

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**RANCHI, 'E' COURT, AT KOLKATA**

**Before Shri S.S, Godara, JM & Dr. A.L. Saini, AM**

**ITA No.176/Ran/2019**

(Assessment Year: 2015-16)

<b>DCIT, Circle-1, Ranchi</b>	Vs.	<b>Shri Ravindra Kumar Sinha</b> E-8, Ranisons, Kusai Colony Doranda, Ranchi, Jharkhand
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AGKPS1170K</b>		
(□ पीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by : Shri A. K. Mohanti, Addl. CIT, Sr. DR

Respondent by : Shri R. K. Khushal, AR

सुनवाई की तारीख / **Date of Hearing** : **22/07/2020**

घोषणा की तारीख/**Date of Pronouncement** : **24/08/2020**

**आदेश / O R D E R**

**Per Bench:**

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2015-16, is directed against the order passed by the Id. Commissioner of Income Tax(Appeals), Jharkhand in appeal No. CIT(A)/Ranchi/10754/2017-18 dated 09.01.2019 which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act 1961 (hereinafter referred to as the 'Act') dated 26.17.2017.

2. The grounds of appeal raised by the Revenue are as follows:

*"1. That on the facts and circumstances of the case the Appellate Authority has erred in deleting the well discussed addition of the Assessing Officer.*

*2. That on the facts and circumstances of the case, the Appellate Authority has erred in law and fact that section 41(1) of the I.T. Act 1961 is not applicable in case of sundry creditors and advances in the case of the assessee whereas it is clearly seen that assessee failed to fulfill the primary responsibility to provide details as asked for and did not provide complete details of parties.*

*3. That on the facts and circumstances of the case, the Appellate Authority erred in facts and ignored that proper opportunity was given to the assessee during assessment proceeding to produce the documents but it failed to do so and addition was made based on findings of the assessment proceedings.*

*4. The Ld. CIT(A) erred in deciding the fact without calling for remand report and without confronting the additional evidence/submissions made ignoring the rule 46A of the I.T. Rules.*

*5. Any other ground will be urged at the time of hearing.”*

3. Brief facts qua the issue are that during the assessment proceedings on careful perusal of the details in respect of sundry creditors filed by the assessee, it was noticed by the assessing officer that assessee had furnished only name of creditors and did not furnish complete address of the creditors. Age-wise analysis or the date since when the said trade liability is existing in the books of the assessee, amount paid during the year, the PAN of the creditors etc. were not furnished, before the AO. Therefore, the assessing officer held that the assessee has failed to discharge its onus to bring sufficient evidence on record to the satisfaction of the Assessing Officer regarding the genuineness of the claim of ‘Sundry Creditors and advances’, to the tune of Rs. 1,61,95,176/- in the given assessment year. Therefore, in the absence of any supporting documents, the necessary verifications, confirmations and investigations could not be carried out to find out whether the liability of Rs. 1,61,95,176 /- shown under the head ‘Sundry Creditors and Advances’ actually exists or not. Hence the AO made addition by invoking the provision of Sec. 41(1) of the I.T. Act, 1961 at Rs. 1,61,95,176 /-.

4. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the CIT(A) who has deleted the addition made by the Assessing Officer observing the following:

*“When the language of the section is clear and unambiguous, there is no scope of importing into the statute words which are not there. Such importation would be, not to construe, but to amend the statute. Even if there be casus omissions, the defect can be remedied only by legislature and not by judicial interpretation.”*

*As can be seen from the specific provisions of section 41(1) of the Income-tax Act, 1961, it is only when a person derives some benefits in respect of such trading*

*liabilities by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profit and gains is not within the ambit of section 41(1). Therefore, as per the above cited decision of the Hon'ble Supreme Court, the Ld. AO is not competent to bring in any other item other than that specified in the section.*

**(ii) Provisions of Section 41(1)**

*Section 41(1) of the Income-tax Act, 1961 does not envisage the following:*

- a. *Doubt of the creditors and the genuinity of creditors*
- b. *Satisfaction of AO regarding the genuineness and the source of sundry creditors*
- c. *Treating the trading liability as income of assessee from undisclosed sources*

*Although the above are not envisaged in the deeming provisions of section 41(1), the AO has erroneously invoked the deeming provisions of section 41(1) for the above issues which is not legally tenable.*

*Section 41(1) is a deeming section and deeming provision is a statutory fiction; as a rule it implicitly admits that a thing is not what it is deemed to be but decrees that for some particular purpose it shall be taken as if it were that thing. As per the statute, the provisions of section 41(1) is a deeming provision and should be interpreted strictly. There is no document available with the AO to establish that the appellant was required to furnish the confirmations as per Rule 46A(4) of the Income-tax Rules. Thereafter, the appellant has furnished the confirmations from the respective sundry creditors and all the creditors have confirmed the outstanding liabilities and furnished PAN/Aadhar. Therefore, it is stated that the liabilities has neither ceased nor remitted. The appellant has not got any benefit by way of cessation or remission of liability within the meaning of the section 41(1).*

**4.5.4** *As per the settled legal position, the onus is on the AO to establish that the liability has either ceased or remitted especially when the appellant has stated that the liability has not ceased/remitted. However, the AO stated in the Assessment order that due to shortage of time, no notice u/s 133(6) could be issued to the sundry creditors. The AO has further stated that the onus was on the appellant to prove the identity, genuineness and creditworthiness of the concerned parties. The Assessing officer stated that the appellant failed to discharge his onus to bring sufficient evidence on record to the satisfaction of the Assessing officer regarding the genuineness of the claim of sundry creditors and advances. The provisions of section 41(1) can be invoked only in case of liabilities which have either ceased or remitted. There is no legal requirement and onus cast upon the appellant for establishing the genuineness of the sundry creditors as such credits have actually not appeared in books of accounts of the appellant for the year under consideration. As regards the cessation or remission of liability, the onus is on the AO to establish that the liability has either ceased or remitted especially when the appellant has stated that the liabilities were outstanding as the Balance Sheet date. In the case under consideration, there is no documentary evidence brought on record by the AO to establish that the liability in the name of any of the person appearing under the head sundry creditors, have either ceased or remitted. Moreover, during the appellate proceedings, the appellant was required to furnish the confirmations for the sundry creditors, which were also furnished and all*

*the creditors have duly concealment of income and furnishing of inaccurate particulars of income.”*

*The above statement of the Assessing Officer is not legally tenable due to the following reasons:-*

- (a) There cannot be any disallowance u/s 41(1) as disallowance can be only for the expenses claimed in the Profit & Loss a/c. Legally there can be addition u/s 41(1) and not disallowance. The amount appearing as liability is a Balance Sheet item and not a Profit and Loss a/c item. Disallowance can be made for a claim made in the Profit & Loss a/c and not Balance Sheet.*
- (b) The AO has treated that the said amount of Rs. 1,61,95,176/- as income from undisclosed sources. Legally, the liabilities appearing in the Balance Sheet cannot be held to be income from undisclosed sources and there is no provisions for such treatment under the Income-tax Act, 1961.*
- (c) The AO has further stated that the appellant has falsely claimed the said amount of trading liability in the Balance Sheet. At the out-set, it is stated that the AO has allowed the appellant to claim the entire expenses on account of purchase of material, labour charge etc. When the total expenses claimed in the Profit & Loss account has been allowed to be claimed by the AO, there is no justification to state that the appellant falsely claimed as liability in the Balance Sheet. The AR stated that the liability in the Balance sheet is a moving account and majority of the creditors are for current year and moreover many creditors were paid off in the subsequent year. Therefore, the AO's finding that the appellant has falsely claimed as trading liability is erroneous.”*

5. Aggrieved by the order of Id. CIT(A), the Revenue is in appeal before us.

6. We have heard the rival submissions and perused the materials available on record. Ld. DR for the Revenue reiterated the stand taken by Assessing Officer, whereas Id. Counsel for the assessee relied on the submissions made before the Id. CIT(A). We note that during the course of assessment proceedings, the Assessing Officer required the assessee to furnish certain details with respect to sundry creditors to the tune of Rs.1,61,95,176/- and the Assessing Officer had not satisfied by the details filed by the assessee therefore the said amount of Rs.1,61,95,176/- was disallowed by the Assessing Officer u/s 41(1) of the Income Tax Act, 1961. We note that the onus is on the Assessing Officer to establish that the liability has ceased or remitted. We note that assessee has not obtained any benefit as required under the provisions of section 41(1) of the Act. The assessee submitted that the liability in balance sheet is a moving account

and majority of the creditors are for current year and moreover many creditors were paid off in the subsequent year. Therefore considering the factual position, we note that there is no any infirmity in the order passed by the Id. CIT(A), hence we decline to interfere in the order passed by the Id. CIT(A), his order on this issue is hereby upheld and the grounds of appeal raised by the Revenue is dismissed.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 24/08/2020.

**Sd/-**

**(S. S. Godara)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**

**(A. L. Saini)**

लेखासदस्य / ACCOUNTANT MEMBER

कोलकाता/Kolkata;

Dated: 24/08/2020

RS

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-DCIT, Circle-1, Ranchi
2. प्रत्यर्थी/Respondent- Shri Ravindra Kumar Sinha
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाइल / Guard file.

//True Copy//

By order/आदेश से,

Sr. Private Secretary