

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 3074/AHD/2015
(Assessment Year: 2012-13)**

Income Tax Officer, Ward- 2(1)(1), Ahmedabad	V/S	M/s Gayatri Intermediates Ltd. 201/2/3 Phase-III, GIDC, Vatva, Ahmedabad
(Appellant)		(Respondent)

PAN: AAACG5330N

**Appellant by : Shri Lalit P. Jain, Sr. D.R.
Respondent by : Shri Tushar Hemani & P.B. Parmar**

(आदेश)/ORDER

Date of hearing : 03 -10-2019
Date of Pronouncement : 10 -12-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal filed by the Revenue is directed against the order of the Ld. CIT(A)-2, Ahmedabad dated 28.08.2015 pertaining to A.Y. 2012-13 and following grounds have been taken:

1. The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,79,75,009/- made by the AO on account of ceased liabilities u/s.41(l) of the Act, without properly appreciating the facts of the case and the material brought on record.
2. On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.
3. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the Assessing Officer may be restored to the above extent.
- 4.. The appellant craves leave to amend, alter or add a new ground, which may be necessary.

2. Facts of the case are as emanated from the assessment order:

3 Cessation of Liability U/S 41(1)

Over verification of balance sheet, it is noticed that the assessee company has shown trades payable of Rs 20,773,910/- . It was also observed that the the assessee had shut operations in March 2005 and for the assessment year under consideration, almost 7 years have past after its closure.Perusal of balance sheet revealed that all the assets and liabilities are shown unchanged over the last year. Therefore the assessee was asked to submit proof regarding the existing liabilities on account of trade payable.

3.1 In response, assessee filed reply dtd. 15.12.2014 in which the assessee produced a list of trade payables as under:-

SrNo	Name of the party	Amount payable
1	Balaji Plastic Industries	47925
2	Bhavani Packaging Industries	58446
3	Comet Clearing Agency	22413
4	Gurunanak Engineering Works	202400
5	Heat Transformers Equipment P Ltd	340060
6.	Hindustan Petroleum Corp Ltd	45685

7	<i>Krupa Trading Corporation</i>	165868
8	<i>Mangalam Cargo Movers</i>	24200
9	<i>Patel Service</i>	24500
10	<i>Premier Clearing Agency</i>	29545
11	<i>Sapphire Exim Agency</i>	54964
12	<i>Sarr Freight Clearing Agency</i>	116223
13	<i>Shree Jalaram Enterprise</i>	96104
14	<i>Shree Shakti Roadways</i>	24072
15	<i>S.K.Punjabi</i>	38144
16	<i>S.P.U Consultants</i>	18894
17	<i>Surendra Industries</i>	15548
18	<i>Ambica Products</i>	38063
19	<i>ATC International</i>	539250
20	<i>Bahubali Enterprise</i>	428074
21	<i>Balaji Enterprise</i>	471210
22	<i>Balaji Formalin Ltd</i>	64511
23	<i>Bhimani Chemicals Pvt Ltd</i>	220559
24	<i>Bholenath Chemicals</i>	50099
25	<i>Chemical Corporation</i>	870724

26	<i>Chemical Corporation=Bombay</i>	662400
27	<i>ChemIndia Enterprise</i>	1098083
28	<i>Chemi Organic Chem P Ltd</i>	29000
29	<i>Chemsol Corporation</i>	60478
30	<i>Dhanlaxrni Industries</i>	516825
32	<i>Parth Enterprise</i>	802218
33	<i>Kahan Chemicals</i>	525161
34	<i>Sandri Trading Co.</i>	21414
35	<i>Shah Bhimani Chemicals</i>	35100
36	<i>Shaiman Chemicals Pvt Ltd</i>	144795
37	<i>Shalibhadra Dyechem Pvt Ltd</i>	187250
38	<i>Shalibhadra Int Pvt Ltd</i>	131368
39	<i>Shraddha Finechem Pvt Ltd</i>	110081
40	<i>Shreeji Chemical Industries</i>	35755
41	<i>Shreeji Ice Factory</i>	675733
42	<i>Shree Krishna Sulphite Pvt Ltd</i>	32761
43	<i>Shree Rasayan Enterprise</i>	331279
44	<i>Shree Sumkit Enterprise</i>	42731

45	<i>Siddhi Intermediaries Pvt Ltd</i>	1642450
46	<i>Simaline Chemicals Ind Ltd</i>	133491
47	<i>Sun Chem India</i>	170037
48	<i>Sun Sient Technical Colours</i>	26217
49	<i>Supan Traders</i>	40800
50	<i>Outstanding Miscellaneous Expense</i>	500658
51	<i>Tradex Corporation</i>	350554
52	<i>Traxpro Enterprise Pvt Ltd</i>	1666560
53	<i>Trilok Chemcials Pvt Ltd</i>	363386
54	<i>Uday Chemicals</i>	140669
55	<i>Umang Acid Chem Pvt Ltd</i>	316875
56	<i>Umiya Chem Industries</i>	31381
57	<i>Vimal Chemicals</i>	57507
58	<i>Vishal Traders</i>	175500
59	<i>Win International</i>	663108
60	<i>Cosmic Dye Chem Pvt Ltd</i>	148669
61	<i>Gayatri International</i>	1427433
62	<i>Rachna Captial Securties Ltd</i>	748933

63	Others	2719769
	Total	20773910

and contended that of which is as under :-

As the company was incurring huge losses and there was complete lack of liquidity, the company has not been able to pay the creditors in respect of the goods and services supplied the them up to March, 2005. These liabilities are still outstanding and payable by the company as per legal and contractual terms. It is submitted that there is no remission or cessation of liabilities of Rs.2,07,73,910/-. Even though these liabilities have become barred by the law of limitations, there is neither remission by the creditors of such liabilities nor cessation of the liability as the liability is not extinguished. This liability represents a bonafide and genuine trade debt, which is payable by the company as on 31st March, 2012. Though the company is liable and legally committed to pay these amounts to the creditors, on account of non -availability of funds, the same could not be paid and they are still outstanding. It is submitted that as the liabilities are still a legal obligation of the company and are payable and in absence of remission or cessation of these liabilities, the provisions of Section 41(1) do not apply to these amounts.

For the purpose of submission to MMCB, the company had obtained Valuation Report in respect of its Plant & Machinery located at its Plant at GIDC, Vatva, Ahmedabad, from an Government Registered Valuer Mr. BD. Gajera. The valuation was carried out on 8th August, 2008. The valuer has noticed that the plant is closed since March, 2005, power connection to the plant is cut off and all the machineries were in rotten condition and not in use since many years. The Valuation Report of an independent valuer, who is an approved valuer, appointed by the MMCB also establishes the fact that in 2008 at the time of the valuer's visit to the factory, the plant was totally closed and there was no activity of any kind. A copy of the Valuer's Report is also enclosed herewith.

To justify that these amounts are payable, the company recently contacted and requested these suppliers and has obtained confirmations of balances from some of them confirming that these amounts are still recoverable from the company by the said suppliers. We enclose herewith copies of confirmations of balances from the following suppliers, aggregating to Rs. 27,98,901/-".

3.2 The reply of the assessee has been carefully considered. However the same is not acceptable owing to reasons as under :-

a) During the course of assessment proceedings the assessee was asked to provide the complete details in respect of all such creditors i.e. their complete current addresses,

copy of the account of the assessee from the books of these creditors with confirmation. But it could bring the confirmation and the evidences in respect of five parties only . The assessee could not bring any confirmation from the creditors nor could it produce supporting evidences to prove that the liability in respect of balance 58 creditors totaling to Rs 1,79,75,009/- .

b) Merely stating that that there is neither remission by the creditors of such liabilities nor cessation of the liability as liability is not extinguished does not discharge onus of the assessee company to prove that the outstanding trade payables liability had not ceased to exist after more than 7 years. It has to be proved by producing the relevant accounts and other supporting documents which would reflect that the other party is still showing the assessee as debtor .The assessee could not clearly state when the liability would be possibly paid and also could not produce any relevant documents showing whether the creditors have filed any claim before the court or any other agency.

c) The onus is on the assessee to provide the complete details since only he has special knowledge of the liability and only on furnishing of such information, the AO can examine whether the liability still exists or not. The onus was on the assessee to establish that any liability for which deduction had been claimed in earlier year/years is continuing and it still continues to exist. The assessee has failed to discharge it onus and therefore an adverse inference is drawn against the assessee. It was pointed out to the assessee that in case of failure to submit any concrete information in respect of these creditors or to adduce any evidence to the effect that these liabilities are infact payable, then it will be concluded logically that these creditors were no more payable and these liabilities had ceased to exist.

3.3 In light of the above, vide order sheet dated 15.12.2014, a final opportunity was granted to the assessee either to prove that these liabilities still exist or to show cause , why the same should not be considered to be ceased liability U/s 41(1) of the IT Act. The hearing for this purpose was fixed on 31.12.2014. Till date the assessee has not been able to bring any additional evidences / materials to substantiate its claim and therefore the balance amount of Rs 1,79,75,009/- is considered to be ceased liability.

3. Against the addition of Rs. 1,79,75,009/-, assessee preferred first statutory appeal before the Id. CIT(A) who granted relief to the assessee with following observation:

3.3 I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. The AO has made the addition of Rs.1,79,75,009/- invoking the provisions of Section 41(1) of I.T. Act in respect of

the amount outstanding in the books of the appellant in the name of various parties noted at Page No. 2 to 4 of assessment order. The AO observed that the amount in respect of the aforesaid parties were outstanding even before March, 2005. The AO has observed that the assessee could not bring any confirmation from the creditors nor could it produce supporting evidences to prove the liability in respect of balance creditors totalling to Rs.1,79,75,009/-. Further, AO also observed that the appellant could not clearly state when the liability would possibly be paid and also could not produce any relevant documents showing whether the creditors have filed any claim before the court or any other agency. The onus was on the appellant to prove the complete details since only he has special knowledge of the liability and only on furnishing of such information, the AO could examine whether the liability still existed or not. The onus was on the appellant to state that any liability for which deduction had been claimed in earlier years is continuing and it still continues to exist. The appellant has failed to discharge its onus and, therefore, as per AO an adverse inference was to be drawn against the appellant.

3.4. On the other side, the appellant claimed that the company was engaged in the business of manufacture of dyes, intermediates. But it became defunct and not carried out any business operations since March, 2005. There being no business activity, there was no income or expenditure. It was submitted to the AO also that the liability was on account of money payable to the creditors in respect of goods and services supplied by them prior to March, 2005 and that during the year under appeal, there has been no cessation or remission of any trade liability and that the appellant has not obtained any benefit either in cash or otherwise on account of cessation or remission of trading liability. Thus, the provisions of section 41 (1) of I. T. Act are not applicable to the facts of the appellant's case. It was further submitted that during the year under appeal, there had been no remission or cessation of liability as erroneously presumed by the AO. The liability on account of sundry creditors was very much in existence and the appellant was under legal obligation to make payment of such liability. During the year under appeal, the appellant has not obtained any benefit in respect of such liability by way of remission or cessation thereof. Even in the assessment order, the AO has not recorded any finding or fact to the effect that there was remission / cessation of liability. The appellant further argued that unless notices were issued to the concerned creditors and they had confirmed that they had given up the claims against the assessee, no decision could be taken by the AO merely on the ground that the debts remained unpaid in the books of accounts for a number of years that the liability had ceased or had been remitted. Thus, it was mentioned by the

appellant that the conditions specified under the provisions of section 41(1) of the I. T. Act, 1961 is not complied with and hence the same are not applicable over the facts of the case.

3.5. In respect of the applicability of the provisions of Section 41(1) of the Act, the appellant has relied upon the various judgments of different Courts including the Hon'ble Gujarat High Court and according to that no addition u/s.41(l) could be made on these facts. In the year under consideration, neither any amount has been recovered in respect of the unsecured loans nor any benefit is obtained by the appellant company by way of any remission or cessation of such liability. The liability towards the parties still subsisted which was further evident from the fact that the impugned amounts were still reflected as outstanding in the books of the appellant. No written off of such balances has been made.

3.6. The various Hon'ble Court's have analyzed the provisions of Section 41 (1) of the I.T. Act and held no addition to be made unless the creditors had foregone their debts in favour of debtor. Some of the decisions are briefly as under-

3.6.1. It has been held by the Hon'ble Gujarat High Court in Tax Appeal No.770 of 2013 in the case of CIT Vs. Hardik Fabrics that the decision of the Tribunal on the facts over the issue was correct and the Revenue's appeal was dismissed. The Tribunal in the aforesaid case has observed that the Revenue had not brought anything on record to show that the sundry creditors had forgone their debts in favour of the assessee.

3.6.2. Further, the Hon'ble Gujarat High Court in the case of CIT Vs. Bhogilal Ramjibhai Atara 222 Taxman 313 has held that unclaimed liabilities of earlier years which are shown as payable in the accounts are not taxable as income even if creditors are untraceable and liabilities are non-genuine. In view of the aforesaid recent judgment of the Hon'ble Gujarat High Court, no addition u/s.41 (1) can be made over the facts of the case as the liabilities had not been written back in the accounts by the appellant. The relevant portion of the finding of the Hon'ble Gujarat is as under:-

"S.41(l) would apply in a case where there has been remission or cessation of liability during the year under consideration. In the present case, there was nothing on record to suggest there was remission or cessation of liability in the AY 2007-08. It is undoubtedly a curious case. Even the liability itself seems under serious doubt. The AO 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-parte 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 u/s.41(l) 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 s. 4] (1) of the Act there is no cure for it."

3.6.3. Further in the case of CIT Vs. Miraa Processors (P) Ltd. (2012) 208 Taxman 93 (Guj.) in which Division Bench of this Court observed as under:-

"14. As pointed out in the case of Sugauli Sugar Works (P) Ltd. (supra), vide the last five lines of the paragraph-6 of the judgment, the question whether the liability is actually barred by limitation is not a matter which can be decided by considering the assessee's case alone but has to be decided only if the creditor is before the concerned authority. In the absence of the creditor, it is not possible for the authority to come to a conclusion that the debt is barred and has become unenforceable. There may be circumstances which may enable the creditor to come with a proceeding for enforcement of the debt even after expiry of the normal period of limitation as provided in the Limitation Act."

3.6.4. Further in the case of CIT Vs. Nitin S. Garg, (2012) 208 Taxman 16 (Guj.), it was observed as under:-

"15. In the case before us, it is not been established that the assessee has written off the outstanding liabilities in the books of account. The Appellate Tribunal is justified in taking the view that as assessee had continued to show the admitted amounts as liabilities in its balance sheet the same cannot be treated as assessment of liabilities. Merely because the liabilities are outstanding for last many years, it cannot be inferred that the said liabilities have ceased to exist. The Appellate Tribunal has rightly observed that the Assessing Officer shall have to prove that the assessee has obtained the benefits in respect of such trading liabilities by way of remission or cessation thereof which is not the case before us. Merely because the assessee obtained benefit of reduction in the earlier years and balance is carried forward in the subsequent year, it would not prove that the trading liabilities of the assessee have become non-existent."

3.6.5. Further in the case of CIT Vs. G.K. Patel & Co. (2013) 212 Taxman 384 (Guj.), in which a Division Bench of this court held and observed as under:

'To the extent the said decision holds that a unilateral act on the part of the debtor cannot bring about a cessation of his liability, the same would not be applicable to the facts of the present case, in view of the insertion of Explanation

1. However, at the cost of repetition it may be stated that in this case there is no unilateral act on the part of the debtor so as to bring about a cessation of its liability. Therefore, the other part of the decision would still apply to the facts of the present case, namely that the cessation of liability has to be either by reason of operation of law, i.e. on the liability becoming unenforceable at law by the creditor and the debtor declaring unequivocally his intention not to honour his liability when payment is demanded by the creditor, or a contract between the parties, or by discharge of the debt - the debtor making payment thereof to his creditor. In the present case, admittedly there is no declaration by the assessee that it does not intend to honour its liabilities nor is there any discharge of the debt. In the aforesaid premises, as no event had taken place in the year under consideration to indicate remission or cessation of the liabilities in question, the provisions of section 41(1) of the Act could not have been invoked. The reasoning adopted by the Tribunal while holding that section 41(1) would not be applicable to the facts of the present case is in the line with the principles enunciated in the above decision. The Tribunal, therefore, committed no legal error so as to give rise to any question of law warranting interference by this court."

3.6.6. Further in the case of CIT Vs. Willard India Ltd. (2008) 302 ITR 221 (All), it has been held as under:-

Business income - Profits chargeable to tax under s. 41(1) - Time-barred debts taken to P & L a/c - Unilateral act of assessee debtor in writing back time-barred debts does not amount to cessation of liability, hence not chargeable under s. 41 (1)- CIT vs. Sugauli Sugar Works (P) Ltd. (1999) 2 SCC 355 relied on.

3.6.7. Further in the case of Ambica Mills Ltd. Vs. CIT (1964) 54 ITR 167 (Guj.), it has been held as under:-

Business income- Profits chargeable to tax under s. 10(2A) - Unpaid and unclaimed wages due to and payable by the company to its workers - Amount acknowledged as liability in the balance sheet every year - Does not become time barred - cannot be added to income as profits chargeable to tax.

F38. In view of the aforesaid discussion, it is on record that the AO has not brought anything on record to say that the appellant has derived any benefit in cash or otherwise due to cessation or remission of liabilities, if any. Further, such cessation or remission has actually taken place in the year under consideration has not been established by the AO. Moreover, no written off the liability has been done in the books of accounts. Thus, both the elements of the provisions of Section 41 (1) are not complied with, and therefore, the provisions u/s. 41 (1) of the Act is not applicable on the facts of the case. Consequently, the addition

made by the A.O. is found not correct, and therefore, the same is directed to be deleted.

4. Now Revenue has come before us.
5. We have gone through the relevant record and impugned order. Ld.A.O. has made addition of Rs. 17975009/- invoking provisions of section 41(1) of Income Tax Act. The A.O. has observed that assessee could not bring any confirmation from the creditors nor could it produce supporting evidences to prove the liability in respect of balance creditors totaling to Rs. 1,79,75,009/-.
6. On the other hand, appellant contention was that company was engaged in the business of manufacture of dyes, intermediates. But it became defunct and not carried out any business operations since March, 2005. There being no business activity, there was no income or expenditure, it was submitted to the A.O. also that the liability was on account of money payable to the creditors in respect of goods and services supplied by them prior to March, 2005 and that during the year under consideration, there has been no cessation or remission of any trade liability and that the appellant has not obtained any benefit either in cash or otherwise on account of cessation or remission of trading liability.
7. In support of its contention, assessee cited an order of Hon'ble Jurisdictional High Court in the case of Dattatray Poultry Breeding Farm (P.) Ltd. [2019] 104 taxmann.com 366 (Guj.) :

“Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability (Applicability of) - Assessment year 2010-11 - Assessee was engaged in business of job work of hatching of eggs for 'S1 Farm Ltd. - During course of scrutiny assessment, Assessing Officer noted from

balance sheet that assessee had shown huge amount of sundry creditors - Assessing Officer took a view that assessee company was doing job work only and hence, there would be no purchases and hence, there was no possibility of such huge amount outstanding in respect of such sundry creditors - He therefore forming an opinion that there was no genuine creditors appearing in balance sheet, treated amount in question as cessation of liability within meaning of section 41(1) - Tribunal upheld addition made by Assessing Officer - Whether, on facts, if existence of liabilities was doubted, same could have been disallowed in year in which it was claimed, or could have been treated as unexplained cash credit in hands of assessee under section 68, but same could not be taxed under section 41(1), inasmuch as if liability itself was not genuine,, question of remission or cessation thereof would not arise - Held, yes - Whether, therefore, impugned addition was to be deleted - Held, yes [Para 15][In favour of assessee]”

8. And apart from that assessee cited an order of Hon'ble Jurisdictional High Court in the matter of CIT vs. Bhogilal ramjibhai Atara [2014] 43 taxmann.com 55 (Guj.):

“Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability (Cessation of liability) - Assessment year 2007-08 - In return of income for assessment year 2007-08, assessee had shown a certain amount by way of his debts - He supplied details of 27 different creditors - Assessing Officer undertook exercise to verify records of so called creditors and found that creditors had no dealing with assessee - Assessing Officer further having found that debts were outstanding since several years applied section 41(1) and added above amount in income of assessee as deemed income - There was nothing on record to suggest that there was remission or cessation of liability that too during previous year relevant to assessment year 2007-08 - Whether in peculiar facts of case amount in question could not be added back in income of assessee as

deemed income under section 41(1) - Held, yes [Para 8] [In favour of assessee]”

9. In our considered opinion, ld. CIT(A) has passed a detailed and reasoned order and Hon'ble Gujarat High Court also supported the case of the assessee. We thus see no substantive error in the order of ld. CIT(A).

10. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in Open Court on	10 - 12- 2019
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Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER **True Copy**
Ahmedabad: Dated 10 /12/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad