

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

BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT)

AND

SHRI SAKTIJIT DEY (JUDICIAL MEMBER)

I.T.A. No.2476/Mum/2019
(Assessment Year : 2012-13)

Sitson India Pvt Ltd W 76, MIDC, Phase II Dombivali (E) Dist : Thane-421 204 PAN :AADCS9489D	vs	ACIT, Circle 1, Kalyan
(APPELLANT)		(RESPONDENT)

Appellant by	None
Respondent by	Shri T.S. Khalsa - DR

Dt of hearing	19-01-2021
Dt of pronouncement	28-01-2021

ORDER

Per Saktijit Dey (JM),

This is an appeal by the assessee against the order dated 06-12-2018 of learned Commissioner of Income Tax (Appeals)-2, Pune, for the assessment year 2012-13.

2. The dispute in the present appeal is confined to addition of Rs.23,67,698 under section 41(1).
3. When the appeal was called for hearing, no one appeared for the assessee. Considering the nature of dispute, we proceed to dispose of the appeal ex parte qua the assessee, after hearing the learned Departmental Representative and on the basis of material on record.

4. Briefly the facts are, the assessee, a resident company, is in manufacturing business. For the assessment year under dispute, assessee filed its return of income on 27-09-2012 declaring total income of Rs.12,36,68,920/-. In the course of assessment proceedings, the Assessing Officer on verifying the financial statements of the assessee noticed that the assessee has shown outstanding creditors aggregating to Rs.26,67,798/- which is continuing over the years. Being of the view that such liability has ceased to exist in terms of section 41(1) of the Act, the Assessing Officer added back the same to the income of the assessee. Though, the assessee contested the aforesaid addition before learned Commissioner (Appeals), however, the assessee was unsuccessful.

5. We have heard the learned Departmental Representative and perused the materials on record. Undisputedly, the Assessing Officer has made the addition by treating it as cessation of liability under section 41(1) of the Act. On a careful reading of section 41(1) of the Act it is very much clear that there are three conditions to be fulfilled for invoking the provision. Firstly, there must be a trading liability; secondly, the assessee must have received the benefit either in cash or in kind in respect of such liability and; thirdly, such benefit in cash or kind must have been received during the year under consideration. In the facts of the present case, it is very much evident that the liability in question is continuing for past several years. Therefore, the Assessing Officer was duty bound to establish on record that the assessee has derived the benefit of the liability in cash or in kind in the impugned assessment year. However, the facts on record clearly reveal that the Assessing Officer has not established this fact. It is fairly well settled that once an amount is shown as liability in the books of the assessee and it continues to remain so, there cannot be any cessation of liability unless the conditions of section 41(1) are fulfilled. It is evident from the impugned order of learned Commissioner (Appeals), the assessee itself has offered the outstanding liability as income in financial year 2016-17 corresponding to assessment year 2017-18. In case, the assessee has already offered the outstanding liability as income in assessment year 2017-18 by writing it off in the books, no further addition under section 41(1) of the Act can be made in the impugned assessment year. Therefore, we direct the Assessing Officer to verify assessee's claim of offering the disputed amount as income in assessment year 2017-18 and in case assessee's claim is found to be

correct, the corresponding addition in the impugned assessment year made under section 41(1) of the Act should be deleted. Grounds are allowed.

6. In the result, appeal is allowed, as indicated above.

Order pronounced in the Open Court on this 28/01/2021.

(PRAMOD KUMAR)	(SAKTIJIT DEY)
VICE PRESIDENT	JUDICIAL MEMBER

Mumbai, Dated : 28/ 01/2021.
Pavanan, Sr.P.S (on contract)

Copy of the order forwarded to :

1. The Appellant.
2. The Responent.
3. The CIT(A)
4. 4. The CIT
5. D.R., ITAT, Mumbai.
6. Guard File.

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By order

I.T.A.T., Mumbai.