

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, AHMEDABAD
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND
Ms MADHUMITA ROY, JUDICIAL MEMBER

अपील सं./ITA No.615/Ahd/2016
&नधाण वष/Asstt. Year:2011-2012

Income Tax Officer, Ward-1(2), Bhavnagar-364001	Vs.	M/s. Alcock Ashdown Gujarat Ltd., Old Port P.B. No.28, Bhavnagar-364001. PAN: AABCA7983J
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(Applicant)	(Responent)
Revenue by :	Shri L.P. Jain, Sr.D.R,
Assessee by :	Ms Arti N. Shah, A.R

सुनवाई का ताराख/Date of Hearing : 20/12/2019
घोषणा का ताराख /Date of Pronouncement: 25/02/2019

आदेश/O R D E R

PER Ms MADHUMITA ROY, JUDICIAL MEMBER:

The instant appeal filed by the Revenue is against the order dated 14.12.2015, passed by the Learned Commissioner of Income Tax(Appeals)-6, Ahmedabad, arising out of the order dated 24.01.2014 passed by the I.T.O Ward-I(2), Bhavnagar, for the Assessment Year 2011-12, whereby and whereunder the addition to the tune of Rs.88,95,360/- made under section 41(1) of the Act by the Assessing Officer was deleted.

2. The assessee is a Government Company. On verification of books of accounts it was found that there are 61 creditors where balances remained outstanding since last 4 to 6 years and no debt/credit were made with those parties accounts. The list of those creditors where balances are outstanding since 31.03.2011 and no payment were made till date was furnished by the assessee before the Ld.AR. A show cause was also issued as to why those creditors should not be treated as ~~cessation of liability~~ u/s.41(1) of the Act and should not be added to the total income of the assessee. The case of the assessee was this that company is owned by Government and involved in manufacturing of vessels completion of which used to take 3 to 5 years time and as per the provisions, payment is made upon such completion of the vessels and therefore payments to those creditors were delayed. Those creditors did not contacted the assessee since last 5 to 6 years for payment and the Ld.AO came to the conclusion that they might have claimed their debts as liabilities are ceased. Hence the entire amount of 88,95,360/- was made to be chargeable to tax u/s.41(1) of the Act and the same was added to the income of the assessee. In appeal such addition was deleted by the Ld.CIT (A). Hence, the instant appeal preferred by the Revenue is before us.

3. At the time of hearing of instant appeal the Ld.Advocate appearing for the assessee submitted that the creditors never voluntary gave up the claim and thus remission of liability does not arose. It was further argued by the Ld.AR, that the onus is upon the Revenue to prove that the liability has ceased finally, neither there is any possibility of their revival any more. Thus addition applying provisions u/s. 41(1) of the Act is not sustainable. In support of the argument he also relied on the following judgments.

J.K Synthetic 199 TTR 14 (Supreme Court)

Gujarat High Court Vs. Silver Cotton Ltd. 125 taxman 741.

3.2 It was further contended by him that since there is no cogent reason and material evidence in support with the liabilities as ceased to exist the finding of the Ld.AO is erroneous on assumption basis. He therefore relied upon the order passed by the Ld.CIT (A) deleting such addition. However, the Departmental representative relied upon the order passed by the Ld.AO.

4. We have heard the parties, perused the relevant material available on record. It appears from the record that since the liability was outstanding for more than 4 years the Ld.AO merely on assumption basis has treated the same as ceased to exist but no material evidence on record is found which can establish that the liabilities is either been ceased or remitted. There was no inquiry conducted by the Ld.AO in respect of those creditors list of which was duly furnished by the assessee. There is no iota of evidence to show that liability was not genuine. Moreso, since the assessee a Government Company, genuineness of creditors seems to be true.

4.1 In absence of any evidence in support of the contention that liability have ceased to exist the findings of the Ld.AO cannot sustain particularly when the genuineness of those creditors are not in question. Thus treating the liabilities as ceased to exist on presumption basis as made by the AO is not sustainable in the eye of Law and addition thereof is uncalled for.

4.2 The Ld.CIT (A) has taken into consideration the entire aspect of the matter as observed by us. He also took note of the ratio laid down by the Honøble SC passed in the matter of J.K. Synthetic reported in 199 ITR 14(SC) where it has been decided that if there is no possibility of revival of debt in future then only liabilities can be treated as ceased. Further that if there is no

cogent reason and material evidence in support that liabilities has ceased to exists then liabilities cannot be treated as ceased to exist. Remission and cessation are important factor, if the remission has not been granted by the creditors then the same cannot be treated as ceased liabilities as also decided by the Honøble Apex Court in the case of Gujarat High Court Vs. Silver Cotton Ltd and Co-ordinate of Bench of ITAT in the case of New Commercial Mills Limited Vs. DCIT 73 TTJ 893. The ratio of the judgments was followed by the Ld.CIT(A). Remission of liabilities only arises when the creditors voluntarily be give up the claim and the liability ceased to exist in the eye of Law and thus the Ld.CIT(A) ultimately deleted the addition as made by the Ld.AO.

4.3 In the light of the above discussion we do not find any infirmity in the impugned order passed by the First Appellate authority warranting interference by us. The question is accordingly answered in the affirmative i.e in favour of the assessee and against the Revenue. Consequently, the appeal fails and is accordingly dismissed.

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

Order pronounced in the Court on 25/02/2019 at Ahmedabad.

**-Sd-
(AMARJIT SINGH)
ACCOUTANT MEMBER**

(True Copy)

**-Sd-
(Ms MADHUMITA ROY)
JUDICIAL MEMBER**

Ahmedabad; Dated 25/02/2019

Manish

आदेश कॢ त्रलम अॢ षत/Copy of the Order forwarded to :

1. अॢलाथॢ / The Appellant
2. ढॢथॢ / The Respondent.
3. संबंॢत आयकर आयुॢत / Concerned CIT
4. आयकर आयुॢत(अॢल) / The CIT(A)
5. ढॢभागीय ढॢत्रलमॢध, आयकर अॢलमॢध अॢधकरण / DR, ITAT,
6. गाडॢफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उॢ/सहायक ढंजीकार (Dy./Asstt.Registrar)
आयकर अॢलमॢध अॢधकरण, अहमदाबाद / ITAT, Ahmedabad