

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "E" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri ABY T. Varkey (JM)

I.T.A. No. 3336/Mum/2023 (A.Y. 2014-15)

M/s. Trend Setters 285, 5 th Floor Engineer Building Shamaldas Gandhi Marg, Princess Street Mumbai-400 002. PAN : AAFT1573B (Appellant)	Vs.	ACIT-18(3) Earnest House Nariman Point Mumbai-400 021. (Respondent)
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Assessee by	Shri Govind Jhaveri
Department by	Shri P.D. Chougule
Date of Hearing	29.01.2024
Date of Pronouncement	29.01.2024

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 14.8.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2014-15. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of Rs. 29,50,406/- made by the Assessing Officer under section 41(1) of the Act.

2. The assessee is engaged in the business of export of home textile products. During the course of assessment proceedings, the Assessing Officer called for the details of trade creditors from whom the assessee had purchased goods. The Assessing Officer noticed that following sundry creditors are outstanding for about 7/8 years :-

NAME OF SUNDRY CREDITORS	CREDIT AMOUNT
P.L. Dawer Silk Mill Pvt. Ltd.	10,61,920.65
P.L. Dawer Silk Mills	1,19,395.00
J. Tex	10,31,981.00
S.J. Dawer & Son	5,81,329.00
Jaydeep J. Dawer (HUF)	(33,752.50)
Pooja Textiles	1,89,533.00

Aggregate outstanding amount of the above said creditors was Rs.29,50,406/-. In order to verify the correctness of the same, the Assessing Officer issued summon u/s 131 of the Act to M/s. P.L.Dawer Silk Mill Pvt. Limited. The director of above said company named Mr. Jaideep J. Dawer, appeared before the AO and a Statement was taken from him. In the statement, he stated that the aggregate amount due from the assessee was to the tune of Rs. 1.04 crore. He also submitted that they have taken legal recourse against the assessee for recovery of the above said amount and the matter is pending before Hon'ble Gujarat High Court. Based on the above said fact, the Assessing Officer concluded that the assessee has no intention to pay this amount and hence the same is assessable to income tax act under section 41(1) of the Act. Accordingly, he assessed the above said amount of Rs. 29,50,406/- as income of the assessee under section 41(1) of the Act. The learned CIT(A) also confirmed the same and hence the assessee has filed this appeal before the Tribunal.

3. We heard the parties and perused the record. The outstanding amount shown by the assessee against the Dawer Group was Rs. 29,50,506/-. We notice that the director of the above said group has appeared before the Assessing Officer and confirmed that a sum of Rs. 1.04 crore is due from the assessee. He has also stated that they have taken legal recourse against the assessee for recovery of the amount due from the assessee. We notice that the amount shown by the assessee as outstanding is lesser than the amount mentioned by the director as due from the assessee, meaning thereby, there should not be any doubt on the genuineness of the outstanding balance

shown by the assessee. We notice that the AO has made the addition u/s 41(1) of the Act on the reasoning that the assessee does not have intention to repay the outstanding balance. We are afraid, the said reasoning should not be a ground for making addition u/s 41(1) of the Act. In any case, the very fact that the Dawer group has initiated legal proceedings would show that there is some dispute between the parties.

4. The provisions of section 41(1) of the Act will apply in a case where the assessee gets benefit by way of remission of secession of trading liability. This was so held by Hon'ble Supreme Court in the case of Sugauli Sugar Works Pvt. Ltd. (1991) 236 ITR 518. In the facts of the present case, we noticed that there is no remission or secession of liability, which is proved by the fact that the director of the creditor has confirmed the outstanding balance and has also stated that they have initiated legal proceedings against the assessee. Accordingly, we are of the view that there is not question of invoking the provisions of section 41(1) of the Act and it was wrongly invoked by the Assessing Officer in assessing the impugned amount in the hands of the assessee. Accordingly, we are of the view that the learned CIT(A) was not justified in confirming the addition. Accordingly we set aside the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to delete the addition of Rs. 29,50,406/- made by him under section 41(1) of the Act.

5. In the result, appeal filed by the assessee is allowed.

Order pronounced on 29.1.2024,

Sd-
(ABY T. Varkey)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 29/01/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent

3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai