

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.3186/Mum/2024
(Assessment Year :2014-15)**

Shivaji Irmali Chamtoli, Kulgaon S.O. Ambarnath Thane- 421503	Vs.	Commissioner of Income Tax (Appeals) Mumbai
PAN/GIR No.AAGPI4054G		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Bhangapatil Pushkaraj Ramesh
Date of Hearing	10/12/2024
Date of Pronouncement	13/12/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 27/03/2024 passed by Id. CIT(A) Pune -11 for the quantum of assessment passed u/s.143(3) r.w.s. 147 for the A.Y.2014-15.

2. At the outset, the appeal is time barred by 21 days. In the petition of condonation of delay it has been stated that the assessee was unaware of this order as he was pre-occupied in his work related to the firm wherein he was a partner and the firm was going through process of insolvency before the NCLT

and strict time line was imposed and accordingly, he was not aware that the order has been passed by the Id. CIT(A) as he did not check the portal. Since it is a marginal delay and looking to the aforesaid reasonable cause, the delay is condoned.

3. In the grounds of appeal, the assessee has challenged the addition of Rs.13,34,000/- made u/s.41(1) of the Income Tax Act.

4. The brief facts are that assessee is an individual deriving income from construction activity, supply of building material and sale and purchase of land. During the course of scrutiny proceedings, the assessee was asked to submit the details of sundry creditors and loans during the year and the details of payment made to them. The Id. AO noted that there were following liabilities outstanding as opening balance in the balance sheet for more than three years:

Sr. No.	Name of Party	Amount
1	Gopinath Kolekar	1,34,000/-
2	P.D. Ingale	9,50,000/-
3	Manisha Desai	2,50,000/-
	TOTAL	13,34,000/-

5. The Id. AO on the presumption that since these liabilities are outstanding for more than three years, he invoked the provision of Section 41(1) thereby rejecting the contentions of the assessee that these are liabilities on account of loan which are still due and made the addition of Rs.13,34,000/-.

6. Before the Id. CIT (A), assessee submitted that the liability was in the form of loan taken in the earlier years which assessee has repaid subsequently. The party wise details of loan was as under:-

1. *Gopinath Kolekar Assessee had received loan of Rs. 1,34,000 from the said lender on October 08, 2011 Loan Confirmation from the lender, ITR-V for the said AY and Receipt entry highlighted in the Bank Statement have been attached in the Paperbook*

2. *P.D. Ingale: Assessee had received loan of Rs. 9,50,0000 from the said lender on October 28, 2011 Loan Confirmation from the lender, ITR-V for the said AY and Receipt Entry highlighted in the Bank Statement have been attached in the Paperbook.*

3. *Bombay Chlorides Private Limited. Assessee had received loan of Rs. 2.50,000 from the said lender as on June 06, 2011 and never from Mrs. Manisha Desai Ld. AO has mistakenly considered Manisha Desai instead of Bombay Chlorides Private Limited, wherein Manisha Desai is Director. The Loan has been duly repaid on August 19, 2014. Loan Confirmation from the lender, ITR-V for the said AY and Receipt & payment entry highlighted in the Bank Statement have been attached in the Paperbook."*

The assessee has also referred to the Judgment of the Hon'ble Supreme Court in the case of **CIT vs. Mahindra and Mahindra Ltd. reported in 404 ITR 1** stating that, once assessee has received no benefit on the outstanding loan, there cannot be any cessation of liability.

7. However, the Id. CIT (A) has confirmed the addition holding as under:-

15.0 The facts of the case are that the AO made an addition of Rs. 13,34,000/- on account of cessation of liabilities as the appellant could not produce evidence of him having made any attempts at repayment of the liabilities pending for more than 3 years to Shri. Gopinath Kolekar, Shri P.D. Ingale and Smt. Manisha Desai. To date, there exists no change in the liabilities

15.1 On the issue of the loan from Manisha Desai, the appellant claims in appeal that the AO had erred in considering the loan from Bombay Chlorides Pvt. Ltd. as that of Smt. Manisha Desai, It is claimed that Smt Manisha Desai is a friend and a director of Bombay Chlorides Pvt. Ltd and that Bombay Chlorides Pvt. Ltd. loaned the appellant an amount of Rs. 2,50,000/ on 06/06/2011 and was repaid in 19/08/2014 A perusal of the AYs 2014-15 Balance Sheet shows a liability of Rs. 2,50,000/- towards 'Manisha Desai LOAN but none to Bombay Chlorides Pvt. Ltd. However, in the AY's 2015-16 Balance Sheet, the liability to Manisha Desai is written as BOMBAY CHLORIDE (MANISHA DESAI)'. The appellant has submitted an extract of Bombay Chlorides Pvt. Ltd. bank account No. 316905010044099 maintained with Union Bank of India which shows that payment of Rs. 2,50,000/- was received from the appellant as "RTGS SHIVAJI IRMALI on 19/08/2014, Now, the question arises that if the amount of loan was repaid by the appellant on 19.08.2014 in that case, how come the said loan is still appearing in the balance sheet as on 31.03.2015 under the narration 'BOMBAY CHLORIDE (MANISHA DESAI). There is no explanation on this issue from the appellant. Since, the said loan is still appearing in the balance sheet as on 31.03.2015, therefore, the appellant's claim that he has repaid the loan on 19.08.2014, cannot be accepted. It is also important to mention that no such explanation was ever filed before the assessing officer.

15.2. For other two amounts, the appellant could not provide any evidence of having made any repayment, partially or in pel towards his liabilities towards Shri Gopinads Kolekar and Shri. P.D Ingale Signed Confirmations of the loans from both parties along with bank account statements showing receipts of the loans in AY 2012-13 have been submitted in appear the sighed confirmation from Shri. Gopinath Kolekar shows that the loan

amount of Rs. 134,000/- has apparently been repaid as reproduced below:

"CONFIRMATION LETTER

I HEREBY CONFIRM THAT THE AMOUNT FOR LOAN AS ON 2011-12 TO MR. SHIVAJI LAXMAN IRMALI, AGE 46, LIVING IN CHAMTOLI, BADLAPUR EAST- 421503 IS RS. 1,34,000/- (ONE LAKH THRITY FOUR THOUSAND). THIS LONE AMOUNT FULLY RECEIVED TO ME."

(Emphasis supplied)

The confirmation is undated and without any contact information. Similarly, Shri PD. Ingale through his undated and unaddressed Confirmation also claims that the loan amount of Rs. 9,50,000/- is already repaid The said loans are appearing in the balance sheet as on 31:02 2015 as well. The appellant has not been able to show evidence that he has repaid the loans even after a passage of more than 11 years despite the claims in the Confirmation. The undated and unaddressed Confirmations are nothing but dubious and an afterthought as they submitted during the assessment proceedings they were never

15.3 The fact LA Ltd. (Supra) are distinguishable from th BAREMENT Vs Mahindra the present case in that appellant has neither paid any form of interest nor provisioned for and Mahindra in this case, the it to the lenders unlike in the aforementioned case. Moreover, in the case of Mahindra and Mahindra Limited (supra), the genuineness of credit balances was never in doubt.

8. Ld. CIT (A) after referring to the decision of the Hon'ble Madras High Court in the case of West Asia Exports & Imports (P) Ltd. vs. ACIT reported in (2019) 412 ITR 208, has confirmed the addition of Rs.13,34,000/- after observing as under:-

15.5. It is not under dispute that the liabilities are outstanding for long and the appellant could not substantiate the same by filing confirmations. The assessing officer has doubted the genuineness

of said liabilities and as discussed above, the appellant could not substantiate the genuineness of these creditors before me as well. Further, the appellant has not substantiated that the said liabilities have been discharged by him as on date. In view of these facts, the ratio of the judgement in the case of West Asia Exports (supra) will be applicable to the present case. Accordingly, the addition of Rs. 13,34,000/- made by the assessing officer, is upheld. The ground no 4 stands DISMISSED.

9. We have heard both the parties at length and also perused the relevant material brought on record. The ld. AO has treated the outstanding loan taken in earlier years from three parties aggregating to Rs.13,34,000/- which was outstanding during the year in the balance sheet, as cessation of liability u/s.41(1). Once this fact was duly brought on record by the assessee that these are unsecured loans taken in the earlier years which have been repaid in the subsequent years, then we are unable to comprehend how AO can still make the addition u/s.41(1). Section 41(1) is applicable where allowance or deduction has been claimed in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. Thus, the primary condition for invoking Section 41(1) is that, there has to be allowance or deduction in respect of loss, expenditure or trading liability and subsequently during any previous year assessee has obtained any benefit in respect of such trading liability by way of remission or cessation thereof, then only it is deemed to be profit or gain and is chargeable to tax as income of the previous year. Nowhere, it has been stated by the ld. AO or ld. CIT(A) that the unsecured loan was in the nature of allowance or deduction in respect of any loss or expenditure or trading

liability and whether assessee has claimed any benefit on such outstanding loan. It appears that both ld. AO and ld. CIT(A) has either failed to even read the provision of Section 41(1) or could not understand the bare provision of the section before adding or confirming the outstanding loan as deemed cessation of liability u/s.41(1). It is also not the case that loan given by the other parties have been waived off in this year, once the assessee brought on record before the CIT(A) that subsequently these loans have been paid off. If such a view is upheld then in all the cases where loans are outstanding in the balance sheet should be treated as deemed remission and income of the assessee without any enabling provision under the law. Accordingly, the addition of Rs.13,34,000/- is deleted.

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

Order pronounced on 13th December, 2024.

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER

Mumbai; Dated 13/12/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

ITA No.3186/Mum/2024
Shivaji Irmali

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai