

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

**BEFORE SH. SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.631/Del/2021  
Assessment Year: 2017-18

<b>DCIT Central Circle-29 New Delhi</b>	<b>Vs</b>	<b>M/s. Surya Kiran Finance Corporation 43/1, Rajpur Road, Civil Lines, Delhi-110054 PAN No.ABGFS7841A</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Vivek Vardhan, Sr. DR
Respondent by	Sh. T. M. Shivakumar, Advocate

Date of hearing:	14/06/2023
Date of Pronouncement:	/06/2023

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A)-30, New Delhi dated 05.02.2021 pertaining to A.Y.2017-18.

2. The only grievance of the revenue is that the CIT(A) erred in deleting the disallowance of Rs.15695780/- .

3. Briefly stated the facts of the case are that during the course of the scrutiny assessment proceedings the AO noticed that the assessee has repaid loans amounting Rs.15695780/-. The AO was of the opinion that these companies are bogus companies of different entry operators and was further of the opinion that the

repayment of loan is also bogus and there is a cessation of liability u/s. 41 (1) of the Act and went on to make the addition of Rs.15695780/-.

4. Assessee agitated the matter before the CIT(A) and vehemently contended that the loans taken in earlier year were repaid by the assessee, therefore, there is no question of cessation of liability and infact the assessee has discharged the loan liability. After considering the facts and the submission the CIT(A) observed as under :-

*“It is seen that the opening balances of these six parties have been paid in full during the year and the balances outstanding at the end of the year in Nil as also evident from the detailed chart produced in assessment order. The Hon’ble Supreme Court in the case of Chief CIT vs. Kesaria Tea Co. Ltd.[2002] 122 Taxman 91 (SC), has observed that in order to apply Section 41(1), the following points are to be kept in view:*

- (1) *In the course of assessment for an earlier year, allowance or deduction has been made in respect of trading liability incurred by the assessee;*
- (2) *Subsequently, a benefit is obtained in respect of such trading liability by way of remission or cessation thereof during the year in which such event occurred;*
- (3) *in that situation the value of benefit accruing to the assessee is deemed to be the profit and gains of business which otherwise would not be his income; and*
- (4) *such value of benefit is made chargeable to income tax as the income of the previous year wherein such benefit was obtained.*

*Thus, in order to invoke the provisions of Section 41(1) of the Act, there must have been a trading liability in respect of which an allowance or deduction has been claimed by the assessee in any earlier years and during the year, there must be a benefit to the assessee by way of remission or cessation of such trading liability. However, this is not in the case of appellant as the AO has not brought anything in the order to prove that the appellant has claimed any allowance or deduction in respect of these unsecured loans in any earlier years and further, he could not prove that there has been cessation or remission of these liabilities during the year as there is no waiver of*

*these loans by the lenders. In this case, the amounts have been repaid in full during the year itself. The fact that the payment of these liabilities has been made in full during the year is also supported by the details provided in the assessment order. In view of the facts and circumstances of the case discussed above, I am of the considered view that provisions of Section 41(1) of the Act are not applicable in the facts of the case of the appellant. In view of the above, the addition of Rs.1,56, 95, 780/- hereby deleted and the appellant gets relief on this ground of appeal.*

5. Before us the DR strongly supported the findings of the AO and the Counsel reiterated what has been stated before the CIT(A).

6. We have carefully considered the orders of the authorities below. The peculiar fact of the case is that during the year the assessee has repaid the loan liability taken in earlier year amounting to Rs.15695780/-. We fail to understand once the liability has been repaid by the assessee how could it be a case of cessation of liability u/s. 41 (1) of the Act. The CIT(A) has rightly deleted the addition which calls for no interference. The appeal of the revenue is dismissed.

Order announced in the open court on 19.06.2023.

Sd/-

**[SAKTIJIT DEY]**  
**JUDICIAL MEMBER**

Dated: .06.2023

\*Neha\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Sd/-

**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar  
ITAT, New Delhi