

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

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 6175/MUM/2018
Assessment Year: 2012-13**

M/s Jivanlal Corporation,
409 Western Edge II,
Western Express Highway,
Borivali (East), Mumbai-
400066.

PAN No. AACFJ3353K

Appellant

ITO-Mumbai-17(2)(1),
Vs. Aayakar Bhavan, Mumbai.

Respondent

Assessee by : Mr. Bhupendra Shah, AR
Revenue by : Mr. Bhera Ram, DR

Date of Hearing : 19/11/2019
Date of pronouncement : 25/11/2019

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2012-13. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-57, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under :

- 1) In the facts and the circumstances of the case and in law, the Ld. CIT(A) erred in confirming addition of Rs.18,45,648/- u/s 41[1] by overlooking the fact that
 - a. confirmations and proof of payments made to suppliers were filed,
 - b. the said balances were never written back in books by the Appellant

- c. there were business disputes between the Appellant and the suppliers.
 - d. Debts even though barred by limitations do not become income u/s 41[1].
- 2) The Assessing Officer wrongly made an addition of Rs.18,45,648/- u/s 41[1] by overlooking above said facts.
- 3) The Assessing Officer wrongly charged interest u/s 234 A, B and C and initiated penalty u/s 271(1)(c).

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2012-13 on 27.09.2012 declaring total income of Rs.13,03,311/-. The assessee trades in chemicals and solvents. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee had purchased goods from (i) M/s Darshan Sales Corporation of Rs.8,28,590/- and (ii) M/s Chetan Chemical Corporation of Rs.10,17,058/-, who were declared as hawala operators by the Sales Tax Authorities. These two parties were treated as bogus and non-genuine in the earlier assessment years i.e. AY 2009-10 and AY 2010-11. The AO further noted from the balance sheet filed by the assessee that these two parties were still appearing as sundry creditors during the impugned assessment year. In response to a query raised by the AO to explain why addition should not be made u/s 41(1) of the above sum of Rs.18,45,648/-, the assessee submitted that the amount outstanding from the said suppliers were not yet time barred and when it purchased from the above two parties, their registration were in force under the MVAT Act. However, the AO was not convinced with the above explanation of the assessee and made an addition of Rs.18,45,648/- u/s 41(1) of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) dismissed the appeal filed by the

assessee on the reason that the confirmation letter filed during the course of appellate proceedings in the case of M/s Chetan Chemical Corporation contains the signature of the proprietor but does not contain the PAN/TAN number. Similarly, the confirmation given by Darshan Sales Corporation contains the signature of the proprietor but there is no PAN/TAN number. As the above two parties have been declared as hawala/non-genuine and as the confirmations do not contain PAN/TAN number, the Ld. CIT(A) confirmed the addition of Rs.18,45,648/- made by the AO.

5. Before us, the Ld. counsel for the assessee submits that it was pointed out to the AO during the course of assessment proceedings that the assessee had never written back the said balances in the books of accounts maintained by the assessee and there was commercial dispute between the assessee and the suppliers for a long time and therefore, the said payments were not made to the supplier by the appellant. It is further explained by him that the claims do not cease to exist just because the same has been barred by law of limitations. Finally, it is stated by him that the appellant has settled the account with them in the current year which also goes to prove that liabilities need not cease.

6. On the other hand, the Ld. Departmental Representative (DR) submits that the assessee failed to produce the above parties before the AO for examination and also failed to furnish confirmation of the above two parties. During the appellate proceedings confirmations were filed by the assessee before the CIT(A) without any PAN/TAN No. and therefore, it is stated that it was no possible to make any verification. The Ld. DR thus submits that the order passed by the CIT(A) be affirmed.

7. We have heard the rival submissions and perused the relevant materials on record. In the instant case the AO has made the addition u/s 41(1), which speaks of recovery against any allowance or deduction allowed earlier. It says that where an allowance or deduction has been made in the assessment for any year in respect of (i) loss, (ii) expenditure, or (iii) trading liability incurred by the assessee and subsequently, during any previous year, he (the same assessee) has obtained, whether in cash or in any other manner, whatsoever :

(i) any amount in respect of such loss or expenditure ; or

(ii) some benefit in respect of such trading liability by way of remission or cessation thereof,

then, the amount obtained by the assessee or the amount of the liability which is extinguished shall be deemed to be profit and gains of business or profession and accordingly chargeable to income tax as the income of that previous year. It may be mentioned that the business or profession, in respect of which the allowance or deduction has earlier been made, may or may not be in existence in the previous year in which such amount is obtained or the benefit accrued to him.

As mentioned earlier, the AO has made a disallowance of Rs.18,45,648/- in respect of the two parties who were sundry creditors and also it is observed by him that their names were declared as hawala operators by the Sales Tax Authorities. It was the contention of the assessee before the AO that the amount outstanding from the said two parties were not time barred and the assessee effected purchases from them when their registration were in force under the MVAT Act.

The assessee further submitted before the CIT(A) during the course of appellate proceedings that the payments have been settled and in this respect it produced the bank account indicating the payment.

On a query from the Bench, the Ld. counsel clarified that the appeals in respect of disputed purchases disallowed by the AO for AY 2009-10 and AY 2010-11 are pending before the Ld. CIT(A). The matter in AYs 2009-10 and 2010-11 may have a bearing on the assessment order passed by the AO in AY 2012-13.

Considering the above facts, we restore the matter to the file of the Ld. CIT(A) to make an order afresh after giving reasonable opportunity of being heard to the assessee. We direct the assessee to file the relevant documents/evidence before the Ld. CIT(A).

The 3rd ground of appeal is consequential.

8. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open Court on 25/11/2019.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER
Mumbai;
Dated: 25/11/2019
Rahul Sharma, Sr. P.S.

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

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//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai