

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.1887/Kol/2018
Assessment Year:2013-14

Amar Kant Agarwal Prop: Ruchira Chemical Corporation, 9, Ram Sevak Mullick Lane, Kolkata-700007 [PAN No.ACYP A 7815 P]	<u>बनाम /</u> V/s.	Income Tax Officer, Ward-43(1), 3, Govt. Place (West), Kolkata-001
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Miraj D Shah, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri C.J. Shah, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	05-03-2019
घोषणा की तारीख/Date of Pronouncement	15-05-2019

आदेश /O R D E R

This assessee's appeal for assessment year 2013-14, arises against the Commissioner of Income-tax (Appeals)-13, Kolkata's order dated 24.07.2017 passed in case No.312/CIT(A)-13/Kol/2014-15, 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 dispute that arose for my apt adjudication in the instant appeal is of correctness of sec.41(1) cessational liability addition of ₹5 lac in respect of assessee's alleged sundry creditors M/s R.K. Trading Co. u/s 41(1) of the Act. the CIT(A)'s detailed discussion confirming the impugned addition reads as under:-

"4. Decision:-

I have gone through the contention of the assessee, the order passed by the AO and the submissions made by the Appellant. The decision of this appeal is given as under:-
continued to show the amounts as liability in his balance sheet. There is no cessation of liability. Hon. Madras High Court in CIT v. Tamilnadu Warehousing Corporation (2007) 292 ITR 310 had held - 'The assessee had continued to show the admitted amount of Rs.8/22/925j- as liability in the balance sheet. The undisputed fact was that it was a liability reflected in the balance sheet. Once it was shown as liability by the assessee, the

Commissioner was wrong in holding that it was assessable under section 41(1) of the Act. Unless and until there is cessation of liability section 41(1) is not applicable'

In the case of Pr. CIT v. Mahuraprasad C. Pandey (2015) 377 ITR 363, the AO made an addition of Rs.56,96,645/- invoking section 41(1) of the Act doubting sundry creditors appearing in the balance sheet of the assessee for the past several years. The addition was deleted by the Tribunal. On departmental appeal the Gujrat High Court held - 'that the sundry creditors mentioned in the balance sheet of the assessee were shown as sundry creditors for several years before the relevant assessment year. There was no remission or cessation of the liability during the previous year relevant to the assessment year under consideration. The deletion of addition was justified'

The Supreme Court of India had dealt with the cessation of trading liability in Chief CIT v. Kesaria Tea Co. Ltd. (2002) 254 ITR 434, wherein provision made by the assessee towards purchase tax liability (allowed in the earlier years was written back assessee in the year under consideration. The Apex Court held the unilateral act on the part of the assessee by writing off the liability in the accounts did not necessarily mean that the liability ceased in the eye of law."

4.2.2 The aforesaid facts were shown to the AO for his comments. The AO vide his report dated 15-03-17 has reported as under -

"At the appellate stage the assessee claimed vide letter dated 09/01/2017 before the Ld. CIT(A)-13 Kolkata and letter dated 28/02/2017 before the undersigned as under:- During scrutiny proceedings A.D. found that assessee made undisclosed purchase of Rs.4,40,436/- from this concern. The assessee was duly informed and asked to attend hearing before the A.D. The assessee ignored the issue and remained silent when show caused by the A.D. regarding the issue. Therefore the A.O. had no other option but to add back the sum of Rs.4,40,436/- total income of the assessee. At the appellate stage the assessee has filed a reconciliation of accounts. On going through the reconciliation and the explanation provided along with it the contention of the .assessee appears valid."

4.2.3 Perusal of remand report in case of R.K. Trading Company and submission of the appellant shows that the aforesaid liability was lying for many years. The appellant was not able to provide the current address of the sundry creditor. The appellant come with new plea before the A.D. during remand proceeding that the goods have been returned to the party as they were not upto the marks. The appellant submitted transport bill, but no new address of the party "and current address was submitted. The road transport and the bill of the aforesaid purchase submitted by the appellant does not show any corresponding transportation challan, tax payment and confirmation of creditors. The appellant has also not provided any current address of the party. Transportation bill of the aforesaid material and original purchase bill were also not submitted. The appellant has not given quantitative, sale & purchase along with price during the relevant year. The appellant during the assessment proceedings did not submit any current address of the appellant nor quality of -goods was challenged. However at remand stage the appellant presented bill of Howrah and Hyderabad before the AO claiming it as resend to the suppliers. Perusal of such bills show that the bill is not having any corresponding receipt of the aforesaid parties. Only appellant's credit note, debit note found to be produced. These are not self-sufficient evidences as these are not in confirmation of action of the suppliers. When their current whereabouts is not know/ how the goods have been sent back to the suppliers. There is no receipt proof of the aforesaid goods. Neither appellant has made claim that the goods were sold in the subsequent year and the AO has accepted the same. Keeping in view the aforesaid fact, the addition of Rs.14,66,247/- on account of Sri Sai Shyam Industries is hereby deleted."

3. The assessee's only case during the course of hearing is that he had returned the goods in issue followed by the consequential reversal of the amount which had never been written off in his books so as to attract sec. 41(1). The Revenue on the other hand strongly supports assessee's detailed discussion not accepting the same as per Assessing Officer's remand report. I find no reason to concur with the CIT(A)'s action under challenge. The assessee's paper book makes it clear that he has placed purchases bills in case of M/s R.K. Trading Co., ledgers of the said entity as on 31.03.2011 showing credit balances as on 31.03.2011, the very factual position continuing upto in Assessment Years 2012-13 to 2013-14, debit note of ₹5,01,662/- (No.46) returned after rejection of the material covered under bill No.294 dated 12.02.2011, way bill sent along with return material dated 17.02.2017 as well as ledger of M/s R.K. Trading Co. as on 31.03.2017 showing nil balance; respectively on record. I therefore conclude that the impugned liability had never ceased to exist so as to attract sec. 41(1) of the Act. I accordingly direct the Assessing Officer to delete the impugned addition of ₹ 5 lac. u/s 41(1) of the Act.

4. This assessee's appeal is allowed.

Order pronounced in open court on 15/05/2019

Sd/-
(S.S. Godara)
Judicial Member

Kolkata,
*Dkp/Sr.PS

दिनांक:- /05/2019 कोलकाता

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

1. अपीलार्थी/Appellant-Amar Kant Agarwal, Prop: Ruchira Chemical Corporation,
9, Ram Sevak Mullick Lane, Kolkata-007
2. प्रत्यर्थी/Respondent-ITO Ward-43(1), 3, Govt. Place (West), Kolkata-001
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, कोलकाता ।