

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एस एम सी", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 5224/मुं/2019 (नि.व 2006-07)  
ITA NO.5224/MUM/2019(A.Y 2006-07)

ITO-4(3)(4),  
Room No.637, 6<sup>th</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Satya Impex Pvt. Ltd.  
415, Raheja Chambers,  
Nariman Point, Mumbai 400 021.

..... प्रतिवादी/Respondent

PAN: AAACS-6242-F

अपीलार्थी द्वारा/ Appellant by : Shri Sanjay J. Sethi

प्रतिवादी द्वारा/Respondent by : Shri A.K.Tibrewal

सुनवाई की तिथि/ Date of hearing : 06/09/2021

घोषणा की तिथि/ Date of pronouncement : 01/12/2021

आदेश/ ORDER

This appeal by the Revenue is directed against the order of Commissioner of Income Tax(Appeals)-2, Mumbai [ in short ' the CIT(A)'] dated 27/05/2019 for the Assessment Year 2006-07.

2. The solitary ground raised by the Revenue in appeal reads as under:-

1. "Whether on the facts and in the circumstances of the case and in law Id. CIT (Appeal ) was right in directing to delete the addition made u/s 41(1) of the I.T. Act without appreciating the fact that investigating agency CBI during the course of search found that M/s Empire Commercial Co. (P) Ltd. (ECCPL) against which

*outstanding liabilities has been shown by the assessee is engaged in providing accommodation entry and hence such liability is bogus / non-existent and hence ceased to exist."*

3. Shri Sanjay J. Sethi representing the Department submitted that consequent to search in the case of Anil Dalmia and Harish Dalmia by Central Bureau of Investigation, it was found that the aforesaid persons have floated various companies for providing accommodation entries. One of such company is Empire Commercial Company Pvt. Ltd. (ECCPL). As per the information received by Commissioner of Income Tax (Central), Mumbai the name of the assessee figures in the list of sundry debtors of ECCPL. As per the said list the assessee is shown as sundry debtor of Rs.2,20,245/- from Assessment Year 2006-07 and the said amount is continuing till Assessment Year 2010-11. In view of the above information assessment in the case of assessee for Assessment Year 2006-07 was reopened. The assessee is one of the beneficiaries of accommodation entries from ECCPL. On detailed investigation it was found that the assessee had claimed bogus purchases in earlier years thereby disclosing sundry creditors outstanding as on 01/04/2005 of Rs.11,60,000/-. Though the assessee had claimed that he has paid part of aforesaid amount in subsequent Assessment Years and the only amount that is payable to ECCPL is Rs.2,20,245/-, however, the explanation and arguments made by assessee cannot be accepted as the transaction itself is bogus. The Assessing Officer after having examined the entire gamut of transaction made addition of the entire bogus transaction of Rs.11,60,000/- u/s 41(1) of the Income Tax Act, 1961 ( in short 'the Act') as cessation of liability. The Id. Departmental Representative submitted that the CIT(A) has erred in deleting the aforesaid addition on the ground that provisions of section 41(1) of the Act are not attracted. The Id. Departmental Representative prayed for reversing the findings of CIT(A) and upholding the assessment order.

4. On the other hand, Shri A.K.Tibrewal appearing on behalf of the assessee vehemently supported the order of CIT(A). The Id. Authorized Representative for the

assessee submitted that apart from allegation that ECCPL is engaged in providing accommodation entries there is no tangible material on record to substantiate that the assessee has obtained accommodation entries from the said company. The Id. Authorized Representative for the assessee submitted that the transaction between the assessee and ECCPL is genuine. The assessee had made purchases from ECCPL to the tune of Rs.11,60,000/-. Thereafter, the assessee had made payments to ECCPL on 13/04/2004 Rs.5,000/- and Rs.9,36,755/- on 30/03/2006. Thus, as on 31/03/2006 the outstanding amount payable to ECCPL was Rs.2,20,245/-. The CIT(A) has rightly observed that the provisions of section 41(1) of the Act are not attracted as there is no remission of trading liability during the imputed Assessment Year. Further, the Revenue has failed to establish that the assessee is one of beneficiaries of alleged accommodation entries provided by ECCPL. The Id. Authorized Representative for the assessee prayed for upholding the order of CIT(A) and dismissing appeal of the Revenue.

5. Submissions made by rival sides heard, orders of authorities below examined. The Assessing Officer in the assessment proceedings has held that the assessee is one of the beneficiary of ECCPL who is engaged in providing accommodation entries. This observation has been made by the Assessing Officer on the basis of information received from CBI in search operations carried out in the case of Dalmia Brothers. ECCPL is one of the companies operated by Dalmia Brothers. However, we observe that apart from the information there is no documentary evidence on record to link that the assessee is one of the beneficiaries of alleged bogus entries provided by ECCPL. Ostensibly, the assessee had made purchases to the tune of Rs.11,60,000/- from ECCPL in the year. Thereafter, assessee made payment of Rs.5,000/- in 2004 and Rs.9,36,755/- on 30/03/2006. Thus, the outstanding amount payable by the assessee to ECCPL as on 31/06/2006 was Rs.2,20,245/-.

6. A bare perusal of section 41(1) of the Act would show that for invoking provisions of said section following conditions should be fulfilled:

- (i) In the assessment for any year, an allowance or deduction has been made in respect of any loss, expenditure or trading liability incurred by the assessee.
- (ii) During the previous year the assessee had obtained any amount in respect of such loss or expenditure or any benefit in respect of such trading liability by way of remission or cessation thereof.

In the present case we find that none of the above additions are satisfied. There was debit balance of Rs.2,20,245/- as on 31/03/2006, the assessee had paid Rs.9,36,755/- on 30/03/2006 (i.e. F.Y.2005-06). Thus, it clearly indicate that there was no remission or cessation of liability during the assessment year 2006-07. In the facts of the case, the provisions of section 41(1) of the Act are not attracted. I find no error in the order of CIT(A) in deleting the addition made u/s 41(1) of the Act , hence, the impugned order is upheld and appeal of the Revenue is dismissed being devoid of any merit.

Order pronounced in the open Court on Wednesday the 01<sup>st</sup> day of December, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 01 /12/2021  
Vm, Sr. PS (O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**