

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 607/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of Income Tax,
Circle-2, Kolhapur.

.....अपीलार्थी / Appellant

बनाम / V/s.

Smt. Usha Jitendra Shah
612, 'E' Ward, Anand Chamber,
2nd Lane, Shahupuri,
Kolhapur-416 001
PAN: AEJPS9860D

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Hoshang Boman Irani

सुनवाई की तारीख / Date of Hearing : 19.12.2019
घोषणा की तारीख / Date of Pronouncement : 19.12.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the Revenue emanates from the order of the
Ld. CIT(Appeals)-2, Kolhapur dated 21.12.2016 for the assessment year
2012-13 as per the grounds of appeal on record.

2. The crux of the grievance of the Revenue is with regard to the deletion of addition of Rs.4,43,07,446/- on account of cessation of liability u/s.41(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') without giving reasonable opportunity to the Assessing Officer as per Income Tax Rules, 1962 to examine/rebut additional evidences.

3. The brief facts of this case are that the assessee is engaged in the business of wholesale sugar trading, share trading & commission agency, commodity exchange & trading etc. and filed the return of income for assessment year 2012-13 on 28.09.2012 declaring the total income of Rs.37,03,432/-. The Assessing Officer noted that the assessee has shown certain sundry creditors to the tune of Rs 4,43,07,446/-. The Assessing Officer attempted to issue notice u/s. 133(6) of the Act to these creditors but the notices were either not served or were not complied with. The Assessing Officer has detailed the situation of issue of notices and their compliance in para 4.5 on page 16 of his order. Due to the non compliance on part of the creditors, the Assessing Officer issued show cause notice as to why the outstanding credit balance in name of seven creditors should not be added to her income as cessation of liability u/s.41(1) of the Act. In response to the said notice, the assessee submitted that she has made payment to the aforesaid creditors in next financial year and filed the detailed ledger extract showing proof of the payment. However, this did not find favour with the Assessing Officer who added these creditors amounting to Rs.4.43 Crores to the income of the assessee mainly on account of Cessation of Liability u/s.41(1) of the Act.

4. The Ld. CIT(Appeals) has decided this issue at Para 5 of his order wherein he has observed following points :

(i) That the entire ledger account was filed before the Assessing Officer wherein it is evident that the assessee has made payments to the creditors in the next financial year and filed proof of payments.

(ii) That as and when the payments were made, transactions were offered for taxation in that particular year.

(iii) The assessee has not claimed any expense as payable to these parties and therefore the same cannot be assessed as cessation of liability u/s.41(1) of the Act as the section starts with the words "*Where an allowance or deduction is made.....*". There is no such allowance or deduction made which contra reflects in payable to these parties.

The Ld. CIT(Appeals), therefore, as per reasons appearing in his order which is on record had provided relief to the assessee.

5. The Ld. DR at the time of hearing, submitted that there were additional evidences accepted by the Ld. CIT(Appeals) in contravention of Rule 46A of the IT Rules, 1962. It was the contentions of the Ld. DR that these additional evidences were not forwarded to the Assessing Officer for his comments and the Ld. CIT(Appeals) accepted those additional evidences and granted relief to the assessee.

6. Per contra, the Ld. AR of the assessee vehemently argued that there were no additional evidences that were produced before the Ld. CIT(Appeals). In fact, the entire ledger account has been produced before the Assessing Officer along with proof of payments. The Ld. CIT(Appeals) analyzed only the facts and circumstances that there was no allowance or deduction claimed by the assessee and these payments were made to the creditors in the

subsequent year and similarly, was offered for taxation in that year. Therefore, there was no cessation of liability u/s.41(1) of the Act which par-se is not applicable to the assessee which correctly observed by the Ld. CIT(Appeals). The Ld. AR has placed reliance on the order of the Hon'ble Jurisdictional High Court in the case of Pr. Commissioner of Income Tax Vs. Pukhraj S. Jain, ITA No.1288 of 2016 wherein the question was as follows:

"2. Whether on the facts and circumstances of the case and in Law, the Hon. ITAT was justified in upholding the decision of the Ld. CIT(A) wherein the addition by the A.O., by invoking section 41 of the I T Act, 1961 was deleted ?

The Hon'ble Jurisdictional High Court answered this question by observing as under:

"4. It is well settled through series of judgments that merely because a debt has not been repaid for over three years, would not automatically imply cessation of liability. Exhaustion of period of limitation may prevent filing of recovery proceedings in a Court of law, nevertheless it cannot be stated by itself that the liability to repay the amount had ceased. Going by this logic itself, the Assessing Officer, in our opinion, committed an error invoking Section 41(1) of the Act. Further the assessee had produced additional evidence on record before the Appellate Authority after following the procedure and pointed out that substantial portion of the debt was cleared in later assessment years.

5. We do not find any error in the decision of the Tribunal. Income Tax Appeal is dismissed."

7. We have perused the case records and heard the rival contentions. We have also analyzed the facts and circumstances in this case and considered the judicial pronouncements placed before us. We have also given considerable thought to the findings of the Ld. CIT(Appeals) and on perusal of the order, it is evident that it is not a case of cessation of liability and even the application of section 41(1) of the Act was not correct in the case of the

assessee. There has been no allowance or deduction claimed by the assessee and we take guidance from the decision of the Hon'ble Jurisdictional High Court in ITA No.1288 of 2016 (supra.) on this issue wherein the Hon'ble High Court had held that the Tribunal was justified in upholding the decision of the Ld. CIT(Appeals) wherein addition by the Assessing Officer invoking section 41 of the Act was deleted and the Revenue's appeal was dismissed. That further as demonstrated on record in the order of the Ld. CIT(Appeals) that the payments were made in the subsequent year and similarly offered to tax and therefore, there was no loss to the revenue.

8. In view of the examination of facts on record and judicial pronouncement, we do not find any infirmity with the findings of the Ld. CIT(Appeals) and relief provided to the assessee by the Ld. CIT(Appeals) is hereby sustained.

9. In the result, **appeal of the Revenue is dismissed.**

Order pronounced on 19th day of December, 2019.

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 19th December, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-2, Kolhapur.
4. The Pr. CIT-2, Kolhapur.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	19.12.2019	Sr.PS/PS
2	Draft placed before author	19.12.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		