



IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.481/Nag./2024
(Assessment Year : 2020-21)

Income Tax Officer
Ward-2(1), Nagpur

..... Appellant

v/s

N. Kumar Housing and
Infrastructure Pvt. Ltd.
Poonam Plaza, Civil Lines
Nagpur 440 001 PAN – AABCN9938J

..... Respondent

Assessee by : Shri Manoj G. Moryani
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 06/01/2015

Date of Order – 25/02/2025

ORDER

PER V. DURGA RAO, J.M.

This appeal by the Revenue is directed against the impugned order dated 11/07/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2020-21.

2. Following grounds have been raised by the Revenue:-

"1. Whether on the facts and circumstances of the case, the Id. CIT(A) was correct in holding that the provision of section 41(1) are not applicable in the case of the assessee on addition made of Rs.5.2 crore without ascertaining the nature of transactions through documentary evidences as per Rule 46A of Income Tax Rules as the evidences regarding nature of such transactions was not submitted during the course of assessment proceedings.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) should have treated the amounts of Rs.5.2 crore on the basis of lack of any

evidences submitted by the assessee regarding the nature of such transactions as benefit arisen in the hands of the assessee as per the provisions of section 28(iv) of the Act on account of benefit arisen on exercising the business.”

3. Fact in Brief:- The assessee is Private Limited Company is engaged in the business of construction of commercial and residential properties. For the year under consideration, the assessee filed its return of income on 15/02/2021, declaring total loss of ₹ 3,85,795. The case was selected for limited scrutiny for two reasons viz. (i) High creditors/liabilities and (ii) investment in immovable property. The Assessing Officer, during the course of assessment proceedings, noted that the assessee had shown other payable worth ₹ 14,20,00,000, from the assessment year 2015-16 onwards and in the assessment year 2019-20 and the same was increased to ₹ 15,20,00,000. However, during the assessment year 2020-21, the assessee had shown current liability at ₹ 15,20,00,000, in its Balance Sheet. On inquiry, the assessee submitted that the same was on account of lease deposit and booking advances and further submitted that the same was accepted by the Department in scrutiny assessment for the assessment year 2017-18. The assessee contended that the lease advances of ₹ 10 crore was received from M/s. Poonam Resorts Ltd., prior to the financial year 2011-12 and an amount of ₹ 3 crore was received from the same party during the financial year 2011-12. However, the Assessing Officer, on examination of the lease agreement dated 13/09/2011, found that the lease advance was only ₹ 10 crore. The Assessing Officer further noted that M/s. Poonam Resort Ltd., is related party of the assessee and the assessee has shown the amount of ₹ 3 crore as sundry creditor on account of lease deposits and shown the same as "other

payables". Therefore, the Assessing Officer concluded that these liabilities are very old liability and the assessee has failed to establish the existence of liability and failed to prove the genuineness of the above liability. Therefore, the Assessing Officer considered the lease deposit of ₹ 3 crore as cessation liability.

4. In respect of remaining sundry creditors of ₹ 2,20,00,000, the Assessing Officer noted from the submission of the assessee that there was no opening stock, work-in-progress, closing stock shown by the assessee in the return of income filed from the assessment year 2015-16 onwards, therefore, the Assessing Officer inferred that the assessee has nothing to sell in terms of stock/inventory to the persons/parties from whom the booking advances of ₹ 2.20 crore were shown under the head "*other payables*" and under the head "*other current liabilities*" in the return of income for the assessment year 2020-21. Further, the Assessing Officer noted that the assessee has not furnished the details of persons/parties from whom the booking advances of ₹ 2.20 crore was received such as name, address, details of PAN, confirmation of existence of booking advance, etc. Further, the Assessing Officer noted that the books of accounts of the assessee company are not audited from the assessment year 2015-16 onwards. Therefore, the Assessing Officer concluded that these liabilities are very old liability and the assessee has failed to establish the existence of liability and failed to prove the genuineness of the above liability. Accordingly, the Assessing Officer considered the same as cessation liability. In view of these facts, the Assessing Officer made addition of ₹ 5.20 crore on account of cession of

liability under section 41(1) of the Act and completed the assessment. Being aggrieved, the assessee preferred appeal before the first appellate authority.

5. During the first appellate proceedings, the assessee made a detailed submission before the learned CIT(A), which is recorded at Page-4 to 21 of the impugned order passed by the learned CIT(A), is also reproduced below for ready reference:–

"5.0 The assessee has submitted ground wise written submission vide letter dated 30/05/2024, which is reproduced as under

Ground No. 1 : General in nature, hence no comments.

Ground No. 2 to 4 :

The assessee has filed return of income on 15/02/2021 declaring net loss of Rs. (-) 3,85,795/- vide acknowledgment No. 264362441150221 for the previous year relevant to Asstt. Year 2020-2021. The assessee encloses herewith copy of acknowledgment of return and computation of income for your kind perusal, which is on Page-1 To 4 of the Paper Book.

The assessee engaged in business of development and construction of commercial and residential properties. The assessee has maintained regular books of accounts and books of account audited as per provision of section 44AB of the Income Tax Act, 1961. The assessee has obtained Audit Report and audited Balance Sheet, Profit & Loss A/c. and schedule within specified time limit and submitted alongwith return of income. The assessee encloses herewith copy of audited Balance Sheet, Profit & Loss A/c. and schedule for your kind perusal, which is on Page-5 To 14 of the Paper Book.

The case was selected under CASS for limited Scrutiny and notices U/s. 142(1) as well as show cause notice were issued to the assessee. The assessee encloses herewith copy of show cause notice for your kind perusal, which is on Page-63 To 72 of the Paper Book. In response to notices counsel for the assessee filed written submission and filed details from time to time and explained the entire return of income. During the course of assessment proceedings assessee has submitted all the details called from time to time before the Income Tax Department, assessment unit. The assessee encloses herewith copy of written submission and copies of acknowledgment of e-proceedings response showing the details submitted by the assessee for your kind perusal, which is on Page-21 To 33 of the Paper Book.

In the books of accounts the assessee has claimed other current liabilities at Rs. 15,20,00,000/- and also shown in the audited balance sheet, which includes lease deposit of Rs. 13,00,00,000/- and booking advance of Rs.

2,20,00,000/-. The assessee encloses herewith details of other current liabilities and ledger account of lease deposit Kamptee and booking advance for your kind perusal, which is Page-15 To 17 of the Paper Book.

So far as the lease deposits amount is concerned, the assessee submitted that the assessee company and Poonam Resorts Ltd. company entered into agreement of lease dated 13/09/2011 and the lease deed was executed in the year 2011 between Poonam Resorts Ltd. company incorporated under Companies Act, 1956 and assessee company Nkumar Housing & Infrastructure Pvt. Ltd. incorporated under the Companies Act, 1956. The assessee encloses herewith copy of agreement of lease for your kind perusal, which is on Page-36 To 60 of the Paper Book. It was agreed between the parties to develop a project on land and has taken on lease basis area of 32.87 acres of land situated at Yerkheda, Kamptee Road, Nagpur. As per agreed terms and condition a company Poonam Resorts Ltd. has paid an amount of Rs.10crores to assessee company in the year 2011. These lease deposits were the interest free deposit paid by PoonamResots Ltd to the assessee.

Later on as the project was in developing state and were not completed further amount of Rs. 3 Crores were again paid by Poonam Resorts Ltd to the assessee company as lease deposit for the development purpose. Thus Poonam Resorts Ltd. company has paid total lease deposits at Rs. 13 Crores. In support it contention the assessee encloses herewith ledger account of Lease Deposits-Kamptee for your kind perusal, which is on Page-35 of the Paper Book, which clearly showing entire lease amount is old amount. The entire lease amount of Rs. 13,00,00,000/- were accepted by the department in the past assessment year and assessment was completed and assessment order was passed U/s. 143(3) dated 22/11/2019 for the previous year relevant to Asst. year 2017-2018. The assessee encloses herewith copy of assessment order U/s. 143(3) dated 22/11/2019 for A.Y. 2017-2018 for your kind perusal, which is on Page-61 & 62 of the Paper Book.

The lessee company Poonam Resorts Ltd. was also assessed to tax vide PAN No. AADCP3940L and entire transaction was duly reflected in the books of account of lessee company. The assessee encloses herewith copy of confirmation and copy of acknowledgment of return for your kind perusal, which on Page-18 To 19 of the Paper Book. The learned assessing officer, assessment unit, without going into the merits of the case disallowed Rs. 3,00,00,000/- as liability ceased to exist and added Rs. 3,00,00,000/- U/s. 41(1) being cessation of liability. Even the assessee has not received the any sum during the previous year relevant to Asstt. Year 2020-2021. The said lease deposits was the old interest free deposits and duly accepted by the department in the past assessment year.

The assessee also draw attention that notice u/s 133(6) was not issued to Poonam resorts and without receiving any reply the learned assessing officer, drawn conclusion and disallowed Rs.3,00,00,000/- as liability ceased to exist.

The assessee draw attention that Cessation of liability may occur due to following reasons :

a. By reason of liability becoming unenforceable in law by creditor coupled with debtor declaring his intention not to honour his liability;

- b. By a Contract between parties regarding the said liability;
- c. By discharge of debt.

In the case of assessee, none of the reasons have been occurred and therefore there is no question of cessation of liability arises at all.

The assessee respectfully submitted that to substantiate the genuineness of the lease deposit amount, assessee has already submitted ledger account, confirmation of Poonam Resorts Ltd alongwith acknowledgement of return of Income of Poonam Resorts Ltd. The aforesaid amount were lease deposit amount & part of the lease deposit amount were earlier accepted by the department in the past assessment year. The said deposit is temporary deposit for lease period of 21 years. The said lease period is duly mentioned in the agreement of lease Page 38 of the paper book and re-negotiated before the expiry of lease period i.e. in 20th year (one year before the expiry of lease period) when both the assessee and Poonam resorts Ltd will mutually sit together and decide fresh terms of further lease and in any case the fresh terms are not materialized within a period of 12 months the Lessee shall handover the possession and Lessor shall pay the cost of project assessed by the valuer to the lessee. The same is duly mentioned in Para 9 of the Agreement of lease which is on page 39 of the paper book. Therefore, assessee respectfully submitted that since the lease period is continued till 21 years then the lease deposits also exists and has not ceased. The said agreement of lease is binding on both the parties and hence during the previous year relevant to Asstt Year 2020-2021, the said lease deposits cannot be treated as income of the assessee. Further the sum of Rs.3,00,00,000/- were again paid by the Poonam resorts & were duly acknowledged and confirmation were also filed by the Poonam Resorts Limited.

The assessee respectfully submits that on account of following reasons appeal filed by the assessee may kindly be allowed

1. *The lease deposits are old lease deposits and liability has not ceased as the same were deposits. Therefore the same cannot be the income of the assessee.*
2. *There is no deduction or exemption claimed by the assessee during the previous year relevant to assessment year 2020-2021.*
3. *Liability existed in previous years & same is duly accepted by the department in the past assessment years.*
4. *The assessee has acknowledged its deposits & the same will return after completion of the contract of lease & submitted Balance sheet reflecting the same.*
5. *The assessee draw attention that Cessation of liability may occur due to following reasons :*
 - a. *By reason of liability becoming unenforceable in law by creditor coupled with debtor declaring his intention not to honour his liability;*
 - b. *By a Contract between parties regarding the said liability;*
 - c. *By discharge of debt. In the case of assessee, none of the reasons have been occurred and therefore there is no cessation of liability.*

The assessee places reliance on following judgments :

1. (2023) 67 CCH 0679 (Raipur Trib.)
A.C. Strips Pvt Ltd. -Vs.- Assistant Commissioner of Income Tax
2. (2013) 355 ITR 0218 (Del. HC)
Commissioner of Income Tax -Vs.-Shivali Construction Pvt Ltd
3. (2016) 95 CCH 0042 (Del. High Court)
Principal Commissioner of Income Tax -Vs.-TinnaFinex Ltd.
4. (2007) 292 ITR 0310 (Mad. High Court)
Commissioner of Income Tax -Vs.-Tamilnadu Warehousing Corpn.
5. (2010) 325 ITR 0593 (P&H High Court)
Commissioner of Income Tax -Vs.- Smt. Sita Devi Juneja
6. (2014) 364 ITR 0401 (P&H High Court)
Commissioner of Income Tax -Vs.- Speedways Tyre Ltd.
7. (1989) 177 ITR 0218 (Mumbai High Court)
Commissioner of Income tax -Vs.- Chase Bright Steel Ltd.
8. (2013) 89 DTR 0265 (Delhi, High Court)
Commissioner of Income Tax Vs. Jain Exports Pvt Ltd.
9. (2012) 80 CCH 0156 (Delhi High Court)
Commissioner of Income Tax Vs. Hotline Electronics Ltd
10. (2021) 190 ITD 0435 (Mumbai - Trib)
Assistant Commissioner of Income Tax -Vs.-AshishIndurChowdhry
11. (2016) 159 ITD 0266 (KolkattaTrib)
Income Tax Officer &Anr. -Vs.-Marcopolo Products Private Limited Anr.
12. (2016) 46 CCH 0452 (Asr. Trib)
Modern Distributors -Vs.- Income Tax Officer

The assessee also submitted that none of the judgments quoted by the assessing officer is applicable in the case of assessee. The assessee submitted herewith the contradiction of the cases relied by the department from assessee's case for your kind perusal.

5.1 The assessee uploaded further groundwise written submission on 12/06/2024, which is reproduced as under

"Further Submission with regard to Lease deposits
(Ground No. 4) :

The assessee submitted that so far as the lease deposits amount is concerned, the assessee submitted that the assessee company, N.Kumar Housing & Infrastructure Pvt Ltd and Poonam Resorts Ltd company has entered into agreement of lease dated 13/09/2011 and the lease deed was executed between the parties i.e. Poonam Resorts Ltd. and assessee company Nkumar Housing & Infrastructure Pvt. Ltd in the year 2011.

It was planned by the assessee company to open up a resort, Community Center, 9 hole Golf Course with apartment towers with facility of accommodation and club house having other recreational activities. The assessee company was unable to execute this project. It was then agreed between assessee company, N.Kumar Housing & Infrastructure Pvt Ltd and Poonam Resorts Ltd to develop this dream project and Poonam Resorts Ltd has taken on lease basis area of 32.87 acres of land situated at Yerkheda, Kamptee Road, Nagpur. As per agreed terms and condition company Poonam Resorts Ltd. has paid an amount of Rs.10crores to assessee company in the year 2011 as lease deposits. These lease deposits were the interest free deposit paid by PoonamResots Ltd to the assessee company. Further looking to the point that as the project was in developing stage and to get it completed in the decided time period, & increase in cost of project further amount of Rs. 3 Crores were again paid by Poonam Resorts Ltd to the assessee company as lease deposit for security purpose. Thus Poonam Resorts Ltd. company has paid total lease deposits of Rs. 13 Crores. The assessee encloses herewith confirmation letter of lease deposits for your kind perusal.

The assessee drew attention that Lease deposit amount were interest free deposits. In general principle, Interest Free Deposit means interest free amount to be deposited by the Licensee with Lessor as per terms and conditions of Lease Agreement as interest free deposit. The Interest free deposit taken by the licensor is to secure or to act as a guarantee as per the terms of agreement against damages to the properties.

In the case of assessee company, lease deposits cannot be considered as cessation of liability when the tenure or lease period has not ceased & the deposit amount has to return to the lessee company when the term expire or project completed or as negotiated between both the parties. As per term mentioned in para 9 of the lease agreement – "before the expiry above mentioned of lease period, in 20th year (one year before expiry of lease period), both the parties will mutually set together and decide fresh terms of further lease and in any case the fresh terms are not materialized within a period of 12 months the Lessee shall handed over the possession and Lessor shall pay the cost of project assessed by Valuer to the Lessee".

In the circumstances assessee humbly request that amount disallowed at Rs.3,00,00,000/- as liability ceased to exist is incorrect and same cannot be added u/s 41(1) being cessation of liability. The assessee respectfully submitted that addition made may kindly be deleted and appeal filed by the assessee may kindly be allowed.

Further Submission with regard to booking advances (Ground No.5) :

The assessee company, N.Kumar Housing & Infrastructure Pvt Ltd doing business in real estate for development and construction of land and buildings. It is practice in this line of business in which assessee company received advance against booking of property from various parties and shown under the head "booking advance against property". During the previous year relevant to Asstt Year 2020-2021, assessee has not received any new booking advances against property but carry forward of old advances which the assessee has received in the prior assessment years. In the books of accounts the assessee

has claimed booking advance of Rs. 2,20,00,000/- and the same was shown in the audited balance sheet. In Earlier year the assessee has agreed to sold some portion of property and received advance amount against sale of property for sum of Rs. 2,20,00,000/- towards booking advance against property from various parties. The project of the assessee was not completed and badly affected by Covid-19 pandemic & hence the assessee has not executed any further document.

The assessee respectfully submitted that in the past assessment year 2019-2020, assessee has opening balance of Rs.1,20,00,000/- which were received as booking advance against property from various parties and later on during the previous year relevant to Asstt Year 2019-2020 assessee has further received Rs.1,00,00,000/- through proper banking channel towards booking advance against property. The assessee submitted herewith the bank statement duly reflecting the booking advance received alongwith ledger account which enclosed herewith for your kind perusal. Thereafter, the project of the assessee was stopped and not completed and badly affected by Covid-19 pandemic. Therefore the amount received were old booking advance against property duly shown in the books of accounts of the assessee & later on after completion & execution of sale deed converted into sale account.

The assessee also draw attention to the following points :

- 1. The booking advance shown were not pertain to previous year relevant to Asstt Year 2020-2021 & were old advances against property & same were advance which cannot be income & when project was completed the same will be transfer to sales account.*
- 2. The funds received were through proper banking channel and duly supported by the bank statement of assessee itself proves the genuineness of the transaction.*
- 3. The booking advance received by the assessee company were accepted in the past assessment years by the department. The Assessment were also completed in the case of assessee in the past assessment years u/s 143(3) and no addition with regard to booking advances were made by the assessing officer. To support the same, assessee already submitted the copy of assessment order page – 61 & 62 of paper book for your kind perusal. All along in the past booking advance received by the assessee company were accepted by the department.*
- 4. The booking advances received in earlier assessment years were duly shown in the books of accounts of assessee and books of accounts of earlier years are duly audited and no adverse remarks have been made by the auditors in the audit report.*
- 5. The assessee has neither claimed any allowance nor claimed any deduction with respect to the booking advances received against the property in any of the previous years and even not in the year under consideration. These amounts are specifically received as advances against booking of property. Thus provisions of Section 41(1) are not attracted and no disallowance can be made in the case of assessee company.*

6. It is a well settled principle of law that the liability can be remitted or ceased only by a bilateral or multilateral act between the creditor(s) on one side and the debtor on the other and not by a unilateral act. In the instant case, the amount received as advances from customers has been reflected in the audited Balance Sheet as 'Booking advance received from Customers' till the date registries were executed. The amount received as advances has been reflected in the balance sheet each year till the time registries were executed in the name of customers. Therefore the liability is existing and has not ceased. Therefore there is no cessation of liability.

7. The assessee further submitted that as and when the project of the assessee is completed and sale deeds are executed the said booking advances from customers shall be transferred to Sales/revenue account. Hence there is no loss to the revenue on the above mentioned preposition.

The assessee further places reliance on following judgements :

1. ITA 380/Ind/2017 (ITAT, Indore)
ACIT -vs.- M/s. Sunderdeep Construction Pvt Ltd
2. (2012) 22 taxman 59 (Gujarat High Court)
Commissioner of Income Tax -Vs.-Nitin S Garg

In the circumstances assessee humbly request that amount disallowed at Rs.2,20,00,000/- as liability ceased to exist is incorrect and same cannot be added u/s 41(1) being cessation of liability. The assessee humbly request that addition made may kindly be deleted and appeal filed by the assessee may kindly be allowed."

6. The learned CIT(A), considering the submissions of the assessee, passed a detailed order vide Page-20 to 24 of the impugned order and by virtue of following observations of the learned CIT(A), the issue was decided in favour of the assessee and against the Revenue.

"6.0 Ground No. 1 to 5 :- In these ground the assessee has contested the addition of Rs. 5,20,00,000/- made by the AO u/s. 41(1) of the IT Act. Since all the grounds are interconnected with each other and the main issue involved therein is related the addition of Rs. 5,20,00,000/-, there grounds are taken together for adjudication.

6.1 The written submission uploaded by the assessee have been re-produced in para 5 & 5.1 above

6.2 I have perused the assessment order, grounds of appeal and submissions filed by the assessee carefully. I find from the assessment order that the case was selected for limited scrutiny for the reason (i) High Creditors/liabilities & (ii) Investment Immovable property. During the course

of assessment proceedings, the AO noted that the assessee had shown other payable of Rs. 14,20,00,000/- from AY 2015-2016 onwards and in AY 2019-20, the same was increased to Rs.15,20,00,000/-. However in AY 2020-21, the assessee had shown current liability of Rs. 15,20,00,000/- in the balance sheet. On inquiry the assessee submitted that the same was on account of lease deposit and booking advance and further submitted that the same was accepted by the department in scrutiny assessment for AY 2017-18. The assessee contended that the lease advance of Rs. 10 crores was received from M/s. Poonam Resorts Limited prior to FY 2011-12 and an amount of Rs. 3 crores was received from the same party during F.Y. 2011-12. However, the AO on examination of the lease agreement dated 13/09/2011 found that the lease advance was Rs. 10 crores only. The AO further noted that M/s. Poonam Resorts Limited is a related party of the assessee and the assessee has shown the amount of 3 crores as sundry creditor on account of lease deposits and shown the same as 'other payable'. Therefore the AO concluded that these liabilities are very old liability and the assessee has failed to establish the existence of liability and failed to prove the genuineness of the above liability. Therefore the AO considered the same as cessation liability.

In respect of remaining sundry creditors of Rs. 2,20,00,000/-, the AO noted from the submission of the assessee that there was no opening stock, work in progress, closing stock shown by the assessee in ITR filed from AY 2015-16 onwards therefore the AO inferred that the assessee has nothing to sell in terms of stock/inventory to the persons/parties from whom the booking advances of Rs. 2.20 crores were shown under the head 'other payables and under the head other current liabilities in ITR for AY 2020-21. Further the AO noted that the assessee has not submitted the details of persons/parties from whom the booking advance of Rs. 2.20 crores such as name, address, PAN number, confirmation of existence of booking advance etc. Further the AO noted the books of accounts of the assessee company are not audited from AY 2015-16 onwards. Therefore the AO concluded that these liabilities are very old liability and the assessee has failed to establish the existence of liability and failed to prove the genuineness of the above liability. Therefore the AO considered the same as cessation liability. In view of the above facts, the AO made addition of Rs. 5.20 crores on account of cessation of liability u/s. 41(1) of the Act and completed the assessment.

During the course of assessee proceedings, the assessee contended that the liability mentioned in the assessment order are very old liabilities and the same were accepted during the course of assessment proceeding for AY 2017-18 by the department. Regarding the lease deposits of Rs. 13,00,00,000/- the assessee (lessor) submitted that interest free lease deposit of Rs. 10 crores was received in 2011 from on lease for 20 years vide agreement dated 13/09/2011 for opening a resort and agreed to pay Rs. 10 lakh per year as lease rent to lessor. The assessee contended that due to increase in cost of project, the lessee had paid further amount of Rs. 3 crores as lease deposits for security purpose.

Regarding the liability of Rs. 2,20,00,000/-, the assessee submitted that the amount of Rs. 1,20,00,000/- was received prior to AY 2019-20 as booking advance against property from various parties and later on during AY 2019-20, the assessee received Rs. 1,00,00,000/- as booking advance through banking channel. The assessee submitted that during past assessment proceedings

u/s 143(3), the AO had not made any addition with regard to booking of advances. Therefore the assessee contended that addition cannot be made u/s. 41(1) being cessation of liability.

I have considered the fact of the case and submissions filed by the assessee carefully. I find from the assessment order that the AO has made the addition of Rs. 5,20,00,000/- u/s. 41(1) of the Act on the ground that these liabilities are very old and non existing liabilities and the assessee has failed to establish the existence of liability and failed to prove the genuineness of the above liability. I find that the contention of the assessee that these liabilities were accepted by the department during past assessment proceedings u/s 143(3) is not found to be correct since it is noticed from the assessment order for AY 2017-18 produced by the assessee that the case for A.Y. 2017-18 was selected for scrutiny under CASS for limited scrutiny and the said assessment order is very cryptic order and nothing is mentioned in the said order either implicitly or explicitly that the lease deposit transaction and booking advance transactions have been examined and accepted. Therefore the explanation of the assessee is not found to be correct.

*However I find from the assessment order that the AO has not clearly brought out as to how the provisions of section 41(1) are applicable in the present case. In this regard, for the sake of clarity, the provisions section 41(1) of the Act are reproduced as under :-
Profit chargeable to tax.*

41. [(1)Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year :-

(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profit and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

(b) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.

[Explanation 1—for the purposes of this sub-section, the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof shall include the remission or cessation of any liability by a unilateral act by the first-mentioned person under clause (a) or

the successor in business sunder clause (b) of that sub-section by way of writing off such liability in his accounts]

I find from the assessment order that the AO has not brought out that the assessee has made an allowance or deduction in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee and subsequently during any previous year has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof. Thus I find that the basic condition of invoking the provision of section 41(1) of the Act has not been pointed out the AO in the assessment order. The AO has only doubted the genuineness of the lease deposit transaction and booking advances transactions which could have been the basis for addition u/s. 68 of the Act but again the transactions are very old and not taken place during previous relevant to AY 2020-21, therefore the applicability of section 68 is also not there. Even if the transaction are assumed to be trading liability, the condition mentioned in the explanation to section 41(1) of the Act is not justified. Hence the addition made by the AO is deleted and grounds of appeal raised by assessee are allowed."

7. Since the issue was decided in favour of the assessee by the learned CIT(A), the Revenue being aggrieved filed appeal before the Tribunal.
8. Before us, the learned Departmental Representative strongly relied on the order of Assessing Officer and vehemently objected to the contents of the impugned order passed by the learned CIT(A). He submitted that the impugned order be reversed by upholding the assessment order passed by the Assessing Officer.
9. On the other hand, the learned Counsel for the assessee reiterated the submissions made before the authorities below and supported the impugned order passed by the learned CIT(A).
10. We have heard the rival arguments, perused the material available on the record and gone through the order of the authorities below. Keeping in view the overall facts and circumstances of the case, we find it to be admitted

fact that the assessee company was engaged in the business of development and construction in commercial and residential properties. The assessee claimed "*other current liabilities*" at ₹ 15,20,00,000, and also shown in the Audited Balance Sheet, which includes lease deposit of ₹ 13,00,00,000, and booking advance of ₹ 2,20,00,000. It is also admitted fact that the assessee company and Poonam Resorts Ltd., a company entered into agreement of lease dated 13/09/2011, and lease deed was executed in the year 2011 for land admeasuring 32.87 acres situated at Yerkheda, Kamptee Road, Nagpur. A copy of lease deed is placed on record. The assessee also received ₹ 10 crore from Poonam Resorts Ltd., in the year 2011 and the said deposit was the interest free deposit. The project was not completed as per agreed terms and condition between assessee and Poonam Resorts Ltd., and the company again paid ₹ 3 crore to assessee as lease deposit for the development purpose. It is also admitted fact that the entire lease amount of ₹ 13 crore were accepted by the Department in during assessment year and assessment under section 143(3) was completed for the previous year relevant to the assessment year 2017-2018.

11. It is also admitted fact that the notice under section 133(6) was never issued to Poonam Resort Ltd. and without having received any reply thereto, the Assessing Officer drew conclusion and disallowed ₹ 3 crore as liability ceased to exist and cessation of liability may occur due to the reason viz. (a) by reason of liability becoming unenforceable in law by creditor coupled with debtor declaring his intention not to honour his liability; (b) by a contract between parties regarding the said liability; and (c) by discharge of debt. But

in assessee's case, none of the reasons have been occurred and, therefore, there is no question cessation of liability. It is admitted fact that in support of its contention, the assessee has furnished ledger account, confirmation from Poonam Resorts Ltd., along with acknowledgment of return of income, which is also placed on record.

12. It is also admitted fact that lease deposit amount were interest free deposit means interest free amount to be deposited by the Licensee with Lessor as per terms and conditions of lease agreement. The interest free deposit taken by the licensor is to secure or to act as a guarantee as per the terms of agreement against damages to the properties.

13. The amount of ₹ 3 crore received by the assessee were lease deposit and the said deposit is temporary in nature for lease period of 21 years as per lease agreement. The said agreement of lease is binding on both the parties. The amount was duly acknowledged and confirmation was also filed by Poonam Resorts Ltd., which is placed on record. The assessee has placed reliance on the various case laws of Hon'ble High Court as well as ITAT Bench, which also support the case of the assessee.

14. The assessee has claimed booking advance of ₹ 2.20 crore. The assessee has sold some portion of property and received sum of ₹ 2.20 crore towards booking advance in earlier year. The project of the assessee was stopped and not completed as badly affected by Covid-19 Pandemic. The amount received towards booking advance was old advance and carry forwarded to next year.

15. We find that the assessee company received advance against booking of property from various parties, which were routine practice in this line of business. During the assessment year 2019-20, the assessee was having opening balance of ₹ 1.20 crore which was received as booking advance against property. Subsequently, the assessee has further received ₹ 1 crore through proper banking channel towards booking advance during the previous year relevant to the assessment year 2019-20 and not as booking advance during the previous year relevant to the assessment year 2020-21. The said advance were booking advance against property which cannot be treated as cessation of liability. These amounts are specifically received as advances against booking of property and which does not fall within the provision of 41(1) of the Act, therefore, provision of section 41(1) are not applicable in assessee's case. No amount has been received during the previous year relevant to the assessment year 2020-21. In support of the contentions of the learned Counsel for the assessee, he placed reliance on the following case laws:-

- 1) *CIT v/s Shivall Construction Pvt. Ltd., (2013) 355 ITR 0218 (Del. HC);*
- 2) *CIT v/s Speedways Tyre Ltd. (2014) 364 ITR, 0401 (P&H HC);*
- 3) *CIT v/s Jain Exports Pvt. Ltd., (2013) 89 DTR 0265 (Del. HC);*
- 4) *CIT v/s Hotline Electronics Ltd., (2012) 80 CCH 0156 (Del. HC);*
- 5) *ACIT v/s Ashish Indur Chowdhry, (2021) 190 ITD 0435 (Mum.-Trib);*
- 6) *ITO & Ors.v/s Marcopolo Products Pvt. Ltd. & Anr., (2016) 159 ITD 0266 (Kolkata-Trib);*
- 7) *Modorn Distributors v/s ITO, (2016) 46 CCH 0452 (Asr.-Trib);*

8) *ACIT v/s M/s. Sunderdeep Construction Pvt. Ltd., ITA No.380/Ind/2017 (ITAT-Indore);*

9) *CIT v/s Nitin S. Garg, (2012) 208 Taxman 16 (Guj. H.C.).*

16. We also noticed that the Assessing Officer has failed to bring on record that the assessee has made an allowance or deduction in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee and subsequently during any previous year has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof. Thus, we find that the basic condition of invoking the provision of section 41(1) of the Act has not been pointed out the Assessing Officer in the assessment order. The Assessing Officer has only doubted the genuineness of the lease deposit transaction and booking advances transactions which could have been the basis for addition under section 68 of the Act, but again the transactions are very old and not taken place during previous relevant year relevant to the assessment year 2020-21. Therefore, the applicability of section 68 is also not attracted in assessee's case. Even if the transactions are assumed to be trading liability, the condition mentioned in the Explanation to section 41(1) of the Act is bad-in-law, arbitrary and unjustified. We have gone through the order of the authorities below as well as the submissions made by both the parties and the same have been considered keeping in view the case laws relied upon. As such, in view the overall facts and circumstances of the case and the discussion made supra, we are of the considered opinion that the addition

made for ₹ 3 crore against lease advance as well as addition of ₹ 2.20 crore toward booking advance as liability ceased as income of the assessee were rightly deleted by learned CIT(A). The Revenue failed to appraise us with any scope which warrants us to take a view other than the view taken by the learned CIT(A). Accordingly, the impugned order passed by the learned CIT(A) is hereby upheld by dismissing the grounds raised by the Revenue.

17. In the result, appeal by the Revenue stands dismissed.

Order pronounced in the open Court on 25/02/2025

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 25/02/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur