

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.7330/Del/2019, A.Y. 2014-15

ITO, Ward-8(3), New Delhi	Vs.	M/s. Eunite Technologies Pvt. Ltd. 22, Ramanuja Computer Complex, Okhla Industrial Area, Phase-II, New Delhi- 110020 PAN No. AAGCS8425G
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Navin Agarwal, CA and Ms. Vaishali Garg, CA
Revenue by	Sh. Vivek Kumar Upadhyay, SR. DR

Date of hearing:	11.07.2023
Date of Pronouncement:	27.07.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Revenue against the order dated 28.06.2019 of the CIT(A)-34, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') arising out of an appeal before it against the order dated 28.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-8(3), New Delhi (hereinafter referred as the Ld. AO).

2. The brief facts of the case are that appellant is engaged in the business of trading of computers, printers and accessories. Return declaring an income of Rs. 8,07,150/- was filed on 29.11.2014. The case was selected for

scrutiny under CASS. The AO has completed the assessment u/s 143(3) vide order dated 28.12.2016 after making addition of Rs. 52 lacs u/s on account of share capital and Rs. 2,18,51,709/- u/s 41(1) of the Act. Total income was assessed at Rs. 2,78,59,359/-.

2.1 The assessee has shown sundry creditors to the extent of Rs. 17,89,54,946/- during the year under consideration. The Ld. AO has issued the notice u/s 133(6) to the creditors to verify the identity, creditworthiness and genuineness of the transaction. In response to the notice, M/s CCS Computers Pvt. Ltd. have filed the confirmation alongwith the copy of ledger account. Other concerns have not filed any information therefore Ld. AO deputed the Inspector to serve the notice to other companies / concerns but none of the company exist at the given address. The Ld. AO has asked the assessee to produce the representative of the other companies whom Ld. AO has issued notice u/s 133(6). The assessee has filed the confirmation and copy of return of the creditors and submitted before the Ld. AO that outstanding balances of the parties is yet to be repaid fully. The Ld. AO has treated the creditors bogus as sundry creditors does not exists at the address and appellant has failed to produce the representative of these companies despite various opportunities provided to them and credit balance had not been repaid till now. Thus AO has added Rs.2,18,51,709/- as deemed income as per provisions of section 41(1) of the Act.

3. Against the order, assessee filed the appeal and Ld. CIT(A) has allowed the appeal of the assessee with following relevant findings ;

“7.3 I have considered the facts of the case, finding of the AO and submission of the appellant. The AO has added the following sundry creditors u/s 41(1) :-

<i>S. No.</i>	<i>Name of Creditor</i>	<i>PAN</i>	<i>Name of proprietor/Direct OR</i>	<i>Amount in INR</i>

1.	Alpha Vision	AABPH6377G	Mr. Chander Shekhar Hallen	31,60,280/-
2.	Bhaskar International	BHMPK1942D	Mr. Manoj Kumar	47,32,296/-
3.	Candy Eletronics Private Limited	AABCC9713G	Mr. Satya Pal Chauhan (Director)	39,21,761/-
4.	Shree Shyam Enterprises	BBKPK3797E	Mr. Prashant Kumar Khanna	36,57,900/-
5.	Shree Sidhi Sales Corporation	ANVPM0898E	Mr. Mangal	39,44,104/-
6.	VVS Computers	AHSPM9217G	Mr. Gautam Malhotra	24,35,368/-
			Total	2,18,51,709/-

The AO has issued the notice u/s 133(6) to the aforesaid creditors and served them through Inspector, the Inspector reported that notice could not be served as the creditors did not found exist in the given address. The appellant has filed the balance confirmation from the party, copy of the ITR PAN No., copy of balance sheet in respect of these creditors but AO has no treated them genuine as appellant failed to produce the representative of these companies and added them as deemed income as per provisions of section 41(1) of the Act. During the course of appellate proceedings, appellant has submitted that there is nothing on record to suggest that the creditors have granted any remission and cessation to the appellant company during the year under consideration. The case of the appellant is not covered by Explanation 1 of section 41(1) which envisages the act of unilateral writing of liability by the appellant company. No liability has been so written off wholly or partly by the appellant company. The liability on account of sundry creditors duly reflected in the account books of the appellant company and the corresponding books of account of the respective sundry creditors. The AO has made the addition solely on the basis of the Inspector's report who proceeded on the false assumption that all the creditors were companies and never considered that these entities could be proprietorships, firms or other than companies. The appellant has brought on record complete details showing continued existence of liability. Sundry creditors have visited the office of the AO on December 28, 2016 for recording their statement u/s133(6) of the Act and also filing

their written reply alongwith balance information but AO has not accepted the request of sundry creditors, therefore they have send the reply through courier. The appellant has further submitted that during FY 2016-17 the appellant company has entered into settlement with its sundry creditors and as per terms of settlement with each party has written back only an agreed portion of amount payable to its creditor and rest of the amount is shown as net payable to the creditors. The appellant has also made certain payments to the said creditors and appellant has enclosed the copy of the ledgers in the paper book page no. 383 to 394.

7.4 The AO has made the addition without considering the documents and evidences furnished by the appellant in respect of creditors outstanding during the year under consideration. The appellant company has furnished complete details like PAN, copies of ITR, financial statements of the creditors and continuation of liability in the books of appellant company. The appellant has also furnished evidence regarding subsequent payments made by the appellant company to the creditors in part in pursuant to the settlement deed entered into with the creditors. Part liability stood remitted in subsequent year and appellant has shown it as income for that subsequent year. The appellant has furnished the additional evidence during the appellate proceedings; therefore remand report is called for from the AO. In the remand report AO has made the fresh enquiry by issuing notice u/s 133(6) to the above creditors and it is stated by the AO that all the notices remained undelivered / unclaimed and returned back to this office. The MOU which was entered by the appellant with the creditors, AO found them afterthought of appellant company and stated that AO has rightly added these creditors to the total income of the assessee. For invoking provisions of 41(1) the pre conditions as per the provision are required to be satisfied i.e. that an allowance must have been made in any previous year, and any amount has been obtained in response to such allowance, the liability must have been ceased / remitted / written off and certain benefit should arise from such cessation. The AO has not brought on record the details of the liabilities which has ceased to be exists and any amount whether in cash or otherwise have been obtained by appellant in respect of such allowance of trading liabilities. The appellant has filed the summary of creditors of past three years along with ledger account of relevant creditors and bank

*statements for relevant period reflecting the payments made to these creditors on various dates. The AO has not examined these documents and details of the payments and submitted the report only on the basis of the report of the Inspector and notice issued in the remand proceedings u/s 133(6). Since there is no cessation of liability, section 41(1) has no application and the disclosure of liability by the appellant company in its balance sheet amounts to an acknowledgement of the debts and liability was enforceable in a court of law. In the case of **CIT Vs Sugauli Sugar works (P) Ltd. (1999) 236 ITR 518 Hon'ble Apex Court** held while affirming the decision of Hon'ble Calcutta High Court in respect of cessation of debts u/s 41(1) that "It will be seen that the following words in the section are important: 'the assessee had 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 him'. Thus, the section 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."*

4. Department is in appeal raising following grounds ;

"1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs. 2,18,51,709/- ignoring the fact that the assessee totally failed to prove the genuineness, creditworthiness and identity of the Sundry Creditors, the onus of which is on the assessee.

2. The appellant craves leave to add, amend or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

5. Heard and perused the record.

6. Ld. DR submitted that Ld. CIT(A) has not taken into consideration the detailed investigation of the issue by the Ld. AO. It was submitted that Ld. CIT(A) has failed to take into consideration the report of Inspector who was

deputed by Ld. AO to serve the notices u/s 133(6) and as per Inspector's report the sundry creditors does not exist on the addresses.

6.1 On the other hand, Ld. AR supported the findings of Ld. CIT(A).

7. Giving thoughtful consideration to the matter on record it comes up that at the appellate stage assessee had filed an application under Rule 46A of the Income Tax Rules for admitting additional evidences. The appellant has filed the settlement agreement entered with sundry creditors and amount written back an agreed portion of amount payable through its creditors, copy of their ledgers and copy of audited financial statement as additional evidences. Additional evidences was admitted by Id. CIT(A) and Remand report was called for from the Ld.AO.

8. It can be seen from the order of Ld. CIT(A) that he has duly taken into consideration the fact that no liability has been written off wholly or partly by the appellant company, so Explanation 1 of Section 41(1) is not applicable. Ld. CIT(A) has rightly observed that AO has not brought on record the details of the liabilities which has ceased to be exist and any other amount whether in cash or otherwise have been obtained by appellant in respect of such allowance of trading liabilities.

8.1 Ld. CIT(A) has taken into consideration the fact that the appellant has filed the summary of creditors of past three years along with ledger account of relevant creditors in the bank statements for relevant period reflecting the payments made to this creditors on various dates which remain unexamined by Ld. AO in the remand report.

9. The Bench is of considered view that the report of Inspector with regard to the service of notice u/s 133(6) cannot be so sacrosanct that all the evidences filed by the assessee like details of PAN, copies of ITR, financial

statements of the creditors and the fact of continuation of liability in the books of appellant company can be ignored. Thus, on facts and law both, Ld. AO had erred which has been duly correct by Ld. CIT(A) and the impugned order requires no interference. The ground no. 1 raised by the Revenue has no substance, the same is decided against the Revenue. **The appeal of Revenue is dismissed.**

Order pronounced in the open court on 27th July, 2023.

**Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Dated :27th /07/2023

Binita, Sr. PS

Copy forwarded to: -

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

By Order

Assistant Registrar,
ITAT, Delhi