

**IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI BENCH, RANCHI**

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.05/Ran/2017 Assessment Year :2013-14

Shri Swapan Kumar Sarkar Prop. M/s Tarun Tools, Tata- Kandra Road, Adityapur, Jamshedpur-831013 [PAN No.ADKPS 3837 L]	V/s.	ACIT, Circle-3, Jamshedpur
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Devesh Poddar, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri P.K.Mondal, JCIT-DR
सुनवाई की तारीख/Date of Hearing	07-01-2019
घोषणा की तारीख/Date of Pronouncement	15-02-2019

आदेश /ORDER

PER BENCH:-

This assessee's appeal for assessment year 2013-14 arises against the Commissioner of Income Tax (Appeals)-Jamshedpur's order dated 18.10.2016 passed in case No.136/JSR/2015-16, involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused

2. The sole substantive question that arises for our apt adjudication in the instant appeal is as to whether both the lower authorities have rightly

invoked cessation of liability addition u/s 41(1) of the Act regarding the sum of Rs.65.50 lac claimed as sundry creditors liability in books of account since 2009-10. Then is no dispute between the parties the very amount stood allowed as a liability in the past very many assessment years involving both summary as well as regular assessments. The assessee's books have also not indicated the impugned sum as a case of cessation of liability. We notice in this backdrop of facts that tribunal's co-ordinate bench decision in *ACIT vs. M/s Soorajmull Nagarmull* in **ITA No.1907/Kol/2016** decided on 20.07.2018 holds as under:-

“3. We have heard both the parties reiterating their respective stands against and in support of impugned section 41(1) remission / cessation of liability involving the amount of Rs.12,97,47,322/-. The instant proceedings appear to be second round of litigation between the parties *qua* the very issue before this tribunal. Earlier co-ordinate bench had remitted the instant issue back to the assessing authorities for afresh adjudication (*supra*).

4. The Assessing Officer took up consequential proceedings. There is no dispute about the assessee to have been carrying forward the impugned liability in its books for a time span of almost three decades. It is an admitted fact that the department did not raise any issue in all intervening assessment years in question. It emerges that Assessing Officer had issued summons to six directors of the concerned entities on test check basis in the instant second round. Four of the said six entities' directors put in appearance. They expressed their ignorance about any such trading transactions with the assessee in their respective statements. This made the Assessing Officer to issue a show-cause dated 12.03.2015 proposing to treat the above sum as a mere book entry as ceased u/s 41(1) of the Act. The assessee stated reiterated the fact of having claimed the impugned liability in its books almost three decades earlier for the first time followed by similar treatment in the intervening assessment years without any change relevant in facts. Its case was that none of its creditors had ever remitted their respective sums so as to attract section 41(1) of the Act. It highlighted the fact that above random creditors had supported its case as per their written replies in response to the respective summons. All this failed to convince the Assessing Officer. He noticed that one of the said written replies did not contain even concerned party's signatures. He thereafter narrated the entire backdrop and quoted four of the tested check parties statements to conclude that the impugned liability was not genuine one so as to be taken as subsisting upto impugned assessment year. He took cognizance of the fact the that said four directors had expressed their complete ignorance about any corresponding transactions to have taken place in the past. Relevant intervening period had also not seen any payment from the taxpayer's side for a very long period of time as per the Assessing Officer. He was therefore of the view that neither the creditors in question had taken any steps to recover their respective dues nor the instant taxpayer had discharged even a single penny of the impugned liability. All this formed sufficient reason for him to opine that the assessee had no intention to pay that money in question. He alleged creditors non confirmation as well as lack of their identity in his assessment order based on an assumption that they had either vanished or there was no effort at their

behest to claim this liability sum. The Assessing Officer was further of the opinion that hon'ble Delhi high court's decision in *CIT vs. Chipsoft Technology Pvt. Ltd.* on 20.07.2012 in **ITA No. 598/2011** had made it clear that section 41(1) Explanation sufficiently indicated the same to be inclusive provision since the legislature had not used "means" clause therein. He therefore made the impugned addition u/s 41(1) on cessation of trading liability of Rs12,97,47,322/- in question.

5. The assessee preferred appeal. The CIT(A) has reversed the Assessing Officer's action in his above extracted detailed discussion. This leaves the Revenue aggrieved.

6. Learned Departmental Representative vehemently argues in the light of Assessing Officer's findings that assessee's impugned liability is not a genuine one first of all as per the four parties's directors' statements. He thereafter submits that it can be safely assumed that the liability in question as ceased u/s. 41(1) of the Act. We do not find merit in either of these two arguments. Case file revealed that the assessee has throughout been claiming the impugned liability for a time span of almost three decades without any such objection from department. Relevant sundry creditors list runs into 96 parties; amount and address-wise, particularly in paper book pages 55 to 56 as on 31.03.2001. The assessee partly paid the sum in case of five of the said parties involving gross amount of Rs21,95,04,000/-. Paper book pages 93 to 95 and 57 to 59 contains the summarized statement of liability in question as to 31.03.2000 and from 01.04.1989 to 31.03.2013 involving the sum of Rs12,87,24,079/-; respectively.

7. Case file further suggests that the impugned liability claim has nowhere been doubted in preceding or succeeding assessment years involving regular assessment at least in assessment years 1998-99, 2000-01, 2003-04 and 2004-05. The CIT(A)'s clinching findings that four directors of corresponding entities have been appointed in financial year 2001-02 only whereas the impugned liability dates back to almost 30 years; have gone unrebutted from the Revenue side. We therefore do not see any merit in Revenue's above twin submissions. Its former plea that the impugned liability is not genuine at this belated stage carries no weight. Hon'ble Karnataka high court's decision in *CIT vs. Alvares & Thomas* (2010) 69 Taxman 257 (Kar) holds that mere none verification of such a liability for or for that any doubt raised thereupon does not attract cessation of liability principle u/s 41(1) of the Act as the same has to be a case of cessation in law only. Hon'ble Gujarat high court's judgment in *CIT vs. Nitin S Garg* (2012) 22 Taxman 59 (Guj) has placed reliance on much a celebrate judgment of hon'ble apex court in *CIT vs. Sugauli Sugar Works (P) Ltd.* (1999) 236 ITR 518 (SC) to hold that the mere fact of a liability having continued to be shown for very many years would not attract section 41(1) since it is for the Assessing Officer has who has to show that concerned assessee has drawn any benefit by way of cessation or remission thereof. We further make it clear that CIT(A)'s above extracted detailed discussion has examined all the facts as well as the relevant legal position at length which has nowhere been rebutted from the Revenue side. We therefore conclude that the CIT(A) has rightly reversed the assessment findings holding the amount in question of Rs12,97,47,322/- to be a case of cessation of liability u/s 41(1) of the Act."

We adopt the detailed discussion mutatis mutandis to conclude that the impugned addition regarding assessee's sundry creditors liability income case of M/s XYZ & Co. is not sustainable. The same is deleted.

3. This assessee's appeal is allowed.

Order pronounced in accordance with Rule 34(4) of the ITAT Rules by putting on Notice Board on 15/02/2019

Sd/-

(लेखा सदस्य)

(Dr. A.L. Saini)

(Accountant Member)

Ranchi,

*Dkp Sr.P.S

दिनांक:- 15/02/2019 Ranchi I

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

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

1. अपीलार्थी/Appellant-Shri Swapan Kr. Sarkar, Prop: M/s Tarun Tools, Tata-Kandra Road, Adityapur, Jamshedpur-831013
2. प्रत्यर्थी/Respondent-ACIT, Circle-3, Jamshedpur
3. संबंधित आयकर आयुक्त / Concerned CIT Ranchi
4. आयकर आयुक्त- अपील / CIT (A) Ranchi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Ranchi
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

SR.PS, ITAT, RANCHI