

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: Bench 'D', NEW DELHI**

**BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 2851/Del/2015
AY: 2011-12**

ITO Ward 11(2), New Delhi.	vs.	Hero Global Design Ltd. 603, International Trade Tower, Nehru Place, New Delhi. AABCH0102L
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(Appellant)

(Respondent)

Appellant by : Smt. Naina Soin Kapila, Sr. DR
Respondent by : Sh. Nirmal Singh, CA

Date of Hearing : 24/01/2019

Date of Pronouncement: 29/01/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by revenue against order dated 24/02/15 passed by Ld. CIT (A)-4, New Delhi on following grounds of appeal:

1. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 2,08,00,000/- u/s 41(1), made on account of non verification of static sundry creditors for several years.*
2. *The appellant craves leave to add, alter or amend any ground of appeal raised above the time of hearing.”*

Brief facts of the case are as under:

2. Assessee filed its return of income declaring nil on 30/09/11. The return was processed under section 143 (1) of the Act and was selected for scrutiny. Subsequently, notice under section 143 (2) was issued

followed by notice under section 142 (1) along with questionnaire to assessee. In response to statutory notices, assessee appeared from time to time and filed necessary details as called for.

3. Ld.AO observed that assessee was providing R&D for developing and designing of parts for automotive industry. It was observed that as per Schedule VI of balance sheet, a sum of Rs.2,08,00,000/- has been shown as sundry creditors, as on 31/03/11. He also observed that identical sum was also shown as on 31/03/10. Ld.AO accordingly called for details of sundry creditor as on 31/03/10, 31/03/11, 31/03/12 and 31/03/13 in order to verify as to whether it is a case of static liability. In response to query raised, assessee submitted that the sum is shown as on 31/03/10, 31/03/11, 31/03/12 and 31/03/13 was clear case of static liability. Ld.AO thus called upon assessee to prove as to why it is not a case of cessation of liability looking at its static nature from past several preceding assessment years. Assessee submitted that it is not a case of loss/expenditure or trading liability and there is no unilateral or bilateral act of remission or cessation of liability. However in the absence of any documentary evidences, Ld.AO made addition in the hands of assessee under section 41 (1) of the Act.

4. Aggrieved by the order of Ld. AO, assessee preferred appeal before Ld.CIT (A), who deleted the addition.

5. Aggrieved by order of Ld.CIT (A), assessee is in appeal before us now.

6. Ld.Sr DR vehemently placed reliance upon order of Ld.AO and submitted that it is upon assessee to prove that it is not a case of remission or cessation of liability and assessee has not been able to discharge its onus with any supporting document or proof.

7. On the contrary, Ld.AR submitted that confirmation dated 22/01/14 issued by M/s Hero Motors Ltd. showed that, these advances were to assessee, which was filed before Ld.CIT (A), and is placed in paper book before us at pages 6. It was further submitted by Ld.AR that amount due is appearing as receivables in the books of M/s Hero Motors Ltd., and that assessee has never claimed the said amount as loss/expenditure/trading liability and therefore provisions of section 41 (1) and 41 (1) (a) of the Act would not be applicable.

8. We have perused submissions advanced by both sides in the light of the records placed before us.

9. Ld.CIT (A) categorically record that said liability exists in books of assessee, and has not been written off unilaterally or by other party, which is evident from confirmation issued by M/s. Hero Motors Co. Ld.Sr.DR has not been able to bring on record any documents to establish that said sum has been treated by assessee either as trading liability, or that there has been remission or cessation of liability in order to attract provisions of section 41 (1) of the Act.

10. Under such circumstances, we are satisfied with view taken by Ld.CIT (A), and the same is upheld.

Accordingly, grounds raised by revenue stands dismissed.

In the result appeal filed by revenue stands dismissed.

Order pronounced in the open court on 29/01/2019

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BEENA A PILLAI)
JUDICIAL MEMBER

Dated: 29.01.2019

*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	25/01/2019
Date on which the typed draft is placed before the dictating Member	25/01
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	29/01
Date on which the fair order comes back to the Sr. PS/PS	30/01
Date on which the final order is uploaded on the website of ITAT	30/01
Date on which the file goes to the Bench Clerk	30/01
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	