

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A' NEW DLEHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 1850/Del/2017  
Assessment Year: 2013-14**

**ACIT Circle 49(1),  
New Delhi.**

**vs.**

**Arvind Kumar Arora,  
W-35, Ground Floor,  
Greater Kailash part-I,  
New Delhi**

**C.O. No. 117/Del/2017  
(in ITA No. 1850/Del/2017)  
Assessment Year: 2013-14**

**Arvind Kumar Arora,  
W-35, Ground Floor,  
Greater Kailash part-I,  
New Delhi**

**vs.**

**ACIT Circle 49(1),  
New Delhi.**

**PAN : ABXPA8204C  
(Appellant)**

**(Respondent)**

Appellant by : Sh. Satpal Gulati, CIT/DR  
Respondent by: Sh. Ved Jain, Advocate

Date of hearing: 07/07/2021

Date of order : 16 /07/2021

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

Aggrieved by the order dated 24.01.2017 passed by the learned Commissioner of Income Tax (Appeals)-17, New Delhi ("Ld. CIT(A)") for the assessment year 2013-14, in the case of Arvind Kumar Arora ("the

assessee”), Revenue filed this appeal. The assessee has also filed cross-objections in this appeal.

2. Brief facts of the case are that the assessee is an individual and proprietor of M/s Arora Aromatics. He is engaged in the business of manufacturing and export of Menthol Crystal, Menthol and Essential Oils Crystals, DMO, Peppermint Oil, etc. For the assessment year 2013-14, the assessee filed his return of income on 29.8.2013 declaring an income of Rs. 3,20,89,580/-. During the assessment proceedings learned Assessing Officer found that the assessee had taken a loan of Rs.9,80,05,543/- from his brother Mr. Suresh Chand Arora. In response to a query raised by the learned Assessing Officer the assessee submitted that he made the purchases form Ruchi Infotech Systems in the preceding years and at the year end on 31.3.2013, the assessee has transferred the amount of Rs. 6,44,29,650/- outstanding in the name of M/s Ruchi Infotech Systems to the account of Sh. Suresh Chand Arora, who is also the proprietor of M/s Ruchi Infotech Systems. The account of Sh. Suresh Chand Arora shows as loan in the books of accounts of the assessee; that it is just a change of the name of the ledger Account both being the same person. Assessee claims to have submitted the ITR, Bank Statement, Copy of Confirmation of the account and copy of Bank Account of Mr. Suresh Chand Arora vide letter dated 16.7.2015, and submitted that Mr. Suresh Chand Arora is his brother and also proprietor of M/s Ruchi Infotech Systems and was deriving business income for the A.Y. 2007-08 to 2012-13. Assessee also claims to have submitted the return of income, financial accounts of M/s Ruchi Infotech Systems and all other relevant details to show that Mr. Suresh Chand Arora proprietor

of M/s Ruchi Infotech Systems is regularly filing return of Income and had Net Profits of Rs. 16 Crore from A.Y. 2006-07 and 2011-12.

3. Learned Assessing Officer, however, observed that proceedings were concluded by the Commissioner, Central Excise, Meerut-II, Division against the assessee, enquired from the Commissioner of Excise regarding the present status of the case and got to know that the order dated. 29.01.2010 has been passed against the assessee by the Commissioner wherein it has been held that assessee has availed cenvat credit of bogus cenvat invoices issued by M/s Ruchi Infotech Systems; that against the order passed by the Commissioner Central Excise, assessee went before CESTAT and filed an appeal on 25.06.2010 and CESTAT has granted the interim stay to the assessee and no further order has been passed. Learned Assessing Officer further observed the assessee has converted the trading credit liability in the name of M/s Ruchi Infotech Systems into the loan liability and therefore liability has ceased to exist, and accordingly made the addition of an amount of Rs. 6,44,29,650/-, under section 41(1) of the Income Tax Act, 1961 (for short "the Act").

4. Aggrieved by such an order of the learned Assessing Officer, the assessee preferred an appeal before the Ld. CIT(A). While submitting the details of material Purchased from M/s Ruchi Infotech Systems, Export sales done by the assessee, and the statement of Accounts of Arora Aromatics P. Ltd. and a copy of order passed by the Customs, Excise & Service Tax Appellate Tribunal in the case of Ruchi Infotech Systems, the assessee contended that and the impugned amount was paid in the subsequent year. On considering the facts in their entirety, Ld. CIT(A)

deleted the addition by holding that the books of the accounts of the assessee are not rejected and no defects have been found by him in the books, the sales and purchase figures were before the Assessing Officer and the same were not doubted and the amount due to M/s Ruchi Infotech Systems were paid in the subsequent years. The Revenue is, therefore, before us in this appeal. Supporting the findings reached by the Ld. CIT(A), and assailing the grounds of appeal of the Revenue, assessee filed the cross objections.

5. Ld. DR placed reliance on the order of the learned Assessing Officer; whereas Ld. AR based his arguments on two grounds. Firstly, according to the learned Assessing Officer, in view of the order passed by the Commissioner of Excise against the assessee on 29/1/2010 holding that the assessee had availed cenvat credit bogus Cenvat invoices issued by M/s Ruchi Infotech Systems was subsequently found to be factually incorrect in view of the decision of the CESTAT in the case of assessee (Mrs Arora aromatics vs. Commissioner of Central excise, Meerut, 2017 (12) TMI 1430-CESTAT, Allahabad) by order dated 1/11/2017 and also in the case of M/s Ruchi Infotech Systems by order dated 21/2/2019, the copies of which are produced before us in the paperbook vide page numbers 406 to 411. The other argument is that, since the amount payable is not written back, and as the amount was still shown as outstanding at the end of the relevant year, the provisions of section 41(1) of the Act are not attracted, as is held by the Hon'ble jurisdictional High Court in the case of CIT Vs Shri Vardhman Overseas [2012] 343 ITR 408 (Del.).

6. On a perusal of the order of the Hon'ble CESTAT in the case of M/s Arora aromatics (supra) and also M/s Ruchi Infotech (supra), we find that in those decisions the transaction between the assessee and M/s Ruchi Infotech System were held to be not tainted one, and genuine one. It does not require further enquiry or proof, in the absence of any circumstances contrary to the fact found by the Hon'ble CESTAT.

7. Now coming to the observations of the learned Assessing Officer that the assessee had converted the trading credit liability in the name of M/s Ruchi Infotech Systems into the loan liability, and such liability also seized to exist, it could be seen that the outstanding liability existing as on 31/3/2013 was paid subsequently as per the books of accounts of the assessee and the assessee demonstrated with reference to page Nos 329 2/3/1957 of the paperbook. Insofar as these entries are concerned, after verification of the account books, Ld. CIT(A) returned a factual finding that the accounts were not rejected by the learned Assessing Officer, nor any defect in such books was found and therefore, the details of purchase vis-à-vis sales produced by the assessee which were not doubted by the learned Assessing Officer, establish the case of the assessee. This finding of fact of the Ld. CIT(A) is not disputed by the Revenue. It, therefore, goes to establish that such liability as was existing as on 31/3/2013 and was repaid subsequently between 1/4/2013 and 31/3/2017, and such fact is well evidenced by the books of accounts.

8. In such circumstances, the contention of the assessee merits consideration that the provisions under section 41 (1) of the Act are not applicable to the facts of the case. This view is fortified by the decision of the Hon'ble jurisdictional High Court in the case of Shri Vardhaman

Overseas (supra). In the circumstances, we are of the considered opinion that the Ld. CIT(A) rightly applied the law to the facts of the case and reached an unassailable conclusion. We accordingly hold that the findings of the Ld. CIT(A) do not suffer any illegality or irregularity and they cannot be disturbed. Consequently grounds of appeal of Revenue are found devoid of merits and are liable to be dismissed. In view of our findings in the appeal of the Revenue, the cross objections become infructuous and are also liable to be dismissed.

9. In the result, appeal of the Revenue and cross objections of the assessee are dismissed.

**Order pronounced in the open court on this 16<sup>th</sup> day of July, 2021.**

Sd/-  
**(PRASHANT MAHARISHI)**  
ACCOUNTANT MEMBER

Sd/-  
**(K. NARASIMHA CHARY)**  
JUDICIAL MEMBER

Dated: 16/07/2021  
'aks'