

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.2311/DEL/2019
Assessment Year 2015-16

Raunika Fashion Pvt. Ltd. J- 1906 LGF (Lower Ground Floor) CR Park New Delhi	Vs.	The Income Tax Officer Ward-21(1) New Delhi
TAN/PAN: AADCR2715H		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri Atiq Ahemad, Sr.DR		
Date of hearing:	16	05	2023
Date of pronouncement:	23	05	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-VII, New Delhi ('CIT(A)' in short) dated 23.01.2019 arising from the assessment order dated 28.12.2017 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16.

2. As per the grounds of appeal, the assessee has challenged the additions made by the Assessing Officer under Section 41(1) of the Act amounting to Rs.69,59,056/- on account of cessation of liability.

3. Briefly stated, the assessee e-filed its return of income

declaring total income at 'Nil' and claimed loss of Rs.9,27,239/- for the Assessment Year 2015-16 in question. The assessment was framed under Section 143(3) of the Act wherein the Assessing Officer *inter alia* alleged that four parties appearing as sundry creditors namely, Shri Ram Hari Ram Jewellers, Shovana Enterprises, Royal Sales Corporation, Eksara Trading Company aggregating to 69,59,056/- were outstanding for last three years. A notice issued under Section 133(6) to such creditors to confirm whether liability still existed or not but could not be served. The assessee responded to the show cause notice issued by the AO in this regard and submitted that purchases were made from these parties against bills and VATs were charged and also partly paid against these bills. All these bills are from registered VAT dealers and proper entries have been made in the books of account in this regard. Copies of bills of all parties were also presented before the Assessing Officer for verification. The assessee further contended before the Assessing Officer that some payments were made to these parties but however due to ongoing financial problem and lack of fund, the assessee could not make full payment resulting in outstanding balances in the books of account. The assessee thus contended before the Assessing Officer that the liability existed in the books of account and therefore provisions of Section 41(1) cannot be invoked. The Assessing Officer however based on non service of notice under Section 133(6) concluded that the liability has ceased to exist. Provision of Section 41(1) were invoked and the additions were carried out by amount of Rs.69,59,056/-.

4. Aggrieved by the additions, the assessee preferred appeal before the CIT(A). The CIT(A) however declined to give any

relief.

5. When the matter was called for hearing, none appeared for the assessee. Accordingly, the matter was proceeded *ex-parte*.

6. The Id. DR for the Revenue relied upon the respective orders of the lower authorities.

7. We have carefully perused the assessment order and the first appellate order and the case records with the assistance of the Id. DR for the Revenue. The applicability of Section 41(1) in the facts of the case is in controversy.

7.1. The assessee in the instant case has claimed that the liability shown under the head 'sundry creditors' arose due to non payment but all the creditors / registered VAT dealers had issued tax invoices, a copy of which was placed before the Assessing Officer. The *bona fides* of the liability thus cannot be effaced merely because of non response to the notice under Section 133(6). The longevity of the outstanding *per se* cannot be a ground to treat such outstanding as cessation of liability contemplated under Section 41(1) of the Act. In the background of such claim of assessee, the applicability of Section 41(1) of the Act on outstanding trading liabilities as reflected in the balance sheet has been called in questions.

7.2 Section 41(1) of the Act states that when allowances in respect of an expenditure or trading liability etc. is made in a year and the assessee obtains any benefit, whether in cash or otherwise in a subsequent year, such benefit shall be deemed to be profits and gains of the business in that subsequent year, whether such business is in existence or not in the subsequent year. The Section has the effect of deeming such cessation or remission of liability

as income in departure with the general law where such remission or cessation is not treated as an income.

7.3 Coming to the facts, as emerges above from the case records, it is the case of the assessee that trading liabilities of Rs.69,59,056/- claimed to be payable to several parties are subsisting liability. Despite the observation of the Assessing Officer that such creditors could not be traced on the address given by the assessee, it is incorrect on the part of the Revenue to conclude liability shown in the balance sheet to be non existing liability for the purposes of Section 41(1) of the Act. It is the contention of the assessee before lower authorities that Section 41(1) cannot be invoked where the assessee has not written back these amounts in the books of accounts.

7.4 The issue is squarely covered in favour of the assessee by the judgment of Hon'ble Delhi High Court in the case of *Vardhman Overseas Ltd.*, 343 ITR 408 (Del) and *Dattatray Poultry Breeding Farm P. Ltd. vs. ACIT (2019) 104 taxmann.com 366 (Guj.)*. The Hon'ble Delhi High Court in *Vardhman* case *inter alia* observed that for invocation of Section 41(1), it is necessary that the assessee should have received 'some benefit' with respect to all such trading liability. However, the benefit in respect of trading liability should be 'by way of remission or cessation of the liability'. The assessee in the instant case, has continued to recognize the liability and one cannot say that the liability is not unenforceable against the assessee without its discharge or reversal. A mere fact of expiry of period of limitation to enforce it does not, by itself, constitute cessation of liability. The Hon'ble Gujarat High Court in the case of *Dattatray Poultry (supra)* similarly has observed that where the existence of liability was

doubted, same could have been disallowed in the year in which it is claimed or could have been treated as unexplained credit in that relevant year. The Hon'ble Gujarat High Court observed that while the assessee has continued to declare the trading liability in its books of account, no benefit can be said to have been obtained in respect of such trading liability by way of remission or cessation thereof and thus the requirement of Section 41(1) are not satisfied. Guided by the observations in the judicial precedents, we find merit in the case of the assessee for reversal of additions. The additions made under Section 41(1) is thus set aside and reversed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 23/05/2023

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

DATED: /05/2023
prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**