

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**

आयकर अपील सं./I.T.A. No. 1339/Ahd/2014

(निर्धारण वर्ष / Assessment Year : 2010-11)

Jagdishbhai Kanaiyalal Patel Prop. Fair Deal Consultancy, 79, Vaibhav Bunglow, Part- 1-II, Nr. Sun-N-Step Club, Memnagar, Ahmedabad- 380052	बनाम/ Vs.	A.C.I.T. Circle-6, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACMPP1809N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri K. C. Thakkar, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri S. K. Dev, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	17/09/2018
घोषणा की तारीख /Date of Pronouncement	18/09/2018

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the CIT(A)-XVI, Ahmedabad ('CIT(A)' in short), dated 03.03.2014 arising in the assessment order dated 26.12.2012 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

2. The grounds of appeal raised by the assessee reads as under:

“1. The learned C.I.T.(A) has erred in law and on facts in confirming the disallowance of Rs.10,50,000/- being the business promotion expenses.

2. The learned C.I.T.(A) has further erred in law and on facts in confirming the disallowance of Rs.21,47,180/- u/s.41(1) of the Act as seized liability.

3. On the facts and in the circumstances of the case and in law the learned C.I.T.(A) ought to have deleted the disallowance of Rs.10,50,000/- and of Rs.21,47,180/- referred to above.

4. It is therefore prayed that the disallowance of Rs.10,50,000/- and of Rs.21,47,180/- may be deleted.”

3. In the course of hearing, the learned AR for the assessee pointed out that he does not seek to press the Ground no.1 and Ground no.4 concerning disallowance of Rs.10,50,000/- towards business promotion expenses. Consequently, Ground nos. 1 & 4 are dismissed as not pressed.

4. As regards remaining ground concerning disallowance under s.41(1) of the Act, the learned AR for the assessee referred to the assessment order and pointed out that the disallowance amount of Rs.21,47,180/- represents commission expenditure incurred in the earlier year and remained unpaid during the assessment year. It was contended that the AO has wrongly treated the aforesaid liability to be bogus and not an actual liability. The learned AR pointed out that the AO accordingly treated the liability shown in the balance sheet as non-genuine and a case of cessation of liability. The AO consequently invoked Section 41(1) of the Act and proceeded to enhance the taxable income by the aggregate liability of Rs.21,47,180/-. In this regard on being inquired in the course of hearing, the learned AR furnished ledger account of the various parties to show that the liabilities being ultimately repaid wholly or partly in the subsequent assessment years, one cannot say that there was cessation of liability by any means as

contemplated under s.41(1) of the Act. The learned AR thereafter relied upon the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Puridevi Mahendrakumar Chaudhary [2014] 221 TAXMAN 367 (Guj); CIT vs. Nitin S. Garg [2012] 208 TAXMAN 16 (Guj) and CIT vs. Hardik Fabrics [2013] 86 CCH 195 (Guj) for the proposition that in the given facts, the remission or cessation of liability under s.41(1) of the Act cannot be assumed and inferred against the assessee.

5. The learned DR for the Revenue on the other hand relied upon the order of the lower authorities.

6. We have carefully considered the rival submissions and perused the orders of the authorities below and case laws cited at bar. The applicability of Section 41(1) of the Act on outstanding liabilities emanating from business activities as reflected in the balance sheet has been called for in question. Section 41(1) of the Act states that where an allowance in respect of an expenditure or trading liability etc. is made in a year and the assessee obtains any benefit, whether in cash or otherwise in a subsequent year, such benefit shall be deemed to be profits and gains of the business of that subsequent year, whether such business is in existence or not in that subsequent year. The Section has an effect of deeming such cessation or remission of liability as income in departure with the general law where such remission or cessation is not regarded as an income. In this background, we examine the factual matrix. The liability towards outstanding expenses have been declared and shown in the balance sheet of the assessee as outstanding payable during the assessment year in question. The plea of the assessee are of the two fold; firstly, when liability is shown as subsisting and reckoned by the assessee as payable, the cessation thereof cannot be presumed and secondly, the liability has been actually paid in the ensuing years as demonstrable

from the ledger accounts. We find strong merit in the plea raised on behalf of the assessee in the light of the fact that the liabilities have been actually squared up in the subsequent assessment year by payment. All other considerations thus fade into insignificance. This also proves that the trading liabilities had not become non-existent. Thus, in our view, the CIT(A) committed error in confirming the action of the AO. The addition made under s.41(1) of the Act amounting to Rs.21,47,180/- thus requires to be deleted as pleaded on behalf of the assessee. The AO is accordingly directed to do so.

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

This Order pronounced in Open Court on 18/09/2018

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 18/09/2018

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

S. K. SINHA

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।