

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 268/Srt/2022 (Assessment Year 2018-19)
(Virtual hearing)

Shubham Developers, FP No. 53-59, TP 29, Vesugam, Vesu- Madalla, Vesu, Surat-395007. (Gujarat) PAN No. ACAFS 6671 F	Vs.	A.C.I.T., Central Circle-3, Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Biren Shah, AR
Department represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	25/04/2023
Date of pronouncement	28/04/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-4, Surat (in short, the Id. CIT(A)) dated 08/08/2022 for the Assessment Year (AY) 2018-19. The assessee has raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case, the Id. CIT(A) erred in confirming addition of Rs. 15,12,903/- made by the Assessing Officer under Section 41(1) of the Act on account of cessation and remission of liability from creditors.*
- 2. The assessee craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal."*

2. Brief facts of the case are that the assessee-firm is a builder and developers, filed its his return of income for the A.Y. 2018-19, was selected for scrutiny. During the assessment, the Assessing Officer noted that the assessee has shown various creditor. In order to verify

the genuineness of credit, the Assessing Officer issued notice under Section 133(6) of the Income Tax Act, 1961 (in short, the Act). The Assessing Officer made following summary of creditors and response of reply under Section 133(6) of the Act:

Sr. No.	Name of the Creditors	PAN	Amount Outstanding (Rs.)	Remarks
1	Dineshkumar Lalmani Maurya	BVVPD8977L	Rs. 8,30,600	No reply received
2	Malik Qsiurrehkhan Amiruddin CIZPM3309R	CIZPM3309R	Rs. 5,38,753	No reply received
3	Ramesh Laxman Sharma	CTZPS2361E	Rs. 1,43,550	No reply received
		Total	Rs. 15,12,903	

3. The assessee was asked to produce the persons for verification. The assessee filed its reply and confirmation of creditors against various works undertaking by them. The assessee also furnished copy of their bills, PAN and address. The assessee submitted that Section 41(1) is not applicable against the trading liability. Reply of assessee was not accepted by the Assessing Officer. The Assessing Officer held that reply of assessee is general in nature. No reply was received from such creditors. The contention of assessee that bills were raised only in A.Y. 2017-18. There is no clarity as to how such business exigencies to keep the amount outstanding for two years when the assessee has huge turnover in course. The Assessing Officer treated the sundry creditor as income of assessee and added amount of Rs. 15,12,903/- as income of assessee.

4. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed statement of fact and written submission. The submission of assessee is recorded in para 6.1 of order of Id. CIT(A). The assessee besides objecting against the addition of trading liability/credit. In without prejudice submission submitted that the assessee has offered income from three sundry creditors in A.Y. 2021-22. The assessee also furnished copy of Profit & Loss Account and computation of income and stated that confirming such addition would amount to double taxation.
5. Id. CIT(A) after considering the submission of assessee, upheld the addition by holding that the persons against whom, the assessee has shown liability are aluminum/glass worker, plumber or wooden worker, these people are generally of small means and cannot keep the balance outstanding for 3-4 years. The stand of assessee that they have voluntarily offered the income for A.Y. 2021-22, clearly shows that the liability cease to exist in the impugned assessment year. Offering the income in A.Y. 2021-22 itself goes to show that the sundry creditors were not really genuine in A.Y. 2018-19 and upheld the addition. Further aggrieved, the assessee has filed the present appeal before this Tribunal.
6. I have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental

Representative (Id. Sr. DR) for the revenue and have perused the orders of the lower authorities carefully. The Id. AR of the assessee submits that the liability was not ceased in the impugned assessment year. The assessee furnished copy of confirmation of all the creditors. No liability was ceased during the year under consideration. The trading liability cannot be added in the income of assessee. The Id. AR in his without prejudice submission, submitted that the assessee in A.Y. 2020-21 has included such income in its total income and offered the same for taxation. In case, the addition is upheld, that would amount to double taxation.

7. On the other hand, the Id. Sr.DR for the revenue supported the orders of lower authorities. The Id. Sr.DR for the revenue submits that the Id. CIT(A) while confirming the addition has clearly held that the liability was in fact ceased during the year i.e. the reason the assessee has shown in subsequently A.Y. 2020-21.
8. I have considered the submissions of both the parties and find that there is a very limited issue involved in the present appeal. The assessee in his alternative submission has submitted that they have included the income from sundry creditors in A.Y. 2020-21 and offered the same for taxation. Considering such submission, I direct the Assessing Officer to verify the facts and allow relief to the assessee in accordance with law. It is made clear that if the assessee has included

the income in A.Y. 2020-21, no addition in A.Y. 2018-19 be retained. I order accordingly.

9. In the result, this appeal of assessee is allowed.

Order announced in open court on 28th April 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 28/04/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr. Private Secretary, ITAT, Surat