

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.219/M/2018
Assessment Year: 2013-14**

M/s. Teksons Cooling Systems P. Ltd., Kolshet Road, Kapurbawadi, Thane – 400 607 PAN: AA ACT2546H	Vs.	DCIT 8(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Dinkle Haria, A.R.
Revenue by : Shri Amit Pratap Singh, D.R.

Date of Hearing : 15.01.2020
Date of Pronouncement : 18.02.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 03.10.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

2. The only issue raised by the assessee is against the order of Ld. CIT(A) wherein the Ld. CIT(A) has sustained the addition of Rs.1,12,50,000/- as made by the AO by invoking the provisions of section 41(1) of the Act.

3. The facts in brief are that the assessee filed the return of income on 01.10.2013 declaring income of Rs.1,57,70,740/-. Subsequently, the case of the assessee was selected for scrutiny

under CASS and statutory notices were duly issued and served upon the assessee. During the course of assessment proceedings, the AO found that the assessee has shown liability of Rs.1,12,50,000/- as other long term liabilities and accordingly called upon the assessee to furnish the details and supporting evidences in connection there with. However, the assessee did not file any details despite several opportunities. Finally, vide letter dated 15.03.2016 the assessee submitted that the liability of Rs.1,12,50,000/- represented credit balances of parties of earlier years and are being settled from time to time. The original balances were outstanding since the company closed its business and the outstanding were approximately Rs.1,98,00,000/- which have been reduced to Rs.1,12,50,000/- over the years. The balance has been carried forward from previous year and would be discharged as per availability of funds. However, the submission of the assessee did not find favour with the AO and he added the same under section 41(1) of the Act by observing that the liability has ceased to exist and hence made addition of Rs.1,12,50,000/-.

4. In the appellate proceedings, the Ld. CIT(A) also affirmed the order of AO by considering the contention of the assessee by observing and holding as under:

“4. I have considered the submission made by the appellant and the reasons recorded by the AO. During the course of appellate proceedings also, the appellant was asked to furnish the details of long-term liabilities amounting to Rs. 1,12,50,000 shown outstanding in the balance sheet. However, the appellant did not submit any such information claiming that software has crashed and the data is irretrievable. When the appellant does not have any record of the liabilities, how can it claim that the liabilities still exist. A person who is willing to honour liabilities must be able to tell atleast as to what are the liabilities which he is willing to honour, which are the parties whose claim is outstanding and what is the reason for non-payment so far. Mere fact that the liabilities are shown in the balance sheet is not sufficient to prove the bona fides of the claim of the appellant. If the appellant

is unable to furnish any details about the liabilities claim to be outstanding, the AO has no other option but to conclude that the liabilities have ceased to exist during the previous year under consideration because the appellant's claim about the existence of liabilities has been already accepted at face value in the earlier assessment years and no evidence to the contrary is available in the assessment year under consideration. Accordingly, addition of Rs. 1,12,50,000/- made by the AO u/s 41(1) of the IT Act is hereby confirmed."

5. After hearing both the parties and perusing the material on record, we observe that in this case the business operation of the assessee was closed down and assessee due to the financial crunch could pay off the liabilities outstanding in the books of accounts. We note that at the time of closure of business, the outstanding liabilities were Rs.1,98,00,000/- which was reduced to Rs.1,12,50,000/- over the years. The plea of the counsel of the assessee is that the liability has not ceased to exist and therefore the action of the AO to add the same under section 41(1) citing reason that same has ceased to exist and is bad in law. In defence of his argument, the Ld. D.R. relied on the decision of Hon'ble Bombay High Court in the case of Pr. CIT vs. Mahalaxmi Infra Project Pvt. Ltd. in ITA No.1769 of 2016 order dated 13.01.2019 wherein the Hon'ble Bombay High Court has held as under:

"5. We notice that the Revenue has proposed following additional question for our consideration:-

- (i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the addition made by the AO u/s 41(1) on account of bogus claim of expenses in the name of labour contractors/sub-contractors which are outstanding for a number of years?
- (ii)
- (iii)

6. In so far as question no.(i) is concerned, the same arises out of the additions made by the Assessing Officer under Section 41(1) of the Income Tax Act, 1961 ("the Act" for short) on account of bogus claim of liability. The Tribunal while giving relief to the assessee, referred to the decision of the Supreme Court and other decisions holding that merely because period of 3 years expired from arising of the

liability would not automatically mean that the liability has ceased. We do not find any error in the view of the Tribunal.”

6. Considering the facts of the case of the assessee in the light of ratio laid down by the Hon’ble Bombay High Court, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 18.02.2020.

Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated:18.02.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.