c) r.w.s 274 of the Income-tax Act, 1961 is being initiated separately.”

6. Against the above order, assessee filed an appeal before the Id. CIT(A). Ld. CIT (A) noted the submissions of the assessee that the amounts are shown as liability in the financial statements of the assessee for the subject assessment year and the period of limitation of such liabilities also gets extended by their mentioning these liabilities in their financial statements. In this regard, he referred to the decision of Hon'ble Delhi High Court in the case of CIT vs. Hotline Electronics Ltd.. He further noted that assessee has filed during assessment certain orders of District Consumer Form/court. Ld. CIT (A) further noted that during discussion of the appeal hearing, when the assessee was asked for status

of other booking amounts, the assessee has filed some more orders of courts, evidence of some currently going on court proceedings and some renegotiations of allotments to be done shortly to the customers. Further, it was stated that these booking amounts are disputed amounts of contractual liabilities and also that the assessee would not like to forfeit to the extent possible because forfeiting would adversely affect their goodwill and consequently their future business. It was further noted by the Id. CIT (A) that at the same time being a real estate company in severe liquidity crunch, they are returning the booking amounts only in those cases when ordered by consumer forum/court. Ld. CIT (A) accepted the contention that just because the liabilities are outstanding for long the liabilities cannot be held to be ceased to have exist. Ld. CIT (A) further referred to the decision of Hon'ble Gujarat High Court in the case of CIT-II vs. Nitin S Garg that for making the additions, the AO shall have to prove that the assessee has obtained the benefits in respect of such trading liabilities by way of remission or cessation thereof. In this backdrop, Id. CIT (A) held that he was satisfied that section 41 could not be invoked in this case, hence the addition made by the AO of Rs.3,68,14,376/- was deleted.

7. Apropos security deposits – Addition u/s 41 on account of cessation of liability of Rs.57,92,682/- : On this issue, AO noted that

assessee company has shown security deposits payable at Rs.1,01,30,383/-. On primary enquiry, assessee company submitted that security deposits mainly pertained to the contractors involved in construction works and the same is refundable to them. AO asked the assessee to furnish the confirmations of all parties having security deposit more than Rs.1 lakh. But the assessee could not furnish the requisite confirmations from the parties. Further AO noted that outstanding security payables have been reflecting in the books of account since long back. AO asked the assessee to submit certain details in a particular format. Assessee company furnished the details but not in the given format. AO noted that in the reply, it has shown Rs.57,92,682/- as opening balance as on 01.08.2012. Assessee company did not furnish the addresses of any security depositors neither it has mentioned the reasons for withholding the securities. He observed that assessee has shown some amount under the head 'interest free maintenance deposit' pertaining to different projects constructed by the assessee company totaling Rs.43,37,701/- falling under this category. But AO noted that assessee has not given any explanation for not refunding the security amount of Rs.57,92,682/-. He noted that assessee company had failed to furnish PAN and address of the parties and it could not provide the details of the

financial year in which these security money were received. Hence, AO treated the amount of Rs.57,92,682/- as income u/s 41 (1) of the Act.

8. Ld. CIT (A) in his order noted that the details of security deposit has been submitted during assessment and a major portion i.e. Rs.23,65,517/- out of those security deposit addition amounting to Rs.57,92,682/- has already been repaid and repayment is reflecting in the ledger and bank statements of the assessee company. He held that these liabilities relate to opening balances being brought forward from earlier years. He further noted that assessee's submission that earlier years' remaining security amounts have not been repaid due to liquidity crisis and some business considerations. Ld. CIT (A) held that it is well settled legal position that liabilities cannot be considered as ceased or remitted only because liabilities are outstanding for last many years. Further, ld. CIT (A) referred to the decision of Hon'ble Gujarat High Court in the case of CIT vs. Nitin S. Garg (supra) for the proposition that AO shall have to prove that the assessee has obtained the benefits in respect of such trading liability by way of remission or cessation thereof. Considering these facts, ld. CIT (A) held that section 41 could not be invoked in this case. Hence, he directed the AO to delete the amount of Rs.57,92,682/-.

9. Apropos Static Creditors – Addition u/s 41 of the Act on account of cessation of liability of Rs.9,12,666/- : On this issue, AO noted that there are certain creditors which are static for last so many years and assessee company was asked to furnish the confirmations from static creditors who has balance more than Rs.2 lakh. But assessee could not furnish requisite confirmation. In response to AO's query, assessee furnished confirmation from 3 parties as under :-

1.	Excellent Manpower Services	Rs. 99,513/-
2.	Peculiar Projects Pvt. Ltd.	Rs.4,61,930/-
3.	Sh. Adarsh Jain	<u>Rs. 40,000/-</u>
	Total :	<u>Rs.6,01,443/-</u>

But the AO noted that assessee could not furnish any confirmation from the creditors who are static for at least last 3 years. The list of such creditors are as under :-

1.	Vijeta Estates	Rs.1,29,897/-
2.	Dynamic Associates	Rs.1,28,088/-
3.	Avinash Aneja Properties	Rs.1,22,001/-
4.	I.D. Works	Rs.1,25,000/-
5.	Swarna Real Estate Consultants	<u>Rs.4,07,680/-</u>
	Total :	<u>Rs.9,12,666/-</u>

AO proceeded to add the above static creditors of Rs.9,12,666/- as income of the assessee.

10. Ld. CIT (A) upon assessee's appeal referred to the submissions of the assessee and held that it is also clear from the several court cases cited in the written submissions of the assessee and it is well settled legal position that liabilities of static creditors cannot be considered as ceased

or remitted only because liabilities are outstanding for last many years.

In this regard, ld. CIT (A) referred to the decision of Hon'ble Gujarat High Court in the case of CIT vs. Nitin S. Garg (supra). He proceeded to hold that he was satisfied that provisions of section 41 cannot be invoked in this case. Hence, he directed to delete the addition.

11. Against this order, Revenue is in appeal before us. We have heard both the parties and perused the records.

12. Ld. DR of the Revenue relied upon the order of AO and referred to several case laws.

13. Per contra, ld. Counsel relied upon the order of the ld. CIT (A). He further submitted that the concerned liabilities are very much existing as the assessee is paying the same as per court orders which are coming. In this regard, he referred to Paper Book and a chart showing various items which were refunded at different stages i.e. at the stages of AO's order, ld. CIT (A)'s order and some after ld. CIT(A)'s order as under :-

Detail of Balance of booking amount and Court orders passed against the Respondent – Ground No.1		
Total Booking Amount (till 31.03.2016)	4,16,84,832	Pg.No.193-199 of the PB
Less : Amount refunded till the order of the ld. AO – (B)	(48,70,456)	Refer Pg. No.93, 238-248 of the PB – (Court order of Daryav Singh, Prem Sagar Batla and 8 other case for which amount was refunded.)
Net Booking Amount (on the date of AO order) – (C=A-B)	3,68,14,376	Addition made by the Assessing Officer
Less : Amount refunded till the order of CIT (A) (D)	(7,65,475)	Refer Pg. No.93, 97-110 of the PB – (Court order of Aseem Kumar Gupta and Naveen Sangwan for which amount was refunded)

Booking Amount (on the date of CIT (A) order) – (E=C-D)	3,60,49,901	
Less : Amount refunded from the date of CIT (A) order to till date – F	(40,50,150)	Refer Pg. No.93, 325-345 of the PB – (Court order of Anil Kumar, M.K. Jain and Neeru Jain for which amount was refunded)
Booking amount as on date – (G = E-F)	3,19,99,751	

Detail of Security Deposit and Court order passed against the Respondent – Ground No.2		
Opening Balance of Security Deposit as on 01.08.2012 – (A)	57,92,668	Addition made by AO – Pg.No.249-265 of the PB
Less : Security Deposit paid from FY 2012-13 to FY 2018-19 – (B)	(23,65,517)	Refer Pg.No.128-129 of PB
Balance Security Deposit payable as on 31.03.2019 – (C= A-B)	34,27,165	
Less : Amount paid from 20.02.2020 to 30.06.2020 – D	(4,82,994)	Refer Pg. No.81, 346-348 of the PB – (Court order of Peculiar Project and Amount written back and shown as income as on 31.03.2022)
Balance Security Deposit as on 30.06.2022 – (E= D-C)	29,44,171	

14. We note that the amounts involved have ceased to be liability of the assessee for a considerable long period of time. As regards, booking amount and security deposits, the necessary details and addresses were sought by the AO which assessee did not supply. Further assessee is accepting that though the liabilities have ceased but due to goodwill and market reputation, assessee is not forfeiting the amounts. Furthermore, the Id. CIT (A) has accepted the assessee's contention that the AO did not make necessary enquiry. There is nothing in statute which prohibits the Id. CIT(A) from making further enquiry as he deems necessary. We further note that as referred above, the names and addresses have not

been supplied to the AO as noted in the assessment order which obviously has thwarted due enquiry by the AO. Furthermore, Id. CIT(A) has referred to several court cases and other decisions which were not referred by the AO in his order. Assessee on occasions has accepted that there was liquidity crunch that is why they have not been able to return the amount. However, having a liquidity crunch does not operate as a bar to the application of provisions of section 41 of the Act. Ld. CIT (A) has primarily focused on the decision of Hon'ble Gujarat High Court in the case of Nitin S. Garg (supra) and has held that AO should prove that the assessee has obtained the benefits in respect of such trading liabilities. In this regard, we note that these liabilities are in existence for a very long period. As held by Hon'ble Supreme Court in the case of TVS Sundaram Iyenger, a liability can change in character over a period of time and an amount in capital field may become revenue receipt. The Id. DR has further relied upon Hon'ble Madras High Court in the case of West Asia Exports & Imports (P) Ltd. vs. ACIT vide judgment dated 11.03.2019 and the decision of Hon'ble Delhi High Court in the case of CIT vs. Rajasthan Golden Transport vide judgment dated 15.02.2001 in support of Revenue's proposition.

15. We note that Id. Counsel of the assessee has himself submitted before the Id. CIT (A) certain court orders and subsequent payment

details after the AO's order. Admittedly, some documents have been considered by Id. CIT (A) which were not before the AO. Further, even before us, in his submissions, Id. Counsel of the assessee has given details of payment and court orders subsequent to the order of Id. CIT (A). In these circumstances, in our considered opinion, interest of justice will be served if the issue is remitted to the file of AO. AO is directed to consider the issue afresh after taking into account and examining the factual veracity of submissions of the Id. Counsel of the assessee before the Id. CIT (A) and material referred before us, which are subsequent to the date of Id. CIT (A)'s order. Hence, the matter is remitted to the AO who shall decide afresh after going through the submissions & our directions above and as per law. Needless to say, assessee shall be provided an opportunity of being heard.

16. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on this 15th day of December, 2022.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 15th day of December, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-32, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
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