

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'C', NEW DELHI**

**BEFORE SHRI RS SYAL, VICE PRESIDENT
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

ITA No. 6776/Del/2015

A.Y. 2010-11

M/s Hindustan Vegetable Oils Corp. Ltd. 64-65, Satguru Ram Singh Marg Kirti Nagar New Delhi 110 015 PAN: AAACH 0631 D	vs.	DCIT, Circle 11(1) New Delhi
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ITA No. 6833/Del/2014

A.Y. 2010-11

DCIT, Circle 11(1) New Delhi	vs.	M/s Hindustan Vegetable Oils Corp. Ltd. New Delhi 110 015
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Cross Objection 183/Del/2017

(In ITA No. 6833/Del/2014)

A.Y. 2010-11

M/s Hindustan Vegetable Oils Corp. Ltd. New Delhi 110 015	vs.	DCIT, Circle 11(1) New Delhi
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(Appellant)

(Respondent)

Assessee by	Sh. Manpreet Singh Kapoor, FCA
Department by	Smt. Shefali Swaroop, CIT, D.R.
Date of Hearing	05/06/2018
Date of Pronouncement	08/06/2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeals have been filed by assessee against the quantum addition confirmed by Ld. CIT (A)-4 vide order dated 21/10/15, and appeal filed by the revenue along with Cross Objection by assessee, against the penalty being deleted by Ld. CIT (A)-15 vide order dated 22/09/14 for Assessment Year 2010-11 on the following grounds of appeal:

ITA No. 6776/del/2015 (assessee's appeal against quantum proceedings)

"1. The Ld CIT (A) has erred on facts and circumstances of the case in making disallowance of sundry creditors Rs. 5,77,00,706/- under section 41(1) as creditors are being paid in subsequent years and details are part of department records submitted during scrutiny assessment u/s 143(3) in the previous years.

2. Ld.DCIT, circle 12(1) and Ld CIT (A) has erred on facts and circumstances of the case in making disallowance of other liabilities Rs.12 17 23,144/- under section 41(1) as the same are being settled in subsequent years and details are part of department records submitted during scrutiny assessment u/s 143(3) in the previous years.

3. Ld.DCIT circle 12(1)and Ld CIT (A) has erred on facts and circumstances of the case in invoking section 41(1) and concluding that sundry creditors Rs.5,77,00,706/- were written off / remitted without carrying out any enquiry or confirmation or any other established procedure for verification.

4. Ld. DCIT circle 12(1) and Ld CIT (A) has erred on facts and circumstances of the case in invoking section 41(1) and concluding that other liabilities Rs. 12,17,23,144/- were written off / remitted without carrying out any enquiry or confirmation or any other established procedure for verification.

5. The appellant craves the consent to add, modify, amend or delete any of the ground of appeal at the time of hearing.

Relief Claimed

The appellant prays to delete the disallowance/additions in terms of the statement of facts and grounds of appeal, and/or any other relief, which your honour deems fit in the interest of justice.”

ITA No. 6833/Del/2014 (revenue's appeal against penalty order)

“1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the penalty of Rs.6,09,86,187/- imposed u/s 271(1)(c) of the Income Tax Act, 1961 (the Act) on the grounds of filing inaccurate particulars.

2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the penalty ignoring the facts that the assessee is not in appeal against the addition made in regular assessment.”

CO/183/Del/2017 (Cross Objection by assessee against penalty order)

“That the ld.AO has erred in law and facts by passing an order of penalty u/s 271(1)(c) of the Income Tax Act, 1961 which is bad in law as the notice issued u/s 274 r.w. section 271 of the Act does not discern as to whether the penalty proceedings was initiated for

furnishing of inaccurate particulars of income or concealment of income under the facts and in the circumstances of the appellant's case and therefore, the impugned order passed deserves to be cancelled."

2. Brief facts of the case are as under:

ITA No. 6776/Del/2015

Assessee filed its return of income on 14/12/10 declaring loss of Rs.21,29,67,437/-. The case was selected for scrutiny and notice under section 143 (2) of the Income Tax Act 1961 (the Act) was issued along with notice under section 142 (1) and questionnaire. In response to the notices issued by Ld.AO, Representatives of assessee appeared before Ld.AO and filed requisite details as called for.

Ld.AO observed that assessee was engaged in the business of manufacturing of food products and has one unit. It was observed by Ld.AO that assessee had sundry creditors at Rs.5,77,00,706/-as against sundry creditors of Rs.5,67,35,912/- in the immediately preceding Assessment Year. As no details being filed by assessee, Ld. AO made addition of Rs.5,77,00,706/-as liability that had ceased to exist and accordingly made addition under section 41 (1). Further with regard to other liabilities as on 31/03/10 amounting to Rs.12,17,23,144/-as against Rs.11,91,50,553/-in the immediately preceding year in the absence of any details from assessee Ld. AO held liability having ceased to exist and made addition under section 41 (1).

2.1. Aggrieved by order of Ld.AO, assessee preferred appeal before Ld.CIT (A) who confirmed the additions made by Ld.AO.

2.2. Aggrieved by the order of Ld. CIT (A) assessee is in appeal before us now.

3. Ld. AR submitted that assessee is a corporate entity fully owned by Government of India and was engaged in the business of manufacturing of Vanaspati, refining and packing of imported edible oil for PDS and manufacturing of breakfast cereal. Assessee was then referred to BIFR in the year 1999 and in the year 2000 the government decided to inform BIFR that it did not consider feasible to attempt its revival. In September, 2006 Government submitted to Hon'ble Delhi High Court that it was willing to explore the possibility of hiving off Break Fast Food Unit (BFFU) and reviving it under a joint-venture. It was indicated by government that outside liabilities (other than government liabilities) of assessee could be settled through sale of movable assets of assessee of loss units.

3.1. As regards immovable assets of assessee (which constitutes land in prime locations in various cities in the country), government did not want to sell the same as the major liability of assessee was towards the government. Based on the submissions Hon'ble Delhi High Court vide order dated 28/09/06 permitted government to appoint a liquidator for disposal of immovable assets exclusive of the breakfast food unit and settlement of private liabilities. Accordingly a list of sundry creditors and other liabilities had been submitted to the liquidator through Hon'ble Delhi High Court. Ld.AR further submitted that there would not be any changes in the total amount of sundry creditors

outstanding at the end of every financial year as assessee is in partial liquidation and the list of the same has already been submitted with Hon'ble High Court. It was thus submitted that the liabilities had not ceased and therefore Ld.AO was not justified in making addition under section 41(1) of the Act.

3.2. On the contrary Ld.DR submitted that addition has been made since assessee failed to submit details in respect of the sundry creditors and other liabilities.

4. We have perused the submissions advanced by both the sides in the light of the records placed before us.

4.1. It is observed that assessee has gone into BIFR and most employees of assessee have left. It has been submitted that assessee was therefore unable to make any regulatory compliances. Further it is observed that it was a scrutiny assessment for Assessment Year 2009-10 during which the sundry creditors and other liabilities as existed as on 31/03/09 were examined by Assessing Officer and the new creditors that added for the current year amounted to Rs.9,64,794/-. It is observed that Assessing Officer completed the assessment proceedings by disallowing entire amount of liabilities without considering the fact that the opening balances of the liabilities were already admitted in the immediately preceding Assessment Years. Assessee has placed the assessment order for the preceding Assessment Year before us for verification of the same. Further it is observed that the claim has been filed before BIFR and therefore the same cannot be considered to have been ceased. It is only a matter of timing that as the issue is pending before BIFR, the creditors remain suspended but there has been

no notice which could extinguish the existing right except to the extent that they become part of the sanctioned scheme.

5. We therefore are of the considered opinion that the addition made by Ld.AO is unjustified. Accordingly the grounds raised by assessee stands allowed.

6. In the result appeal filed by the assessee stands allowed.

7. ITA No. 6833/Del/2014 and CO No. 183/del/2017

The penalty appeal has been filed by Revenue against order dated 22/09/14 passes by Ld.CIT (A)-15, New Delhi and Assessee filed Cross Objection challenging notice issued under section 274 read with section 271 (1) (c) of the Act for Assessment Year 2010-11.

At this juncture Ld.AR submits that the Cross Objection raised by assessee shall be taken as 'not pressed'. Accordingly the same stands dismissed.

8. We have perused the submissions of assessee recorded by Ld. CIT (A) in the impugned order. Ld. CIT (A) has deleted the present penalty by observing as under:

“6.3 I find that the appellant had not filed any appeal against the order dated 15.3.2013 passed u/s 143(3) of the Act. Further, against the impugned order 27.9.2013, appeal was filed on 26.11.2013, which was late. The Ld. Counsel submitted before me that the company is under liquidation and is operating with skeleton strength for the head office and breakfast food unit, while all its units have been closed. It was submitted that in view of the lack of staff, the appellant is not able to make regulatory compliance. In view of this, the AR requested for allowing

condonation of delay in filing of appeal. I have carefully considered the facts of the case. In view of the state of affairs of the company, which is a Public Sector Undertaking of Ministry of Food and Civil Supplies and is under closure, I condone delay in filing this appeal.

6.4 The Ld. AO has held the addition made by the Ld. AD in the assessment order as evidences of filing of 'inaccurate particulars of income'. The appellant did not file any appeal against the said order of assessment. However, evidently there was a scrutiny assessment in the immediately preceding year i.e AY 2009-10, during the course of which, 'sundry creditors' and 'other liabilities' as existed on 31.3.2009 were duly examined by the AD. During the appellate proceedings in AY 2009-10 based on examination of 'current liabilities', I had found out that the appellant did not offer for capital gain tax, an amount of Rs. 1 Crore shown under the head "current liabilities", which was received from Delhi Metro Rail Corporation and accordingly enhancement of Income was made accordingly. Under the circumstances, evidently all 'sundry creditors' and 'current liabilities' as on 31.3.2009 were already examined in the assessment proceeding for AY 2009-10 and no adverse view in respect thereof can be taken.

6.5 Further, the appellant had filed details of Sundry creditors and 'other liabilities' before the Hon'ble Delhi High Court, following the Hon'ble High Court's order dated 28.9.2006 appointing a liquidator to settle private liabilities. The appellant during the course of these proceedings had filed details of increase in the current year in sundry creditors and other liabilities. Evidently, as the appellant has closed its Industrial Undertaking in view of the

decision taken by the Central Government, liabilities in the nature of security charges for the closed units, interest charges and other charges relating to such units, keep increasing. These are evident on perusal of the schedule of the balance sheet and the details furnished during the course of assessment proceedings for A.Y. 2009-10.

6.6. The Ld.AO has himself held that there is no 'concealment of income'. Moreover, these details are reflected in the annual accounts which are attached to the return of income, a copy of which was also filed before me. The Ld. AO has not been able to identify any liability that may have ceased to exist but has made summary disallowance of all sundry liabilities and sundry creditors without even verifying the facts from the assessment records for AY 2009-10. The facts and figures given in the annual accounts have not been established to be incorrect in any manner, as the Ld. AO has not carried out any enquiry, whatsoever, for verifying the same. Moreover, the appellant has not written off these liabilities in its books in order to hold that the same was liable to be taxed u/s 41(1).

6.7 In view of the settled law position that penalty proceeding are independent of assessment proceeding, the fact that the appellant had not filed appeal against the assessment proceeding is not an unequivocal evidence that it had filed 'inaccurate particulars of income'. In view of the above, there is no merit in the action of the Ld. AO of levying penalty in this regard. Accordingly, the order of penalty is cancelled,"

9. We have already deleted the addition made by Ld.AO in preceding paragraphs, which forms basis of levy of penalty. Considering totality of facts and observations of Ld.CIT (A), we do not find any infirmity in the penalty being deleted by Ld. CIT (A). Accordingly grounds raised by revenue stands dismissed.

10. In the result appeal filed by revenue as well as Cross Objection filed by assessee stands dismissed.

Order pronounced in the open court on 08/06/2018

Sd/-

(R.S.SYAL)
VICE PRESIDENT

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 08th June,2018

*mv

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR

ITAT Delhi Benches