

आयकर अपील अा अधकरण, राजकोट ँयायपीठ, राजकोट ।
IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND MS. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 17/Rjt/2016

नधाण वष/Assessment Year: 2012-13

DCIT Income Tax, Circle-2, Jamnagar	Vs	Aditya Gopal Export Pvt. Ltd., Near Railway Siding, Near Old Railway Station, Jamnagar
PAN No. AAC CA3 014 H		
अपीलाथ/ (Appellant)		अयथ/ (Respondent)
Revenue by :		Shri Ranjit Singh, CIT DR
Assessee by :		Shri M. J. Ranpura, AR

सुनवाई क ताराख/Date of Hearing : 24/02/2020

घोषणा क ताराख /Date of Pronouncement : 28/02/2020

PER BENCH:

The instant appeal filed by the Revenue is directed against the order dated 20.10.2015 passed by the Commissioner of Income Tax (Appeals), Jamnagar arising out of the order dated 27.03.2015 passed by the ITO, Ward - 2(2), Jamnagar under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to "the Act") for the Assessment Year (A.Y.) 2012-13.

2. The matter relates to deletion of addition of Rs. 5,47,01,315/- made under section 41(1) of the Income Tax Act, 1961.

During the course of assessment proceeding upon verification of the details submitted by the assessee it was found that an amount of Rs. 5,47,01,315/- has been shown as outstanding as on 31.03.2012 towards the creditors. The Ld. AO concluded the assessment on the ground of cessation of liability in respect of said amount of debts on the ground of being barred by limitation and also for the failure on the part of the assessee to justify the reasons for non-payment. The said amount was, therefore, added to the total income of the assessee under section 41(1) of the Act. In appeal the Ld. CIT(A) deleted such addition. Hence, the instant appeal before us.

Heard the parties, perused the relevant materials available on record.

3. The case of the assessee was this that the said balance appearing in the books of accounts are payable to the respective sundry creditors on account of purchases made from them in the immediate preceding previous year. Further that those parties did not pay the VAT charges on the sales made to the appellant and as such the assessee could not get the correspondence credit from the Commercial Tax Officer which is the major reason for outstanding credit in this accounts. It is the case of the assessee that the liabilities are still alive and such business liability is to be paid in due course.

4. At the time of hearing of the instant appeal the Ld. DR relied upon the order passed by the Ld. AO. The Ld. Advocate appearing for the assessee submitted before us that apart from aforesaid reasons that the relevant fact is this that subsequently during the F.Y. 2014-15 the company was taken over and the new management has written off the said debts in

the P&L Account for the year ended on 31.03.2016 and paid tax thereon. In support of his argument the Ld. AR submitted the financial statement of the assessee upon perusal of which the contention of the assessee seems to be genuine. In that event, in our considered opinion, the amount cannot be taxed in the hands of the assessee under section 41(1) of the Act particularly in view of the judgment passed by the Hon'ble Jurisdictional High Court in the matter of Dattatray Poultry Breeding Farm (P.) Ltd. vs. ACIT where the ratio has been decided to this effect that if the existence of such liability is doubted the same could have been disallowed in the year in which it was claimed or could have been treated as unexplained cash credit in the hands of the assessee under section 68 of the Act but the same cannot be taxed under section 41(1), inasmuch as if liability itself was not genuine, question of remission or cessation thereof could not arise. The relevant portion of the said judgment is reproduced hereinbelow:-

"14. In the facts of the present case, it is not even as if the assessee debtor has unilaterally made any entry in the books of account. Merely on the ground that a considerable time has elapsed since the debts were incurred and more particularly on the ground of genuineness of such debts, the Assessing Officer has passed the order under section 41(1) of the Act. There is no material whatsoever on record to show that there was cessation or remission of liability during the previous year relevant to assessment year 2010-11, namely the year under consideration.

15. From the findings recorded by the Assessing Officer as well as the Tribunal, it appears that the very genuineness of such entries has been doubted, inasmuch as the Assessing Officer has tried to verify the existence of such liabilities from the creditors, however, many were not found at the given address and some of them had categorically denied having any transaction with the assessee. In the opinion of this court, if the existence of such liabilities is doubted, the same could have been disallowed in the year in which it was claimed, or could have been treated as unexplained cash credit in the hands of the assessee under section 68 of the Act in the relevant assessment year, but the same cannot be taxed under section 41(1) of the Act, inasmuch as if the liability itself is not genuine, the question of remission or cessation thereof would not arise.

16. Section 41(1) of the Act can be applied, provided the following conditions are fulfilled:

- In the assessment of any assessee, an allowance or deduction has been made in respect of any loss, expenditure or trading liability incurred by him;*
- any amount is obtained in respect of such loss or expenditure; or any benefit is obtained in respect of such trading liability by way of remission or cessation thereof;*
- such amount or benefit is obtained by the assessee;*

- such amount or benefit is obtained in a subsequent year; Thus, where a debt due from the assessee is foregone by the creditor in a later year, it can be taxed under section 41(1) of the Act in such later year when it was foregone. Section 41(1) of the Act, therefore, contemplates existence of a debt/liability and the remission or cessation thereof in the year under consideration. Therefore, for the purpose of taxing any income on account of remission or cessation of liability, the Assessing Officer has to establish that there was an existing liability and that there was remission or cessation of such liability in the previous year relevant to the assessment year in which such income is sought to be taxed.

17. In the facts of the present case, while the assessee has shown the trading liability in its books of account, no benefit has been obtained in respect of such trading liability by way of remission or cessation thereof; under the circumstances, the requirements of section 41(1) of the Act are not satisfied in the present case. Moreover, any such cessation or remission of liability has to be in the previous year relevant to the assessment year under consideration, in the facts of the present case, it is not the case of the Assessing Officer that the liabilities ceased to exist in the previous year relevant to the assessment year under consideration. In fact the Assessing Officer has doubted the very genuineness of such liabilities. Therefore, in the absence of any liability, the question of taxing any income on the ground that there was remission or cessation of such non-existent liability would not arise.

18. The Tribunal, in the impugned order, has held that the Assessing Officer was right to hold the financial year in question as the right year for taxability when the facts concurring the non-existence were unrevealed (sic. revealed/unrevealed). Thus, the Tribunal has doubted the very existence of the trading liabilities. Thus, the reasoning adopted by the Tribunal is contrary to the provisions of section 41(1) of the Act, which can be invoked provided there is trading liability in existence and there is remission or cessation of such liability. If no trading liability exists, the question of invoking section 41(1) of the Act would not arise.

19. In the opinion of this court, the decision of this court in the case of Commissioner of Income Tax-III v. Bhogilal Ramjibhai Atara (supra) would be squarely applicable to the facts of the present case, wherein the court held thus:

“We are in agreement with the view of the Tribunal. Section 41(1) of the Act as discussed in the above three decisions would apply in a case where there has been remission or cessation of liability during the year under consideration subject to the conditions contained in the statute being fulfilled. Additionally, such cessation or remission has to be during the previous year relevant to the assessment year under consideration. In the present case, both elements are missing. There was nothing on record to suggest there was remission or cessation of liability that too during the previous year relevant to the assessment year 2007-08 which was the year under consideration. It is undoubtedly a curious case. Even the liability itself seems under serious doubt. The Assessing Officer 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 under section 41(c) 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 section 41(1) of the Act there is no

cure for it. Be that as it may, insofar as the orders of the Revenue authorities are concerned, the Tribunal not having made any error, this Tax Appeal is dismissed."

20. *The facts of the present case are more or less similar to the facts of the above case, and hence, the Commissioner (Appeals) was wholly justified in holding that the said decision would be squarely applicable to the facts of the present case and in deleting the addition.*

21. *Another relevant aspect of the matter is that the appellant has written off some of the liabilities in the subsequent assessment years and offered the same as income, therefore, taxing such income in the year under consideration would amount to taxing the same income twice, which is impermissible in law.*

22. *Insofar as the decisions on which reliance has been placed by the learned senior standing counsel for the respondent are concerned, the decision of the Delhi High Court in the case of Commissioner of Income Tax v. Chipsoft Technology (P) Ltd. (supra), is contrary to the settled view taken by this court in various decisions on which reliance has been placed by the learned advocate for the appellant.*

22.1 *The decision of the Bombay High Court in the case of Palkhi Investments & Trading Co. (P) Ltd. v. Income Tax Officer, Mumbai (supra) would also not be applicable to the facts of the present case, inasmuch as the same was rendered in the context of penalty proceedings. It may be further noted that in paragraph 7 of the said judgment, the court has categorically noted that the learned counsel appearing for the revenue attempted to take the court over the applicability of section 41(1) to the facts of the said case, but the court had stopped him from doing so. Under the circumstances, the controversy in issue in the present case was not in issue before the court in the said case and hence, the said decision does not carry the case of the revenue any further.*

22.2 *In Rama Steel Rolling Mills & General Engg. Works (supra), the Rajasthan High Court held that though no principle of law has been laid down, no substantial question of law arose for consideration regarding the effect of section 41(1) of the Income Tax Act resulting into remission or cessation of the trade liability standing in the books of account; under the circumstances, the said decision does not in any manner come to the aid of the revenue.*

23. *In the light of the above discussion, the court is of the view that the impugned order passed by the Tribunal suffers from various infirmities as referred to hereinabove and therefore, cannot be sustained.*

24. *The appeal, therefore, succeeds and is, accordingly, allowed. The impugned order dated 19.6.2018 passed by the Income Tax Appellate Tribunal in ITA No.2193/Ahd/2014 is hereby quashed and set aside. The questions are answered in the negative, that is, in favour of the appellant and against the revenue. It is held that the Income Tax Appellate Tribunal was not justified in upholding the addition under section 41(1) of the Income Tax Act, 1961. The Tribunal was also not justified in upholding the addition under section 41(1) of the Act in respect of liabilities written off and offered as income in subsequent years."*

Respectfully relying upon the ratio laid down in the said judgment by the Hon'ble Jurisdictional High Court we find no justification in interfering in the order passed by the Ld. CIT(A). It is observed by the Ld. CIT(A) that purchases and sales cannot be disturbed unless the parties

forgo their claim of receivable or payable as the case may be. While dealing with the issue, as we find he has relied upon the judgment passed by the Hon'ble Jurisdictional High Court in the matter of CIT vs. Silver Cotton Mills Co. Ltd. (2002) 254 ITR 7228 (Guj.), as well as in the case of Bhogilal Ramjibhai Atara where it has been held that section 41(1) would apply in case where there has remission or cessation of liability from the year under consideration subject to the conditions contain in the statute to be fulfilled. The relevant portion of the order passed by the Ld. CIT(A) as follows:-

"It is further seen that, the purchases were made in the accounting year 2010-11; they are recorded in the books of accounts; they are supported by bills and; part payments were made. No finding to the effect that these purchases are bogus, has been brought on record. It also cannot be denied that the purchased goods were sold and profits offered to tax. Therefore, purchases and sales cannot be disturbed unless the parties forgo their claim of receivable or payable as the case may be.

I also find that, the Hon'ble High Court of Gujarat has, in the case of CIT vs. Silver Cotton Mills Co. Ltd. (2002) 254 ITR 7228 (Guj.), has held that "For the purpose of adding any amount under section 41(1), there should be either remission of the liability by the concerned creditor so that the liability with regard to making payment comes to an end or there should be cessation of liability." Further, the Hon'ble Gujarat High Court in the case of Bhogilal Ramjibhai Atara has held that, "Section 41(1) would apply in a case where there has been remission or cessation of liability during the year under consideration subject to the conditions contained in the statute being fulfilled. Additionally such cessation or remission has to be during the previous year relevant to the assessment year under consideration. 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 section 41(1) there is no cure for it. Therefore, the appeal filed by the revenue was liable to be dismissed."

Therefore, in light of the above, it is held that provisions of sec. 41(1) are not applicable in this case. Therefore, the addition of Rs. 5,47,01,315/- made u/s. 41(1) is hereby deleted and the grounds of appeal are allowed.

7. In the result, appeal is allowed."

5. Thus, taking into consideration the ratio laid down by the Hon'ble Court in the above judgments and respectfully relying upon the same we find no infirmity in the order passed by the Ld. CIT(A) so as to warrant interference particularly in view of the fact that the assessee subsequently

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has written off such liability and offered the same as income in subsequent years. Thus, the order is passed in the affirmative i.e. in favour of the assessee and against the Revenue.

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

Order pronounced in the Court on 28th February, 2020 at Rajkot.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Rajkot; Dated, 28/02/2020
Tanmay Datta, Sr.PS

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आदेश का प्रतिलिपि अप्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. वित्तीय प्रबंध, आयकर अपील आधिकरण, / DR, ITAT, Rajkot
6. गार्डफाइल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपील आधिकरण, / ITAT, Rajkot