

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.4533/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO 26(1)(5) Room No.708, 7 th Floor, Pratyakshakar Bhavan, BKC, Bandra, Mumbai-400051.	बनाम/ Vs.	Shri Hemant Ranjeet Singh Flat No. B/106, Dosti Jupiter Housing Society, Shaikh Misree Road, Wadala, Mumbai-37.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BCXPS1885F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Mrs. Jyothi Laxmi Nayak (DR)	
Assessee by:	Shri Fenil Bhatt (AR)	

सुनवाई की तारीख / Date of Hearing: 18/11/2019

घोषणा की तारीख /Date of Pronouncement: 27/11/2019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 28.02.2018 passed by the Commissioner of Income Tax (Appeals) -38, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2014-15.

2. The revenue has raised the following grounds: -

"1. " On the facts and in the circumstances of the case, the CIT(A) has wrongly held that the addition of sundry creditors amounting to Rs.7,84,21,571/- added as unproved/non genuine creditors to the total income of the assessee under the head income from business due to



cessation of liability u/s 41(1) of the Income Tax Act, 1961 is not sustainable and deleted the addition".

2. "On the facts and in circumstances of the case, the CIT(A) has wrongly deleted the addition of sundry creditors made under the head income from business due to cessation of liability u/s 41(1) of the Income Tax Act, 1961 in spite of the fact that the assessee failed to furnish the requisite details called for during assessment proceedings to prove the genuineness of the sundry creditors, or produce the parties as in most of cases the 133(6) notices were returned unserved".

3. "The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."

4. "The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary".

3. The brief facts of the case are that the assessee filed his return of income on 29.11.2014 declaring total income to the tune of Rs.6,54,710/- for the A.Y.2014-15. The return was processed u/s 143(1) of the Act. The case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee has shown the sundry creditors of Rs.20,87,21,849/-. The notice was issued and the assessee filed the reply but the assessee failed to prove the genuineness of bonafide creditors in respect of the following fourteen parties: -

Sr. No	Name of the sundry creditor	Amount in Rs. As on 31.03.2014
1	M/s. Adarsh Enterprises	9,20,455
2	M/s. Adarsh Steel	12,47,320
3	M/s. Arihant E-recycling Pvt. Ltd.	73,156
4	M/s. Chandan Enterprises	2,87,29,160
5	M/s. G. R. Trade Imepx	53,069
6	M/s. Hemant Enterprises	2,95,863
7	M/s. Indus towers Limited	5,96,241



8	M/s. Maruti Steel Trading	56,72,934
9	M/s. Rahi Metal udyog Pvt. Ltd.	1,12,110
10	M/s. Sheela Sales Corporation	65,51,792
11	M/s. Parshava Enterprises	1,42,774
12	M/s. Sheela Sales Pvt. Ltd.	1,23,14,681
13	M/s. Shiv Industries	8,87,817
14	M/s. Shreyas Enterprise	1,82,86,134
15	Ms/. Yadav Scrap Auto Parts	25,38,065
	Total	7,84,21,571/-

Therefore, an amount of Rs.7,84,21,571/- was added to the income of the assessee. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

ISSUE NOS. 1 to 3

4. Issue nos. 1 to 3 are inter-connected, therefore, are being taken up together for adjudication. Under these issues the revenue has challenged the allowance of the claim of the assessee in sum of Rs.7,84,21,571/- belonging to the sundry creditors. The Ld. Representative of the revenue has argued that the CIT(A) has wrongly allowed the claim of the assessee specifically in the circumstances when the genuineness of the claim has not been proved by the assessee, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-



“9. In the light of the above facts and circumstances, respectfully followings the judicial precedents cited above, in my view, merely because the creditor could not be served with notice u/s. 133(6) or the creditor did not response or comply with the notice or the party is not did not comply with the notice or the creditors could not be or were not produced before the AO, is not a ground to conclude that there was cessation of the liability. Cessation of the liability has to be cessation in law, of the debt to be paid r C:t assessee to the creditor. The debt is recoverable and Limitation period has not expired. Under the circumstances, in the present case, it can hardly be said that the liability had ceased. in fact the appellant has stated that the liability is a trade liability pertaining to the F.Y. 2012-13, immediately preceding F.Y. 2013-14 relevant to the instant assessment year 2014-15 which is not long ago and this fact is not disputed by the AO. The appellant has not written off the payables as no more liable to be paid and has not taken any benefit from such an act. If the liability had not ceased or the benefit was not taken by the assessee in respect of such trade liability, the conditions precedent were not fulfilled for invoking Section 41(1) of the Act in the instant case. Therefore, the addition of Rs. Rs,7,84,21,571/- made to total income cannot be sustained. The Assessing Officer is directed to delete the addition. Accordingly, this ground of appeal is allowed.”

5. On appraisal of the above mentioned finding, we noticed that the CIT(A) has allowed the claim of the assessee on the basis of this fact that there was no cessation of the liability i.e. debt was recoverable and the limitation period was not expired. The trading liability exists from the F.Y. 2012-13 onwards. The appellant did not take any benefit from the said act. The liability was not seized and the benefit was not taken by assessee, therefore, there is no application from the provisions of Section 41(1) of the Act. Accordingly, the addition was deleted. In this regard, the Ld. Representative of the assessee has also been placed relying upon the Hon'ble ITAT in the case of **Madan Mohla Vs. ITO (2017) 83 taxmann.com 338 (Mum. Tribunal)**. The relevant finding has been given in para no. 3.6 & 3.7 which are hereby reproduced as under: -



“3.6. We have gone through the orders of the lower authorities and judgments relied upon before us. The admitted facts are that the impugned creditors were continued to be shown by the assessee in its balance sheet. It means that assessee continue to acknowledge these liabilities in its books of accounts. Under these circumstances, even if more than 3 years have passed, then at the best these liabilities may be termed as not enforceable in the court of law, but that alone would not finally exonerate the assessee from these liabilities. The assessee is carrying in the business and for its respectful and peaceful existence in the business as well as in the society; he may prefer to pay off all the liabilities from social, moral, commercial or many other angles. The decision to pay or not to pay a liability can be taken by the businessman alone. So long as, the liabilities are acknowledged in the books of account, no presumption should be drawn that the liability ceased to exist that too merely on the basis of their age. Further, there is nothing to show that the creditors had discharged the assessee from payments of these liabilities and that too in the year under consideration. It is further noted by us that for the application of provisions of section 41(1), an assessee must get some benefit in real terms by way of remission or cessation of the liabilities. Our view is supported by many judgments which have been relied upon by the Ld. Counsel. We find it appropriate to reproduce relevant observation of Hon’ble Supreme Court from its judgment rendered in the case of CIT vs. Sugauli Sugar Works (P) Ltd 236 ITR 518 as follows:

“The following words in section 41(1) of the Income-tax Act, 1961, are important: "the assessee had obtained, whether in cash or in any other manner whatsoever any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him". The section contemplates the obtaining by the assessee of an amount either in cash or in any other manner whatsoever or a benefit by way of remission or cessation and it should be of a particular amount obtained by him. Thus, the obtaining by the assessee of a benefit by virtue of remission or cessation is the sine qua non for the application of this section. The mere fact that the assessee has made an entry of transfer in his accounts unilaterally will not enable the Department to say that section 41(1) would apply and the amount should be included in the total income of the assessee. The principle that expiry of the period of limitation prescribed under the Limitation Act could not extinguish the debt but it would only prevent the creditor from enforcing the debt, has been well settled. If that principle is applied, it is clear that mere entry in the books of account of the debtor made unilaterally without any act on the part of the creditor will not enable the



debtor to say that the liability has come to an end. Apart from that, that will not by itself confer any benefit on the debtor as contemplated by the section.

3.7. From the above judgment, it may be seen that Hon'ble Supreme Court has clearly observed that expiry of the period of limitation prescribed under the Limitation Act would not extinguish the debt but it would only prevent the creditors from enforcing the debt. It has further been clearly held that obtaining by the assessee a benefit by virtue of remission or cessation is the sine-qua-non for the application of section 41(1). Similar view has been taken by Hon'ble Supreme court in another judgment in the case of CIT v. SI Group 379 ITR 236. Thus, taking into account totality of all the facts and circumstances of the case and aforesaid judgments we find that addition made by the AO was not sustainable in the eyes of law and therefore, it is directed to be deleted."

6. The factual position is quite similar to the facts of the case as narrated above. Taking into account all the facts and circumstances and by relying upon the decision of the Co-ordinate Bench in the case of **Madan Mohla Vs. ITO (supra)**, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, we decide this issue in favour of the assessee against the revenue.

7. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 27/11/2019.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :27/11/2019

Vijay Pal Singh/Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 4533/M/2018
A.Y.2014-15

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**