

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI AMARJIT SINGH (JUDICIAL MEMBER)**

**ITA No. 1623/MUM/2017
Assessment Year: 2010-11**

M/s Venus International,
26/28, Mohan Niwas, Old
Hanuman Lane,
Mumbai-400 002.

PAN No. AAAPV 5850 B

Appellant

DCIT-14(2),
Vs. Aayakar Bhavan
Mumbai.

Respondent

Assessee by : Mr. Naresh Jain, AR
Revenue by : Mr. S.N. Kabra, DR

Date of Hearing : 14/03/2022
Date of pronouncement : 30/03/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal filed by the assessee against the order dated 23/12/2016 passed by the Ld. Commissioner of Income Tax (Appeals)-26, Mumbai [in short the Ld. CIT(A)] for assessment year 2010-11, was heard by the Tribunal on 08/04/2019 and order was pronounced on 23/05/2019. However, on a miscellaneous application filed by the assessee on 28/02/2020 that decision in the case of **Lotus investment Ltd versus ACIT [Mum-Trib-(2019) 55 CCH**

0184] and **Elde Electricals Agencies Private Limited Vs CIT [Bom HC -2015 (7) TMI 16]** were cited by the Ld. counsel of the assessee, but not considered by the Tribunal, the Tribunal in its order in Miscellaneous Application No. 36/Mum/2020, recalled the order dated 23/05/2019 to the limited extent of examining the application of decision in “Elde Electricals Agencies Private Limited (supra)” and “Lotus India Ltd (supra)” to the present case.

2. We have heard rival submission of the parties on the issue in dispute and perused relevant material on record including the case laws cited by the Ld. counsel of the assessee.

3. In the case, the assessee is a partnership firm engaged in the business of export of textile fabrics. The Assessing Officer during assessment proceeding observed certain trade liabilities (trade creditors) outstanding for more than five years but on verification, those parties denied any outstanding due from the assessee. The Assessing Officer accordingly treated the said creditors as ceased/waived liability and added under section 41(1) of the Income Tax Act, 1961 (in short ‘the Act’). The Ld. CIT(A) also upheld the addition. On further appeal, the Tribunal *vide* order dated 23/05/2019 upheld the addition observing as under:

"4. We have heard the counsels for both the parties and we have also perused the material placed on record, judgment cited by the parties, respective written submissions as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the assessee by taking into consideration the submissions made by the assessee, remand report submitted by the AO in para no. 4 to 7 of its order and the same is reproduced below:-

4. The first Ground of appeal is against the addition u/s.69C of Rs.32,51,157/ being the amount payable to M/s. Gravity(India) Ltd.

4.1. It is the contention of the Ld. counsel that this expenditure pertain to A.Y.2005-06 and therefore section 69C cannot be applied. He further stated that the principles of natural justice have been violated as the information was collected behind his back and no cross examination was given to him. in response to notice issued by the AO, M/s.. Gravity India has confirmed that it has received the entire payments in Sept., 2009 and there is no balance receivable from the appellant. The appellant requested the AO to provide the details provided by M/s. Gravity India which were not provided to him. A remand report was called for by my predecessor seeking the AOs comments on the same, The AC in his remand report submitted as under -

" This addition of Rs.32,51,157/- claimed to be payable to INIs, gravity India P.Ltd. was treated as unexplained expenditure, as the assessee had no reply to the show cause, where it was asked to explain why it should not be treated as paid out or its unaccounted income, when the client, M/s. gravity India P./td., had stated under summons issued u/s,131 of the Income-tax Act, 1961 that there is no dues pending from 14/s. Venus International, all the payments were received in the month of September, 2009 and that they have not claimed any amount as bad debts from M/s. Venus International.

For remand proceedings, this office issued a notice to M/s. gravity India P.ltd. calling for information u/s.133(6) of the LT, Act and asked to furnish a copy of bank statement highlighting the cheque No. and amount received from M/s. Venus International.

M/s. Gravity India P.ltd. submitted its bank of Haroda Account No.04050500000029 statement copies for the month of Sept., 2009 highlighting the amount and cheque No. received from M/s. 'Yentis International where the exact amount of payment received is tallied (copy attached for your reference). Further, a notice u/s.133(6) was issued to the bank for classification of the receipt wherein the bank has confirmed the payment received by M/s, Gravity India P.ltd. from various account since M/s. Gravity India P.Ltd, has liability from M/s. Venus International. Hence, the assessee's claim of sundry creditors of the party is not justified and the addition is sustained."

4.2. Needless to say, the appellant was given an opportunity by the AC during the remand proceedings thereby the appellant was provided with the copy of the bank statement of M/s.Gravity India Ltd. However, it is the contention of the appellant that these amounts are not paid by him. The cheques deposited into the account of M/s.Gravity India have come from various parties and not from the appellant. The Ld, Counsel claims that the amount of Rs.32,51,157 is still payable as on 31.2.2010 and cannot be added u/s.69C.

4.2.1. The amounts credited into the account of M/s,Gravity India in Sept.09 exactly tally with the amount payable by the appellant. Even though the cheques are issued by various parties, the possibility of the payments being made by the appellant through other parties is not ruled out. For example, P.D. Sinar, who is the agent of the appellant has collected the amount due to the appellant from its clients and adjusted it against tn dues from the appellant. Similarly, the appellant would have some of its debtors pay to M/s.Gravity India Ltd. M/s, Gravity India is confirming that it had received the payment from the appellant

and is showing the bank account statement as a proof. Therefore, this is a payment made by the appellant which has not gone through the books and the AO has rightly brought this to tax u/s.69C as unexplained expenditure.

4.2.2. Even for a moment, if it is presumed that the appellant has not made this payment and the amounts are still due to M/s.Gravity India Ltd., when the creditor itself is saying that it has received the payments and there is nothing receivable from the appellant, it amounts to cessation of liability. The party (self is clearly saying that there is nothing receivable from ehe appellant. Therefore, if the appellant has not paid the amount to the party, it need not pay in future also as M/s. Gravity India Ltd. has clearly stated that there is nothing receivable from the party. So if not u/ 9C, this aunt will be taxable u/s,41(1) of the 1.1. Act, The addition made by the AO is confirmed. This ground of appeal is dismissed,

5. The second ground of appeal is against the addition u/s.41(1) of Rs.41,90,675/ which was payable to M/s. R.D. textiles.

5.1. The Ld. Counsel for the appellant submitted that the AO relied on some alleged information/confirmation or some statement u/s.131 from Mr. Harish Chandra Singh, Prop. of M/s. RD. Textiles in which he confirmed that no amount is receivable from the appellant. The Ld. Counsel for the appellant submitted that the purchases from RD. Textiles were made in July, 2003 and according to the proprietor's statement, the fire took place on 9.9.2003. and he has stopped the business after that. According to the Ld. Counsel, the reply of the proprietor was based on his memory and recollection and is not absolute truth. No adverse i;iference ought to be drawn as the statement given by Mr. Harish Singh is based on his memory or to the best of his knowledge specially when no cross examination has been provided. This is a case where the creditor is stating that he does not remember any such receivable from the appellant which is good for the appellant as he is waving off the amounts payable. The Ld. Counsel contended that the cross examination was not provided and the statement has been recorded behind his back. However, the statement copy has been given to

him during the remand proceedings, The AD has submitted as under in the remand report :-

The addition of Rs.2,49,39,6201- for ceased liability claimed of sundry creditors, out of the above Rs.41,90,6751- claimed as outstanding payment to Mr. H.V. Singh, proprietor of M/s. R.D. Textiles, Surat has been claimed by the assessee. The statement was recorded on oath u/s.131 of the I.T.Act, wherein question was put to the proprieto, by the AO which is annexed herewith.

Q.No.4. My assessee M/s, Venus International in his return of income for AY.2010-11 claims that they had purchased material from M/s. R.I), textile and shown creditors of Rs,41,90,675.20, please explain whether an amount of Rs.41,90,675.20 was receivable by you,?

Ans - To the best of my know/edge, no such big amount i.e. Rs.41,90,672,20 as stated above is receivable by me.

This itself is satisfactory that there is no amount payable to P4/s. P.D. textiles or Mr. H.V.Singh, the proprietor (copy of the statement is attached herewith for your reference and perusal)

Assessee's claim for cross examination is not justifiable as such a huge amount receivable by a person cannot he waived out, hence, there is no justification for the claim of sundry creditors ad the addition made stands."

5.2. It is also a fact that the matter pertains to purchases made in July, 2003 and the proprietor issued a statement in 2013 stating that he does not remember anything as receivable from the appellant. Even till the end of 2016, which is a good 13 years after the purchases, the party has not taken any steps for recovery. It is amply clear from this that the party is not interested in pursuing recovery if it all it was due from the appellant, and there is no chance " of any

further measures for recovery as the business of the appellant was closed down in 2003 itself. The appellant is carrying a fictitious liability, When it is very clear that there are absolutely no steps taken by the party for recovery from 2003 to 2016, it does not make any sense to still show it as a liability. Further, he had himself stated that to the best of his knowledge, no such amount is receivable by him. The AO is right in treating this as a cessation of liability and bring it to tax u/s,41(1) of the I.T. Act, 1961. This ground of 'appeal is dismissed.

6. The third ground of appeal is against the addition of Rs.2,07,48,845/- u/s.41(1) of the I.T. Act.

6.1. The party wise break up of this amount is as under :--

<i>Name of the creditors</i>	<i>Balance as on 31.3.2010</i>
<i>LM/s. Sunrise Textiles</i>	<i>1,71,26,130/-</i>
<i>M/s, Paaneri Print</i>	<i>6,22,823/-</i>
<i>M/s. S.R. Prints</i>	<i>967174/-</i>
<i>M/s. Shri. Sai Leela Dyg & ptg.Mills</i>	<i>7,70,375/-</i>
<i>Mr. Pradeep Kher</i>	<i>5,05,799/-</i>
<i>Mrs. Om Textiles Pvt. ltd.</i>	<i>7156,544/-</i>

6.2 The Ld. Counsel for the appellant submitted that out: of the above six parties, the balances with respect to 4 parties which are Paaneri Print, Pradeep Kher, SR Prints and Shri Sai Leela dying and printing Mills have been appreciated by the CIT(A) while passing the order for the A.Y.2004-05 where a similar addition has been made by the AO. As regards other 2 parties, i.e. M/s.Sunrise Textiles and M/s.C_)rn Textiles Pvt. Ltd., he contents that the balances are genuine and still remain payable. The Ld. counsel was asked by the undersigned if there was any correspondence with the said parties, if the parties had followed up with the

appellant for recovery and if any amounts have been paid till now. It is seen that the balances as on 31.3.2004 in respect of the above parties are more or less the same even as on 31.3.2010. Till date i.e. till Dec., 2016, no payments have been made by the appellant. However, the appellant has produced some letters which were supposed to be correspondence between the appellant and the parties,

1) M/s. Sunrise Textiles H This is a Surat based party to whom the - appellant claims to have a liability of Rs.1,71,26,130/-. No amount has been paid by the appellant till now. Even though this is due for so many years, the Ld. Counsel for the appellant has furnished 2 letters dated 8.3.2016 and 26.7.2016 where the party had requested the appellant to make the payment. The appellant also seems to have replied stating that he would start making the payments by the end of Dec., 2016. It is not understood why no legal action has been taken by this party even after so many years. The letters from the parties submitted by the appellant also appear to be fabricated. There is no phone no. given on the letter head even though it is a very big party to whom the appellant's dues itself is 1,71,26,130/-. It is strange and surprising that somebody would keep quiet without initiating any legal action when the party i.e. the appellant is non-cooperative and defiant.

2) M/s. Paanerj Print : The amount payable to this party is Rs.6,22,823/- and the address is Sakinaka, Andheri(E), Murnhai. This amount is being carried forward from A.Y.2004-05 i.e. for about 17 years. No payment whatsoever has been made by the appellant for all these years. At the time of appellate proceedings for 2004-05, the CIT(A) has observed that the balance has been confirmed by the party and therefore he deleted the addition. He was deciding the matter for A.Y.2004-05. The current appeal is against the additions made for A.Y.2010-11 and the situation remains the same. The Ld. Counsel for the appellant was asked to submit any correspondence between the appellant and the party, He had submitted 2 letters dt 18.12.2016 and 19.8.2016 supposedly written by

M/s.Paaneri Print, requesting for clearing the dues. It is surprising that after keeping silent for about 12 years, the party is writing letters in 2016. Further surprising is that the party has not initiated any legal action till date. Even more surprising is the fact that the phone number of the party i.e. M/s.Paaneri Print given in its letter head is 022 6369979 which is only seven digits All the phone numbers in Metros have been converted to 8 digits many years ago. If somebody is keeping a seven digit phone no. on the letter head in 2016, the genuineness of the letter is anybody's guess. The appellant no doubt has furnished a fabricated piece of paper for which no credence can be given.

3) M/s.S. Print The amount due to this party is Rs.9,67,174/ and the address is Sakinaka, Andheri(E), Mumbal. This balance is being carried forward for many years. ' No payment what so even has been made by the appellant for all these years. At the time of appellate proceedings for 2004-05, the CIT(A) has observed that the balance has been confirmed by the party and therefore he deleted the addition, He was deciding the matter for A.Y.2004-05 and it was too early to apply section 41(1). The current appeal is against the additions made for 2010-11 and the situation remains the same. The Ld. Counsel for the appellant was asked to submit any correspondence between the appellant and the party. The appellant submitted copies of 2 letters dated 17.2.2016 and 3.9.2016 where the party is requesting for payment of the dues. It is surprising that after keeping silent for about 12 years, the party is writing letters in 2016. FuFther surprising is that the party has not initiated, any legal .action till date. Even more surprising is the fact that the phone number of the party i.e. M/s.S.R. Print given in its letter head is 022- B523863/8505623 which are only seven digits. All the phone numbers in Metros have been converted to 8 digits many years ago. If somebody is keeping seven digit phone no. on the letter head in 2016, the genuineness of the letter is anybody's guess. The appellant no doubt has furnished a fabricated piece of paper for which no credence can be given.

4) *Shri Sai Leela Dyeing and PN.Mills* The amount due to this party was Rs.7,70,375/- which is due from A.Y.2004-05. This amount is being carried forward from A.Y.2004-05 i.e. for about 12 years. No payment whatsoever has been made by the appellant for all these years. At the time of appellate proceedings for 2004-05, the CIT(A) has observed that the balance has been confirmed by the party and therefore he deleted the addition. He was deciding the matter for A.Y.2004-05 when it was too early to apply Sec.41(1). The current appeal is against the additions made for 2010-11 and the situation remains the same. The Ld. Counsel for the appellant was asked to submit any correspondence between the appellant and the party. He had submitted 3 letters dt.25.12,2015, 30.06.2016 and 13.9.2016 supposedly written by M/s.Saileela Dyeing Ptg.Mills requesting for clearing the dues. It is surprising that: after keeping silent for about 12 years, the party is writing letters in 2016. Further surprising is that the party has not initiated any legal action till date. The appellant, no doubt has furnished a fabricated piece of paper for which non credence can be given.

The letters from the parties submitted from the appellant also appear to be fabricated. There is no phone no. given on the letter head even though it is a very big party to whom the appellant's dues itself is 7,70,375/-. It is strange and surprising that somebody would keep quiet without initiating any legal action when the party i.e. the appellant is non-cooperative and defiant.

5) *Mr. 'Pradeep Kher* : The amount due to this party is Rs.5,05,799/-, This amount is being carried forward from A.Y.2004-05 i.e. for about 12 years, No payment whatsoever has been made by the appellant for all these years. At the time of appellate proceedings for 2004 05, the CIT(A) has observed that the balance has been confirmed by the party and therefore he deleted the addition. He was deciding the matter for A.Y.2004-05. The current appeal is against the additions made for 2010-11 and the situation remains the same, The Ld. Counsel for the appellant was asked to submit any correspondence between the appellant and the party. He had submitted a letter dt.28.07.2016 supposedly written by Mr.Pradeep Kher requesting for clearing the dues. It is surprising that

after keeping silent for about 12 years, the party is writing letters in 2016. 'Further surprising is that the party has not initiated any legal action till date, Liven more surprising is the fact that the phone number of the party i.e. Mr. Pracieep Kher given in this letter head is 3108181 which is only seven digits. All the phone numbers in Metros have been converted to 8 digits many years ago. If somebody is keeping seven digit phone no, on the letter head in 2016, the genuineness of such letter is anybody's guess. The appellant, no doubt, has furnished a fabricated piece of paper for which no credence can be given. Also, verification reveals that this number is not existing.

6) M/s. Om Textiles Pvt. Ltd. : The amount due to this party is Rs.7,56,544/-. No amount has been paid by the appellant till now. Even though this is due for so many years, the Lb. Counsel for the appellant has furnished 2 letters dated 2.3.7,2016 and 2.5.8.2016 where the party had requested the appellant to make the payment. The appellant also seems to have replied stating that he would start making the payments by the end of Dec., 2016. It is not understood why no legal action has been taken by this party even after so many years. The letters from the parties submitted form the appellant also appear to be fabricated,

6.2.1. The Ld. Counsel for the appellant was asked to submit any correspondence between the appellant and the party. He had submitted 2 letters dt.18.1 .2016 and 19.8.2016 supposedly written by MIs. Om Textiles P,Ltd, requesting for clearing the dues. It is surprising that after keeping silent for about 12 years, the party is writing lettefs in 2016. Further surprising is that the party has not initiated any legal action till date. Even more surprising is the fact: that the phone number of the arty i.e. Om Textiles P.Ltd. given in this lettei head is 7685926 which is only seven digits. All the phone numbers in Metros have been converted to 8 digits many years ago. if somebody is keeping seven digit phone no, on the letter head in 2016, the genuineness of such a letter is anybody's guess. The appellant no doubt has furnished a fabricated piece of paper for which non credence can be given.

6.2.2. *It is clear from the above, that none of the parties have been pursuing for recovery and it is as good as not recoverable. All the parties seem to have given up on recovery. Otherwise there would have been legal suits initiated against the appellant. There is no such 'thing'. Further, the appellant has furnished some fabricated letters supposedly written by these parties. The CIT(A) while deciding the appeal for A.Y,200405 has allowed the outstanding liabilities in 4 cases i.e. M/s.Paneeri Print, 'Mr.Pradee'p Kher, Shri. Sai Leela and M/s,S.R. Prints. The reason given by him is that these parties have confirmed the balances as on 31.3.2004. In the instant case, we are dealing with A.Y.201011 and the facts are being appreciated in 2016. The CIT(A) has further observed that there were some transactions and part payments to some .of these parties. However, it is seen that there is no payment made in the last so many years and in the case of 2 parties, the balance is exactly the same as on 31.3.2004. The appellant has not made any payment in about 12 years and none of the parties have initiated legal action for recovery.*

6.2.3. *The Ld. counsel for the appellant relied on various case laws to support his case. However, the facts of all of them are different from the facts of the present case. In the case of CIT vs. Sugauli Sugar works(P) Ltd. relied upon by the appellant, the Hon'ble Apex court held that :*

" Sec.41 contemplates the obtaining by the assessee of an amount either in cash or in any other manner whatsoever or a benefit by way of remission or cessation and it should be of a particular amount obtained by him. Thus, the obtaining by the assessee of a benefit by virtue of remission or Cessation is sine qua non for the application of this section. The mere fact that the assessee has made an entry of transfer in his accounts unilaterally will not enable the department to say that s.41 would apply and the amount should be included in the total income of the assessee. Just because an assessee makes an entry in his books of accounts unilaterally, he cannot get rid of his liability. The question whether the liability is actually barred

by limitation is not a matter which can be decided by considering the assessee's case alone but it is a matter which has to be decided only if the creditor is before the concerned authority. In the absence of the creditor, it is not possible for the authority to come to a conclusion that the debt is barred and has become unenforceable. There may be circumstances which may enable the creditor to come with a proceeding for enforcement of the debt even after expiry of the normal period of limitation as provided in the Limitation Act. The principle that expiry of period of limitation prescribed under the Limitation Act could not extinguish the debt but it would only prevent the creditor from enforcing the debt, has been well settled. If that principle is applied, it is clear that mere entry in the books of accounts of the debtor made unilaterally without any act on the part of the creditor will not enable the debtor to say that the liability has come to an end."

6.2.4. In the instant case, there is no unilateral write off in the books of accounts. In fact, the appellant has net written off the liabilities but the facts and circumstances showed that there is no possibility of any recovery. Therefore, the additions made u/s.41(1) are justified. The appellant further relied upon UT Jain Exports Pvt. Ltd. 35 Taxman.com 540 (Del.) wherein the Delhi High Court held that credit amount outstanding for several years cannot be held as cessation of trading liability on ground that assessee could not prove genuineness of transaction, where assessee had acknowledged its liability successively over several years, Genuineness of the transactions is not an issue in this case. Therefore, this case cannot be applied. In the case of ITO Mumbai vs. PAN International 2013 (4 IMI 638) the ITA Mumbai held that outstanding creditors even for more than 3 years cannot be considered as sufficient evidence of cessation of liability. In the instant case, the liabilities have been existing for more than 12 years, without any efforts for recovery by the creditors, Therefore, this case is not relevant to the instant case. In the case of Aasia Business Ventures vs. ITO 2013 (430/Mum/2011), the issue is of advance against export received

from the party which was treated as income. In the present case it is not an advance shown in the balance sheet, but it is for purchases. In the case of CIT vs, Rajivbhai Becharbhai Dhamelia 34 Taxmarn.com.11 (Guj,) the issue was that the outstanding liabilities have already been paid in the subsequent year by way of account payee cheques. In this case, no such payments have been made by the appellant. Therefore, none of the cases relied upon by the appellant come to the aid of the appellant.

6.2.5. On the other hand, in the case of Mrs. Adarsh Sodh vs. CIT 47 Taxman.corn 268 (P & H), the Hon'ble High court of P & H held that when the two parties denied of having any amount payable to them, the amount found credited in books of account of the assessee, the liability to pay back ceased to exist and the income will be treated as assessee's taxable income. In this case also, M/s. Gravity India Ltd. and M/s, R.D.. Textiles have denied any outstanding liability and therefore the amount shown as outstanding by the appellant has been rightly treated as the appellant's income.

6.2.6. In the case of Natural Gas Co. Pvt. Ltd. Vs. DCIT 70 SOT 1, the Hon'ble ITAT Mumbai held that - revenue found that certain liabilities were outstanding in assessee's books for periods from 3 to 25 years - revenue was of the view that liability no longer existed- whether since assessee has not adduced any material or evidence or even explanation as to why the impugned amounts were not paid in normal course, the same amounted to cessation or remission of liability/s.41(I): held .yes,

6.2.7. In view of the facts and circumstances discussed above and in view of the judgments cited above, the additions made by the AO in the cases of R.D. Textiles, M/s. Sunrise Textiles, M/s. Panneri Print, M/s. S.R. Prints, M/s. Shri. Sai Leena Dyg. & Ptg.Mills, Mr. Pradeep Kher and M/s. Om.Textiles Pvt. Ltd. have to be upheld.

6.2.8. *In view of the facts and circumstances discussed above, the addition made by the AO u/s,41(1) is upheld. This ground of appeal is dismissed.*

5. *After having gone through the facts of the present case, we find that the AO had made additions by identifying the creditors who were outstanding for more than five years and in this respect, summons were issued separately u/s 131 to them. In the case of M/s Gravity (I) Ltd, where the amount outstanding was shown at Rs. 32,51,157/-, the said party categorically stated that it had received the entire amount during financial year 2009-10 and thus there was nothing which was receivable by the assessee. Ld. CIT(A) during the appellate proceedings had also called for the remand report seeking AO's comments and the AO in his remand report had stated that notices u/s 133(6) of the I.T. Act were issued upon the said party i.e. M/s Gravity (I) Pvt. Ltd. for furnishing copy of bank statements highlighting the payments received from the assessee. In this regard, M/s. Gravity India P Ltd. submitted its bank of Baroda Account No.0405050000029 statement copies for the month of Sept., 2009 highlighting the amount and cheque No. received from M/s. Venus International where the exact amount of payment received was tallied. Thus in this way, the assessee was also given an opportunity by the AO during the remand proceedings by providing the copies of the bank statement of M/s. Gravity India Ltd.*

6. *The amounts credited into the account of M/s,Gravity India in Sept.09 exactly tally with the amount payable by the assessee. Thus in this way, AO had rightly brought this amount to tax u/s.69C as unexplained expenditure. We are also of the same view that even if for a moment, if it is presumed that the assessee had not made this payment and the amounts are still due to M/s. Gravity India Ltd. But in the present case, when the creditor itself is saying that it has received the payments and there is nothing receivable from the assessee, thus it amounts to cessation of liability.*

7. *As far as the additions of Rs. 41,90,675/ which was payable to M/s. R.D. textiles is concerned, we noticed that AO had relied upon the statement of Mr. Harish Chandra Singh, Prop. of M/s. RD. Textiles recorded u/s 131 of the Act, in which he confirmed that no amount is receivable from the assessee. Even the said Harish Singh*

submitted that he had stopped the business in 2003 and had no knowledge of receiving any amount from the assessee. Thus this is a case where the creditor is stating that he does not remember any such receivable from the assessee which is good for the assessee. In this case, the copy of statement was provided to the assessee with regard to Shri Harish Singh, the proprietor of R. D. Textile.

8. *It is important to mention here that the matter pertains to purchases made in July, 2003 and the proprietor issued a statement in 2013 stating that he does not remember anything as receivable from the assessee. Even till the end of 2016, which is a good 13 years after the purchases, the party has not taken any steps for recovery. Thus in such circumstances, it was rightly concluded that the party is not interested in pursuing recovery if it all it was due from the assessee, and there is no chance " of any further measures for recovery. The assessee is carrying a fictitious liability,*

9. *As far as addition of Rs.2,07,48,845/- u/s.41(1) of the I.T. Act is concerned, we have minutely gone through the orders passed by Ld. CIT(A), wherein each party wise details have been provided, wherein it was categorically admitted that no amount has been paid by the assessee to any of the parties till date. As far as furnishing of communication in the shape of letter are concerned, the same was rightly considered as fabricated as none of the parties personally appeared before the AO and even in the case of sunrise textile, there is no phone no. given on the letter head even though it is a very big party to whom the assessee owes itself is 1,71,26,130/-. Thus it is strange and surprising that somebody would keep quiet without initiating any legal action when the party i.e. the assessee is non-cooperative and defiant.*

10. *As far as in the case of other parties, admittedly assessee had not made payment to any of them and the letters submitted by the assessee contains the phone numbers of the parties, which are only in 7 digits, which itself shows that no phone numbers are less than 8 digits since many years ago. These 7 digit phone numbers on the letter heads in 2016 itself doubted the genuineness of the letters.*

11. We are in agreement with the reasoning given by Ld. CIT(A) while rejecting the claim of the assessee. It is also an undisputed fact that none of the parties have been pursuing for recovery and it is as good as not recoverable. Thus all the parties seem to have given up on recovery. Otherwise there would have been legal suits initiated against the assessee.

12. In the instant case, there is no unilateral write off in the books of accounts. In fact, the assessee has net written off the liabilities but the facts and circumstances showed that there is no possibility of any recovery. Therefore the additions made u/s.41(1) are justified. The assessee had not adduced any material or evidence or even explanation as to why the impugned amounts were not paid in normal course, the same amounted to cessation or remission of liability u/s.41(1) of the Act

13. During the course of arguments, the Ld. AR relied upon the judgment of Hon'ble Gujarat High Court in the case of **Bhogilal Ramjibhai Atara (2014) 222 Taxmann 0313 (Gujarat)**. Whereas Ld. DR relied upon the decision of the Coordinate Bench of ITAT, Ahmedabad in the case of **Dattatray Poultry Breeding Farm (P.) Ltd** dated 19.6.2018.

14. We are of the view that the facts and circumstances of the present case are distinguishable from the decision relied upon by Ld. AR as in the case of **Bhogilal Ramjibhai Atara**, the creditors outstanding **were not Trading Creditors** whereas in the present case, the outstanding creditors are trading creditors. Moreover, in the decision in the case of **Dattatry Poultry**, the case of **Bhogilal Ramji Bhal Atara** was duly referred by the Hon'ble ITAT while passing the decision. The Coordinate Bench of ITAT had also discussed the case of **M/s Gujtron Electronics (P.) Ltd. v. ITO:1.20171 83 taxmann.com 389/249 Taxman 443 (Guj.)** which was passed subsequent to the decision of **Bhogilal Ramjilal Atara** ie on 12-07-2017 and the Hon'ble Gujarat High Court had also referred to the case of **Bhogilal Ramjibhai Atara** while passing the judgment in the case of **Gujtron Electronics (P.) Ltd. v. ITO** referred *supra*

15. Even the Coordinate Bench of ITAT while reaching to the conclusion had also referred the decision of Hon'ble Bombay High Court in the case of **Palkhi Investments & Trading Co. (P.) Ltd. v. ITO 120161 71 taxmann.com 322** wherein the Hon'ble Bombay High Court had held that penalty is also leviable if the assessee fails to offer cessation of liability of outstanding demand. In this case also one of the creditor admitted that nothing was outstanding against the assessee in his books and certain other creditors were not found at the address given. The Assessing Officer made additions u/s 41(1) as ceased Liability. In quantum proceedings of the case, the Ld CIT(A) confirmed the action of Assessing Officer, the Hon'ble ITAT also confirmed the action of Assessing Officer. Thereafter the Hon'ble Bombay High Court dismissed the appeal of the assessee and the Honble Supreme Court of India also dismissed the SLP filed by the assessee. The relevant portion of the decision is reproduced as under:

We have carefully considered the rival submissions and perused the orders of the authorities below and the case laws cited at bar. The applicability of section 41(1) of the Act on outstanding trading liabilities as reflected in the balance sheet has been called into question. Section 41(1) of the Act states that where an allowance in respect of an expenditure or trading liability etc. is made in a year and the assessee obtains any benefit, whether in cash or otherwise in a subsequent year, such benefit shall be deemed to be profits & gains of the business of that subsequent year, whether such business is in existence or not in that subsequent year. The Section has an effect of deeming such cessation or remission of liability as income in departure with the general law where such remission or cessation is not regarded as an income. Coming to the facts, as noted above, it is the case of the Revenue that the trading liabilities of Rs. 74.40 Lakhs claimed to be payable to several parties was not found to be subsisting liability as per the outcome of inquiries made in this regard. The AO noted on facts that the creditors shown in the books are for purchase of goods whereas the assessee is engaged in job work and therefore outstanding towards purchase of goods is a high suspect. The AO based on inquiry; observed that many of the

creditors could not be traced on the address given by the assessee. Many others have denied making any transaction with the assessee. Coupled with this, such huge amounts of outstanding remains in the books for last six to twenty years without any repayment. On these facts, the AO concluded that liability shown in the balance sheet to be a nonexisting liability and accordingly invoked Section 41(1) of the Act for the purposes of taxability of such non-existent liability as chargeable income of the assessee owing to the fact that the assessee has obtained benefit in the past against such outstanding trading liabilities. The CIT(A), in first appeal, however, has set aside the action of the AO primarily on the ground that the assessee has not written back of these amounts in the books of accounts. **The CIT(A) granted relief to the assessee placing reliance upon the decision of the hon'ble Gujarat High Court in its decision in the case of Bhogilal Ramjibhai Atara (supra).**

10. It is the case of the Revenue that the law has evolved judicial precedents since the earlier decision of the hon'ble Gujarat High Court in the case of Bhogilal Ramjibhai Atara's case (supra). **Keeping in mind the peculiar facts as found by the AO, we observe that hon'ble Gujarat High Court was confronted with the similar issue in the case of Gujtron Electronics's case (supra) where also the facts are broadly similar.** In Gujtron Electronics's case (supra) also the outstanding was appearing in the balance sheet during the year under consideration and was not actually written off by the Assessee. However, the hon'ble Gujarat High Court noted that not a single customer had demanded money back nor assessee had made any attempt to repay the same. Over year, company had invested such amount in diverse activities. On such facts where since last many years, there was no activity of any repayment of amounts nor the amounts have been collected by the customers, the hon'ble Court endorsed the decision of the co-ordinate bench of tribunal (HA No.1145/Ahd/2016 order dated 10.01.2017) that trading liability had, in fact, ceased to exist. **Therefore, it logically flows that the hon'ble Gujarat High Court has clearly opined that liability may cease to exist in terms of Section 41(1) where it is**

outstanding for a long period without any payment despite it being reflected in the books of accounts. The hon'ble Gujarat High Court also did not question the action of Revenue towards taxability u/s.41(1) of the Act with reference to financial year in question. The distinction sought to drawn on behalf of Assessee for its non-application is un-merited. The Hon'ble Gujarat High Court has approved the findings of ITAT that Section 41(1) of the Act would apply where liabilities outstanding are found to be not payable for one or more reasons. We notice that similar views have been echoed by the hon'ble Delhi High Court in the case of Chipsoft Technology (supra) cited on behalf of Revenue. The hon'ble Delhi High Court in that case observed that the assessee could not claim benefit of showing unpaid dues of employees outstanding for 6-7 years and it was found that there was cessation of such liability on facts which was liable to be added to the income of the assessee. The hon'ble Delhi High Court also negated the contention of assessee that a liability does not cease as long as it is reflected in the books and that mere lapse of time given to the creditor to recover the amount due does not efface the liability. The hon'ble High Court took note of expression 'include' occurring in Explanation to Section 41(1) of the Act and held that the Explanation does not restrict the scope of remission or cessation of any liability by a unilateral act alone. The hon'ble High Court held that in view of the phraseology of Explanation to Section 41(1), even omission to pay over a period of time and resultant benefit derived by the as.sessee would qualin) as cessation of liability albeit by operation of law. In this backdrop, where the Revenue Authorities have found as a matter of fact after detailed inquiry that the liabilities shown in the balance sheet do not, in fact, exist, the Revenue Authorities are not expected to put blinkers while looking at the outstanding trading liability. Merely because the liabilities have been shown in the books of accounts and not written back, would not, in our view tie down the Revenue to hold such liabilities to be subsisting liability. The ground realities on facts were found to be altogether diffCrent in the present case. It does not accord with human probabilities to infer that trading liabilities do exist where the

parties are not traceable, denied the outstanding, no repayment made for last many many years and till date. Such approach would be quite theoretical and abstract.

11. Adverting to the legal claim made before us on behalf of the assessee that liabilities shown in the balance sheet was itself sufficient to hold such liability exists and bonafide is not understood at all. The liabilities shown in the balance sheet as existing by assessee was found to be symbolic by AO. The onus is on the assessee to show the reasons why it believed at the time of filing the return that the liabilities were true. No such attempt was even made to prove the existence of liabilities. In this view of the matter, the incidence of taxation under s.41(1) of the Act cannot be escaped on non-existing liability. Our this view also finds support from yet another decision of **the hon'ble Bombay High Court in the case of Palkhi Investments & Trading Co. (P.) Ltd. v. ITO 120161 71 taxmann.com 322** where the hon'ble Bombay High Court went to the extent of confirming penalty for not offering such trading liability under s. 41(1) of the Act. Thus, the conclusion apparently leans against the Assessee. However, we are left with one pertinent question hurled at us on behalf of the Assessee i.e. year of taxability. In this regard, we are not impressed by the plea the AO did not bring anything on record to allege that cessation took place during the financial year in question for the purposes of taxability under s. 41(1) of the Act. **We find that AO has assertive justification to bring the outstanding liability within the net of s.41(1) of the Act in the Financial Year under inquiry.** The onus is on the Assessee to show that year of cessation is different. In the instant case, the Assessee does not admit cessation at first place. The AG therefore is within its right to hold the Financial Year in question as the right year for taxability when the facts concurring the non-existence were unrevealed. The Assessee was failed to discharge onus. Besides, the defect of year of taxation U any can be cured under s. 153(6) in such cases. However, we do not consider it expedient to dwell further. In the totality of the facts and circumstances, we find ourselves in agreement with the view taken by the AO that addition made in respect of

trading liabilities which had ceased to exist represents taxable business income in terms of Section 41(1) of the Act. The IT(A) in our view has committed error in disregarding the gross facts unearthed in the present case while deciding in favour of the assessee. The order of the CIT(A) is therefore set aside and the order of the AG on the issue is restored.

12. In the result, the appeal of the Revenue is allowed.

16. After considering the above legal proposition and the facts of the present case, we are also of the view that in the present case Sh Harish Chandra Prop M/s R D Textiles admitted on oath that he had stopped his business and had nothing receivable from assessee. As far as other part i.e M/s Gravity India Ltd also admitted that the party had made payments to him and thus there is nothing outstanding. So far as remaining six parties are concerned, they were not found on the address given as the summons issued by the AO u/s 131 of the Act were returned back by the postal authorities with remarks as " not known' 'Mill Closed' etc . Thus on being confronted by the AO and even after issue a showcase notice, the assessee never responded. However, during the appellate proceedings, the assessee placed on records certain letters which Ld CIT(A) had rightly considered the same as fabricated and unreliable on the basis of detailed facts and reasoning mentioned in his order. Even otherwise, the assessee could not furnish any documentary evidence showing that even after lapse of so many years, none of the party entered into any correspondence with him to recover their dues.

17. However it was argued by Ld. AR that in AY 2004-05, Ld. CIT(A) had deleted the additions under the identical circumstances. But it is important to mention here that the present proceedings have been initiated by making additions after lapse of 13 years and even till date, the same amount is still shown as outstanding, whereas factually either some of the parties are not traceable or some have admitted that nothing is outstanding. Thus in these circumstances, the above plea raised by Ld. AR is not sustainable.

18. Keeping in view of our above discussion, we are of the view that the facts contained in the case of **Bhogilal Ramjibhai Atara** is not applicable to the facts of the present case as in that case **there was no trading liability**, whereas the facts contained in the case of **M/s Dattatray Poultry and M/s Gujtron Electronics (P.) Ltd. v. ITO [2017] 83 taxmann.com 389/249 Taxman 443 (Gui.)** are similar to the facts of the present case and even, the above judgments were passed subsequent to the judgment passed in the case of **Bhogilal Ramjibhai Atara**. The other judgments referred and relied upon by Ld. AR are not found applicable to the facts of the present case.

19. Moreover, no new facts or contrary judgments have been brought on record in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, there are no reasons for us to interfere into or deviate from the findings so recorded by the Ld. CIT(A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, these grounds raised by the assessee stands **dismissed.**"

4. The Ld. counsel submitted that decision in the case of Lotus Investment Ltd. (supra) has not been considered by the Tribunal. In said case, the Assessing Officer observed outstanding expenses, the liability of which was continued in the books of accounts for a long period. In absence of party-wise details, along with confirmation to whom such expenses were payable, the Assessing Officer treated as income under section 41 of the Act by holding that assessee has failed to prove the genuineness of the liability. The Tribunal after considering decisions in the case of ACIT Vs Trans freight containers (supra), CIT Vs Jain

exports Private Limited (supra), PCIT Vs Matruprasad C Pandey (supra), held as under:

“12. In view of the above principles laid down and keeping in view the facts of the present case, we also find that the expenses have been claimed by the assessee in earlier years and are continuing unchanged till the impugned assessment year. But the disallowance was made by holding that assessee had failed to file confirmations and no payments have been made for years together. We are of the view that when the AO accepts that the liabilities were created in the earlier years, then the genuineness of such transactions have to be examined in those assessment years and not in assessment year under consideration. Even on plain reading of the provisions of [section 41\(1\)](#) of the Act, we are of the view that before treating the amount outstanding as deemed income of the assessee u/s 41(1) on account of remission/cessation of liability, the AO is duty bound to examine whether the condition laid down u/s 41(1) are fulfilled or not. As per the reading of [section 41\(1\)](#) along with explanation (1) to [section 41\(1\)](#), the liability ceases to exist in the books of account I.T.A. No. 1417 /Mum/2014 M/s Lotus Investment Ltd. of the assessee in a particular previous year, if the person showing such liability had obtained benefit either in cash or in any other manner in respect of such liability. It further provides that such remission or cessation of liability is also acceptable by unilateral act of writing off such liability in its account by the person showing such liability. Therefore, before applying the provisions of [section 41\(1\)](#), it is necessary to establish on record that the assessee had obtained a benefit either in cash or in any form in respect of such liability in the relevant previous year. Thus, when in AO's own admission liability continued from past so many years, then what prompted the AO to conclude that the assessee has obtained benefit in respect of such liability in the impugned assessment year must be clearly brought on record. In the absence of any material to establish that the assessee had obtained any benefit in

respect of the liability in the impugned assessment year, so merely on the basis of surmises and assumptions it cannot be said that there is remission/cessation of liability in the impugned assessment year.”

5. Thus we find that Tribunal in case of Lotus Investment Ltd. (supra) has deleted the addition under section 41(1) of the Act mainly on the ground that genuineness of the transaction was to be examined in the year of incurring expenditure and not in the year of cessation of liability. The Assessing Officer also not examined whether assessee had obtained a benefit either in cash or in any in any form in respect of such liability in relevant previous year. The facts in the instant case before us are different. In the instant case, the Assessing Officer issued summons to the alleged trade creditors and recorded their statements, wherein they have denied of any payment due to the assessee. Facts of the case being distinguishable, the ratio of decision relied upon by the assessee, cannot be imported to the facts of the case.

6. In the case of Elde Electricals Agencies Private Limited (supra) the Hon'ble court observed as under:

“Addition made under Section 41(1) - creditors outstanding for more than three years in the books of respondent-assessee - ITAT deleted the addition - Held that:- In the present facts, the amount of R 64.27 lacs continues to be show as the liability in the respondent assessee's balance-sheet for the subject assessment year. The occasion to write back the amount of & 4.27 lacs in this particular case,

even unilaterally by the respondent-assessee has not arisen. This is so as the amount of & 64.27 lacs continues to be shown in its balance-sheet as a liability. Consequently, the occasion to invoke the Explanation 1 to Section 41 of the Act does not arise. The settled position in law is that showing the amount due to the creditors in the balance-sheet amounts to acknowledgment of liability. Consequently, the decision of the Apex Court in Kesaria Tea Co. Ltd. (supra) continues to apply in the facts of this case. -Decided against revenue.”

6.1 We find that in above case of Elde Electricals (supra) also there is no finding of denying of existence of liability in the year under consideration by the alleged trade creditors. Therefore, the decision relied upon by the assessee is distinguishable on facts.

7. We have considered finding of the Tribunal in the light of both the decisions cited by the assessee, however in our opinion the ratio(s) of the decisions are not applicable in the facts of the instant case. We concur with the finding of the Tribunal dated 23/05/2019, and accordingly uphold the same.

8. The appeal recalled to the extent of examining the two decisions, is accordingly dismissed.

Order pronounced in the open Court on 30/03/2022.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: **30/03/2022**

Dragon Legal/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai