आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 267/JP/2020
निर्धारण वर्ष/Assessment Year :2014-15

I.T.O., Ward 4(1), Jaipur.	बनाम Vs.	Shri Amit Agarwal, 101, Near Pondrik Park, Brahampuri, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ARYPA 2525 P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by : Shri B.K. Gupta (PCIT-DR)
निर्धारिती की ओर से/ Assessee by : Shri G.M. Mehta (CA)

सुनवाई की तारीख/ Date of Hearing : 14/06/2021
उदघोषणा की तारीख/ Date of Pronouncement : 13/09/2021

आदेश/ ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the Revenue against the order of the ld. CIT(A)-2, Udaipur dated 05/03/2020 for the A.Y. 2014-15, wherein the Revenue has raised following grounds of appeal:

"*1. Whether in the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition of Rs. 2,59,97,837/- made by the AO on account of non-genuine creditors u/s 41(1) of the I.T. Act, 1961?*

2. Whether in the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition of Rs. 50,00,000/- made by the AO on account of unexplained credits u/s 68 of the I.T. Act, 1961?"

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. There is delay of 16 days in filing the present appeal, wherein it was stated that the Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No(s) 3/2020 dated 23/03/2020 has taken suo motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State). To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court and the Hon'ble Supreme Court ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended w.e.f. 15th March, 2020 till further order/s to be passed by this Court in present proceedings. The instant appeal has been filed on 11/06/2020, therefore, in view of the direction of the Hon'ble Supreme Court, there is no need to file condonation application and the delay in filing the present appeal is condonable and is hereby condoned.

4. The brief facts of the case are that the assessee is proprietor of M/s Nandi International and engaged in import and trading of Glass Chaton, Glass beads and silver jewellery. The assessee filed his return of income on 27/09/2014 declaring total income of Rs. 9,01,270/-. The case of the assessee was selected for limited scrutiny under CASS. The A.O. passed the assessment order U/s 143(3)/144 of the Income Tax Act, 1961 (in short, the Act) on 24/12/2016 determining total income of the assessee at Rs. 3,18,99,110/- by making addition U/s 41(1) and 68 of the Act.

5. Being aggrieved by the order of the A.O., the assessee carried the matter before the ld. CIT(A), who after considering the submissions of both the parties and material available on record, allowed the appeal of the assessee. Against the said order of the ld. CIT(A), the Revenue is in further appeal before the ITAT on the grounds mentioned above.

6. The 1st grounds raised by the Revenue relates to challenging the order of the ld. CIT(A) in deleting the addition of Rs. 2,59,97,837/- on account of non-genuine creditors u/s 41(1) of the Act. In this regard, the ld CIT-DR has vehemently supported the order of the A.O. and also relied on the written submissions filed before the Bench and the contents of the same are reproduced below:

> *"The issue in this case is addition made by the AO u/s 41(1) of the Act, which has been deleted by the ld. CIT(A). I would be relying upon the*

following judicial pronouncements in support of my arguments, which would made at the time of hearing.

(1) In the case of West Asia Exports & Imports (P.) Ltd. V ACIT [2019] 104 taxmann.com 170 (Madras), after considering a number of judicial pronouncements on the issue, it has been held by the Hon'ble Madras High Court as under:

- *Section 41 brings to tax certain 'Profits chargeable to tax' and is a long provision having six sub-sections. The crucial words in the said provisions are the 'remission or cessation' of such trading liability which has been claimed as an allowance or deduction taken by the assessee in a previous year and if such liability is remitted by the creditor or had ceased to exist, then in the year of remission or cessation, the said trading liability can be brought to tax as profit chargeable to tax under the said provision. Obviously, the word 'cessation' in the said provision means cessation de facto and de jure. The cessation of liability should cease to exist in the eye of law. While the remission of liability can be by way of conscious act on the part of the creditor, the cessation of such liability can be inferred on the basis of facts and circumstances surrounding such trading liability. After Explanation was added on section 41(1), it can be even by the unilateral act on the part of assessee viz., by writing back or writing off such liability amounting to cessation of liability in his hands attracting section 41(1) and attracting tax thereon.[Paras 18 and 19]*

- *In the instant case, where the trading liability incurred by the assessee in the course of its erstwhile timber business, which was discontinued ten years ago and nobody claimed a single penny from the assessee in the last ten years and the assessee even failed to produce the written confirmations from such trade creditors, it could very well be inferred by the Assessing Authority that such trading liability of the*

assessee ceased to exist in law and not only the claims become barred by limitation, but in fact, no creditor came forward to make any claim from the assessee. The fact that the assessee had changed its business from timber business to that of sending of manpower to Gulf countries, altogether a different kind of business, but still continued to show its erstwhile Sundry Creditors of its erstwhile timber business in the Balance Sheet of current business also, it did not entitle the assessee to claim that the liability of such creditors of its timber business still continues in the eye of law, since such creditors are shown in the Balance Sheet. The inference of cessation of liability will not solely depend upon the accounting entries made by the assessee nor the omission of the assessee to make such accounting entries. The accounting entries are not the sole determinative factor, but they may still be relevant.[Para 20]

- *Though the burden lies upon the revenue to establish that such liability had ceased in law to apply section 41(1), but the initial burden of revenue in this case was discharged by calling upon the assessee to produce the written confirmations from such trade creditors and thus, the onus, thereupon shifted on the assessee to either produce the written confirmations or to produce the creditors themselves as witnesses to establish that the trade credit or liability to pay continues to exist de facto and de jure.[Para 21]*

- *The entries in the books of account or more particularly balances drawn year after year in the Balance Sheets cannot perennially or indefinitely postpone the applicability of section 41(1) on the ground of cessation of trading liability. Such an interpretation would defeat the very object of enacting such a provision. The object of the provision is very clear that what deduction and allowance was claimed against the profits of the previous year(s), if such liability ceased in law in the later year(s) then in such later year(s), to such extent, the liability should be*

treated as profit of such later year(s) and brought to tax, in such later year(s). [Para 22]

- *Therefore, while entry in the books of account is only one piece of evidence to establish that the liability is current and subsisting in the eye of law, even in the current assessment year, if the assessee fails to discharge the onus cast upon him, the Assessing Authority will be free to draw an adverse inference, as has been done in the instant case. One cannot shut eyes to the fact like change of business by the assessee to an entirely different nature and then creditors of old timber business not speaking up anything for ten years and the absence of the assessee to produce the written confirmation from such creditors. In such circumstances, certainly an inference that the business link of the creditors with the assessee and the survival of the claim has totally vanished. Thereafter, after ten years, if such an inference is drawn and section 41(1) is applied, no valid exception can be taken by the assessee.[Para 23]*

- *In the instant case, once the assessee was called upon to prove the credit entries with regard to the Sundry Creditors of its erstwhile business, the burden shifted upon him to establish the current existence of those creditors and their debts due from assessee and that there was a live link between the creditors and the outstanding debts and therefore, in the absence of assessee discharging that burden shifted upon him, the case of cessation of liability made out by the revenue against him so as to bring back those dead debts of the assessee to tax under section 41(1), was justified.[Para 27]*

- *The assessment year 2003-04 in question has passed by for last 15-16 years by now. The assessee on being asked to produce evidence with regards to any creditor who may have raised claim against assessee even in past 15-16 years was unable to produce any evidence,*

despite the grant of an opportunity in this regard. Thus, it is also more fortified now that the liability to pay for these Sundry Creditors had ceased long back and the authorities under the Act, up to the Tribunal, were justified in applying section 41(1) and bring to tax the liability to pay back their old debts, as having ceased in law and in fact.[Para 28]

- *A reasonable time line of period has to be drawn while considering the words 'cessation of trading liability' as employed in section 41(1). The lapse of ten years of time, coupled with the fact that there was a change of business altogether by the assessee, absolutely justified the Assessing Authority to draw an adverse inference against the assessee about the cessation of liability, especially when the assessee failed to produce the written confirmation from such trade creditors of its erstwhile timber business, despite grant of opportunity to the Assessee. The debts had not only become time barred long ago, but, in fact also, no creditor made any claim for recovery from the Assessee during any of these years even up to now.[Para 29]*

(2) In the case of Rama Steel Rolling Mills & General Engg. Works Vs ITO [2013] 35 taxmann.com 262 (Rajasthan), it was held by the Hon'ble Rajasthan High Court that:

> *"4. In our opinion, it is based on factual matrix of the matter and the liability in the end of the year if not proved can certainly be added u/s 41(1) of the Act but it is still left open for the assessing authority to examine and opportunity is available before the assessing authority to produce the creditor and if unable to give the exact address, it will be open for the assessing authority to add back the same as per law. We do not find any substantial question of law arises in the facts & circumstances of the case which may require any consideration.*

5. Consequently, the appeal is devoid of merits and accordingly stands dismissed."

(3) In the case of Mrs. Adarsh Sood Vs CIT [2014] 47 taxmann.com 268 (Punjab & Haryana), it was held by Hon'ble High Court that:

"8. A perusal of the aforesaid order and the facts would show that the entries which had been shown in the books of account of the assessee were not treated to be income under Sections 41(1) or 68 of the Act. The Tribunal had applied the principles enunciated by the Apex Court in T.V. Sundariam Iyengar &Sons's case (supra) where the amount which was initially of capital nature but had changed its character to be of revenue nature, it was treated to be taxable income of the assessee. Thus, the amount of Rs. 1,03,648/- found credited in the books of account of the assessee, the liability to pay back the same had ceased to exist and, therefore, the Tribunal had rightly treated it to be assessee's taxable income. It may be noticed that the submission of learned counsel for the appellant that the non-declaration of Rs. 1,03,648/- as the income of the assessee was due to bonafide belief that it was not exigible to tax, appears to be plausible.

9. In view of the above, we do not find any merit in the appeal."

(4) In the case of Natural Gas Company (P.) Ltd. Vs DCIT [2015] 61 taxmann.com 297 (Mumbai - Trib.), it was held that:

"5. ….. In the present case, the Revenue states of the liabilities continuing to outstand in the assessee's books from 3 to 25 years. Surely, the same raises considerable doubts as to the existence of the liability/s. True, they stand not written back and continue to outstand in the assessee's books, but that is precisely the reason for the same being, questioned by the Revenue, or entertaining doubts about the same. The doubt can by no means be considered as not

valid, being in accord with the common practice and, thus, discharging the onus that law places on the Revenue. The accounting entries or the treatment that the assessee accords to an asset or liability in its books is not determinative of the matter. Again, the presumption would only be of the same representing the true state of affairs, but the inordinate delay in discharging the same raises considerable and valid doubt as to the existence of those liabilities as at the relevant year-end, i.e., as a fact. The onus on the Revenue, thus, gets discharged and shifts to the assessee, who is in effect only being called upon to show that the position as stated in its accounts reflects the true and correct position. A trading liability would normally get settled within a period of one or two months of its arising, while in the instant case years and years have passed. The same leads to the question: Why were the same not paid in the normal course and, rather, not paid at all? Is the matter disputed-if so, to what extent, and which shall again have to be demonstrated. In fact, after the lapse of considerable time, it becomes doubtful if the creditor exists, who may have moved to a different place; discontinued business, at all. No material or evidence or even explanation is forthcoming from the assessee. The only inference under the circumstances is that the liability no longer exists. (emphasis supplied)…..

The next question that arises is as to the year of taxability, and which is the year of remission or cessation of liability. The assessee having claimed it as a liability for the immediately preceding year as well, and which stood accepted by the Revenue, would preclude the assessee from contending that the liability was not existing, or was in fact not a liability even as at the end of the immediately preceding year. That is, it is not open for the assessee to turn back and say that you accepted my lie for the preceding years and, therefore, you

are bound by it. The only consequence in law is that the cessation or remission has occurred during the relevant previous year. We are in this regard, with respect, unable to agree with the Hon'ble High Court in the case of Bhogilal Ramjibhai Atara (supra) that the law is not clueless in this regard; the said decision having been rendered without considering the decision by the said Court in CIT v. Hides & Leather Products (P.) Ltd. [1975] 101 ITR 61 (Guj.). (emphasis supplied)….

6. In the result, the assessee's appeal is dismissed."

(5) In the case of GAC Shipping (India) (P.) Ltd. Vs JCIT [2015] 61 taxmann.com 347 (Cochin - Trib.) , it was held that:

"21. We have heard both parties and perused the record. The argument of the assessee's counsel is devoid of merit. In our opinion, these credits continue to be carried forward year after year and there was no claim from the person to whom it was owing. Generally, in the normal course, nobody would ordinarily not claim his dues and usually they take steps to recover the dues if it is a genuine liability. In this case, the liability is outstanding in the books of account of the assessee year after year.(emphasis supplied)

23. In the present case, the assessee has drawn balance-sheet based on its books of account in which the above amounts were being claimed as liabilities due to the various parties as at the end of the accounting year under dispute. However, the assessee failed to establish the genuineness of these liabilities by citing credible evidence. Simply the liabilities being reflected against certain names in its books of account would not establish the genuineness of such liabilities. On the other hand, the Assessing Officer went to the root of the issue and came to the conclusion that the alleged creditors

were not genuine. The assessee was not able to establish the existence of these liabilities. In the circumstances, the lower authorities are justified in treating the liabilities as income under section 41(1) of the Income-tax Act. Being so, the lower authorities are justified in holding that such liabilities did not exist at the end of the accounting year under dispute and rightly added the said liabilities which had ceased to exist. Hence, we do not find any infirmity in the orders of the lower authorities and accordingly, this ground of the assessee is rejected. Accordingly, the assessee appeal in I.T.A. No. 803/Coch/2013 is dismissed"

(6) In the case of Bharat Dana Bera Vs ITO [2015] 56 taxmann.com 388 (Mumbai - Trib.), it has been held:

"7. …. In the present case, the liabilities outstanding in the books of account of the assessee for the assessment year under consideration and only the provisions of the section 41(1) of the Act could be applied. In the present case the assessee failed to establish the actual existence of the impugned disputed amount in the books of account of the assessee. The assessee has drawn its balance sheet based on its books of account, in which the above amount, were being claimed as liabilities due, to various parties, as at the end of the accounting year under dispute. However, the assessee failed to establish the genuineness of these liabilities by producing supporting evidence. Simply the liabilities being reflected against certain names in the books of account would not establish the genuineness of liabilities. (emphasis supplied)

8. On the other hand the AO required the assessee to file supporting evidence from the alleged creditors and the assessee was only able to prove the existence of the liability in respect of Rs.11,79,018/- and balance was not established as genuine. This shows, that the

assessee has no explanation to prove that the creditors in the books of account are genuine. The assessee failed to discharge its onus cast on it, to substantiate its claim. Being so, CIT(A) is justified in holding that such liabilities did not exist at the end of the accounting year and rightly sustained the said liabilities which has ceased to exist.

(7) In the case of Asht Laxmi Diamond &Jewellery Vs ITO [2015] 59 taxmann.com 430 (Mumbai - Trib.), it was held that:

"8. We have considered the rival submissions. The Ld. CIT(A) has discussed in detail that in this case the alleged creditors, in the light of elaborate inquiries and evidence collected and also in the absence of any evidence produced by the assessee to the contrary, it had been well proved that the alleged creditors were non existent. It is not a case where the CIT(A), in the absence or because of the failure of the assessee to provide addresses, confirmations etc. from the alleged creditors, has assumed that the liability has ceased to exist, but he himself made further enquiries to find out the alleged creditors through the official machinery. When he had satisfied himself that neither in the last so many years those parties had ever been seen by anybody, nor any known address of them was available, there was never any demand of payment by any of the above named parties from the assessee for the last more than 10 years, no income tax returns had been filed by them, only then he concluded that the liability of the assessee, in fact, had ceased to exist. …..In our view, merely because the assessee now has offered the said amount as income, that itself, does not support the case of the assessee that the liability had not ceased to exist in the year under consideration, rather, this fact supports, the case of the Revenue that even after passing of further 5 years from the date of

assessment, the assessee could not trace his creditors. We, therefore, do not find any infirmity in the well-reasoned order of the Ld. CIT(A) in this respect. There being no merit in the appeal of the assessee, the same is accordingly dismissed. The assessee, however, if so advised, will be at liberty to claim the refund/adjustment of the taxes paid subsequently, in relation to the additions made/confirmed during the year under consideration to avoid double taxation, in accordance with the provisions of the law."

7. On the contrary, the ld AR appearing on behalf of the assessee has vehemently supported the order of the ld. CIT(A) and also relied on the written submissions filed before the Bench. The contents of the submissions are as under:

"The assessee could not pay the outstanding to the trade creditors in majority of cases because of paucity of funds for which ld. AO made addition of Rs.2,59,97,837/- under sec. 41(1) of the Act . In subsequent years, payments were made by a/c. payee cheques to two of the creditors and remaining creditors were paid through sale of goods after charging applicable GST on such sales as per following details:

S.No.	Name of creditor	Amount due	Repayments	Amount	P.B. page
1.	Balaji Enterprises	15,70,432	1 of 12.01.2017	15,70,432.00	**5 & 6**
2.	Dhan Laxmi Traders	16,65,937	Chq.dt.30.09.2015	14,00,000.00	**7**
			11 of 10.03.2017	82,656.00	**8 (F)**
			16 of 17.3.2017	1,83,289.95	**9 (F)**
				16,65,945.95	**10**
3.	Dzire Exports	22,34,187	23 of 28.03.2017	9,98,404.60	**11**
			24 of 28.03.2017	12,35,799.94	**12**
				22,34,204.54	**13**
4.	H.P. Jewellers	28,05,600	9 of 08.03.2017	5,76,155.41	**14 (F)**
			10 of 08.03.2017	13,84,625.00	**15 (F)**
			14 of 17.03.2017	5,17,519.70	**16 (F)**
			15 of 17.03.2017	3,27,299.28	**17 (F)**
				28,05,599.39	**18**
5.	Om Shree Exports	24,44,880	25 of 28.03.2017	13,90,121.90	**19**
			26 of 28.03.2017	8,21,989.18	**20**
			27 of 28.03.2017	2,32,799.96	**21**
				24,44,911.04	**22**
6.	Orient Enterprises	23,96,309	Chq.dt.05.11.2014	20,00,000.00	**23**

7.	*R.R. Gems*	*30,14,652*	*4 of 20.02.2017*	*30,14,700.00*	***24 & 25***
8.	*Rudha Impex*	*41,04,560*	*6 of 06.03.2017* *7 of 06.03.2017* *8 of 06.03.2017* *12 of 10.03.2017* *13 of 10.03.2017*	*20,55,633.81* *5,44,289.00* *4,53,719.59* *4,80,606.00* *5,70,619.90* *41,04,868.30*	***26*** ***27*** ***28 (F)*** ***29*** ***30*** ***31***
9.	*Shri Narayan Jewellers*	*15,71,863*	*5 of 28.02.2017 17 of 18.03.2017* *22 of 27.03.2017* *28 of 28.03.2017*	*5,00,461.17* *6,49,322.08* *2,26,858.12* *1,95,299.88* *15,71,941.25*	***32 (F)*** ***33 (F)*** ***34*** ***35*** ***36***
10.	*Hunan Heng Zin Jewellery Ltd.Co.**	*41,89,117*	*Yiwu Sailing Diamonds* *Zhejiang Yiwu Jingchu* *Zhejilang Yiwu Sailing*	*21,37,736.88* *5,26,083.09* *14,94,272.00* *41,58,091.97*	***37*** ***37A***
		2,59,97,837			

*(*Advances made for import of goods to its three sister concerns were adjusted against the payment due to Creditor)* ***(F indicates VAT free sale****)*

Till the accounts of the above creditors were settled, these were continuously shown and admitted as liabilities in Assessee's Balance sheets as per following details:

S.No.	*Year ended on*	*Admission of Liability*	*Paper book page*
1.	*31.03.2014*	*Yes*	***38***
2.	*31.03.2015*	*Yes*	***39***
4.	*31.03.2016*	*Yes*	***40***
5.	*31.03.2017*	*Yes*	***41 & 41A***

When it is so, no addition could be made by applying provisions of sec. 41(1) of IT Act. Reliance is placed on the judicial pronouncements:

(1) ***CIT Vs. Sigauli Sugar Works (P) Ltd (1999) 236 ITR 518 (SC):*** *Remission of liability-Condition precedent for application of sec. 41(1). Obtaining benefit of virtue of remission or cessation of liability. Mere unilateral transfer entry in accounts. No benefit obtained. Section 41(1) was not applicable.* ***(P.B. 1 to 7 of II)***

(2) ***CIT Vs. Shri Vardhman Overseas Ltd. (2012) 343 ITR 408 (Del):*** *Remission or cessation of trading liability. Scope of sec. 41. Liability to*

creditors outstanding for more than four years. Liability shown in accounts of Assessee Company. Amount not assessable under section 41(1). ***(P.B. 8 to 11 of II).***

(3) ***Pr. CIT Vs. Matruprasad C. Pandey (2015) 377 ITR 363 (Del):*** *Remission of liability. Amount shown for several years as due to sundry creditors. Amount not written off during relevant previous year. Genuineness of creditors not doubted. Amount not assessable under section 41.* ***(P.B. 12 to 20 of II) .***

(4) ***CIT Vs. Banaras House Ltd. (2018) 402 ITR 88 (Del):*** *Remission or cessation of trade liability. Assessee accepting and acknowledging its liability. Many creditors paid, adjusted or ceased in subsequent years. No special reason given by AO to observe that liability ceased. Provision of section 41(1) not attracted.* ***(P.B. 21 to 24 of II)***

(5) ***CIT Vs. Vishal Transformers & Switchgears Pvt. Ltd. (2018) 405 ITR 266 (Karn):*** *Cessation of trading liability. Necessary ingredients for invoking the provisions of sec. 41(1) are twofold. Firstly, there should have been a cessation of trading liability and some benefit had been taken in respect of trading liability by assessee. Since creditor was not traceable on the date when verification was made, it was not a ground to conclude that there was cessation of liability. Cessation of liability had to be cessation in law. Section 41(1) could not be invoked.* ***(P.B. 25 to 29 of II).***

(6) ***CIT Vs. Kanoria Sugar and General Manufacturing Co. Ltd. (2018) 407 ITR 737 (Raj):*** *Remission of cessation of trading liability. Condition precedent for application of sec. 41. Liability should have ceased. Mere entries in account not conclusive.* ***(P.B. 30 to 36 of II) .***

(7) ***Anil Kumar Dangayach HUF Vs. ITO (2018) 58 TAX WORLD 200 (JP):*** *When assessee has furnished complete details of all creditors, including their business names, complete address, PAN as well as TIN, trade creditors were accepted in the year when those were introduced in books of accounts and part liability has been discharged by effecting sales to the trade creditors in subsequent years, only because they were outstanding for more than 5 to 6 years, it is neither remission nor cessation of liability so long the assessee is willing to pay the same and creditors have not waived off the credit.* ***(P.B. 37 to 47 of II)***

(8) ***Pr. CIT Vs. ECO Auto Components Pvt. Ltd. (2018) 409 ITR 202 (P&H):*** *Remission or cessation of liability. Liability continued to be shown in Balance sheet- no deemed income.* ***(P.B. 48 to 55 of II)***

(9) ***Jashojit Mukherjee Vs. ACIT (2018) 195 TTJ (Kol 'A') 697****: Liability not written back by the assessee. Assessee having not written back*

liabilities to creditors to its P & L account but on the other hand, having shown the liabilities as existing in the next financial year. ***(P.B. 56 to 60 of II)***

(Copies of above judicial pronouncements are submitted as per II paper book)

The trade creditors were repaid, partly by a/c. payee cheque, partly through sale of goods. In case of foreign creditor- adjusted against amount due from its sister concerns (per creditor's instructions).

The sale of goods to different creditors in the month of March 2017 was out of the following imports/purchases:

Date	***Import / purchase***	***Exporter/seller***	***Amount***	***P.B. page***
10.01.2017	*Import*	*Yiwi Harvest Intt. Trading Co.*	*38,34,644.00*	***42***
21.01.2017	*Import*	*Shining Life Co. Ltd.*	*34,07,354.00*	***43***
14.02.2017	*Import*	*Yiwu Yong Yang Jewellery Co.*	*36,81,493.00*	***44***
22.02.2017	*Import*	*Shining Life Co. Ltd.*	*12,84,276.00*	***45***
27.02.2017	*Import*	*Shining Life Co. Ltd.*	*8,51,394.64*	***46***
07.03.2017	*Import*	*Shining Life Co. Ltd.*	*9,78,164.00*	***47***
16.03.2017	*Import*	*Shining Life Co. Ltd.*	*11,76,326.61*	***48***
Total import of goods in A.Y. 2017-18			***1,52,13,652.25***	***49***
25.03.2017	*Local purchase*	*Lavis Silver Arts*	*11,56,138.60*	***50***
25.03.2017	*Local purchase*	*Lavis Silver Arts*	*12,73,870.00*	***51***
27.03.2017	*Local purchase*	*Lavis Silver Arts*	*17,99,670.00*	***52***
25.03.2017	*Local purchase*	*Varndavan Jewellers*	*18,08,279.44*	***53***
25.03.2017	*Local purchase*	*Varndavan Jewellers*	*7,72,803.16*	***54***

25.03.2017	*Local purchase*	*Varndavan Jewellers*	*38,44,500.00*	***55***
27.03.2017	*Local purchase*	*Lavis Silver Arts*	*21,28,595.56*	***56***
27.03.2017	*Local purchase*	*Varndavan Jewellers*	*11,24,692.30*	***57***
27.03.2017	*Local purchase*	*Varndavan Jewellers*	*26,69,850.51*	***58***
Total local purchase of goods in A.Y. 2017-18			***1,65,78,399.57***	***59***
Total Import and local purchase in A.Y. 2017-18			***3,17,92,051.82***	***60***

The above detailed import, local purchases as well as VAT tax free and VAT taxable sale, copy of annual VAT Return for F.Y. 2016-17, VAT assessment order passed by CTO for the same period along with Trading and Profit & loss account are being made part of paper book as per following details:

S.No.	***Nature of document***	***Amount***	***P.B. Page No***
1.	*Sales VAT free*	*51,02,662.98*	***61***
2.	*Sales taxable @ 1% VAT*	*2,86,91,603.54*	***62***
3.	*Trading and P&L account (31.03.2017)*	*3,37,94,266.52*	***63***
4.	*VAT Assessment order (by CTO)* *VAT tax free 51,02,662.98* *Taxable Turnover 2,86,91,603.54*	*3,37,94,266.52*	***64***

The ground No. (1) of the Department, on the facts is liable to be dismissed.

8. We have heard the ld. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before

us and we have also gone through the orders passed by the revenue authorities. From perusal of the record, we found that the ld. CIT(A) has dealt with the issue from para 5.4 and to 5.5 of his impugned and the same is reproduced as under:

"5.3 I have considered the facts of the case, assessment order, remand report and appellant's written submissions. At the outset, the issue of admissibility of additional evidence is required to be adjudicated. In the instant case, the assessment was completed ex-parte within meaning of provisions of sec. 144 of the Act, therefore, various documents furnished during the course of appellate proceedings were treated as additional evidence and were sent to the AO for his comment. The AO in this remand report opposed the admission of additional evidence. For the sake of clarity, Rule 46A of the I.T. Rules regarding production of additional evidence before the Commissioner (Appeals) is reproduced as below:

"Production of additional evidence before the [Deputy Commissioner (Appeals)] [and Commissioner (Appeals)].

46A. (1) The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—

(a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] ; or

(c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or

(d) *where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.*

(2) *No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.*

(3) *The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing. Officer] has been allowed a reasonable opportunity—*

(a) *to examine the evidence or document or to cross-examine the witness produced by the appellant, or*

(b) *to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.*

(4) *Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]"*

On perusal of Rule 46A reproduced hereinabove, it is seen that the case of the appellant is covered by sub-rule (1) Clause (b) as he was prevented by sufficient cause from producing the evidence which he was called upon to produce by the AO during the course of assessment proceedings. Such additional evidence which goes to the root of the matter has to be entertained in the interest of fairness and justice towards the appellant. The confirmations of creditors submitted now as additional evidence are necessary for disposal of the appeal on merits and therefore admission of the same should not be denied. The law on the issue of admission of additional evidences before the first appellate authority is well settled. In the cases of Mr.Shahrukh Khan

Vs DCIT (2007) 13 SOT 61 (Mumbai), CIT Vs Suretech Hospital & Research Centre Ltd. 293 ITR 53 (Bomb.), CIT Vs Parimal, Kandi Chanda (2007) 291 1TR 77 (Gau), CIT Vs Poddar Swadesh Udyog (P) Ltd. (2007) 295 ITR 252 (Gau), Smt. Prabhavati S. Shah Vs CIT (1998) 231 ITR 1 (Born), Surmukh Singh Vs ITO (2008) 115 TTJ (Asr) 852, ITO Vs Dwarka Prasad (1998) 60 TTJ (Pat) 292 and various other cases it was held that in exercise of powers under section 250, CIT(A) is entitled to admit additional evidence which he may think necessary for facilitating further enquiry, also in view of clauses (b) and (c) of Sub-rule (1) of rule 46A the appellate authority is empowered to allow the assessee to produce additional evidence where the assessee was prevented by sufficient cause from producing the evidence during assessment proceedings.

The facts of the appellant's case are quite similar to the facts of the cases cited supra and the ratio laid down therein is squarely applicable to the instant case. Keeping in view the factual and legal position, it is held that the appellant was prevented by sufficient cause to produce this evidence before the AO and hence, the same is admitted.

5.4 As regards the merits of case, the AO treated sundry creditors amounting to Rs. 2,59,97,8371- as non-genuine after summons issued/sent to these parties were returned back unserved and none of the party appeared before the AO. The AO held that these sundry credits are no longer payable and liable to be added u/s. 41(1) of the Act. The appellant submitted before me that these outstanding trade creditors were not more than 2 years old, and out of Rs. 3,19,49,957/-, closing balance as on 31-03-2013 was Rs. 2,59,97,837/- which was received before 31-03-2013 and not during the year under reference. The appellant further submitted that these creditors were for supply of goods/services during the FY 2011-12, whom the payments had duly been made in subsequent years. The appellant further submitted that

there was no cessation of liability as the assessee has not obtained any amount in respect of such expenditure or has not obtained any benefit in respect of such trading liability by way of remission or cession thereon. The appellant contended that these outstanding creditors do not satisfy the conditions prescribed in sec. 41(1) of the Act. The appellant referred to the provisions of sec. 41(1) and relied on various judicial decisions to argue that where the liabilities are outstanding for many years and the assessee had actually discharged the liability at future date, there is no justification to invoke or sustain any addition u/s. 41(1) of the Act. Before adjudicating the issue in hand, it would be appropriate to reproduce the relevant provisions of sec. 41(1) of the Act as under:-

"Profits chargeable to tax.

41. (1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year, --

(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability 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 profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

*** ** ***

[Explanation 1 - For the purposes of this sub-section, the expression - loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof shall include the remission or cessation of any liability by a unilateral act by the first mentioned person under clause (a) or the successor in business under clause (b) of that sub-section by way of writing off such liability in his accounts."

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.

Explanation 1, which was inserted w.e.f. 1.4.1997, is not attracted to the present case since there is no writing off of the liability in the appellant's accounts. The question has to be considered de hors Explanation 1 to Section 41(1). In order to invoke clause (a) of Sec.41(1) of the Act, it must be first established that the assessee had obtained some benefit in respect of the trading liability which was earlier allowed as a deduction. There is no dispute in the present case

that the amounts due to these sundry creditors were allowed in the earlier assessment years as expenditure in computing the business income of the assessee. The other question is whether by not paying them for a period of three years the assessee had obtained some benefit in respect of the trading liability allowed in the earlier years. The words "remission" and "cessation" are legal terms and have to be interpreted accordingly. In the present case, there is nothing on record to show that there was either "remission" or "cessation" of these liabilities. The AO tried to verify the existence of such liabilities from creditors, however, most of the summons issued by him were returned bank unserved and many were not found at the given address. In such case, 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 relevant assessment years, but the same cannot be taxed under section 41(1) of the Act, in as much as if the liability itself is not genuine, the question of remission or cessation thereof would not arise. In the instant case, the AO, merely on the ground of genuineness of such credits, invoked the provisions of sec. 41(1) of the Act. In fact, there is no material whatsoever on record to show that there was cessation or remission of liabilities during the previous year relevant to the present assessment year 2014-15.

It is noted that while the appellant had shown these trading liabilities in his books of account, no benefit had been obtained in respect of such trading liabilities 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 AO that these liabilities ceased to exist in the previous year relevant to the assessment year under consideration. In fact, the AO has doubted the very genuineness of such liabilities, therefore, the question of taxing any income on the ground that there was remission or cessation of such non-existent liabilities would not arise.

5.5 The provisions of section 41(1) have been interpreted by the Hon'ble Supreme Court in the case of Sugauli Sugar Works (P) Ltd. wherein the court concurred with the reasoning adopted by a Full Bench of the Gujarat High Court in the case of CIT v. Bharat Iron & Steel Industries [1993] 70 Taxman 353/199 ITR 67, and held thus:

'9. One aspect of the matter has been completely ignored by the judgment of the Division Bench of the Bombay High Court. As pointed out already, the crucial words in the section require that the assessee has to obtain in cash or in any other manner some benefit. That part of the section has been omitted to be considered by the Division Bench of the Bombay High Court. The said words have been considered by a Full Bench of the Gujarat High Court in detail in CIT v. Bharat Iron & Steel Industries, 119931 199 ITR 67 (Gui.). The following passages in the judgment bring out the reasoning of the Full Bench succinctly:

"11. In our opinion, for considering the taxability of amount coming within the mischief of Section 41(1) of the Act, the system of accounting followed by the assessee is of no relevance or consequence. We have to go by the language used in Section 41(1) to find out whether or not the amount was obtained by the assessee or whether or not some benefit in respect of trading liability by way of remission or cessation thereof was obtained by the assessee and it is in the previous year in which the amount or benefit, as the case may be, has been obtained that the amount or the value of the benefit would become chargeable to income tax as income of that previous year.

12. We fully agree with the view taken by the Division Bench in CIT v. Rashmi Trading 119761 103 ITR 312 (Gui), that the only meaning that can be attached to the words 'obtained, whether in cash or in any other manner whatsdever, any amount in respect of such loss or expenditure' incurred in any previous year clearly refer to the actual

receiving of the cash of that amount. The amount may be actually received or it may be adjusted by way of an adjustment entry or a credit note or in any other form when the cash or the equivalent of the cash can be said to have been received by the assessee. But it must be the obtaining of the actual amount which is contemplated by the legislature when it used the words 'has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure in the past'. As rightly observed by the Division Bench in the context in which these words occur, no other meaning is possible."

We are in agreement with the said reasoning."

The ratio laid down by the Hon'ble Supreme Court is squarely applicable to the appellant's case. The Hon'ble Gujarat High Court in the case of Bhogilal Ramjibhai Atara (Atara) (2014] 43 taxmann.com 55/222 Taxman 313) held as under:

"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(1) 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."

The Hon'ble ITAT Delhi Bench `G' in the case of Smt. Sudha Loyalka vs. ITO [2018] 97 taxmann.com 303 (Delhi - Trib.) held that no addition could be made under sec. 41(1) in respect of unexplained purchases where amount was shown as payable in balance sheet and thus there was no cessation of liability. The facts of this case were that the assessee filed her return declaring certain taxable income. In the course of scrutiny assessment, the Assessing Officer found that the assessee had shown large amount of sundry creditors at the end of relevant year, in order to verify genuineness of creditors, notices under section 133(6) were issued to them. Most of the notices were received back with remarks 'not available/wrong address' etc. The Assessing Officer thus taking a view that assessee was not able to establish that those sundry creditors were genuine, added amount payable to them to her taxable income. The Commissioner (Appeals) confirmed the addition made by Assessing Officer. On second appeal:

" If addition has been mentioned under section 41(1), ingredients of section 41(1), the burden of proof which is resting on revenue, has not been discharged. [Para 6]*

* *There is no evidence that the liability has ceased to exist and that too in the year under appeal. The very fact these amounts were being shown as payable in the balance sheet of the assessee which would establish that there was no cessation of the liability. [Para 6.1]*

* *Impugned liabilities are very much payable by the assessee as and when demanded and unless it is demanded, these are bound to be shown as outstanding. The very fact that these liabilities are appearing in the balance sheet is a strong acknowledgment of the debts payable by the assessee. The liability shown in the balance sheet is a clear case of acknowledging the liability and such liability cannot be treated to have ceased so as to attract section 41(1). That being so, where is the*

question of holding the said liabilities as ceased to exist, more so when assessee herself is acknowledging the liabilities to be paid? How can a third party that too a quasi-judicial authority hold in the absence of any material that the liability is not payable by the assessee? Therefore, the addition made on the basis of the presumption does not have either factual or legal lags to stand. [Para 6.2]

* *It is settled law that the cessation of the liability can be done not by the unilateral act but it can certainly be so by the bilateral act. So long as the assessee is recognizing her liability to pay to these creditors, where is the question of a quasi-judicial authority to intervene and to say on behalf of sundry creditors or on behalf of the assessee that amount is not payable by the assessee? Here is not even unilateral act, let alone the bilateral act. Therefore also, action of Assessing Officer in holding the liabilities ceased to exist has to be reversed. [Para 6.3]*

* *Even in law, the addition is not sustainable for more than one reason. Section 41(1) is a deeming fiction according to which an amount which does not have any trace of income is treated as income liable to suffer the brunt of tax. Therefore, as per the established canons of law, the burden to prove that a particular amount falls within the four corners of section 41(1) is on the shoulder of the Assessing Officer without which the addition cannot be made and if made is liable to be deleted. [Para 6.4]*

* *The first pre requisite for the applicability of section 41(1) is there must be a trading liability in respect of which the deduction has been claimed and allowed and burden to prove the twin conditions to the effect of the above facts, is on revenue. There is not even an iota of whisper as to whether the impugned creditors were in respect of trading liability for which any deduction was ever claimed and allowed and if allowed, in which year was it allowed so on so forth. This is evident from a plain reading of the assessment order. Therefore, Assessing Officer miserably failed to discharge the said burden and therefore this addition is liable to be deleted on this short ground alone. There could very well be the possibility of the loan creditors or advances from the business constituents under the head of sundry creditors for which there could never be any claim of deduction having been allowed. [Para 6.5]*

* *The Assessing Officer has not established with evidence that the liability in respect of the above outstanding balances has ceased to*

exist. Assessing Officer has gone on presumption and that too by placing the burden wrongly on the shoulders of the assessee. Section 41(1) does not envisage any such presumption of cessation and fix the incidence of tax thereon. [Para 6.6]

* *In the absence of any material having been brought on record to establish that the deduction was claimed on credit balance has been remitted, addition cannot be made under section 41(1). [Para 6.7]*

* *The third burden which was on Assessing Officer was to establish that cessation if at all has happened, has happened in the year under appeal. After all, liability to tax can be fixed in the year to which it pertains and to no other year. Liability to tax any ceased liability in a particular year does not depend on the action of Assessing Officer in selecting a case in scrutiny of that year. Merely because Assessing Officer chose to enquire about the creditors in this year and if assessee fails to establish the existence of the liability in this year (even if it is so assumed) then also it cannot be said that the liability ceased to exist only in this year and not before. Nobody can be permitted to fix the year of taxability by a conscious design or omission, be he an assessee or an Assessing Officer. Therefore, viewed from any angle, the addition made by Assessing Officer is liable to be deleted. [Para 6.8]"*

The Hon'ble ITAT Ahmedabad Bench 'A" in the case of Babul Products (P.) Ltd. vs. ACIT[2017] 87 taxmann.com 79 (Ahmedabad - Trib.) held that additions under section 41(1) could not be made unless liability in accounts had been written off. The head note is reproduced as under:-

"II. Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability (Cessation of liability) - Assessment year 2009-10 - Whether in view of judgment in case of CIT v. Bhoghital Rarnjibhai Atara 12014) 43 taxmann.com 55/222 Taxman 313 (Gui.), additions under section 41(1) could not be made unless liability in accounts had been written off - Held, yes - In return of income, assessee had shown liabilities under head sundry creditors for goods, sundry creditors for expenses, advances from customers and other liabilities - Assessing Officer formed an opinion that there was no manufacturing activity in business since 13-3-2005, therefore, this liability was to be assumed as ceased - Accordingly, he made an addition - It was noted that Assessing Officer had not brought any evidence on record to show that liability had ceased - Assessee had not written off liability in

accounts - Whether on facts, impugned additions was unjustified - Held, yes [Para 9] [In favour of assessee]"

The appellant's case is also squarely covered by the decision of the Hon'ble ITAT Delhi Bench `G' in the case of Satpal & Sons (HUE) vs. ACIT [2017] 85 taxmann.com 283 (Delhi - Trib.). The relevant facts of this case were that assessee had shown outstanding sundry creditors since last three financial years in its balance sheet, on verification, Assessing Officer found that sundry creditors were not available at address provided and PAN of such creditors were also found incorrect, assessing Officer held that liabilities would ceased to exist and applied section 41(1), the assessee contended that these creditors had been paid in subsequent years through banking channels. The Commissioner (Appeals) upheld the order of the Assessing Officer. On appeal, the Hon'ble Tribunal held that where assessee had shown outstanding sundry creditors for last three years in its balance sheet and no provision was made to write off outstanding liabilities in its books of account, there would be no remission or cessation of liability under section 41(1) even if sundry creditors were not in existence at address provided and PAN of creditors were found to be invalid, addition u/s. 41(1) cannot be sustained. Similarly, in the instant case the assessee had not written off outstanding liabilities in his books of accounts and made the payments to these creditors in subsequent years through banking channels.

In the light of the above decisions, it is held that the impugned addition is contrary to the well settled position of law; no addition could have made under section 41(1) without proving that liability ceased to exist and that too in the year under consideration. Nothing has been brought on record by the AO to show that some benefit has actually accrued to the appellant during the year under consideration. I find that the case of the present appellant is more stronger on the facts as the appellant has

adduced evidences before me to prove that he made the payments to these sundry creditors in subsequent years (details are duly enclosed as Annexure- A to this order). The appellant has also furnished confirmed copies of account of these parties. All the facts, details and evidences duly establish the appellant's claim that there were no amounts outstanding against names of these parties in subsequent years and purchases and sales are duly verified from invoices and bills furnished. In view of the facts discussed above, legal position and judicial precedents cited supra, it is held that the AO is not justified in invoking the provisions of sec. 41(1) of the Act in respect of sundry creditors of Rs. 2,59,97,837/-, the addition made at Rs. 2,59,97,8371- is directed to be deleted. The ground no. 1 raised by the appellant regarding this issue is allowed."

9. From perusal of the record, we observed that in the instant case, the AO treated sundry creditors amounting to Rs. 2,59,97,837/- as non-genuine after summons issued/sent to these parties were returned back unserved and none of the party appeared before the AO. The AO held that these sundry credits are no longer payable and liable to be added u/s. 41(1) of the Act. The assessee submitted before the ld. CIT(A) that these outstanding trade creditors were not more than 2 years old, and out of Rs. 3,19,49,957/-, closing balance as on 31-03-2013 was Rs. 2,59,97,837/- which was received before 31-03-2013 and not during the year under reference. The assessee further submitted that these creditors were for supply of goods/services during the FY 2011-12, whom the payments had duly been made in subsequent years. The

assessee further submitted that there was no cessation of liability as the assessee has not obtained any amount in respect of such expenditure or has not obtained any benefit in respect of such trading liability by way of remission or cession thereon. The assessee contended that these outstanding creditors do not satisfy the conditions prescribed in sec. 41(1) of the Act. The assessee referred to the provisions of sec. 41(1) and relied on various judicial decisions to argue that where the liabilities are outstanding for many years and the assessee had actually discharged the liability at future date, there is no justification to invoke or sustain any addition u/s. 41(1) of the Act. 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. It was noted that while the assessee had shown these trading liabilities in his books of account, no benefit had been obtained in

respect of such trading liabilities 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 AO that these liabilities ceased to exist in the previous year relevant to the assessment year under consideration. In fact, the AO has doubted the very genuineness of such liabilities, therefore, the question of taxing any income on the ground that there was remission or cessation of such non-existent liabilities would not arise. The assessee's case is squarely covered by the decision of the Coordinate Bench of ITAT Delhi Bench `G' in the case of **Satpal & Sons (HUE) vs. ACIT [2017] 85 taxmann.com 283 (Delhi - Trib.)** wherein the Coordinate Bench had held that where assessee had shown outstanding sundry creditors for last three years in its balance sheet and no provision was made to write off outstanding liabilities in its books of account, there would be no remission or cessation of liability under section 41(1) even if sundry creditors were not in existence at address provided and PAN of creditors were found to be invalid, addition u/s. 41(1) cannot be sustained. Similarly, in the instant case the assessee had not written off outstanding liabilities in his books

of accounts and made the payments to these creditors in subsequent years through banking channels. In view of the above facts and circumstances, we are of the view that no addition could have made under section 41(1) without proving that liability ceased to exist and that too in the year under consideration. Nothing has been brought on record to show that some benefit has actually accrued to the assessee during the year under consideration. We observe that the case laws relied on by the ld DR are not applicable in the facts of the present case. The ld. CIT(A) has passed a speaking and reasoned order discussing all the facts and circumstances as well as legal propositions of law therefore, considering the totality of facts and circumstances and case laws exactly similar to the facts and circumstances of the present case, we find no reason to interfere in the order of the ld. CIT(A) qua this issue, hence, we uphold the same.

10. Ground No. 2 raised by the revenue relates to challenging the order of the ld. CIT(A) in deleting the addition of Rs. 50,00,000/- made by the A.O. on account of unexplained credits U/s 68 of the Act. In this regard, the CIT-DR has vehemently supported the order of the A.O. and also relied on the written submissions filed before the Bench and the same were already reproduced in earlier para of this order.

11. On the other hand, the ld. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the ld. CIT(A) and also relied on the written submissions filed before the Bench and the contents of the same are as under:

> *"Rs.50,00,000/- was received on 17.01.2014 through RTGS as advance for purchase of goods from M/s. Avi Enterprises (PB. Page No. 65 & 65A). Due to non-availability of required quantity and quality of goods, the assessee could sell the ordered goods as per the following details:*

S.No.	*Date of sale*	*Invoice No.*	*Amount*	*P.B. Page*
1.	*28.03.2017*	*29*	*34,80,731.46*	*66*
2.	*28.03.2017*	*30*	*11,59,121.65*	*67*
3.	*28.03.2017*	*31*	*3,60,200.00*	*68*
Total goods taxable @ 1% GST sold			*50,00,053.11*	*69*

> *Since the amount received as advance was for trading activity, the same was shown as trade creditors towards liability side of the balance sheets every year till goods was sold to M/s. Avi Enterprises in March 2017. In the case of Pr. CIT Vs. Dutta Automobiles (P) Ltd. (2016) 287 CTR (Cal) 684, (P.B. page 61 to 64 of second paper book) Hon'ble Calcutta High Court has held that where advance was received from customer for sale of goods which was eventually adjusted against sale price and that no bogus liability was created as per the AO, section 68 is not applicable."*

12. We have heard the ld. Counsels of both the parties and have perused the material placed on record. From perusal of the record, we found that

the ld. CIT(A) has dealt with the issue at para 6.2 of his impugned and the same is reproduced as under:

"6.2 I have considered the facts of the case, assessment order and appellant's submissions. The AO, in absence of any details from the appellant to prove the genuineness of transaction of Rs. 50,00,000/- (advance for sale), treated the same as unexplained credit u/s. 68 of the Act. During the remand proceedings also, since summons issued to this party returned back unserved by postal authorities, therefore, the AO stated that the addition on account of unexplained credit was rightly made. The appellant submitted that he duly discharged his onus by filing confirmation account of this party, however the AO did not give any cognizance to the same and only on the basis of returning of notice as unserved, doubted the genuineness of transaction. The appellant pointed out that he received an amount of Rs. 50,00,000/- as advance for sale and the same was cleared by sale on 28-03-2017. In this regard, the appellant furnished confirmation account, bank details, purchase and sale bills. Upon perusal of these details and evidences furnished by the appellant, I am inclined to agree with the appellant's claim. The appellant has produced copy of confirmation before the undersigned duly reflecting the creditor's name along with its address, PAN, advance amount etc.

The Hon'ble Allahabad High Court in the case of CIT vs. S Kamaljeet Singh (147 Taxman 1 S) held that no addition to income on account of cash credits is called and that the appellant had discharged the onus on him to explain the nature and the source of cash credit in question by placing, on record :-

* *Confirmation letters of cash creditors,*

* *Their affidavits;*

** Their full address and GIR nos. and permanent account numbers.*

In the case of Mod Creations Pvt. Ltd., vs. ITO (2012) 354 ITR 282 (Del.), the Hon'ble Delhi High Court held as under :-

> *"Section 68 of the Income-tax Act, 1961, only sets up a presumption against the assessee whenever unexplained credits are found in the books of account of the assessee. The presumption is rebuttable. In refuting the presumption raised, the initial burden is on the assessee. This burden, which is placed on the assessee, shifts as soon as the assessee establishes the authenticity of transactions as executed between the assessee and its creditors. It is no part of the assessee's burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the assessee to prove the creditworthiness of the sub-creditors."*

Similarly, in the cases of CIT v. Real Time Marketing Pvt. Ltd. [(2008) 306 ITR 35 (Delhi)], CIT v. Ramneet Singh [(2008) 306 ITR 267 (P & H)] and CIT v. Shri Ram Enterprises [(2008) 304 ITR 375 (All)], it was held that in a case where an appellant company satisfactorily proves the identity, capacity and genuineness of the transactions, no addition u/s 68 is called for.

The Hon'ble Gujarat High Court in the case of DCIT vs. Rohini Builders [2003] 127 TAXMAN 523 (GUJ.) deleted the addition made u/s. 68 of the Act by observing that the assessee had discharged the initial burden by providing the identity of the creditor by giving their complete address, PAN and other details, the head note is reproduced as under:-

> *"Section 68 of the Income-tax Act, 1961 - Cash credits - Assessing Officer made addition of Rs. 12,85,000 as unexplained cash credits in respect of loans taken by assessee from 21 parties - Assessee had discharged initial onus by providing identity of all creditors by giving their complete addresses, GIR numbers/permanent account numbers and copies of assessment orders wherever readily available - Assessee had also proved capacity of creditors by showing that amounts were received by account ,payee cheques drawn from bank accounts of*

creditors - Repayment of loans and interest thereon was also made by account payee cheques by assessee and tax also had been deducted at source on interest payments and remitted - Whether assessee was not expected to prove genuineness of cash deposited in bank accounts of creditors, because under law, assessee can be asked to prove source of credits in its books of account but not source of source - Held, yes - Whether merely because summons issued to some of creditors could not be served or they failed to appear before Assessing Officer, could not be ground to treat those credits as non-genuine - Held, yes - Whether considering totality of facts and circumstances of case, especially fact that Assessing Officer had not disallowed interest claimed/paid in relation to those credits in assessment year under consideration or even in subsequent assessment years, and tax at source had been deducted out of interest paid/credited to creditors, Tribunal was justified in deleting addition made - Held, yes - Whether as there was no substance in appeal and no substantial question of law arose, appeal was liable to be dismissed - Held, yes"

The Hon'ble Jurisdictional High Court in the case of CIT vs. Jai Kumar Bakliwal [2014] 45 taxmann.com 203 (Rajasthan) held that where identity, capacity and genuineness of transaction stands proved by assessee, he was not required to prove source of amount which had been deposited by creditors/lenders. The head note is reproduced as under:-

"Section 68 of the income-tax Act, 1961 - Cash credit (Unsecured loan from relatives) - Assessment year 2006-07 Unsecured loan raised by assessee from relatives was added in income of assessee on ground that none of creditors were able to prove source of amount advanced to assessee and immediately before grant of loan by them cash was deposited in their accounts - However, it was admitted by Assessing Officer that all creditors were assessed to Income tax and they had provided confirmation as well as their PAN Moreover, all payments were through account payee cheques and most of cash creditors appeared before Assessing Officer and were examined on oath - Whether since there was no clinching evidence nor Assessing Officer had been able to prove that money actually belonged to none but to assessee himself, action of Assessing Officer appeared to be based on mere suspicion and, thus, addition required to be deleted - Held, yes [Pares 9 & 10] [In favour of assessee]

The Hon'ble Rajasthan High Court in the case of Smt. Harshila Chordia vs ITO (2008) 298 ITR 349 held that "Addition u/s 68 could not be made in respect of the amount which was found to be cash receipts from the customers against which delivery of goods was made to them."

Similarly, the Hon'ble ITAT, Nagpur Bench in the case of Mis Heera Steel Limited vs ITO (2005) 4 IT J 437 held that "Both the lower authorities failed to appreciate the case of the assessee that these were the trade advances and not cash credits and against such advance, the assessee has supplied the material in due time as per details available on record. In view of the above, there is no justification for the revenue authorities to treat these cash advances as unexplained cash credit u/s 68".

The Hon'ble ITAT, Mumbai Bench in the case of ITO vs. Surana Traders, (2005)93 TTJ 875: (2005)92 ITD 212, while dealing with a similar issue, observed as under:-

> *"So merely because for the reasons that the purchaser parties were not traceable, the assessee could not be penalized. In the sales documents, the assessee has made available all necessary details, i.e. the total weight sold as well as the rate per kilogram. Undisputedly, the assessee has maintained complete books of accounts alongwith day to day and kilogram to kilogram stock register. These were produced before the AO by the assessee. The assessee also submitted stock tally sheet along with the audited accounts. The audit report of the assessee also bears ample testimony in favour of the assessee. The facture of the assessee having maintained stock register and quantitative details have been mentioned by the AO in the assessment order. No mistake were pointed out by the AO in these records maintained by the assessee----Since the purchases have been held to be genuine, the corresponding sales cannot, by any stretch of imagination be termed as hawala transaction ……..It is the burden of the department to prove the correctness of such additions. When, in such like cases, a quantitative tally is furnished, even if purchases are not available no addition is called for."*

From the above judicial decisions, it is evident that advances or cash received against which goods is supplied subsequently is not a cash credit

as contemplated by section 68. Simply because, the appellant could not produce the confirmation from this party, the genuineness of transaction cannot be doubted. All the relevant details proving the transaction as genuine were available on record despite that, the Assessing Officer's mere emphasis was on the production of the confirmation from this party. In fact, the name and addresses were mentioned in the copies of bills of sale and purchase. Besides, the appellant by way of various documents duly proved that he had already supplied the goods against the advance amount subsequently on 28- 03-2017. In this regard, the appellant duly furnished bills. In the light of the above discussion and judicial precedents discussed supra, it is held that the AO is not justified in making the addition of Rs. 50,00,000/- u/s. 68 of the Act, the same is directed to be deleted. The ground no. 2 of appeal raised by the appellant regarding this issue is allowed."

13. From perusal of the record, we observed that the AO, in absence of any details from the assessee to prove the genuineness of transaction of Rs. 50,00,000/- (advance for sale), treated the same as unexplained credit u/s. 68 of the Act. During the remand proceedings also, since summons issued to this party returned back unserved by postal authorities, therefore, the AO stated that the addition on account of unexplained credit was rightly made. The assessee submitted that he duly discharged his onus by filing confirmation account of the party, however the AO did not give any cognizance to the same and only on the basis of returning of notice as unserved, doubted the genuineness of transaction. The assessee pointed out that he received an amount of Rs. 50,00,000/-

as advance for sale and the same was cleared by sale on 28-03-2017. In this regard, the assessee furnished confirmation account, bank details, purchase and sale bills. Upon perusal of these details and evidences furnished by the assessee, we agree with the assessee's claim. The assessee has produced copy of confirmation before the lower authorities duly reflecting the creditor's name along with its address, PAN, advance amount etc. From the above, it is evident that the advances or cash received against which goods is supplied subsequently is not a cash credit as contemplated by section 68 of the Act. Simply because, the assessee could not produce the confirmation from this party, the genuineness of transaction cannot be doubted. All the relevant details proving the transaction as genuine were available on record despite that, the A.O's mere emphasis was on the production of the confirmation from this party. In fact, the name and addresses were mentioned in the copies of bills of sale and purchase. Besides, the assessee by way of various documents duly proved that he had already supplied the goods against the advance amount subsequently on 28- 03-2017. In this regard, the assessee duly furnished bills. The ld. CIT(A) has passed a speaking and reasoned order discussing all the facts and circumstances as well as legal propositions of law therefore, considering the totality of facts and circumstances and case laws as stated by the ld. CIT(A) in thenimpjgned order exactly similar to the facts and

circumstances of the present case, we find no reason to interfere in the order of the ld. CIT(A) qua this issue, hence, we uphold the same.

14. In the result, this appeal of the Revenue is dismissed.

Order pronounced in the open court on 13 September, 2021.

(विक्रम सिंह यादव)	(संदीप गोसाईं)
(VIKRAM SINGH YADAV)	(SANDEEP GOSAIN)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 13/09/2021
*Ranjan
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The I.T.O., Ward 4(1), Jaipur.
2. प्रत्यर्थी / The Respondent- Shri Amit Agarwal, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 267/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar