

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 53/RPR/2020
निर्धारण वर्ष / Assessment Year : 2013-14

A.C Strips Pvt. Ltd.
20, New Cloth Market,
Pandri, Raipur (C.G.)
PAN : AACCA0568N

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax-3(1)
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri Choudhary N.C. Roy, Sr. DR

सुनवाई की तारीख / Date of Hearing : 02.01.2023

घोषणा की तारीख / Date of Pronouncement : 06.01.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-I, Raipur, dated 01.07.2019, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 30.03.2016 for assessment year 2013-14. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. Ld. CIT(A) erred in confirming addition of Rs.2,96,878/- made by the A.O u/s.41(1) on account of outstanding balance. The addition made by the A.O and sustained by Ld. CIT(A) is arbitrary, baseless and not justified.
2. Ld. CIT(A) erred in confirming addition of Rs.22,63,951/- made by the A.O invoking Sec.41(1) on account of outstanding balance in the account of a party. The addition made by the A.O and sustained by the Ld. CIT(A) is arbitrary, baseless and not justified.
3. Without prejudice to above grounds, Ld. CIT(A) erred in confirming the additions of Rs.25,60,829/- made by the A.O u/s.41(1) without appreciating the fact that the additions were outside the ambit of sec.41(1) and were liable to be deleted.
4. The appellant reserves the right to add, amend or alter any of the ground/s of appeal.”

2. On a perusal of the records it transpires that the present appeal is barred by limitation by a period of 141 days. Explaining the reasons leading to the delay involved in filing of the present appeal, Shri Dhiraj Kumar Surana, director of the assessee company has filed a letter dated

05.03.2020 seeking condonation of the same which is accompanied with his affidavit dated 16.09.2022 a/w. affidavit of his employee, viz. Shri Satish Sahu. On a perusal of the aforesaid letter/affidavits, it transpires that the delay in filing of the present appeal had occasioned for the reason that Shri Satish Sahu (supra), an employee of the assessee company had inadvertently failed to bring the order passed by the CIT(Appeals) dated 01.07.2019 to the notice of the directors of the assessee company. The aforesaid claim of Shri Dhiraj Kumar Surana (supra) is supported by an affidavit of Shri Satish Sahu (supra) who had admitted that the delay involved in preferring the present appeal was for the reason that he had failed to put up the order of the CIT(Appeals) before the directors of the assessee company. On the basis of the aforesaid facts the Ld. Authorized Representative (for short 'AR') had sought for condonation of the delay involved in filing of the present appeal.

2.1 Per contra, the Ld. Departmental Representative (for short 'DR') objected to seeking of condonation of delay by the assessee appellant.

2.2. We have given a thoughtful consideration, and are of the considered view that the delay involved in filing of the present appeal could neither be attributed to any deliberate conduct nor smacked of a lackadaisical approach on the part of the assessee-appellant. In fact, admission of Shri Satish Sahu (supra), an employee of the assessee company which is

supported by his affidavit substantiates the bonafide reasons that had led to the delay in filing of the present appeal. Having given a thoughtful consideration, we are satisfied with the reasons leading to the delay involved in filing of the present appeal and condone the same.

3. Succinctly stated, the assessee company which is engaged in the business of running a rolling mill had e-filed its return of income for the A.Y.2013-14 on 30.09.2013, declaring an income of Rs.49,10,790/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

4. During the course of the assessment proceedings, it was observed by the A.O that there were certain unmoved outstanding liabilities in the balance sheet of the assessee for the year under consideration, viz. (i) M/s. Ashoka Buildcon Ltd.: Rs.2,96,878/-; and (ii) Jetha Ram Concreeto : Rs.22,63,951/-. Observing, that the aforesaid liabilities were brought forward balances of the preceding year the A.O held both of them as liabilities which had ceased within the meaning of Section 41(1) of the Act. Accordingly, the A.O vide his order passed u/s.143(3) dated 30.03.2016 after, inter alia, making an addition of Rs.25,60,829/- u/s.41(1) of the Act, determined the income of the assessee company at Rs.77,19,290/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success in so far the aforesaid additions made by the A.O u/s.41(1) of the Act were concerned.

6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

7. We have heard the ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

8. Admittedly, it is a matter of fact borne from record that the liabilities in question were in the nature of unmoved balance in the books of accounts of the assessee company, i.e., outstanding balances that were brought forward from the preceding year. On a perusal of the assessment order, it transpires that the A.O being solely guided by the fact that the respective liabilities of the assessee company towards the aforementioned parties, viz. (i) M/s. Ashoka Buildcon Ltd. : Rs.2,96,878/-; and (ii) Jetha Ram Concreeto : Rs.22,63,951/- had neither been paid nor adjusted against its sales, therefore, dubbed the same as ceased liabilities and

brought the respective amounts to tax in the hands of the assessee company under Sec.41(1) of the Act.

9. Having given a thoughtful consideration to the issue in hand, we are unable to persuade ourselves to subscribe to the view taken by the A.O, which, thereafter, had been approved by the CIT(Appeals). Although, it was the claim of the Ld. AR that as the aforesaid outstanding liabilities were trade advances and not in the nature of trading liabilities qua which the assessee had claimed any deduction, therefore, there was no justification on the part of the A.O in invoking the provisions of Section 41(1) of the Act, but he failed to fortify his aforesaid claim on the basis of supporting documentary evidence. On the contrary, the Ld. AR on being confronted with the fact that both the liabilities in question were reflected under the head "Trade Payable" (Note No.8) in the balance sheet of the assessee company failed to rebut the same.

10. Be that as it may, we are of the considered view that the A.O had on the basis of pre-mature observations brought the aforesaid outstanding liabilities in question within the realm of the provisions of Section 41(1) of the Act. Ostensibly, Section 41(1) of the Act, inter alia, contemplates that where any deduction has been made in the assessment for any year in respect of trading liability incurred by the assessee and subsequently during any previous year, the assessee has obtained some benefit in

respect of such trading liability by way of remission or cessation thereof, then, the amount of benefit accruing to him shall be deemed to be profits and gains of his business or profession and accordingly, chargeable to income-tax as the income of that previous year.

11. On a careful perusal of the aforesaid statutory provision, it transpires that for triggering Section 41(1) of the Act two important aspects have to be duly considered, viz. (i) the assessee has obtained benefit in respect of such trading liability qua which deduction had earlier been claimed ; and (ii) the amount of benefit so claimed by the assessee is to be brought to tax in his hands during any previous year, in which, the benefit has been so obtained by him. However, in the case before us, we find that neither of the aforementioned mandatory conditions have been satisfied. Neither the A.O has been able to conclusively prove that the liabilities in question which the assessee company had projected as outstanding in its balance sheet had in fact ceased, nor has he given any cogent reason as to why the same was to be assessed in its hands during the year under consideration i.e. A.Y.2013-14. On the contrary, we find that the only reason given by the A.O was that the said respective liabilities had remained unpaid till 31.03.2014. We are unable to concur with the aforesaid observation of the A.O, as the same is seriously short of the pre-conditions which were indispensably required before giving the liabilities in

question a color as that of “ceased liabilities”, and much the less in the year under consideration. Neither is anything discernible from the orders of the lower authorities which would reveal that the liabilities in question had ceased, nor anything can be gathered therefrom as to on what basis the alleged remission or cessation of the liabilities in question were to be assessed during the year under consideration. Merely for the reason that the aforesaid liabilities are outstanding would by no means justify dubbing the same as ceased liabilities in the hands of the assessee company. Our aforesaid view is fortified by the judgment of the Hon’ble High Court of Delhi in the case of CIT, Delhi-II Vs. Jain Exports (P) Ltd. (2013) 217 Taxman.com 54 (Del). In the aforesaid case, the Hon’ble High Court had observed that in order to attract the provisions of Sec. 41(1) of the Act it is necessary that there should be a cessation or remission of liability. It was further observed by the Hon’ble High Court, that as the assessee before them had acknowledged its debt payable to the creditor under consideration, and there was no material to indicate that the parties had contracted to extinguish the liability, therefore, it could not be concluded that the said debt owed by the assessee towards the said party stood extinguished. Accordingly, we are of the considered view that in the present case before us, in the absence of any evidence to conclude that there was a final remission or cessation of the trading liabilities or any part of it the provisions of Sec.41(1) could not have been invoked by the A.O.

Also, support is drawn from the order of the ITAT, Delhi Bench "G" in the case of Satpal & Sons Vs. Assistant Commissioner of Income Tax, ITA No.388/Del/2015, wherein it was, inter alia, observed by the Tribunal that the obtaining by the assessee of a benefit by virtue of remission or cessation is the *sine-qua-non* for the application of Section 41(1) of the Act. For the sake of clarity the relevant observations of the Tribunal are culled out as under:

"7. After hearing both the parties and perusing the entire material on record, we find that the Assessing Officer has made the addition of the creditors' outstanding liability to the income of assessee after resorting to the provisions of section 41(1) of the IT Act. The provisions of section 41(1) of the Act read 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.

A perusal of the aforesaid provision of law as contained in section 41(1), we opine that these provisions are applicable in the cases where the liability stood remitted or ceased during the year under consideration. In the instant case, it has not been established by the Revenue that the assessee has written off the outstanding liabilities in the books of account, rather continued to show the impugned liabilities in the balance sheet. The Revenue has also failed to establish that the assessee had obtained any benefit of reduction in the earlier years of such liabilities by way of their remission or cessation. All these being the conditions to be satisfied under the provisions of section 41(1) of the Act, the addition so made taking shelter of these provisions cannot be sustained for want of satisfaction of such conditions. We stand fortified by the proposition of law laid down in the following decisions :

(i). Hon'ble Supreme Court in the case of CIT vs. Sugauli Sugar Works (P) Ltd., 236 ITR 518 (SC) has held as under :

"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 creditor will not enable the debtor to say that the liability has come to an end. Apart

from that, that will not by itself confer any benefit on the debtor as contemplated by the section."

(ii). Hon'ble Gujrat High Court in the case of CIT vs. Bhogilal Ramjibhai Atara, 222 Taxman 313 (Guj.) has held as under :

"Section 41(1) would apply in a case where there has been remission or cessation of liability during the year under consideration subject to the conditions contained in the statute being fulfilled. Additionally, such cessation or remission has to be during the previous year relevant to the assessment year under consideration. In the present case, both elements are missing. There was nothing on record to suggest there was remission or cessation of liability that too during the previous year relevant to the assessment year 2007-08 which was the year under consideration. It is undoubtedly a curious case. Even the liability itself seems under serious doubt. The AO undertook the exercise to verify the records of the so called creditors. Many of them were not found at all .in the given address. Some of them stated that they had no dealing with the assessee. In one or two cases, the response was that they had no dealing with the assessee nor did they know him. Of course, these inquiries were made ex parte and in that view of the matter, the assessee would be allowed to contest such findings. Nevertheless, even if such facts were established through bi-partite inquiries, the liability as it stands perhaps holds that there was no cessation or remission of liability and that therefore, the amount in question cannot be added back as a deemed income under section 41(c) of the Act. This is one of the strange cases where even if the debt itself is found to be non-genuine from the very inception, at least in terms of section 41(1) of the Act there is no cure for it. The findings of tribunal upheld."

(iii). The ITAT Ahmedabad Bench vide order dated 01.10.2010 in the case of DCIT vs. Ratnamani Metals & Tubes Pvt. Ltd. (ITA No. 3783/Ahd/2008, relying on the decision of Hon'ble Punjab and Haryana High Court in the case of Smt. Sita Devi Juneja 187 Taxman 96 and of Hon'ble Madras High Court in the case of Tamilnadu Warehousing Corpn., 292 ITR 319, has held as under :

"11. The learned DR relied upon the order of the AO. On the other hand, the learned Counsel for the assessee reiterated the submissions made before the authorities below. However, considering the above provisions and decisions noted above, it is clear that the amount in question relates to purchase of building material on which there was a dispute of payment. The AO admitted that the amount remained unpaid in the books of account. Since the assessee explained that the amount relates to purchase of building materials for their project at Kutch which has been shown as capital goods in progress and that the amount has not been paid due to inferior quality of the material, would prove that the assessee has not claimed any allowance or deduction in any assessment year in respect of loss/expenditure or treating of liability and has not obtained any benefits whatsoever in subsequent year. Therefore, there is no question of remission or cessation of liability. Since the liability shown in the balance sheet of the assessee, therefore, facts and circumstances of the case would prove that the case of the

assessee is not covered by the provisions of section 41 (i) of the IT Act. We, therefore, do not find any justification to interfere with the order of the learned CIT(A). We confirm his findings and dismiss this ground of appeal of the revenue."

Following the aforesaid decisions, we are of the opinion that the Id. Authorities below are not justified to make addition by resorting to the provisions of section 41(1) of the Act. Accordingly, the addition of Rs.90,36,451/- made by the authorities below is found fit to be deleted."

Further, we observe that the ITAT, Mumbai in the case of Deputy Commissioner of Income Tax, Central Circle-4(2) Vs. M/s Sri Radhakrishna Shipping Ltd., ITA No.691/Mum/2018 dated 07.08.2019 adopting a similar view had held as under:

"8. We have given a thoughtful consideration to the issue before us and find substantial force in the contention advanced by the Id. A.R, that merely for the reason that the aforesaid "trade payables" were outstanding in the "books of account" of the assessee for the last many years, they could not have been held to have ceased in terms of Sec. 41(1) of the Act. As per Sec.41(1), it is only where allowance of deduction has been made in the assessment for any year in respect of loss, expenditure or trade liability incurred by the assessee (hereinafter referred to as the first mentioned person) and subsequently during any previous year, 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 of deduction has been made is in existence in that year or not. In our considered view, the A.O before characterising an outstanding liability as a ceased liability remains under a statutory obligation to show that the assessee had obtained some benefit in respect of such trading liability by way of remission or cessation thereof, during the year. We are of a strong conviction that on the standalone basis that a "trade liability" is outstanding in the "books of account" of an assessee for several years cannot suffice for bringing the same within the realm of the provisions of Sec.41(1) of the Act. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Delhi in the case of CIT, Delhi-II Vs.

Jain Exports (P) Ltd. (2013) 217 Taxman.com 54 (Del). In the aforesaid case, the Hon'ble High Court had observed that in order to attract the provisions of Sec. 41(1) of the Act, it is necessary that there should be a cessation or remission of liability. It was further observed by the Hon'ble High Court, that as the assessee before them had acknowledged its "debt" payable to the creditor under consideration, and there was no material to indicate that the parties had contracted to extinguish the liability, therefore, it could not be concluded that the said debt owed by the assessee towards the said party stood extinguished. Accordingly, we are of the considered view that as in the case before us the CIT(A) had rightly observed that in the absence of any evidence to conclude that there was a final remission or cessation of a "trading liability" or any part of it, therefore, the provisions of Sec.41(1) could not have been invoked by the A.O. As regards the adverse inferences drawn by the A.O in respect of the genuineness of the transactions under consideration, we are of the considered view, that as the respective amounts had not been "credited" in the "books of account" of the assessee during the year under consideration, therefore, for the said reason itself the provisions of Sec.68 were clearly ousted and no addition of the said amount could have been made in the hands of the assessee under the said statutory provision during the year under consideration. We thus not finding any infirmity in the order of the CIT(A), to the extent he had vacated the addition of Rs.76,36,425/- made by the A.O u/ss. 41(1)/68 of the Act, therefore, uphold the same. The Grounds of appeal No.1 and 2 raised by the revenue are dismissed."

Considering the aforesaid facts, we not being able to persuade ourselves to subscribe to the view taken by the lower authorities, who without satisfying the pre-conditions set out in Section 41(1) of the Act had dubbed the outstanding liabilities of the assessee company as ceased liabilities, thus, set-aside the order of the CIT(Appeals) and vacate the addition of Rs.25,60,829/- made by the A.O u/s.41(1) of the Act.

12. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in open court on 06th day of January, 2023

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 06th January, 2023
*****SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.