IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1944/MUM/2021
Assessment Year: 2018-19

M/s D C Polyester Limited, S. V. Industrial Estate, Aarey Road, Goregaon (East), Mumbai - 400063 PAN: AAACD3816C	**Vs.**	Deputy Commissioner of Income Tax CC-6(4), Mumbai, Room No. 1925, 19th Floor, AIR India Building, Nariman Point, Mumbai - 400021
(Appellant)		**(Respondent)**

Assessee by : Shri Ravikant Pathak (AR)

Revenue by : Shri Surendra Kumar (CIT DR)

Date of Hearing : 26/04/2022
Date of Pronouncement: 03/06/2022

O R D E R

PER S. RIFAUR RAHMAN, AM

This is an appeal filed by the assessee against the order dated 31.08.2021 of Learned Commissioner of Income Tax (Appeals)-54, Mumbai [hereinafter in short 'Ld. CIT(A)'] for the assessment year 2018-19.

2. Assessee has raised the following grounds of appeal:

> *"1.(a) The Commissioner of Income Tax (Appeal) - 54, Mumbai [hereinafter referred as CIT(A)] erred in confirming the addition of Rs. 29,89,035/-made u/s 41(1) of the Income Tax Act, 1961 (Act) out of total addition made by the AO for Rs. 1,75,43,939/- on the*

ground that the said liability is neither repaid nor written back till year ended on 31/03/2020.

The Appellant submits that existence of liability for a longer period cannot be sole reason for making the addition u/s 41(1) of the Act; therefore, the addition confirmed by the CIT(A) shall be deleted.

(b) The CIT(A) erred in confirming the addition without appreciating that the liability of Rs. 29,89,035/- has been written back by the Appellant in its financial statement for year ended on 31/03/2021.

The Appellant submits that action of the CIT(A) in confirming the addition has resulted into double taxation of the same amount as the Appellant itself has written back the said amount in financial year ended on 31/03/2021; hence, the addition confirmed by the CIT(A) shall be deleted.

2. The CIT(A) ought to have allowed the deduction of Rs. 32,889/- under section 28/37 of the Act being education cess paid by the Appellant.

The Appellant craves leave to add, to modify the above grounds of appeal"

3. Brief facts of the case are that the assessee had filed its original return of income on 30.10.2018 declaring total income of Rs. Nil after claiming set-off of carry forward loss of Rs. 14,51,016/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (in short 'the Act').

4. A search action was carried out in the case of D Décor Group on 06.03.2018. Consequent to above search action, the case of the assessee was centralized and notice u/s 143(2) and 142(1) of the Act were issued and served on the assessee. In response to the AR of the assessee attended and submitted the information as called for.

5. During the assessment proceedings, the Assessing Officer (AO) observed that sundry creditors are shown at Rs. 1,93,49,557/- as on 31.03.2017 and Rs. 1,75,43,939/- as on 31.03.2018. The assessee was asked why the above outstanding should not be treated as 'cessation of liability' within the meaning of Section 41(1) of the Act. Assessee filed letter dated 27.12.2019, for the sake of brevity is reproduced below:

> *"The List of creditors from AY 2012-13 to AY 2018-19 are already filed vide our letter dated 20.12.2019 in the respective assessment for AY 2012-13 to AY 2018-19. We submit that the liability towards all the creditors appearing in the books of accounts is existing. Further, as can be evident from the enclosed details of creditors, the assessee has made to various creditors and discharged its liability during these years. Hence, it is submitted that there is no cessation of liability in respect of the creditors and same are still payable. The assessee therefore submit that provision of section 41(1) is not applicable in its case and no addition is called for."*

6. After considering the submissions of the assessee, the AO rejected the contentions of the assessee and proceeded to make the addition on account of cessation of liability to the extent of Rs. 1,75,43,939/-.

7. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) and filed detailed submissions. After considering the detailed submissions of the assessee, the Ld. CIT(A) relying on the outstanding status submitted by the assessee in the below chart allowed partial relief to the assessee:

Particulars	*Amount*	*Amount*
Amount outstanding as on 31/3/2018		*1,75,50,524*
Less:		
Amount paid	*1,01,70,057*	
Amount written back in year ended 31/3/2019	*22,23,657*	
Amount written back in year ended 31/3/2020	*21,67,775*	*1,45,61,489*
Balance payable		***29,89,035***

8. While relying on the above chart, based on the information, Ld. CIT(A) partly allowed the grounds raised by the assessee by deleting the additions made by the AO to the extent of Rs. 1,45,61,489/- and sustained the addition made by the AO to the extent of Rs. 29,89,035/-.

9. Aggrieved with the above order, assessee is in appeal before us.

10. At the time of hearing, Ld. AR of the assessee submitted that assessee has settled the outstanding liabilities in the subsequent assessment years and details were submitted before AO. Still, AO has made the addition, he brought to our notice findings of the Ld. CIT(A) and submitted that the Ld. CIT(A) agreed that the assessee's liabilities are genuine and he acknowledge that assessee has settled the outstanding in the subsequent assessment years and still he proceeded to sustain the remaining liability. He prayed that this issue may be remitted back to the file of AO to verify all the creditors in detail and appreciate the status of the liabilities afresh.

11. On the other hand, the Ld. DR also agreed with the proposition to remit this issue back to the file of AO.

12. Considered the rival submissions and perused the material placed on record. We observed that the AO has proceeded to make the outstanding liabilities of various creditors without properly verifying the outstanding status. It is brought to our knowledge that assessee has settled most of the credit balances in the subsequent assessment year and it was claimed that the outstanding creditors are genuine and it is prayed to remit this issue for the AO to verify the same. Considered the overall facts and record, we deem fit it and proper to remit this issue to the file of AO to verify the details submitted by the assessee and determine the outstanding status as per law, it is needless to say that already Ld. CIT(A) has acknowledged that assessee has already

settled substantial outstanding, however, he has sustained the other outstanding without explaining the reasons for sustaining the addition. Therefore, AO is directed to verify the outstanding and settlement as per law. Accordingly, grounds raised by the assessee is allowed for statistical purposes.

13. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 03.06.2022.

Sd/-	*Sd/-*
(PAVAN KUMAR GADALE) JUDICIAL MEMBER	(S. RIFAUR RAHMAN) ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 03.06.2022
Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**