

THE INCOME TAX APPELLATE TRIBUNAL
“B” Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Ramalal Negi (JM)

I.T.A. No. 5002/Mum/2017 (Assessment Year 2012-13)

ITO-2(2)(3) Room No. 542 5 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Nirjay Securities Pvt. Ltd. 201, Stock Exchange Tower, Dala Street Fort, Mumbai-400 001. PAN : AAACN1785G
(Appellant)		(Respondent)

Assessee by	Shri Vipul Joshi & Ms. Dinkle Haria
Department by	Shri Rajeev Harit
Date of Hearing	18.3.2019
Date of Pronouncement	29.5.2019

ORDER

Per Shamim Yahya (AM) :

This appeal by the Revenue is directed against the order of learned CIT(A) dated 21.4.2017 and pertains to A.Y. 2012-13. The issue raised is that learned CIT(A) erred in deleting the addition made u/s. 41(1) in respect of sundry creditor.

2. The assessee in this case is engaged in the business of trading in shares and securities. The Assessing Officer proceeded to examine veracity of liabilities appearing in the balance sheet under the head “sundry creditors” amounting to Rs. 31,37,99,625/-. Upon enquiry, the Assessing Officer found that twelve parties have already written off their liabilities amounting to Rs. 24,24,57,274/-. Further in respect of six parties amounting to Rs. 6,97,97,184/-, there was no compliance to the notice u/s. 133(6), hence, Assessing Officer proceeded to add the amount of Rs. 31,37,99,625/- u/s. 41(1).

3. Against the above order, assessee appealed before learned CIT(A). While dealing with the issue learned CIT(A) put great emphasis on the order of learned CIT(A) for A.Y. 2007-08, where addition was also in respect of some of the creditors in the present case. These were deleted by the then learned CIT(A) in that year on the ground that mere outstanding for more than three years cannot lead to addition u/s. 41(1) of the Act. Learned CIT(A) also put emphasis that Revenue had not filed appeal against that order of learned CIT(A). Thereafter learned CIT(A) referred to the issue where Assessing Officer has found that twelve parties have already written off Rs. 24,24,57,274/- in this regard. Learned CIT(A) gave a finding that above was not factually correct and in several cases creditors have not written off said amount. In any case learned CIT(A) held that mere unilaterally writing off by these creditors will not result in liability no longer in existence, liable to be added in the hands of the assessee u/s. 41(1) of the Act. As regards creditors who have not responded to the notice u/s. 133(6), learned CIT(A) also held that this alone cannot be a reason to add u/s. 41(1) of the Act. Hence, learned CIT(A) proceeded to delete the addition. Against this order, the Revenue is in appeal before us.

4. We have heard both the counsel and perused the records. Upon careful consideration, we find that in deleting the addition u/s. 41(1), learned CIT(A) has put great emphasis on the order of learned CIT(A) for A.Y. 2007-08, where some of these sundry creditors were disallowed u/s. 41(1) by the Assessing Officer, the same was deleted by learned CIT(A) and Revenue has not in appeal against the order of learned CIT(A).

5. We find that as held by Hon'ble Apex Court, there can be many reasons why the Revenue does not file appeal against the order of the authorities below. The same cannot be taken as precedent that the issue is covered against the Revenue. In the present case, rather we find fact that after so many years some creditors are still continuing the legitimate of inquiry by the Assessing Officer cannot be questioned. As regards finding of learned CIT(A)

with regard to sundry creditors who have already written off outstanding in their books that these some amounts are not actually written off, we find that on this aspect learned CIT(A) has accepted assessee's submissions without any remand report from the Assessing Officer. In our considered opinion this is not appropriate action on the part of learned CIT(A). Furthermore, we find that learned CIT(A) has held that mere unilateral writing off by these parties cannot lead to a conclusion that liability no longer exists and the same is liable to be added u/s. 41(1) of the Act. We find that there are case laws that unilateral writing off by the assessee cannot lead to addition u/s. 41(1) as it cannot be said that liability no longer exists. Learned CIT(A) is drawing reverse unacceptable analogy. In the present case, when creditors themselves have written off and are claiming in their books, that the assessee does not owe anything to then how can the assessee continue to carry those liabilities in their balance sheet is beyond comprehension. By no stretch of imagination when creditors have written off liability and claim that the assessee does not owe anything as per books of account, it can be held that assessee is still entitled to carry those as liabilities. These amounts can certainly be added u/s. 41(1) of the Act. Sine on this issue learned CIT(A) has given some findings that some of the amounts have actually not been written off, we deem it appropriate to remit this issue to the Assessing Officer. The Assessing Officer shall duly enquire after giving fresh notice to the assessee as to how much amounts have actually been written off by the creditors. Amount of liability which has been written off by these creditors is duly liable to be added in the hands of the assessee u/s. 41(1) of the Act.

6. As regards other sundry creditors who have not responded the Assessing Officer's notice u/s. 133(6), we deem it appropriate to remit this issue also to the file of the Assessing Officer. The Assessing Officer shall give further notice to these parties and examine veracity as to whether these liabilities are still existing or not.

7. In the result, this appeal of the Revenue stands allowed for statistical purposes.

Order has been pronounced in the Court on 29.5.2019.

SD/-
(RAMALA NEGI)
JUDICIAL MEMBER

SD/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 29/5/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai