

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 8717/Del/2019 : Asstt. Year : 2016-17

Assam Supari Traders, 611, Surya Kiran Building, 19, K.G. Marg, New Delhi-110001	Vs	ACIT, Circle-48(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAOFA7566M		

Assessee by : Sh. Anil Jain, CA

Revenue by : Sh. Kanav Bali, Sr. DR

Date of Hearing: 18.10.2022

Date of Pronouncement: 05.01.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-16, New Delhi dated 06.08.2019.

2. Following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case and the provision of the law, the Ld CIT (A) has failed to appreciate that the assessment order passed by the Ld AO under Section 143(3) of the Income Tax Act is illegal and bad in law.

2. That on the facts and circumstances of the case and the provision of the law the Ld. CIT (A) has failed to appreciate that the assessment order passed is in violation of principle of natural justice and hence, the said assessment order is bad in eyes of law and liable to be quashed.

3. That the Ld CIT (A) has failed to appreciate that the Ld AO has erred in ignoring the explanation given, evidences and material placed and available on record. The same have not been properly considered and judicially interpreted and the same do not justify the addition made with preset mind of the Ld. AO.

4. That on the facts and circumstances of the case and the provisions of the law, the Ld. CIT (A) has erred in sustaining addition of Rs. 25,39,190/- u/s 41(1) on account of alleged cessations of creditors.

5. That on the facts and circumstances of the case and the provisions of the law, the Ld. CIT (A) has erred in sustaining addition of Rs. 23,15,990/- on account of advance from M/s Gaurav International and M/s Elite Sales (India).

6. That on the facts and circumstances of the case and the provision of the law, the Ld. CIT (A) has erred in sustaining addition of Rs. 17,20,000/- on account of outstanding credit balance of Rs. 17,20,000/- in the name of M/s Swastika Enterprises.

7. That the Ld CIT (A) has failed to appreciate that the various observations and findings of the Ld CIT(A) has erred in the impugned assessment order are irrelevant, unjustified, baseless and vitiated in the law.

8. That on the facts and circumstances of the case and the provisions of law, the Ld. CIT (A) has failed to appreciate that the Ld. AO has erred in charging of an interest u/s 234B. Without prejudice the interest charged is also excessive.

9. That on the facts and circumstances of the case the Ld. CIT (A) has failed to appreciate that the Ld. AO has erred in initiating proceedings u/s 271(1)(c) of the income Tax Act,1961."

3. Ground No. 1 general**4. Ground Nos. 2 & 3 not pressed****Ground No. 4 : Addition u/s 41(1)**

5. During the year under consideration, there were 3 creditors outstanding since last 15 to 16 years. On account of non-filing of the confirmations, the AO has made the addition of Rs. 25,39,190/- u/s 41(1). The pertinent fact was that upto 09.01.2007 this firm was the proprietorship firm of Smt. Dayawanti. On 09.01.2007 Smt. Dayawanti expired and as per her will capital outstanding in her account was transferred to the capital A/c of Smt. Sunita Gupta and the firm was made partnership firm with two partners being Smt. Sunita Gupta and Sh. Anoop Gupta.

6. Copies of the balance sheet as on 31.03.2007 along with relevant annexure and copy of balance sheet as on 31.03.2010 with annexures and copy of will deed executed by Late Smt. Dayawanti Devi was also submitted before the AO.

7. Further, it is submitted that while making assessment for A.Y. 2000-01, addition of same amount outstanding in name of Hargoppa Arecanut Traders of Rs. 12,17,280/- and Madhukar Narsingha Hegde of Rs. 7,52,832/- by the then Ld. AO and addition of Rs. 4,04,000/- in name of M/s Vishwas Food was made by the then AO in A.Y. 2004-05 which were sustained by the Ld. CIT(A). It is a fact on record that these additions were deleted by ITAT Delhi for the A.Y. 2004-05.

8. In the instant Assessment Order the AO has stated that the credit balances of all 3 creditors were outstanding since 2007. In this regard vide show-cause notice dated 21.12.2018, appellant was asked to submit their ledger A/c for the F.Y. 2015-16, 2014-15 and 2013-14. Perusal of the same reveals that all the balances are old, no business/transactions has been effected with the concerned creditors during last many years and same is outstanding since long from 2007 and hence the AO made addition of Rs. 25,39,190/- u/s 41(1).

9. The Ld. CIT(A) held that the lapse of several years, wherein the outstanding balance was static coupled with the fact that the payment was not made even in the subsequent years, suggests a cessation of liability. Therefore, the Ld. CIT(A) has held that the amount of outstanding balance of Rs. 25,39,190 is taxable income as per provisions of Section 41(1).

10. The Id. AR argued that the onus lies upon the Revenue to prove that the liability has ceased during the impugned assessment year.

11. The liability ceases when it has become barred by limitation and assessee has unequivocally expressed its intention not to honor the liability even when demanded. The Id. AR relied on the order in the case of ACIT vs. M/s Milroc Good Earth Property and Developers LLP, by ITAT, Panaji Bench wherein it was held that it is only where the assessee during any previous year has obtained some benefit in respect of such trading liability by way of remission or cessation thereof, the value of benefit accruing to him shall be deemed to be profit and gain of business or profession and accordingly chargeable

to income tax as income of that previous year. It was argued that in the present case the AO has not brought anything on record that the amount payable to above said creditors has ceased during the year under consideration itself. So, when the assessee has not got any benefit during the year under consideration there is no justification for making addition of Rs. 25,39,190/- u/s 41(1) of the IT Act.

12. For this proposition, the Id. AR placed reliance on the following judgments:

- CIT vs. Sugauli Works Pvt. Ltd. 236 ITR 518 (SC)
- CIT vs. Chase Bright Steel Pvt. Ltd. 177 ITR 128 (HC) (Bombay)
- ACIT vs. M/s Milroc Good Earth Property & Developers LLP ITA 26/PAN/2018

13. Provisions of Section 41(1) reads as under:

"41. (1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,—

(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year,

whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

(b) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.

Explanation 1.—For the purposes of this sub-section, the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof" shall include the remission or cessation of any liability by a unilateral act by the first-mentioned person under clause (a) or the successor in business under clause (b) of that sub-section by way of writing off such liability in his accounts.

Explanation 2.—For the purposes of this sub-section, "successor in business" means,—

- (i) where there has been an amalgamation of a company with another company, the amalgamated company;*
- (ii) where the first-mentioned person is succeeded by any other person in that business or profession, the other person;*
- (iii) where a firm carrying on a business or profession is succeeded by another firm, the other firm;*
- (iv) where there has been a demerger, the resulting company."*

14. At the cost of repetition, we hold that the liability ceases when it has become barred by limitation and assessee has unequivocally expressed its intention not to honor the liability even when demanded. The liability has been shown to be paid for the last 15 years and the assessee has not made any payment and no demand from the lender could be proved by the assessee with regard to the outstanding payment. No business transactions have been made with these parties in the last 10 years and no confirmations have been filed before the revenue authorities. All these facts goes to prove that the amounts which have been debited to P&L account once and taken as outstanding payable have ceased to exist. The argument of the Id. Counsel that if at all the amounts ceased to exist it could have been taxed in the last previous year or in the subsequent year, there is no reason to tax in the instant year cannot be held to be valid argument that such proposition would be devoid of any logic and revenue cannot be expected to wait for indefinite period to receive their dues as taxes with folded hands. There was no iota of proof to demonstrate that the amounts have liable to be paid in the instant year or in the near future. The conduct of both the parties clearly demonstrates the remission of the amounts. The amounts which were hitherto remained unpaid for more than a decade cannot be treated as an existing liability. Hence, the action of the revenue authorities subjecting that amount u/s 41(1) cannot be faulted with. The appeal of the assessee on this ground is dismissed.

Ground No. 5: Advances Received

15. As on 31.03.2016, there was credit balances appearing in the account of M/s Gaurav International and Elite Sales (India) which was advanced from customers.

16. However, in balance sheet of this year, it was wrongly shown under Sundry Creditors where as it should have been shown as advance from customers. In the Balance Sheet of F.Y. ending 31.03.2015, these have been correctly shown as advances from customers. Copy of this balance sheet was also filed.

17. Hence, there is no dispute that these advances were continuing from earlier years and during the year under consideration no fresh advance was received. As the confirmations of these advances could not be filed the AO has made addition of Rs.23,15,990/- as undisclosed income. And the Ld. CIT(A) has confirmed this addition u/s 41(1) of the IT Act.

18. With regard to addition of Rs. 23,15,990/- it is submitted that advances received by the assessee in earlier assessment years could not be brought to tax as undisclosed income during the year under consideration. In the present case advances were continuing from earlier years and during the year under consideration no fresh advance was received.

19. Hence, we hold that the Ld. CIT(A) has erred in sustaining the addition of Rs. 23,15,990/- on account of advance from M/s Gaurav International and M/s Elite Sales(India) u/s 41(1).

Ground No. 6:

20. The Assessing Officer made an addition of Rs. 17,20,000/- on account of outstanding credit balance of Rs. 17,20,000/- in the name of M/s Swastika Enterprises. During the course of the hearing before the AO, confirmed copy of the statement of account pertaining to F.Y. 2013-14, 2014-15, and 2015-16 was filed before the AO. The Assessing Officer has made the addition of the above said amount holding that the same balance is outstanding since 01.04.2014.

21. Further during the course of hearing, it was submitted that there is no truth in the contention of AO that as on 31.03.2016 same balance was outstanding which was as on 31.03.2014. In fact during F.Y. 2015-16 the assessee has made payment of Rs. 20,00,000/- against opening balance of Rs. 37,20,000/-.

22. The statement of account of M/s Swastika Enterprises for F.Y. 2013-14, 2014-15 and 2015-16 duly confirmed along with PAN was filed. And just because during the F.Y. 2014-15 and 2015-16 there is no purchase from this firm, although payments have been made in the F.Y. 2013-14 and 2015-16 against the purchases made in F.Y. 2013-14, there is no justification for making addition of Rs. 17,20,000/- as undisclosed income. Hence, the action of the revenue authorities cannot be sustained.

23. In the result, the appeal of the assessee is partly allowed.
Order Pronounced in the Open Court on 05/01/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 05/01/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR