

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI 'SMC' BENCH, NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

ITA No. 3372/DEL/2019  
[Assessment Year: 2012-13]

JAI BHARAT THREAD MILLS,  
71/4, SHIVAJI MARG,  
NAJAFGARH ROAD,  
NEW DELHI - 110 015  
(PAN: AACFJ4619J)  
[Appellant]

Vs. ITO, WARD 41(5),  
NEW DELHI

[RESPONDENT]

Assessee by: Shri R.P. Mall, Advocate & Sh.  
Ajit Kumar Jha, Advocate  
Revenue by: Ms. Parul Singh, Sr. DR.

**ORDER**

This appeal is filed by the assessee is against the order of the Ld. Commissioner of Income Tax [Appeals-15], New Delhi dated 14.1.2019 pertaining to assessment year 2012-13 on the following grounds:-

1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the additions made of Rs. 37,08,680/- in respect of unconfirmed sundry creditors in the order of assessment framed u/s 143 (3) of the Act.

2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate 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.

3. That the learned Commissioner of Income Tax (Appeals) has erred in failing to appreciate that 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 and on the contrary the appellant in its books of account had shown the amount as outstanding and hence the provisions of section 41 (I) of the Act is inapplicable.

4. That the learned Commissioner of Income Tax (Appeals) has erred in failing to appreciate that since the learned AO has not brought out the circumstance which lead to establish that remission or cessation of the liabilities in question has happened during this year and hence addition made by the learned AO and sustained by the learned Commissioner of Income Tax (Appeals) is unsustainable in law.

5. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the delay or non-payment, even when the Assessing Officer is of the opinion that likelihood of payment was remote as business has stopped, would by itself not denote and mean cessation or remission of liability.

2. At the time of hearing Ld. Counsel for the assessee stated that Ld. CIT(A) has passed the exparte impugned order without providing sufficient opportunity to the assessee. He requested that the issues in dispute may be set aside to the Ld. CIT(A) to decide the same afresh, after giving adequate opportunity of being heard to the assessee.

3. On the contrary, Ld. DR relied upon the impugned order.

4. I have heard both the parties and perused the orders of the authorities below. I am of the view that Ld. CIT(A) has not given sufficient opportunity to the assessee, therefore, in the interest of justice I am setting aside the issues in dispute to the Ld. CIT(A) to decide the same afresh after giving adequate opportunity of being heard to the assessee.

4.1 Keeping in view of the non-cooperation of the assessee, I am directing the assessee through his counsel to appear before the Ld. CIT(A) on **23.04.2020 at 10.00 am** for hearing. There is no need to issue the notice by the Ld. CIT(A) to the assessee, since this order has already been pronounced in the open court.

5. In the result, the Appeal of the Assessee is allowed for statistical purposes.

The order pronounced on 19.02.2020.

Sd/-

**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Dated:19-02-2020

SRB

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

