

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI**

BEFORE SHRI AMIT SHUKLA, JM
AND
SHRI PRASHANT MAHARISHI, AM

ITA No. 735/Mum/2022
(Assessment Year 2018-19)

Peninsula Properties
Vakil Industrial Estate, Valbahat
Road, Goregaon East,
Mumbai-400 063

Vs.

DCIT Central Circle-5(2)
19th Floor, Air India Building,
Nariman Point,
Churchgate
Mumbai-400 020

(Appellant)

(Respondent)

PAN No. AAIFP 7134 L

Assessee by : None
Revenue by : Mr. Praveen Shekhar, DR

Date of hearing: 02.08.2022
Date of pronouncement : 29.08.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by assessee against the order passed u/s 250 of the income tax act 1961 by the Commissioner of income tax, appeal – 53, Mumbai dated 22/2/2022 for assessment year 2018 – 19 wherein the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the act dated 18th of March 2021 by assistant Commissioner of income tax central circle 5 (2), Mumbai (the learned AO) was dismissed.
02. The assessee has raised following grounds of appeal:-



"The AO has erred in law and in fact by adding outstanding creditors over three years of Rs. 2,31,525/- to assessee's total income u/s. 41(1) of the I.T. Act, 1961 because: Assessee has produced the fact that payment of Rs. 4,804/- was paid to Bharucha Stone and Sand Works P. Ltd. and Rs. 1,257/- paid to Super Stone Co. after 31.03.2018 as part payment to their outstanding as on 31.03.2018. The addition cannot be made u/s. 41(1) since assessee has not written it back in the books of accounts as held in case of M/s. West Asia Export and imports vs. ACIT (Madras High Court). Addition u/s. 41(1) cannot be made for amount not paid due to long pending dispute as held in case of Pyramid Consulting Engineers P. Ltd. vs. DCIT (ITAT, Mumbai).

The assessee craves leave to add, amend and /or alter any of the above grounds of appeal."

03. Assessee is a partnership firm engaged in the business of contractors, developers of land and construction of building, dealer in real estate and commission agent. It filed its return of income on 31/10/2018 at the total income of ₹ 278,002,094/-. During the year, the assessee has declared income from business and house property.
04. As the return was picked up for scrutiny, In assessment proceedings the learned assessing officer found that there are 8 parties whose amounts are outstanding since June 2017 and December 2017 amounting to ₹ 231,524/ -. The assessee was asked to substantiate and explain the

outstanding trading liabilities. Assessee failed to obtain confirmation and failed to prove genuineness of outstanding liabilities over three years. Therefore, the learned assessing officer concluded that these liabilities are not only non-existent but also time barred and there is no possibility of any force in the said debt. The liabilities are seized a liability and thus liable to be added back u/s 41 (1) of the act. The assessee also give information about certain parties to whom the payment have been made in subsequent period also stated that liabilities have not been written off by those parties and therefore addition u/s 41 (1) of the act cannot be made. However as the assessee failed to substantiate any supporting documents and evidences like beans or any other documents to explain the said trading liabilities as well as confirmation of the above parties the learned assessing officer made an addition u/s 41 (1) of the act relying upon the decision of the honourable Supreme Court in 236 ITR 518. Accordingly addition of ₹ 231,524 was made an assessment order u/s 143 (3) of the act was passed by the learned AO on 18th/03/2021 determining the total income of the assessee at ₹ 278,233,620/-.

05. Assessee preferred appeal before the learned CIT – A where assessee submitted that since the assessee has not written back the liabilities in its books of accounts there is no applicability of provisions of Section 41 (1) of the act. The assessee also gave details of subsequent payment with respect to the certain parties. Thus it was submitted that since the assessee continues to reflect the said

outstanding in its balance sheet and not credited the same to the profit and loss account the provisions of Section 41 (1) of the act does not apply. It was further stated that the limitation act also do not apply in income tax proceedings for taxing the sum under this Section. Assessee relied on several judicial precedents.

06. The learned CIT – A considered the explanation of the assessee but held that assessee has not produced any proof of payment to even the three parties and no confirmation with respect to the balance parties were furnished. Even during the appellate proceedings, the assessee has not the genuineness of the trading liability of the creditors. The onus was on the assessee to prove the genuineness of the sundry creditors and this primary onus has not been discharged by the assessee. He therefore relying upon the decision of 26 taxmann.com 109 (Delhi) confirmed the addition of ₹ 231,545/- u/s 41 (1) of the act.
07. Assessee, aggrieved with the above order has preferred this appeal however at the time of hearing none appeared, therefore, the appeal of the assessee is decided on the merits of the case as per information available on record.
08. The learned departmental representative vehemently supported the orders of the lower authorities.
09. We have considered the arguments of the learned departmental representative as well as the orders of lower authorities. The facts clearly shows that the return of

income of the assessee is filed at ₹ 278,002,094/- which is assessed at ₹ 278,233,618 -. The AO found that there are 8 parties amounting to Rs 231`524/-which are outstanding since 2017 and are not paid. As these amounts are outstanding as on the date of the balance sheet, the learned AO asked assessee to justify the genuineness of these outstanding. Assessee submitted that out of these 8 parties, payment with respect to 3 parties have been made subsequently. The assessment was made in March 2021, therefore, the learned AO was of the view that the above liabilities have become time barred. Assessee could not submit the confirmation of these parties and therefore the AO made addition u/s 41 (1) of the act. The learned CIT - A also confirmed the same. It is undisputed fact that these parties are shown by assessee as its liability as on the last day of the accounting period and are not written back in its account. Identical issue arose before the honourable Bombay High Court in case of PCIT V Batliboi Environmental Engineering Ltd [2022] 141 taxmann.com 245 (Bombay)[10-06-2022]wherein it has been held that:-

“5. As regards second question of law is concerned, it was argued by the Appellant- Revenue that since the Respondent-Assessee had around 25 creditors whose payments were outstanding for more than three years and some transactions which are eight to nine years old, the same were barred by the provisions of the Limitation Act, 1963 and, therefore, they will have to be treated as Assessee's income and to be added under

section 41(1) of the Income-tax Act. This issue has been dealt with by both the Commissioner (Appeals) and the Tribunal relying upon the decision of the Gujarat High Court in the case of *CIT v. G.K. Patel & Co.* [2013] 29 taxmann.com 248/212 Taxman 384 and the decision of the Delhi High Court in the case of *CIT v. Jain Exports (P.) Ltd.* [2013] 35 taxmann.com 540/217 Taxman 54 (Mag.).

6. The Delhi High Court in the case of *Jain Exports (P.) Ltd.* (supra) has relied upon the decisions of the Supreme Court in the case of *Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay* AIR 1958 SC 328 and *CIT v. Sugauli Sugar Works (P.) Ltd.* [1999] 102 Taxman 713/236 ITR 518. In *Sugauli Sugar Works (P.) Ltd.* (supra), the Supreme Court has referred to the decision of the Division Bench of this Court in the case of *Kohinoor Mills Co. Ltd. v. CIT* [1963] 49 ITR 578. The Delhi High Court, after following these decisions concluded that merely because the liability is barred by limitation, it does not cease to be a debt. This view is also taken by this Court in the case of *CIT v. Indian Rayon and Industries Ltd.* [2011] 336 ITR 479. Therefore, the submission made by the Appellant that because the liability is barred by the period of limitation the same would be treated as income and added under section 41(1) of the Act cannot be accepted as no other decision contrary to the above is shown to us. Thus, the second question of law does not survive for consideration.”



010. The above decision of the honourable Bombay High Court binds us and further the decisions relied upon by the learned assessing officer are also dealt with in the above decision. Therefore, the issue is squarely covered in favour of the assessee.

011. Accordingly, we allow solitary ground of appeal of the assessee and direct the learned AO to delete the addition of ₹ 231,525/-.

012. Appeal of the assessee is allowed.

Order pronounced in the open court on 29.08.2022.

Sd/-
(AMIT SHUKLA)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.08.2022

Sudip Sarkar, Sr.PS

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai