

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM

ITA No. 554/Mum/2019
(Assessment Year: 2014-15)

Kumar Ishwarlal Doshi 259, Johari Mansion, 2 nd Floor, Kalbadevi Road, Mumbai-400 002	Vs.	ITO – 18(2)(2), Mumbai
PAN/GIR No. ADXPD 0393 H		
(Appellant)	:	(Respondent)
Appellant by	:	None
Respondent by	:	Shri Somnath Wajale
Date of Hearing	:	07.10.2020
Date of Pronouncement	:	07.10.2020

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the learned CIT(A)-53, Mumbai dated 07.12.2018 and pertains to the Assessment Year (A.Y. for short) 2014-15.

2. The grounds of appeal read as under:

1. The Ld. Commissioner of Income Tax (Appeal) erred in upholding the addition of Rs.1,96,853/- made by the Assessing Officer under section 41(1) of the Income Tax Act, 1961.

3. Brief facts of the case is that the assessee is a trader in cloth. During the course of assessment, the A.O. noted that a sum of Rs.1,96,853/- is lying as sundry creditors and that 3 years have elapsed. The A.O. issued notice u/s.133(6) to the said creditor. The same remained unserved. The A.O. proceeded to hold that there is a cessation of liability in terms of section 41(1) of the Act. Accordingly, he proceeded to add the aforesaid sundry creditors as income of the assessee.

4. Upon the assessee's appeal, the ld. CIT(A) upheld the order of the A.O.

5. Against this order, the assessee is in appeal before the ITAT.
6. None appeared for and on behalf of the assessee despite notice sent. Hence, I proceeded to adjudicate the issue by hearing the Id. Departmental Representative and perusing the records. I note that the assessee is trader in cloth. The assessee's sales and purchases have not been doubted. Just because a sundry creditors is outstanding for more than 3 years, there is no presumption in income tax law that the same amounts to cessation of liability u/s.41(1) automatically. It is noted that the A.O. has not even issued summons u/s.131(1) to the said sundry creditors. Hence, in my considered opinion, in the absence of proper investigation the amount involved is not liable to the added u/s.41(1) simply because the same is over 3 years old. Accordingly, I set aside the orders of the authorities below and delete the addition.
7. In the result, this appeal filed by the assessee stands allowed.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board on 07.10.2020

Sd/-
(Shamim Yahya)
Accountant Member

Mumbai; Dated : 07.10.2020

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai