

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI G. MANJUNATHA, AM**

**ITA No. 2956/Mum/2016
(A.Y. 2011-12)**

PSD Exports Pvt. Ltd 2 nd Floor, Mohamedi Manzil, S.V. Road, Khar (West), Mumbai-400 052	Vs.	The Income Tax Officer, ward 9(2)(4), Mumbai
Appellant	..	Respondent
PAN No. AACCP7581Q		

Assessee by : None

Revenue by : Rajat Mittal, DR

Date of hearing: 15-03-2018 **Date of pronouncement :** 15-03-2018

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax-21, Mumbai [in short CIT(A)], in appeal No. CIT(A)-21/ITO-9(2)(4)/IT-104/2014-15 dated 17-02-2016. The Assessment was framed by the Income Tax Officer, Ward-9(2)-4, Mumbai (in short 'ITO') for the A.Y. 2011-12 vide order dated 19-03-2014 under section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act').

2. At the outset, it is noticed that the assessee has contested following three additions by way of ground No. 2 and 3 as under:-

"2. That the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs. 1,82,53,670/- made by the Id. AO under section 41(1) of the Income Tax



Act, 1961 on account of unpaid liabilities of sundry creditor M/s Asiana Enterprises Ltd.

2.1 That the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs. 20,84,065/- made by the Id. AO under section 41(1) of the Income Tax Act, 1961 on account of amount payable to promoter director Mr. Sunil Datwani.

2.2 The Id. CIT(A) has failed to appreciate the fact that the appellant acknowledges the liability to pay in its audited balance sheet and there is no cessation of the same by the creditor.

3. That the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs. 33,34,623/- made by the Id. AO on account of treatment of advance received as income of the impugned assessment year.”

3. Further, we noticed that this case is earlier hearing granted matter and despite that none is present from the assessee's side. Accordingly, we decide to take up this matter. Further, we noticed that this is ex-parte order by CIT(A) and passed without hearing the assessee. We further find that in regard to addition of cessation of liability under section 41(1), the CIT(A) simply confirmed the order of AO vide para 8 of his appellant order as under:-

"8. As already mentioned earlier, even in the appellate proceedings, despite opportunities, the appellant did not file any submissions, evidences to support its grounds of appeal. No application was made giving justification for admission of additional



evidence nor was an such additional evidence filed. However, it is noted that the amount outstanding from Shri Sunil Datwani was not any liability claimed as expense earlier so as to be liable to be deemed to be an income u/s 41. The assessing officer has not made any addition u/s 68. The additional addition cannot be made u/s 41(1). However, the sources of such credit has to be explained. Such explanation is not there on records. Hence the addition of Rs 20,84,065/- is sustained u/s 68 of the Act. As regards the balance amount of Rs.1,82,53670/- the addition u/s 41(1) is sustained. Reliance is placed on the decisions in the following cases where additions u/s 41(1) was upheld on similar facts.”

4. Further, as regards to the addition of advance income, the CIT(A) simply confirmed the addition vide Para 11 as under: -

"11. No details are filed to support the ground of appeal. The addition is therefore sustained. However, no double addition can be made. The assessing officer will exclude this income from AY 2012-13, if the same item of income has been offered as income in that assessment year.”

5. When these findings of CIT(A) were confronted to the learned Sr. Departmental Representative he fairly conceded that the order of CIT(A) is totally non speaking order and hence, in any case the matter can go back to the file of the CIT(A) for fresh adjudication.



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6. In term of the above and the facts and circumstances of the case that the order of CIT(A) is totally non-speaking order and is without hearing the assessee. Accordingly, in the interest of natural justice, we are of the view that let these issues be remanded back to the file of the CIT(A) for fresh adjudication. Needless to say the CIT(A) will allow the reasonable opportunity of being heard to the assessee and in case the assessee does not present himself he will pass ex-parte order but it should be a speaking order after considering the material facts on record.

7. In term of the above, we also directed the assessee to present before the CIT(A) at the time of hearing. In term of the above, the order of CIT(A) is set aside and the matter is remanded back to the file of CIT(A).

8. In the Result, the appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 15-03-2018.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 15-03-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI