

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH ‘SMC’

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 2608/Ahd/2017

निर्धारण वर्ष/Assessment Year: 2014-15

M/s.Surya International 401, Samundra Complex Nr.Hotel Classic Gold Ellisbridge Ahmedabad PAN : AAGFS 5480 A	Vs	DCIT, Cir.5(2) Ahmedabad.
---	----	------------------------------

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Chetan L. Agarwal
Revenue by :	Shri B.P. Srivastava, ld.DR

सुनवाई की तारीख/Date of Hearing : 01/05/2019

घोषणा की तारीख /Date of Pronouncement : 03/05/2019

### ORDER

Assessee is in appeal before the Tribunal against order of the ld.CIT(A)-5, Ahmedabad dated 20.10.2017 passed for the Asstt.Year 2014-15.

2. Sole grievance of the assessee is that the ld.CIT(A) has erred in confirming the addition of Rs.1,71,917/- which was added by the AO with the aid of section 41 of the Income Tax Act, 1961.

3. With the assistance of the ld.representatives, we have gone through the record carefully. It emerges out from the record that while scrutinizing return of income of the assessee, the ld.AO has observed that there are five creditors whose credit balance is outstanding from many years. According to the AO, there is no change in the opening

balance, and closing balance of these creditors, hence, he harboured a belief that liability to pay was ceased and credit balance of Rs.1,71,917/- appeared against names of five persons/entities deserve to be added to the income of the assessee. Appeal to the CIT(A) did not bring any relief to the assessee.

4. The section 41(1) applies where a trading liability was allowed as a deduction in an earlier year in computing the business income of the assessee and the assessee has obtained a benefit in respect of such trading liability in a later year by way of remission or cessation of the liability. In such a case the section says that whatever benefit has arisen to the assessee in the later year by way of remission or cessation of the liability will be brought to tax in that year. The principle behind the section is that the provision is intended to ensure that the assessee does not get away with a double benefit - once by way of deduction in an earlier assessment year and again by not being taxed on the benefit received by him in a later year with reference to the liability earlier allowed as a deduction. At this stage it is pertinent to take note of finding recorded by the Hon'ble Gujarat High Court in the case of CIT v. Bhogilal Ramjibhai Atara [2014] 43 taxmann.com55/222 Taxman 313. It reads as under:

*"8. We are in agreement with the view of the Tribunal. Section 41(1) of the Act as discussed in the above three decisions would apply in a case where there has been remission or cessation of liability during the year under consideration subject to the conditions contained in the statute being fulfilled. Additionally, such cessation or remission has to be during the previous year relevant to the assessment year under consideration. In the present case, both elements are missing. There was nothing on record to suggest there was remission or cessation of liability that too during the previous year relevant to the assessment year 2007-08 which was the year under consideration. It is undoubtedly a curious case. Even the liability*

*itself seems under serious doubt. The Assessing Officer undertook the exercise to verify the records of the so called creditors. Many of them were not found at all in the given address. Some of them stated that they had no dealing with the assessee. In one or two cases, the response was that they had no dealing with the assessee nor did they know him. Of course, these inquiries were made ex parte and in that view of the matter, the assessee would be allowed to contest such findings. Nevertheless, even if such facts were established through bi-partite inquiries, the liability as it stands perhaps holds that there was no cessation or remission of liability and that therefore, the amount in question cannot be added back as a deemed income under section 41(c) f the Act. This is one of the strange cases where even if the debt itself is found to be non-genuine from the very inception, at least in terms of section 41(1) of the Act there is no cure for it. Be that as it may, insofar as the orders of the Revenue authorities are concerned, the Tribunal not having made any error, this Tax Appeal is dismissed."*

5. The AO has not brought any evidence on the record to show that liability has ceased. The assessee has not written off the liability in the accounts. Therefore, there would not be any addition under section 41(1) of the Act. Hon'ble High Court in the case of Bhogilal Ramjibhai Atara (supra) considered this aspect and observed that even if debt itself is found to be non-genuine from the very inception that also in terms of section 41(1) of the Act, there is no solution for that. In other words, addition cannot be made unless liability in the accounts has been written off. Therefore, following the decision of the Hon'ble Gujarat High Court in the case of Bhogilal Ramjibhai Atara (supra), we allow this ground of appeal and delete disallowance.

6. In the result, appeal of the assessee is allowed.

**Pronounced in the Open Court on 3<sup>rd</sup> May, 2019.**

**Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER**

**Ahmedabad; Dated, 03/05/2019**