

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'H' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.5099/Del./2019  
(ASSESSMENT YEAR : 2013-14)**

Jain Peripherals Pvt. Ltd.,  
297, 1<sup>st</sup> Floor, Sector 15-I,  
Gurgaon (Haryana).

vs. DCIT, Circle 13 (1),  
New Delhi.

**(PAN : AAACJ9590R)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Ms. Anupama Singla, Senior DR

Date of Hearing : 09.06.2022

Date of Order : 23.06.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal filed by the assessee is directed against the order of the

1d. CIT (Appeals)-5, New Delhi pertaining to AY 2013-14.

2. The grounds of appeal taken by the assessee read as under :-

“1. The Ld. CIT (A) has erred in confirming the addition of Rs.83,57,720/- u/s 41.

2. The order of the lower authorities is against the law and facts of the case”

3. Brief facts of the case are that assessee company is engaged in the business of trading in computers and computer peripherals and also

providing maintenance services for its clients. During assessment proceedings, the AO called for to give details of sundry creditors above Rs.5 lakhs, their complete address and confirmation for the last two years balance. Independent enquiries were made for such creditors by issuing notices u/s 133(6) of the Act. The confirmation from M/s AVS Computer Pvt. Ltd. has not been received. Confirmation from M/s P3P Productions, M/s JVIT Pvt. Ltd., M/s M Square and M/s M.M. Software Pvt. Ltd. has been received. It was observed by the AO in the assessment order that :-

"the contents of confirmation letters have been examined and found not reliable due to the following reasons:

- (i) All three letters have been prepared on same computer by same persons. Generally, in the amounts written, commas are placed lower sided of the digit whereas in all four letter commas have been placed at upper portion of the figure in the similar manner.
- (ii) Notices were issued from Dy. Commissioner of Income tax. However, the addresses written on envelopes of all four letters received are as under:

DLIT,  
Circle 13/1"

Which is in similar it indicates that these envelopes have been prepared by the same person and on same computer. Due to the reasons mentioned above, it is concluded that the assessee has itself created the confirmation letter and has sent to this office itself. Copy of the envelopes are Annexed as part of order."

4. Accordingly, it is held by the AO that there is no liability for assessee towards these parties and has shown a self created liability in its

books, which no longer exists. Therefore, the credit balance in the above parties case is treated as cessation of liability u/s 41 of the Act amounting to Rs.83,57,720/- and added back.

5. Upon assessee's appeal, Id. CIT (A) confirmed the disallowance by holding as under :-

“8. The appellant disputed the addition of Rs.83,57,720/- where amount shown by the appellant as credit balance from different parties were not found duly explained and added accordingly treating cessation of liability u/s 41 of the Act.

8.1 The appellant contended, as reproduced above, that no defect has been pointed out by the AO nor doubted the existence of any party.

8.2 It is also contended that these companies from whom the credit balance has been shown are having some common persons and therefore, they might have used a common person for typing the confirmation for each of them and sending letters by post to the AO.

8.3 The contention of the appellant has been considered along with the allegation by AO in assessment order. The appellant has not disputed that the language of all creditors in confirmation is similar. Further, the contention that these companies/persons are having some common person has been provided in the chart, however, no details/their accounts or any other document submitted to substantiate and prove its averSIONs.

8.4 On the other hand, the AO has specifically alleged that these letters are submissions created by appellant and held that no actual liability but self created liability has been shown in its books.

8.5 Since the allegation of AO has not been rebutted with the cogent evidences or documents, the contention of appellant cannot be acceptable.

8.6 Therefore, looking to the facts and circumstances of this case, considering that no evidence has been brought on record by appellant either at assessment stage or appellant stage to support its submissions and the allegation of the AO is specific and on the basis of documents brought on record, no interference is made on the findings of AO and the addition is sustained. This ground of appeal is dismissed.”

5. Against the above, assessee has filed appeal before us. We have heard ld. DR for the Revenue. None appeared on behalf of the assessee despite issuance of notice.

6. Upon careful consideration, we find that disallowance in this case has been done u/s 41 of the Income-tax Act, 1961 (for short ‘the Act’). Section 41 postulates disallowance of cessation of liability for expenditure incurred in trading account earlier. In the present case, disallowance has been made by the AO and confirmed by the ld. CIT(A) on the plank that the purchases are not genuine. In our considered opinion, the issue of the genuineness of the purchases will be applicable only if the purchases belong to the current year and in that case, disallowance cannot be done u/s 41 of the Act. Similarly, if the authorities below are of the opinion that purchases were done in earlier years but now the liability has ceased to exist, disallowance can only be done if cogent evidence is brought on record for cessation of liability. In

the present case, since authorities below are for all practical purposes trying to disallow the purchases done in earlier years on the plank of them not being genuine, the disallowance of the same u/s 41 is not legally maintainable. However, since it is also noted that AO has brought some material by establishing the doubtfulness of liabilities, we deem it appropriate to remit back the issue to the file to the AO. The AO shall consider the issue afresh and make proper enquiry after giving proper notice of being heard to the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open court on this 23<sup>RD</sup> day of June, 2022.**

**SD/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**SD/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 23<sup>rd</sup> day of June, 2022  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-5, New Delhi
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**