

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'D'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI RIFAUR RAHMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.1803/Ahd/2015

निर्धारण वर्ष/Asstt. Year: 2011-12

DCIT, Cir.3(1)(2) Ahmedabad.	Vs.	Smt.Madhuri Pradipkumar Kawadiya C-302, Prestige Tower B/h. Judges Bungalow Bodekdev Ahmedabad. PAN : AEDPK 8810 M
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Revenue by :	Shri L.P. Jain, Sr.DR
Assessee by :	Shri Tushar Hemani, AR

सुनवाई की तारीख/Date of Hearing : 28/06/2019

घोषणा की तारीख/Date of Pronouncement: 15/07/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Revenue is in appeal before the Tribunal against order of the Id.CIT(A)-9, Ahmedabad dated 9.3.2015 passed for the Asstt.Year 2011-12.

2. Revenue has taken three grounds. However, its grievance revolves around a single issue viz. the Id.CIT(A) has erred in deleting addition of Rs.65,27,843/- which was added by the AO with aid of section 41(1) of the Income Tax Act, 1961.

3. Brief facts of the case are that the assessee at the relevant time was engaged in trading of construction materials viz. cement, steel etc. She has filed return of income on 28.9.2011 declaring total income at Rs.66,65,590/-. On scrutiny of the accounts, it revealed to the AO that a liability of Rs.65,27,843/- is being outstanding against the names of nine concerns. He reproduced the details of these nine concerns and amounts outstanding against their names. He further observed that this liability is being outstanding from last four-five years. He assumed that it must have ceased, and therefore he made addition of Rs.65,27,843/-. On appeal the Id.CIT(A) did not concur with the AO and observed that upto and until liability is being recognized in the accounts of the assessee, it could not be assumed that the liability is ceased. Therefore, no addition on account of cessation of liability under section 41 is to be made.

4. Before us, the Id.counsel for the assessee submitted that issue in dispute is squarely covered by the latest decision of Hon'ble Gujarat High Court rendered in the case of Dattatray Poultry Breeding Farm P.Ltd. Vs. ACIT, 104 taxmann.com 366 (Guj). He submitted that Hon'ble Gujarat High Court again reiterated position of law as was propounded in the case of CIT Vs. Bhogilal Ramjibhai Atara reported in 43 taxmann 313. On the other hand, the Id.DR relied upon the order of the AO.

5. We have duly considered rival submissions and gone through the record carefully. Section 41(1) of the Income Tax Act has been incorporated to cover a particular fact situation. The section 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.

6. At this stage, we would like to take note of the following finding of the Hon'ble Gujarat High Court in the case of Bhogilal Ramjibhai Atara (supra). 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) of 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.

7. In the light of the above, if we examine the facts of the present case, then it would reveal that liability has not ceased, and the Id.CIT(A) has rightly deleted the same. We do not find error in the order of the Id.CIT(A) on this issue. This ground of appeal is rejected.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Court on 15th July, 2019.

Sd/-
(RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER