

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "H" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

ITA No.8240/Del/2019

[Assessment Year : 2015-16]

Uretek India Pvt.Ltd., C/o-Rohit Malik & Associates, 1212A, Chiranjiv Tower, 43, Nehru Place, New Delhi-110019. PAN-AAACU9168L	vs	ACIT, Circle-27(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Dr. Rakesh Gupta, Adv. & Shri Somil Agarwal, Adv.	
Respondent by	Shri Gurpreet Shah Singh, Sr.DR	
Date of Hearing	08.06.2023	
Date of Pronouncement	14.07.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2015-16 is directed against the order of Ld. CIT(A)-16, New Delhi dated 08.08.2019. The assessee has raised following grounds of appeal:-

- 1(a). *“There were outstanding creditors more than two years old appearing in the balance sheet of the appellant company totaling at Rs. 2,07,29,190/-. These liabilities were incurred by the company in respect of the expenditure incurred in the preceding years, the genuineness of which has not been disputed in the relevant preceding years. Moreover, there was no remission or cessation of the said liabilities by the said creditors nor the appellant company has written off these liabilities in its books of accounts during the year.*

- b) *The assessing officer erred on facts and in law by raising doubts over the genuineness of the creditors just because they were more than two years old and treating them as unexplained cash credit u/s 68 of the Income Tax Act, 1961. The said treatment and consequent addition of Rs. 2,07,29,190/- u/s 68 was illegal, erroneous, without jurisdiction and untenable on facts and in law, and the same deserves to be deleted.*
- c) *That the Commissioner of Income Tax (Appeals) while correctly allowing the claim of the appellant that no addition u/s 68 could be made, on facts and in law went wrong in treating the said sum of Rs. 2,07,29,190/- as remission or cessation of trading liability by invoking the provisions of Section 41(1) of the Income Tax Act, 1961. The said addition of Rs. 2,07,29,190/- sustained by the Commissioner of Income Tax (Appeals) by invoking the provisions of section 41(1) of the Income Tax Act, 1961 being illegal, erroneous and without jurisdiction, deserves to be deleted.*

The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

2. The only effective ground raised by the assessee in this appeal is against the sustaining of addition amounting to INR 2,07,29,190/- treating the same as remission of liabilities u/s 41(1) of the Income Tax Act, 1961 (“the Act”).

3. Facts giving rise to the present appeal are that the assessee is a company, filed its return of income through electronic mode on 30.10.2015, declaring total loss of INR 63,58,859/- which was processed u/s 143(1) of the Act. Thereafter, the case was selected for scrutiny assessment. During the course of assessment proceedings, the Assessing Officer (“AO”) noticed that there were brought forward creditors amounting to INR 2,07,29,190/-. The

assessee was show-caused by the Assessing Authority to explain the outstanding creditors. The response of the assessee was not found acceptable and the Assessing Authority proceeded to make disallowance of INR 2,07,29,190/- u/s 68 of the Act.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, sustained the addition. Although, he made addition u/s 41(1) of the Act instead of section 68 of the Act, as made by the Assessing Authority.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Apropos to Grounds of appeal Nos. 1(a), 1(b) & 1(c), Ld. Counsel for the assessee, Shri Rakesh Gupta, Adv. vehemently argued that action of the AO is *ex-facie*, unjustified, illegal and is a case of complete non-application of mind. He drew our attention to para 4 of the assessment order where the AO recorded that the liability are ceased to exist and he proceeded to make disallowance u/s 68 of the Act. Further, he submitted on the contrary Ld.CIT(A) sustained the impugned addition by invoking the provision of section 41(1) of the Act, without giving any notice to the assessee and contrary to the law laid down by the Hon'ble Jurisdictional High Court in the case of ***CIT-III vs Shri Vardhman Overseas Ltd. in ITA No.774/2009*** order dated **23.12.2011**.

7. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that the Revenue has not disputed the fact that the AO made the impugned addition by making disallowance u/s 68 of the Act. For the sake of clarity, para 4 of the assessment order is reproduced as under:-

4. *“During the course of assessment proceedings, assessee has submitted following list of creditors, whose amount is outstanding for more than 3-years:*

Name of the creditor	Years outstanding	Amount outstanding
<i>Uretek International Aus Pty Ltd.</i>	<i>More than 2-years</i>	<i>20576100.97</i>
<i>Vikram Korla</i>	<i>More than 2-years</i>	<i>153089</i>
Total		2,07,29,190

The A/R of the assessee vide note sheet dated 21/12/2017 was show caused as to why 3-years outstanding sundry creditors should not be added back to the income of the assessee as the liability from them has ceased to exist.

In response to the above show cause assessee submitted its reply, which after perusal was found not satisfactory. The creditors are more than 3-years old and they have not taken any step for recovery of the outstanding demand. It raises doubt over the genuineness of the creditors. Hence, an amount of Rs. 2,07,29,190/- is being disallowed u/s 68 of the Act and is added back to the income of the assessee. Penalty proceedings u/s 271(1)(c) is being initiated for concealment of income.”

9. The above finding of the AO clearly demonstrates that the impugned addition was made by invoking the provision of section 68 of the Act. However, Ld.CIT(A) accepting the submissions of the assessee that the impugned addition does not fall within the ambit of section 68 of the Act, proceeded to

sustain the addition by invoking the provision of section 41(1) of the Act. The contention of Ld. Counsel for the assessee is that Ld.CIT(A) could not have done so without giving notice to the assessee. Moreover, Ld.CIT(A) relied upon the decision of the Hon'ble Madras High Court rendered in the case of **M/s. West Asia Exports & Imports vs ACT** reported in **TCA No.302/2008** dated **11.03.2019**, ignoring the binding precedents of the Hon'ble Supreme Court and Hon'ble Delhi High Court. Thus, in view of the submissions made at bar the short question, that arises whether Ld.CIT(A) was justified in sustaining the addition when himself was of the view that the impugned addition would not fall under the ambit of section 68 of the Act.

10. As per section 251(1)(a), Ld.CIT(A) is empowered in an appeal against the order of assessment to confirm, reduce, enhance, annul the assessment but it does not speak of modification of the order. In the present case, Ld.CIT(A) in essence has modified the assessment order by sustaining the addition u/s 41(1) of the Act instead of section 68 of the Act. Therefore, in our considered view, Ld.CIT(A) travelled beyond the jurisdiction conferred by the Act. Moreover, both the Authorities have failed to take note of the binding judgement of the Hon'ble Delhi High Court in the case of **CIT-III vs Shri Vardhman Overseas Ltd.** (supra) wherein Hon'ble High Court after examining the law on the issue has held as under:-

23. *“In the course of his arguments, the learned standing counsel referred to Section 28(iv) of the Act, according to which the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession shall be*

chargeable to income tax under the head profits and gains of business or profession. He submitted that since the amounts remained unpaid to the sundry creditors for a period of 4 years or more, the monies were available to the assessee in its business which amounted to a benefit arising from the business carried on by the assessee. The contention seems attractive at first blush but cannot bear scrutiny. The provisions of Section 41(1) have been specifically incorporated in the Act to cover a particular fact situation. The section applies where a trading liability was allowed as a deduction in an earlier year in computing the business income of the assessee and the assessee has obtained a benefit in respect of such trading liability in a later year by way of remission or cessation of the liability. In such a case the section says that whatever benefit has arisen to the assessee in the later year by way of remission or cessation of the liability will be brought to tax in that year. The principle behind the section is simple. It is a provision intended to ensure that the assessee does not get away with a double benefit once by way of deduction in an earlier assessment year and again by not being taxed on the benefit received by him in a later year with reference to the liability earlier allowed as a deduction. In CIT, Lakshamma, (1964) 52 ITR 789 Hegde, J., (as he then was) speaking for the Mysore High Court observed that Section 10(2A) of the Indian Income Tax Act, 1922, which is the Mysore V. fore-runner of Section 41(1) of the present Act, was introduced w.e.f. 01.4.1955 to get over the judgment of the Bombay High Court in Mohsin Rehman Penkar v. CIT (1948) 16 ITR 183 holding that remission of a liability in a subsequent assessment year in respect of which the assessee had obtained a deduction in an earlier assessment year, can never become income for the purpose of taxation, where the assessee maintains accounts in the mercantile system of accounting. Thus, it may be seen that Section 10(2A) of the Indian Income Tax Act, 1922 and Section 41(1) of the

present Act of 1961 were intended only to govern a particular factual situation. Section 28(iv), on the other hand, is a general provision which brings to assessment the value of any benefit or perquisite arising to the assessee from the business carried on by him. If, as contended before us by the learned standing counsel for the revenue, the alleged benefit enjoyed by the assessee by utilizing the amounts payable to the sundry creditors in its own business for a period of four years or more is to be brought to tax under Section 28(iv), notwithstanding that the conditions of Section 41(1), which govern the factual situation, are not satisfied, then it would render the latter section otiose or a dead letter. If we accept the argument of the learned standing counsel for the revenue, it would also introduce an element of uncertainty or subjectiveness in ascertaining as to what would be the lapse of time that would be necessary to render a liability to pay the creditors ineffective, which would result in an alleged benefit to the assessee. Moreover, if after the taxing of the amount u/s 28(iv) on the ground that considerable time has elapsed from the date of the debt during which the assessee had the benefit of the monies in his business, it is found that in another later year the creditor has recovered the money from the assessee, there is no provision in the Act to allow deduction for such payment. The section cannot be made subject to such vagaries or subjectiveness in its applicability. It is also necessary to bear in mind that in the case of CIT v. Sugauli Sugar Works (P) Ltd. (supra) a contention was in fact advanced before the Supreme Court on behalf of the revenue that the liability to the creditors remained unpaid by the assessee for more than 20 years and there was practically a cessation of the debt which resulted in a benefit to the assessee which should be brought to tax under Section 41(1). This argument was not given effect to by the Supreme Court, nor did it consider fit to apply Section 28(iv). It is a well settled rule of interpretation of statutes that a construction that reduces one of the two provisions in a statute to a

useless lumber or a dead letter would not amount to a harmonious construction and that a familiar approach in such cases is to find out which one of the two provisions is a special provision made to govern a certain situation and to exclude that situation from the applicability of the general provision. If we apply this rule of interpretation to the case before us, we must necessarily hold that while Section 28(iv) would apply generally to all benefits or perquisites which arise to the assessee from the business carried on by him, the benefit which he obtains by way of remission or cessation of a trading liability in a later year, in respect of which he has obtained a deduction in an earlier year in computing the business income, should be governed by Section 41(1) which is the specific provision governing the factual situation and not by Section 28(iv). This way there would be no conflict between the two provisions and both will be given effect to.

24. *We may clarify that in the present case we are not concerned with Explanation-1 to Section 41(1)(a). Our judgment is only on the applicability of Clause (a) of sub-section (1) of Section 41 and as to what constitute remission or cessation of a trading liability. It may be noted that in the present case, the assessee has not unilaterally written back the accounts of the sundry creditors in its profit and loss account.”*

11. In the present case, the AO as well as Ld.CIT(A) have recorded the fact that the creditors are outstanding for more than 02 years. However, in the case before Hon’ble Supreme Court in the case of **CIT vs Sugauli Sugar Works Pvt.Ltd. (1999) 236 ITR 518** as recorded by the Hon’ble Delhi High Court that the liabilities were existing for more than 20 years. Therefore, in the light of above-mentioned binding precedents, we are of the considered view that the authorities below were not justified in making the impugned addition.

We therefore, direct the AO to delete the addition. Grounds raised by the assessee are thus, allowed.

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

Order pronounced in the open Court on 14th July, 2023.

Sd/-

**(M.BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI