

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No.2327/Del/2014
Assessment Year : 2007-08**

ITO, Ward- 14(1), New Delhi.	Vs.	Paam Antibiotics Limited, 718, Vishal Mkt., Bhai Parmanand Colony, Mukherjee Nagar, New Delhi.
		PAN : AACCP6138P
(Appellant)		(Respondent)

Department by : Shri Atiq Ahmad, Sr.DR
Assessee by : None
Date of hearing : 13-02-2018
Date of pronouncement : 27-02-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the Revenue is directed against the order dated 27.01.2014 of the CIT(A)- XVII, New Delhi relating to assessment year 2007-08.

2. Facts of the case, in brief, are that the assessee is a limited company and filed its return of income on 13.10.2007 declaring loss of Rs.6,94,345/-. During the assessment proceedings, the Assessing Officer asked the assessee to furnish the confirmations of the sundry creditors in respect of 12 parties totaling to Rs.1,18,43,514/-. It was explained by the Authorized Representative of the

assessee that the balances are very old and they are unable to furnish confirmations. Since according to the Assessing Officer the burden of proof is on the assessee to explain the nature and source of any liability found in the books and since the assessee failed to explain such liability to the satisfaction of the Assessing Officer, the Assessing Officer proceeded to bring the amount to tax u/s 41(1) of the I.T. Act. In the meantime, the Assessing Officer received confirmations from M/s Institute of Valuers amounting to Rs.48,00,000/-. Therefore, after giving the benefit of Rs.48,00,000/-, the Assessing Officer brought the tax an amount of Rs.70,43,514/- u/s 41(1) of the I.T. Act.

3. In appeal, the Id. CIT(A) deleted the addition. While doing so, he held that the Assessing Officer should have conducted further enquiries from the creditors if, he was of the view that they are not genuine. However, in the instant case, he has not done the same. Further, according to him, the Assessing Officer failed to show that there was a deduction in respect of a trading liability in an earlier year and remission or cessation of such liability in this year resulted in a benefit to the assessee. Relying on various decisions including the decision of the Hon'ble Supreme Court in the case of CIT vs. Suganli Sugar Mills and the decision of the Hon'ble Delhi High Court in the case of CIT vs. Jain Exports (P) Ltd. in ITA No.235 of 2013 and various other decisions, he held that the

Assessing Officer is not justified in making the addition u/s 41(1) of the I.T. Act.

4. Aggrieved with such order of the Id. CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds :-

“1. That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs.70,43,514/- made by the AO u/s 41(1) of the Act.

2. That on the facts and circumstances of the case, the Ld. CIT(A) erred in holding that the AO should have conducted further enquiries from the creditors, ignoring the fact that the onus to furnish confirmation for credit balance lies with the assessee.

3. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in holding that there was no remission on cessation of liability in respect of any persons by not appreciating the fact that the assessee failed to provide confirmation for opening credit balances in the books of accounts and has already taken benefit of these deductions in earlier years.

4. The Appellant craves to be allowed to add any fresh ground of appeal and/or delete or amend any of the grounds of appeal.”

5. None appeared on behalf of the assessee. Despite issue of notices for a number of time by the Registry through Registered Post. All the notices were returned unserved by the Postal Authorities with the remark “left” or “no person found”. We, therefore, proceed to decide the appeal on the basis of material available on record and after hearing the Id. DR.

6. As mentioned earlier, the Assessing Officer made addition of Rs.70,43,514/- u/s 41(1) on the ground that the assessee failed to file the confirmations in respect of sundry creditors. We find the Authorized Representatives of the assessee, who appeared before the Assessing Officer

along with Accounts Manager stated before the Assessing Officer that the balances are very old and they are unable to furnish the confirmations. Under these circumstances, the findings given by the Id. CIT(A) that the Assessing Officer should have conducted further enquiries from the creditors if he was of the view that they are not genuine is not correct. However, it is an admitted fact that all these creditors are old creditors and assessee has not written off such creditors in its books of account and all these balances are pending balances which were being carried forward for several years. Therefore, the decision of the Hon'ble Delhi High Court in the case of Jain Exports (supra) which has been reproduced by the Id. CIT(A) in the body of the assessment order is clearly applicable to the facts of the present case where the Hon'ble High Court has observed as under :-

“We may also add that, admittedly, no credit entry has been made in the books of the assessee in the previous year relevant to the assessment year 2008- 2009. The outstanding balances reflected as payable to M/s Elephanta Oil & Vanaspati Ltd. are the opening balances which are being carried forward for several years. The issue as to the genuineness of a credit entry, thus does not arise in the current year and this issue could only be examined in the year when the liability was recorded as having arisen, that is, in the year 1984-1985. The department having accepted the balances outstanding over several years, it was not open for the CIT (Appeals) to confirm the addition of the amount of ` 1,53,48,850/- on the ground that the assessee could not produce sufficient evidence to prove the genuineness of the transactions which were undertaken in the year 1984-85.

20. *In order to attract the provisions of Section 41(1) of the Act, it is necessary that there should have been a cessation or remission of liability. As held by the Bombay High Court, in the case of J. K. Chemicals Ltd. (supra), cessation of liability may occur either by the reason of the liability becoming unenforceable in law by the creditor coupled with debtor declaring his intention not to honour his liability, or by a contract between parties or by discharge of the debt. In the present case, the assessee is acknowledging the debt payable to M/s Elephanta Oil & Vanaspati Ltd. and there is no material to indicate that the parties have contracted to extinguish the liability.*

Thus, in our view it cannot be concluded that the debt owed by the assessee to M/s Elephanta Oils & Vanaspati Ltd. stood extinguished.”

7. Similarly, the Id. CIT(A) also has relied on the decision of the Hon’ble Delhi High Court in the case of CIT vs. Auto Kashyap India (P) Ltd. reported in 330 ITR 435 wherein the Hon'ble High Court has observed as under :-

“5. Section 41 of Income-Tax Act, to the extent it is relevant, provides that 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 and subsequently during any previous year the assessee has obtained whether in cash or in any other manner, 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 the assessee from the value of the benefit accrued to him shall be deemed to be profits and gains of profession or business, and accordingly chargeable to Income Tax, as the income of that previous year.

6. It is, therefore, a pre-requisite condition before taking recourse to the Section 41 of the Act that that assessee must have either obtained the amount in respect of the loss, expenditure or trading liability incurred earlier by it or it should have received any benefit in respect of such trading liability by way of remission or cessation thereof. The objective is to tax the amount or benefit received by the assessee thereby making him pay back for the benefit availed earlier by him by way of claiming loss, expenditure or liability in respect of that amount.

7. Remission is a positive conduct on the part of the creditor. In the present case, admittedly there has been no remission of the liability of the assessee. Therefore, the only question which arises in this case is whether there was any cessation of liability as has been claimed by the Revenue. The cessation of the liability may accrue either by operation of law, i.e., on the liability becoming unenforceable in law by the creditor, provided the debtor unequivocally declares his intention not to own the liability even if demanded by the creditor. It may also accrue by way of a judicial pronouncement, absolving the assessee from the liability. It may accrue if there is a contract between the parties whereby the liability gets extinguished or it may come to an end by discharge of the debt. Some benefit however must accrue to the assessee by virtue of remission or cessation of the liability, as the case may be.”

8. Since the order of the Id. CIT(A) is based on the decisions Hon’ble Delhi High Court in the cases cited (supra), therefore, we are bound by the decision of the Jurisdictional High Court and in absence of any contrary material brought to

our notice by the Id. DR, we upheld the order of the Id. CIT(A) on this issue and the grounds raised by the Revenue are dismissed.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on this 27th February, 2018.

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 27-02-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi