

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&**

SHRI AMARJIT SINGH, JUDICIAL MEMBER

**ITA No.1134/Mum/2020
(Assessment Year :2015-16)**

ITO-19(1)(1) 2 nd Floor, Room No.223 Matru Mandir Building Tardeo Road Mumbai-400 007	Vs.	Shri Amit Virendra Patel 103, Pancharatna, M.P. Marg, Opera House Mumbai – 400 054
PAN/GIR No.AADPF9774D		
(Appellant)	..	(Respondent)

Assessee by	Shri Arvind Shah
Revenue by	Shri Mehul Jain
Date of Hearing	22/11/2021
Date of Pronouncement	30/11/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1134/Mum/2020 for A.Y.2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-18, Mumbai in appeal No.CIT(A)-18/IT-10234/ITO-19(1)(1)/17-18 dated 29/11/2019(Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 27/12/2017 by the Id. Income Tax Officer-19(1)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the addition made in sum of Rs. 207,90,576 u/s.41(1) of the Act on account of cessation of liability, in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. We find that assessee is an individual carrying on the business of dealing and manufacturing of cut and polished diamonds and had filed his return of income for the A.Y.2015-16 on 30/09/2015 declaring total income of Rs.13,25,010/-. During the course of scrutiny assessment proceedings, the Id. AO on perusal of the balance sheet observed that assessee had shown sundry creditors totalling to Rs.2,62,98,194/- in respect of eight parties. The Id. AO issued show-cause notice to the assessee to confirm the sundry creditors as per Balance Sheet. The Id. AO also sought to issue independent notice u/s.133(6) of the Act to the sundry creditors totalling to Rs.2,07,90,576/- in respect of six creditors as under:-

Name	Amount
M/s. Bahubali Diamond	30,44,787
M/s. Mona Gems	42,29,572
M/s. Sangham Diamonds P. Ltd	40,90,969
M/s. Parul Diamonds Pvt. Ltd.,	55,26,274
M/s. Shree Bhairav Diamonds P. Ltd.,	27,92,674
M/s. Rajshree Impex	11,06,300
	2,07,90,576

3.1. Since, the notice u/s 133(6) of the Act were not responded by the creditors and no confirmations were received from the aforesaid parties, the Id. AO sought to treat the said sundry creditors as "liability no longer required" and sought to invoke the provisions u/s.41(1) of the Act. The assessee however, submitted before the Id. AO the ledger account of the

each of the creditors as appearing in its books for the year under consideration as well as the subsequent years in which payments have been fully made to the concerned sundry creditors; copy of bank statements of the assessee showing payments to each sundry creditors in subsequent years and ledger account of each of the creditors for the year under consideration duly confirmed by each creditor. Vide letter dated 30/11/2017, the assessee also filed a detailed note as to how the provisions of Section 41(1) of the Act could not be made applicable to the facts of the instant case. It was also pointed out that all these parties had valid PAN and in view of severe depression in diamond market and insolvency of numerous parties, several parties had shut down their businesses and shifted their place of business. It was also pointed out that except for M/s Sangham Diamonds having outstanding balance of Rs.40,90,969/-, the assessee had furnished the confirmation together with the ledger account of all the remaining creditors. The assessee also placed reliance on the decision of the Hon'ble Apex Court in the case of CIT vs. Sugauli Sugar Works Pvt. Ltd, reported 236 ITR 518, CIT vs. Kesaria Tea Co. Ltd., reported in 254 ITR 434, among other decisions. The Id. CIT(A) gave a categorical finding in his order stating that the assessee had not written back to income the sundry creditors payable in its books, hence, the liability payable to these sundry creditors had not ceased to exist. The Id. CIT(A) also observed that from the ledger account of the sundry creditors produced by the assessee, it could be seen that the sundry creditors are related to the new purchases made in the preceding previous year and the same have been duly discharged by the assessee in the subsequent assessment years. He observed that the liability had not ceased to exist and hence, the provisions of Section 41(1) of the Act could not be made applicable at all. Aggrieved by this, the Revenue is in appeal before us.

3.2. We find that the only basis for the Id. AO invoking provisions u/s.41(1) of the Act in respect of outstanding sundry creditors is that the notice u/s.133(6) of the Act sent by the Id. AO to the sundry creditors remain unresponded and those parties were not produced by the assessee for examination by the Id. AO. However, we find that the assessee had duly furnished the complete ledger account of the sundry creditors for the year under consideration as well as for the subsequent years. Except for M/s. Sangham Diamonds, the assessee had even furnished the ledger account of the creditors duly confirmed by them before the Id. AO. It is not in dispute that all these sundry creditors have a valid PAN. All these sundry creditors have been duly discharged by the assessee in subsequent assessment years as under:-

Name of Creditor	Amount outstanding on 31/03/2015	Amount Paid		Bank Statement at Pg. No.
		Date	Amount	
Bahubali Diamond	30,44,787	07/09/2016	30,44,787	16
Mona Gems	42,29,572	06/04/2016	4,32,830	18
		07/09/2016	5,50,000	19
		26/12/2016	9,50,000	20
		26/12/2016	10,50,000	20
		28/12/2016	12,46,742	21
			<u>42,29,572</u>	
M/s. Sangham Diamonds	40,90,969	17/07/2015	15,00,000	25
		03/08/2015	15,00,000	25
		06/04/2016	10,90,969	26
			<u>40,90,969</u>	
M/s. Parul Diamonds Pvt. Ltd.,	55,26,274	15/07/2015	15,00,000	28
		06/04/2016	23,21,274	29

		07/04/2016	20,00,000	30
		02/05/2016	5,00,000	31
			<u>63,21,274</u>	
M/s. Shree Bhairav Diamonds Pvt. Ltd.,	27,92,674	22/04/2015	2,50,000	35
		11/05/2015	4,00,000	36
		07/07/2015	2,50,000	37
		21/12/2015	18,92,674	38
			<u>27,92,674</u>	
M/s. Rajshree Impex	11,06,300	02/01/2016	11,06,300	40

3.3. We also find as on 31/03/2015, the assessee had not written back the sundry creditors to its income as no longer payable, hence, the liability had not ceased to exist and assessee had duly acknowledged his debt payable to these sundry creditors. Hence, in these circumstances, in any case, irrespective of the payments made in subsequent years, the provisions of Section 41(1) of the Act could not come into operation at all. These points have been duly appreciated by the Id. CIT(A) and hence, we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee. Accordingly, the ground raised by the revenue is dismissed.

4. In the result, appeal of the revenue is dismissed.

Order pronounced on 30/11/2021 by way of proper mentioning in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 30/11/2021

KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai