

IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC" BENCH: MUMBAI
Before Hon'ble Sri Mahavir Singh, JM

I.T.A No. 2246/Mum/2014 A.Y 2007-08

M/s. Krishan Gopal Rungta Vs. I.T.O 12(1)(4), Mumbai
PAN: AAFK 2879H
(Appellant/assessee) (Respondent/department)

For the Appellant/assessee: S/Shri Nitesh Joshi,
Prakash P.Gupta,CA, Id.ARs
For the Respondent/department: Shri Manoj Kumar, Id. Sr.DR

Date of Hearing: 04-07-2016

Date of Pronouncement: 04-07-2016

ORDER

Shri Mahavir Singh, Judicial Member:

This appeal by the assessee is arising out of order of CIT(A) in Appeal No. CIT(A)-10/ITO-12(1)(4)/IT-268/11-12 dated 30-10-2013. Assessment was framed by ITO, 12(1)(4), Mumbai for the assessment year 2007-08 u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 16-12-2009.

2. The only issue in this appeal of assessee is against the order of the CIT(A) confirming the addition made by the AO on account of cessation of liability u/s. 41(1) of the Act in respect of sundry creditors amounting to Rs. 6,49,000/-.

3. I have heard the rival contentions and gone through the facts and circumstances of the case. I find from the facts of the case that the AO during the course of assessment proceedings noted that the assessee has made purchases to the tune of Rs.6,49,000/- from the following non existence parties:-

<i>S.No.</i>	<i>Party Name</i>	<i>Cl. Bal</i>
<i>1.</i>	<i>Salokya Exports</i>	<i>62,000</i>

2.	<i>Selective Gems</i>	<i>1,80,000</i>
3.	<i>Arihant Enterprises</i>	<i>2,30,000</i>
4.	<i>Akansha Gems</i>	<i>64,000</i>
5.	<i>Aayush Enterprises</i>	<i>30,000</i>
6.	<i>Nidhi Gems</i>	<i>83,000</i>

According to the AO, this liability is not genuine for the reason that the AO has issued notices to these parties u/s. 133(6) of the Act, which returned unserved. According to the AO, these are non existence parties and even PAN No. filed by assessee in relation to these parties do not match with the data base of the department. Hence, he applied the provisions of section 41(1) of the Act. Aggrieved, the assessee preferred appeal before the CIT(A), who also confirmed this action of the AO. Aggrieved, now the assessee is in second appeal before the Tribunal.

4. Before me the ld. counsel for the assessee demonstrated that all the creditors are arising out of purchases pertaining to earlier years. These are outstanding as on the date. According to the ld. counsel for the assessee these liabilities are very much outstanding and the assessee has not made any write off of the same. In view of this, the ld. counsel for the assessee stated that the AO has wrongly treated this liability as bogus because in the year of purchase this has been allowed by the AO as deduction and if at all the purchases are to be considered as bogus that can be done only in earlier years of purchase. According to him, the provisions of section 41(1) of the Act will not apply in the present year because the liability is very much outstanding. He also produced the confirmations from said 6 parties along with their respective PAN.

5. It is an admitted fact that the sundry creditors are outstanding and shown in the books of account of the assessee, which pertains to earlier years. These are very much outstanding in the relevant year also. I find that the provisions of section 41(1) of the Act have application only in the following two conditions:-

- (i) *an allowance or deduction had been made, in the computation of profits and gains of a business or profession, in the assessment for*

- any year in respect of loss, expenditure or trading liability incurred by the assessee, and*
- (ii) *subsequently during any previous year the assessee had 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.”*

6. From the above, it is clear that the provisions of section 41(1) of the Act can be applied if the earlier amount of deduction was a trading liability, then provisions of section 41(1) of the Act is attracted only when the assessee obtains subsequently, some benefit in respect of thereof by way of remission or cessation of the liability. But in this year, in the present case the assessee has not obtained any benefit in respect of this trading liability by way of remission or cessation of liability thereof because there no cessation at all for the reason that the liability is very much outstanding. Accordingly, I am of the view that the AO as well as the CIT(A) both have worked on wrong presumption. Hence, I set aside the orders of the lower authorities on this issue and allow the appeal of the assessee on this issue.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 04 -07-2016

Dated 04-07-2016

Sd/-
MAHAVIR SINGH
JUDICIAL MEMBER

*PP /Sr.P.S.

Copy of the order forwarded to:

1. Appellant/assessee: M/s. Krishan G.Rungta 68A Nepeansea Road, Mumbai-400 006.
2. Respondent : The ITO Ward 12(1)(4), Aaykar Bhavan, Mumbai.
3. The CIT,
4. The CIT(A), Mumbai
5. DR, Mumbai Benches, Mumbai

True Copy, By order, /

Asstt. Registrar

Sr.No.	Particulars	Date	Initials	Person Concerned
1	Dictation given on	4/7	PP	SPS
2	Draft placed before author	5/7		
3	Draft proposed/placed before The second Member			
4	Draft discussed/approved by Second member			
5	Approved Draft comes to the Sr.PS			
6	Kept for pronouncement on			
7	File sent to the Bench Clerk			
8	Date on which file goes to the Head Clerk			
9	Date of dispatch of Order			