

**आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM  
(through web-based video conferencing platform)**

**श्री एन के चौधरी, न्यायिक सदस्य एवं श्री डि.एस.सुन्दर सिंह, लेखा सदस्य के समक्ष  
BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.511/Viz/2019  
(निर्धारण वर्ष/Assessment Year:2013-14)**

M/s Meryl Shipping and Transports Vs. Asst.Commissioner of  
Flat No.3A Income Tax  
Lakshmi Apartments Circle 1(1)  
Gokhalae Road Visakhapatnam  
Maharanipeta  
**[PAN : AABFM9472B]**

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri I.Kama Sastry, AR  
प्रत्यर्थी की ओर से / Respondent by : Shri B.Rama Krishna, DR

सुनवाई की तारीख / Date of Hearing : 13.09.2021  
घोषणा की तारीख/Date of Pronouncement : 23.09.2021

**आदेश /ORDER**

**Per Shri D.S.Sunder Singh, Accountant Member**

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Visakhapatnam in ITA No.10046/2016-17/ACIT, C-1(1),Vsp/2019-20 dated 14.06.2019 for the Assessment Year (A.Y.) 2013-14 .

2. All the grounds of appeal in this case are related to the addition made by the AO u/s 41(1) of the Income Tax Act, 1961 (in short 'Act') in respect of outstanding loan of M/s Sravan Shipping Services Pvt. Ltd.(M/s Sravan Shipping). During the assessment proceedings, the Assessing Officer (AO) found that a sum of Rs.17,66,259/- was outstanding against M/s Sravan Shipping as a creditor. The AO called for the confirmation letter from the creditor and it was noticed from the confirmation letter that the creditor had written off the outstanding debt and hence viewed that the assessee does not owe any amount to the creditor, therefore, invoked the provisions of section 41(1) and made the addition holding that the liability stands ceased.

3. Against the order of the AO the assessee went on appeal before the CIT(A) and the Ld.CIT(A) observed that M/s Sravan Shipping had written off debt in their books of accounts and hence, M/s Sravan Shipping has forgone the right to receive the debt, therefore, viewed that the assessee need not discharge its obligation pay debt and the liability does not exist. Accordingly, confirmed the order of the AO and the addition.

4. Against which the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR submitted that though the creditor has written off the debt, still the assessee is under obligation for making the

payment of debt to the creditor, since, it was not written off in the books of accounts of the assessee and thus argued that there is no case for making the addition or offering the same for taxation u/s 41(1) of the Act. The Ld.AR relied on the decision of M/s Sonodyne Television Co. Ltd. of ITAT Kolkata in ITA No.330/Kol/2016 dated 31.01.2018.

5. Per contra, the Ld.DR argued that M/s Sravan Shipping has written off the debt in their books of accounts and there exists no liability to the assessee during the previous year relevant to the assessment year under consideration. Therefore, argued that the same required to be brought to tax u/s 41(1) of the Act. The Ld.DR further argued that the AO has to go as per the books of accounts and once, the AO follows the books of accounts, the liability relating to Sraving Shipping does not exist and the debtor has forgone the right to receive the amount, therefore, argued that the Ld.CIT(A) rightly confirmed the addition, hence, no interference is called for in the order of the Ld.CIT(A).

6. Responding to the argument of the Ld.DR, the Ld.AR submitted that as per explanation to section 41(1) of the Act, the first mentioned person shall include remission of cessation of liability by unilateral act as income, but not the second mentioned person, who happens to be the creditor and


the assessee relied on the decision of Sonodyne Television Co. Ltd of ITAT Kolkata Bench. In the instant case, the assessee is the debtor who has incurred the expenditure and therefore, argued that in case, the assessee treats the same as not payable, the same required to be brought to tax, but not otherwise under the head profits and gains.

7. We have heard both the parties and perused the material placed on record. There is no dispute that there was a liability in existence in the books of the assessee. The AO has to go according to the books of accounts of the assessee, while computing the income of the assessee but not as per the books of accounts of the creditor. As per section 41(1) of the Act any allowance or deduction made in the assessment year in respect of loss or expenditure or trading liability incurred by the assessee and subsequently obtained the benefit by way of remission or cessation, the same required to be taxed under the profits and gains of the business of income of that person of the previous year. For the sake of clarity and convenience, we extract 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***

**ITA No.511/Viz/2019, A.Y.2013-14**  
**Merilyn Shipping & Transports, Visakhapatnam** 

*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*

*(b) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.*

*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.*

Explanation I clearly explains that the expression 'loss or expenditure or some benefit in respect of any such trading liability by any unilateral act by the first mentioned person under clause(a) or the successor in business under clause (b) of section 41(1) of the Act. In the instant case, the first mentioned person is the assessee, but not the creditor. In the instant case, the assessee has not written off the liability, though the creditor has written off the debt. Though the debtor has no legal right to enforce the debt, still the assessee is having liability to make the payment, till the assessee writes off the debt. In these facts and circumstances there is no case for making addition u/s 41(1) of the Act. ITAT Kolkata in the case of M/s Sonodyne Television Co. Ltd (supra) dismissed the appeal of the

revenue on similar facts. For the sake of clarity and convenience, we extract para 7 of the order of the coordinate bench of ITAT Kolkata which reads as under :

*"7. We have heard the rival submissions, perused the relevant finding given in the impugned order as well as the material on record. The sole basis for taxing the amount of Rs. 59,75,631/- by the Assessing Officer under section 41(1) is that the genuineness of sundry creditors was not established as the assessee failed to furnish the addresses of creditors. Before we deal with the issue involved here, it would be relevant to quote the relevant section 41(1), which reads as under:— "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 (b) the successor in business" .... 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." A plain look at the above statutory provision makes it clear that an amount to be taxed under this sub-section, it is imperative that any allowance or deduction has been made in the assessment for any year either in respect of loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, and in case such benefit is arrived, then value of benefit accrued to him is deemed to be the profits and gains of the business or profession, which is chargeable to income-tax as the income of that previous year, that is, in the year in which benefit such derived by the assessee. Explanation 1 provides that loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation shall be includible by a unilateral act by the first person who is assessee, i.e., debtor. There is no stipulation of such unilateral act by the creditor. Here in the instant case, Explanation 1 cannot be held to be attracted at all, since there was no writing-off of the liability by the assessee to pay to the creditors in the assessee's account. In the judgment of Hon'ble Gujarat High Court in the case of CIT Vs. Nitin. S. Garg reported in 208 taxman 16 (Guj), it was held that addition u/s*

*41(1) can be made only when it is found that there was a remission and/or cessation of the liability. The relevant extract of the order is reproduced below:- "It is not been established that the assessee has written off the outstanding liabilities in the books of account. The Appellate Tribunal is justified in taking the view that as assessee had continued to show the admitted amounts as liabilities in its balance sheet the same cannot be treated as assessment of liabilities. Merely because the liabilities are outstanding for last many years, it cannot be inferred that the said liabilities have ceased to exist. The Appellate Tribunal has rightly observed that the AO shall have to prove that the assessee has obtained the benefits in respect of such trading liabilities by way of remission or cessation thereof which is not the case before us. Merely because the assessee obtained benefit of reduction in the earlier years and balance is carried forward in the subsequent year, it would not prove that the trading liabilities of the assessee have become non-existent. – Commissioner of Income-tax, Calcutta vs. Sugauli Sugar Works (P) Ltd reported in AIR 1999 SC 1144 followed In the instant case, there is no ambiguity that the assessee has not written off the sundry creditors pertaining to the television division though the same was shut down long time ago. But the balance of sundry creditors is very much reflecting in the books of the assessee. These sundry creditors were brought forward from the earlier years which imply that these were accepted in the earlier years. Thus non-furnishing of address of such sundry creditors cannot be the reason for invoking the provision of section 41(1) of the Act. Hence, the ground of appeal filed by the Revenue is dismissed."*

Respectfully following the view taken by the decision of coordinate bench of ITAT, Kolkata we hold that there is no case for invoking the provision u/s 41(1) in the case of the assessee. Accordingly, appeal of the assessee is allowed.

8. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 23<sup>rd</sup> September, 2021.

<p>Sd/-  <b>(एन के चौधरी)</b>  <b>(N.K.CHOUDHRY)</b>  <b>न्यायिक सदस्य/ JUDICIAL MEMBER</b>  Dated : 23 .09.2021  L.Rama, SPS</p>	<p>Sd/-  <b>(डि.एस.सुन्दर सिंह)</b>  <b>(D.S.SUNDER SINGH)</b>  <b>लेखा सदस्य/ACCOUNTANT MEMBER</b></p>
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

2. निर्धारिती/ The Assessee - M/s Merilyn Shipping and Transports, Flat No.3A  
Lakshmi Apartments, Gokhalae Road, Maharanipeta
1. राजस्व/The Revenue -Asst.Commissioner of Income Tax, Circle 1(1),  
Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-1, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

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Sr. Private Secretary  
ITAT, Visakhapatnam