

आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री शमीम याहया, लेखा सदस्य के समक्ष ।
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 3417/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

Animesh Gupta 6, Gurukrupa Dixit Road, Vile Parle (E), Mumbai-400 057	बनाम/ Vs.	ITO-25(2)(1), Room No. 104, 1 st Floor, Earnest House, Nariman Point, Mumbai-400 201
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AEPPG 8552 C		
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Ms. Dinkle Hariya
प्रत्यर्थी की ओर से/Respondent by	:	Ms. N. Hemalatha
सुनवाई की तारीख / Date of Hearing	:	16.11.2017
घोषणा की तारीख / Date of Pronouncement	:	05.02.2018

आदेश / ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order by the Commissioner of Income Tax (Appeals) dated 17.02.2017 and pertains to the assessment year 2012-13.

2. The issue raised is that the Id. Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.7,50,000/- u/s. 41(1) being loan taken.

3. Brief facts of the case are that it was noted by the Assessing Officer that on perusal of balance sheet for the year ending 31.03.2012, it is seen that under the head sundry creditors assessee has shown liability of Rs.7,25,000/- towards M/s Ani-Anu Developers Pvt. Ltd. The assessee was asked to furnish confirmation of the same along with balance sheet and its annexures of Ani-Anu Developers Pvt. Ltd. The assessee has filed confirmation from Ani-Anu Developers Pvt. Ltd. and also filed audited balance sheet along with annexures of the creditor company. On verification of the details filed by the assessee the Assessing Officer observed that Ani-Anu Developers has not shown the amount of Rs.7,25,000/- as balance outstanding with Shri Animesh Gupta as sundry debtor or under the head loan and advances given. He observed that the assessee's father and brother are managing directors of Ani-Anu Developers Pvt. Ltd. Hence, he held that an amount of Rs.7,25,000/- is considered as liabilities no longer payable/cessation of liability u/s.41(1) of the Act and the same is disallowed.

4. Before the Id. Commissioner of Income Tax (Appeals) it was submitted by the assessee that from perusal of the balance sheet it can be seen that the assessee had borrowed loan of Rs.7,25,000/-. The assessee had purchased gym equipment for Rs.9,05,000/-. The same were purchased by borrowing loan from the said Ani-Anu developers. It can be seen in assessment year 2009-10 the assessee had not undertaken any trading activity, hence no deduction or expenses were claimed for amount payable

to Ani-Anu. That in assessment year 2009-10 amount payable was shown under the head loans and advances. In assessment year 2012-13 through clerical error the said amount of Rs.7,25,000/- payable to Ani-Anu was shown under the head sundry creditors. That the said amount cannot be taxed u/s 41(1) of the Act as the Assessing Officer has not proved that the said amount was claimed as loss, expenditure or trading liability in earlier years. That the Assessing Officer did not bring any material to record to reject confirmation by calling any clarification from Ani-Anu by issuing notice u/s 133(6) of the Act. That filing of confirmation by Ani-Anu proves that liability continues.

5. However, the Id. Commissioner of Income Tax (Appeals) was not convinced. He confirmed the addition by holding as under:

3.2 I have considered the facts of the case. On perusal of the balance sheet of the assessee for AY 2012-13, it is evident that the said amount of Rs.7,25,000/- has been shown as sundry creditors in the name of M/S Ani-Anu Developers. It has also been noted by the AO that assessee's father and brother are managing directors of the said company. There is no doubt about the fact that this amount which was shown as payable to the said M/S Ani-Anu was not appearing in the balance sheet of M/S Ani-Anu as outstanding against the assessee. This fact has not been contradicted by the assessee. Hence, on the basis of evidence which was there before the AO that amount was not appearing as outstanding in the books of account of M/S Ani-Anu Developers and that the assessee has shown the said company as sundry creditor, it was sufficient to form an opinion that there was no liability for payment of the said amount as the same has been written off by M/S Ani-Anu Developers in its books of account. The claim of the assessee that this amount was taken as loan has also not been proved by any evidence whereas it is evident that M/s Ani-Anu is appearing in the books of account of the assessee as sundry creditor. In the given facts of the case, I find no reason to interfere with the finding of the AO and disallowance of Rs.7,25,000/- is accordingly upheld.

6. Against the above order, the assessee is in appeal before the ITAT.
7. I have heard both the counsels and perused the records. The Id. Counsel of the assessee submitted that as explained before the authorities below, the assessee has taken a loan for purchase of gym equipments. That the amount received was not on account of any trading liability. That the amount was not claimed as loss or expenditure earlier also. Hence, it was pleaded that the amount involved cannot be taxed u/s. 41(1). It was further claimed that the assessee has duly shown the amount outstanding as liability. The amount has not been written off in the assessee's books. The assessee has also given confirmation from the party. It was further submitted that ignoring these facts without even issuing any notice u/s. 133(6) of the Act to the lender, the authorities below has have confirmed the addition u/s. 41(1) as cessation of liability.
8. Per contra, the Id. Departmental Representative relied upon the orders of the authorities below.
9. Upon careful consideration, it is noted that the said liability has been appearing in the balance sheet of the assessee. The assessee has not written off the same as irrecoverable. Confirmation from the party has also been produced. Furthermore, it has been brought on record that the amount involved was a loan taken for acquisition of fixed assets and it was not on account of trading account. Hence, it is clear that the authorities below had not given any finding that for this amount any allowance or

deduction has been made in the earlier year in respect of loss, expenditure of trading liability. These are the prerequisites for invoking section 41(1). Hence, I find that the ld. Counsel of the assessee's submissions are correct inasmuch as neither the amount involved was coming under the definition of items liable to be taxed u/s. 41(1) nor it has been cogently proved that there was any cessation thereof. Accordingly, I set aside the orders of the authorities below and decide the issue in favour of the assessee.

10. In the result, this appeal by the assessee is allowed.

Order pronounced in the open court on 05.02.2018

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 05.02.2018

व.नि.स./Roshani, Sr. PS

आदेश की 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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai