IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW

BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER

I.T.A. No.170/Lkw/2020
Assessment Year:2014-15

Dy.C.I.T., Range-4, Lucknow.	Vs.	Smt. Mohini Agarwal, L/h Late Mukesh Agarwal, Prop. M/s M. K. Electronics, 80/17, Gurdwara Road, Naka Hindola, Lucknow. PAN:ADYPA2513M
(Appellant)		(Respondent)

C.O.No.17/Lkw/2023
(in I.T.A. No.170/Lkw/2020)
Assessment Year:2014-15

Smt. Mohini Agarwal, L/h Late Mukesh Agarwal, Prop. M/s M. K. Electronics, 80/17, Gurdwara Road, Naka Hindola, Lucknow. PAN:ADYPA2513M	Vs.	Dy.C.I.T., Range-4, Lucknow.
(Appellant)		(Respondent)

Revenue by	Shri Mazhar Akram, CIT (D.R.)
Assessee by	Shri Ashok Seth, C.A.
Date of hearing	05/12/2024
Date of pronouncement	17/12/2024

O R D E R

PER SUBHASH MALGURIA:J.M.

1. This appeal has been filed by Revenue for assessment year 2014-15 against impugned appellate order dated 12/12/2019 passed by learned Commissioner of Income Tax (Appeals) ["CIT(A)" for short].

2. In this case assessment order dated 27/12/2016 was passed u/s 143(3) of the I. T. Act whereby the assessee's total income was determined at Rs.3,88,46,700/- (rounded off) as against returned income of Rs.18,79,020/-. In the aforesaid assessment order, various additions under different heads were made against which the assessee filed appeal in the office of learned CIT(A). Vide impugned appellate order dated 12/12/2019, the learned CIT(A) gave partial relief to the assessee. The present appeal has been filed by the Revenue against the order of learned CIT(A) and the Cross Objection has been filed by the assessee. The grounds taken in Revenue's appeal and the Cross Objection of the assessee are as under:

I.T.A. No.170/Lkw/2020

"1. The CIT(A) has erred in law & on facts of the case in deleting the addition of Rs.1,38,31,516/- in respect of sundry creditors without appreciating the fact that the assessee could not prove the identity, creditworthiness and genuineness of the creditors u/s 68 of the I. T. Act.

2. The CIT(A) has erred in law & on facts of the case in deleting the addition of Rs.1,68,61,600/- without appreciating the fact that the assessee could not establish the identity, creditworthiness and genuineness of the parties and additional

evidence should have not been admitted as opposed by the Assessing Officer through remand report."

C.O.No.17/Lkw/2023

"The basic fact and the resultant sufferings on which the case lies is the death of the Assessee, Mukesh Agarwal. This fact was repeatedly brought to the notice of the AO, which he chose to conceitedly brush aside. When the first date of 14" September, 2015 was fixed for hearing, the assessee was in hospital and died on 29" September, 2015 after a prolonged illness. After this great turbulence in the family and business, the business was gradually shifted to his wife Mrs. Mohini Agarwal. This took a long legal process and survival was at stake. The legal heir pleaded repeatedly to provide natural relief, but was deprived of. Law of the land is to provide justice to everyone and is designed with human touch, so Law and its executors cannot be inhuman. This premise was never in consideration during the proceedings of assessment. Now, in Tribunal we have fair chance of being heard and we plead before the Honorable bench to consider the facts and documents despite the fact that many information die with the person they belong to.

The addition of Rs.1,68,61,600/- for unsecured loans taken

1. *The addition of Rs.1,68,61,600/- for unexplained Unsecured Loan does not hold any ground. The statement by the AO that this was Assessee's own unexplained money routed through the lender for investing in business for increasing the capital of Assessee." falls flat when we see that out of Rs.1,68,61,600/- taken during the year Rs.1,65,61,600/- was paid back and there is an opening balance of Rs.8,25,000/- in the account of Mr. Akhil Agarwal. Unsecured Loan as on 31.03.2013 was Rs.78,88,048/-, while as on 31.03.2014 outstanding fell down to Rs.19,65,548/-. As a result, there is a decrease of Rs.59,22,500/- in UL during the year. So routing the unexplained money through UL channel is untenable.*

2. *As regards credit worthiness of lenders, all the documents related to their financial strength and transactions executed*

from bank accounts were produced before the Assessing Officer, which he refused to entertain and take on records.

All the relevant documents are being produced herewith to prove the authenticity of the transactions.

ADDITION OF Rs.1,38,31,516/- FOR SUNDRY CREDITORS

1. *As regards addition of Rs.1,38,31,516/- for sundry creditors, we reiterate that all the creditors are genuine as the same can be verified from the ledger copies submitted; that show the purchase bills and corresponding payments. We have taken the confirmation from them. Moreover, when purchases have increased by Rs.9,50,40,526/- the creditors have increased just by Rs.1,38,31,516/-. These are verifiable and genuine. Therefore, not mentioning the precise provisions of law makes the impugned additions bad in law.*

2. *This was well established that Section 68 cannot be applied for taxing unconfirmed sundry creditors - CIT vs. Vardhman Overseas Ltd (2012) 343 ITR 0408 (Del). The A.O. has not established with evidence that the liability in respect of the above outstanding balances has ceased to exist. AO has gone on presumption and that too by placing the burden wrongly on the shoulders of the Assessee.*

3. *Sundry Creditors can be added as income u/s 41(1) of the IT Act once there is remission or cessation of liability. Mere fact that these amounts were outstanding and the AO was not satisfied with the documents submitted, the same cannot be a added as income. The parties are in continuation from previous years and were paid in future as per the practice of the business.*

4. *This is worth mention here that the Assessee was also scrutinized for the A.Y.2013-14 and all the accounts were scrutinized by the learned AO. When in the preceding year nothing untoward was found, how the same assessee can be projected as culprit for not maintaining proper records. We*

substantiated our submission with the copy of the assessment order passed.

5. *The AO has not disallowed any purchases and all the purchases were found to be genuine, then the corresponding liability of the purchases cannot be fake or bogus not passing the test of genuineness. This gives a valid ground to provide genuineness to our prayer.*

6. *That the Cross Objector craves the leave to add, modify, amend or withdraw any of the grounds of cross objections at the time of hearing with the permission of the honourable bench and all the above grounds are without prejudice to each other."*

3. In the course of appellate proceedings in Income Tax Appellate Tribunal, a paper book containing the following particulars was filed from the assessee's side:-

S.No.	Particulars
1.	ITR Acknowledgement assessment year 14-15 of late Mukesh Agarwal
2.	Audited accounts and audit report assessment year 14-15
3.	Assessment order u/s 143(3) for assessment year 2013-14
4.	Assessment order u/s 143(3) for assessment year 2014-15
5.	Form 35 for appeal filed
6.	Written submissions before CIT(A)
7.	Comments on additional evidence u/r 46A by Assessing Officer
8.	Appellate order of CIT(A) dated 12/12/2019
9.	Form 36 appeal filed by DCIT before ITAT
10.	Death Certificate of Late Mukesh Agarwal
11.	Unsecured loan chart and supporting documents
12.	Sundry & supporting documents

Although the additions were made by the Assessing Officer under various heads, the issue in the present appeal pertains to two additions – addition of Rs.1,38,31,516/- in respect of sundry creditors, and addition of Rs.1,68,61,600/- towards unsecured loans received by the assessee. The

learned CIT(A), in his impugned appellate order, deleted the aforesaid additions. The relevant portion of the order of the learned CIT(A) is reproduced below:

6.3 **Additional Evidences filed during Appellate Proceedings:**

During the course of appellate proceedings the appellant filed the following documents as additional evidences on 21.08.2019:

This consisted of P & L Account of 31.03.2013 and 31.03.2014, stock summary, copy of communication with Crompton greaves, ledger accounts of all expenses debited in P & L account, ledger account of selling commission paid, proof of TDS deducted and paid on selling commission, ledger account of unsecured loans, ITRs of parties, certificates of loan confirmation, bank statements of parties from whom loans taken, ledger account and proof of payment of Rs.1,25,664/-, copy of challan of payment of Rs.66,159/- on 19.04.2014, copy of challans for payment of Rs.6,000/- on07.04.2014 and Rs.1,20,189/- on 09.04.2014. For 40A(2)(b) payments (proof of property ownership, ledger accounts of Nikhil and Akhil Agarwal, copies of ITRs of Nikhil and AkhilAgrwal).Copy of ledger accounts of sundry creditors and confirmation of balances.

6.4 Appellant filed an application U/R 46A on 21.08.2019 stating that these evidences could not be filed before the AO due to illness and subsequent death of Mukesh Agarwal i.e. appellant on 29.09.2015 immediately after the first date of hearing i.e. 14.09.2015 due to which these details could not be filed. Due to death of appellant, the business was gradually taken over by him wife i.e. Mohini Agarwal who was a housewife. She hardly had any knowledge of business. Due to sudden death, the business of appellant was dented and normal working was severely imparted. Reliance was placed on the following judgments:

- Pr. CIT vs. M/s LGW Ltd. (Cal) ITA No. 311 of 2016.
- CIT vs. Virgin Securities & Credits (P) Ltd. (Del) ITA No. 666 of 2009
- ACIT vs. Superb Developers ITA No. 52/Del/2014 (ITAT)

6.5 The application of appellant alongwith the submissions of appellant and additional evidences filed were forwarded to the AO for remand report on 21.08.2019. The AO filed remand report vide letter dated 23.10.2019 stating that application U/R 46A be not admitted.

6.6 **Admission of Additional Evidences U/R 46A:**

a. The appellant filed additional evidence u/R 46A of the IT Rules. The same were forwarded to AO vide letter dated 21.08.2019.

b. The AO has filed a detailed remand report vide letter dated 23.10.2019 stating that the additional evidence be not admitted.

c. In the present case the order has been passed by the AO u/s 143(3). The main reason for making the said addition by the AO was that books of accounts with bills/vouchers were not produced before the AO. The appellant contended that same could not be produced before the AO due to death of Mukesh Agarwal i.e. appellant on 29.09.2015 i.e. immediately after the first date of hearing i.e. 14.09.2015. The business was gradually taken over by his wife i.e. Mohini Agarwal who was a housewife with no knowledge of business. The normal business was severely impaired due to sudden death of Mukesh Agarwal. Therefore, it is held that appellant was prevented by sufficient cause from producing before the AO any evidence which was relevant to the ground of appeal. The said evidence is crucial for the disposal of appeal. In order to advance the cause of justice, the said additional evidence ought to be admitted.

d. The Hon'ble Delhi High Court in case of CIT vs. Virgin Securities and Credit (P) Ltd. (2011) 332 ITR 396 (Del.)held that CIT(A) should admit the additional evidence if he finds that the same is crucial for the disposal of appeal.

The Hon'ble Delhi High Court in case of ChandrakantChanu Bhai Patel reported in 202 Taxman 262 held that if additional evidence is without any blemish and in order to advance the cause of justice, the same ought to be admitted.

The CIT(A) cannot proceed with the additional evidence by its own without giving an opportunity to AO to verify the additional evidence. Reliance is placed on decision of **Hon'ble ITAT Delhi in ITO vs. Mrs. Anita Abbi in ITA No. 3707/Del./2011**.

In the present case a reasonable opportunity was allowed to the AO to examine and rebut the Additional Evidence. The AO after examining the Additional Evidence filed a report vide letter dated 23.10.2019.

The Hon'ble ITAT Chandigarh in ITO vs. Bhagwan Das Contractor in ITA No. 393 (Chd.) of 2011 held that if the AO has refused to admit additional evidence, even then, the CIT(A) can admit the additional evidences by his own to render the justice.

In view of the above facts, decisions and judgements, I hold that appellant was "prevented by a sufficient cause" from producing the Additional Evidence before the AO which was relevant to the grounds of appeal, therefore, the said Additional Evidence is hereby admitted u/r 46A of the I.T. Rules.

6.7 **Ground of appeal no. 1- GP addition – Rs.27,81,453/-**

The gist of addition made is outlined in para 6.2 b and 6.2 e above. The contentions of the appellant were examined and the following facts emerge from submissions filed by the appellant:

(अंकिता सिंह)

a. The appellant is proprietor of M/s MK Electricals engaged in Trading of Electrical Goods and Appliances. The gross turnover shown is Rs.21.47 cr. on which GP of Rs.95.65 lac was shown i.e. GP rate @ 4.45%. InAY 2013-14 the GP rate shown was 5.99% on turnover of 11.96 cr. In AY 2012-13 the GP rate shown was 6.47% on turnover of Rs.10.41 cr.

b. The case was taken up for scrutiny and first date of hearing was fixed on 14.09.2015. The appellant died on 29.09.2015. Due to his untimely death, the business was gradually taken over by his wife who was a home maker till the death of appellant namely Mrs. Mohmi Agarwal L/H of the appellant. The business of appellant suffered due to his death.

c. The AO held that the books of accounts and supporting documents were not produced and he completed the assessment on basis of the material available on record.

d. **GP addition- Rs.27,81,453/-:**

The AO noted that appellant has shown lower GP rate i.e. 4.45% as compared to 5.99% in AY 2013-14. The appellant contended that fall in GP is due to following reasons:

- Turnover has increased from 11.96 cr to 21.47 cr i.e. increase of 100% approximately i..e Turnover increased by Rs.10 cr approximately due to which GP rate fell.
- Prolonged illness of appellant due to which business was not effectively managed due to his continuous absence from business.
- Dealership of Crompton company was lost.
- To increase turnover and boost sales, discounts and bonus is given resulting in GP/NP fall.

The AO did not accept the contentions of appellant. He held that books of accounts and bills/vouchers were not produced. Thus, he estimated GP rate @ 5.75% as against GP rate @ 4.45% shown by the appellant. GP was estimated at Rs.1,23,46,585/- as against Rs.95,65,132/- shown by the appellant. GP addition of Rs.27,81,453/- was made to total income of the appellant.

e. The assessment in the case of appellant for immediately earlier AY i.e. AY 2013-14 was completed u/s 143(3) vide order dated 22.02.2016. The GP and NP rate shown was accepted. Only ad-hoc disallowance of expenses of RS.50,000/- Rs.28,884/- , Rs.9130/- and Rs.41,314/- was made by ACIT, Circle-1, Lucknow. No adverse inference was drawn. GP rate @ 5.99% on turnover of Rs.11.96 cr and NP rate @ 1.04% was accepted.

f. Return was filed on basis of Audit Report. All books of accounts are maintained as per Audit Report. No adverse inference has been drawn by Auditor on any of the issues on which addition was made by the AO.

6.8 **Finding:**

a. For making the estimated GP addition the history of the appellant is the best guide. Reliance is placed on judgement in case of **Inani Marbles (P) Ltd. (2009) reported in 316 ITR 125 (Raj)** where it was held that past history of assessee is one of the most reliable guidance to make or not to make any estimation/addition. The AO has failed to bring on record any material which suggests that facts and circumstances of AY 2014-15 have undergone any

change as compared to the earlier and subsequent AYs. The assessment order in the case of appellant for AY 2013-14 was completed u/s 143(3) on 22.02.2016 prior to the date of order passed in the present case i.e. 27.12.2016 and the GP rate shown @ 5.99% was accepted by the AO. The appellant has been engaged in the same business activity i.e. Trading in Electrical Goods and Appliances in earlier AY's present AY and subsequent AY's. The nature of appellant's business has not changed over the years.

b. After examination of accounts of the appellant for AY 2012-13 to AY 2014-15 the corresponding GP rate, NP rate and turnover are tabulated as under:

Asstt. Year	*Turnover*	*G.P. Rate*	*N.P. Rate*
2012-13	*10.41 cr*	*6.47%*	*1.15%*
2013-14	*11.96 cr*	*5.99%*	*1.04%*
2014-15	*21.47 cr*	*4.45%*	*0.88%*

The above table clearly show that turnover of present AY i.e. Rs.21.47 cr is about double the turnover of AY 2013-14 i.e. Rs.11.96 cr and AY 2012-13 i.e. Rs.10.41 cr. Inspite of more than 100 % increase in turnover the GP rate has fell by a small margin to 4.45% as compared to 5.99% and 6.47% in earlier 2 AYs'. Similarly, the NP rate has fell by a small margin i.e. to 0.88% as compared to 1.04% in earlier AY inspite of substantial increase in turnover. It is normal fact that as the turnover increase the GP and NP rate falls and vice versa. The appellant has been able to explain the reasons for fall in GP rate as outlined in par 6.2 e above but same was not accepted by the AO.

c. The AO has estimated GP rate @ 5.75 % as against GP rate @ **4.45**% shown by the appellant. However, no reason for estimating GP rate @ 5.75% was given by the AO. The AO was not entitled to estimate GP rate @ 5.75% without an explanation. It has been held in a number of judgements that an assessment made by estimating the profits of the appellant on flat rate basis or on the basis of comparable case/cases, without furnishing the details of such case/cases is unjustified. In the present case the AO has not disclosed any explanation/details regarding the application of NP rate after tax @ 5.75%. The principle of natural justice requires that before charging any person with a financial liability, he should be informed about the basis on which the NP rate is going to be estimated and given an opportunity to rebut the same.

Thus, the reasons due to which the AO estimated GP rate @ 5.75% must have been explained in the assessment order.

d. The A.O. has estimated the GP rate @ 5.75% as against GP rate @ **4.45**%The scope of the term '**to the best of his judgement**' emphasises the need for '**relevant material**' for making a best judgement assessment. In the present case the judgement of AO in estimating GP rate @ 5.75% is a wild estimate which is unsupported by any '**relevant material**' or the history of the appellant's case. Prior to passing of the present order i.e. 27.12.2016 the case of appellant for AY 2013-14 was completed u/s 143(3) on 22.02.2016 of the Act where GP rate @ 5.99% was accepted by the AO on much lower Turnover. The AO did not give due justice to

the contention of appellant that his GP rate declined due to substantial increase in turnover and to increase turnover the discounts were raised and profit margins were clipped. As from the history of appellant's case it is very clear that as the turnover increases, the GP rate and NP rate decreases and vice versa. Upon rejecting the books of accounts and invoking section 145, the AO does not get unfettered powers to apply any NP rate of his choice.

e. **The Hon'ble Delhi High Court in CIT vs. Paradise Holiday reported in 325 ITR 13** has held that "If any particular expense claimed by the assessee remains unverified, the AO could have disallowed that particular expenditure, but, that by itself cannot be a ground for rejection of books of accounts as a whole u/s 145(3) of the Act".

f. **The Hon'ble ITAT, Lucknow in case of ACIT-6, Kanpur vs. M/s Narain Institute of Management Studies for AY 2009-10 in ITA No. 526/LKW/2012** vide order dated 24.04.2014 held that 'Books of accounts cannot be rejected if a particular expenditure is not open to verification. At the most, that expenditure may be disallowed".

h. In view of the above facts, I find that the estimation of GP @ 5.75% is evidently on the higher side particularly so as no reasons have been advanced for adopting this exorbitant rate. In the case of the appellant, the audited accounts show gross receipts of Rs.21.47cr as compared to gross receipts of Rs.11.90cr in AY 2013-14 and gross receipts of Rs.10.41cr in AY 2012-13. As evident in the appellants case as the turnover increases the GP rate fallsand vice versa. In the present AY the turnover has almost doubled as compared to the earlier AY so there was bound to be fall in GP rate. The adoption of GP rate of 5.75% by the AO is wholly unjustified.

In CIT vs. LaxminarainBadridas[1937] 5 ITR 170 (PC) their Lordships of the Privy Council observed as follows:

> *"The Officer is to make an assessment to the best of his judgements against a person who is in default as regards supplying information. He must not act dishonestly or vindictively or capriciously because he must exercise judgement in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must, their Lordship think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate, and though there must necessarily be guesswork in the matter, it must be honest guesswork. In that sense, too, the assessment must be, to some extent, arbitrary."*

Since the law relating to "Best Judgement Assessment" is the same both in the case of income tax assessment and sales tax assessment , the following observations in **Reghubar Mandal Haribar Mandal vs. State of Bihar [1957] 8 STC 770, 778 (SC) a case under the Bihar Sales Tax Act, would be material:**

> *"No doubt it is true that when the returns and books of accounts are rejected, the assessing officer must make an estimate, and to that extent he must made a guess, but the estimate must be related to some evidence or material and it must be something more than mere suspicious".*

Again in **State of Kerala vs. C. Velukutty [1966] 60 ITR 239 (SC), which was a case under the Travancore Cochin General Sales Tax Act,** the Court observed:

"The limits of the power are implicit in the expression 'best of his judgement'. Judgement is a faculty to decide matters with wisdom truly and legally. Judgement does not depend upon the arbitrary caprice of a judge, but on settled and invariable principles of justice. Though there is an element of guesswork in a 'best judgement assessment', it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case".

h. **The Hon'ble Delhi High Court in Mrs. Krishna Gupta vs. ACIT reported in 311 ITR 322** held that assessment cannot be done on assumptions and presumptions. G.P. depends upon many factors i.e. market conditions based on demand and supply, rise and fall in market rates especially abrupt ones etc. It was observed that profit has to be estimated based on material available on record and the AO has no right to estimate exorbitantly.

The Hon'ble Apex Court in the judgement in the case of JJ Enterprises vs. CIT reported in 254 ITR 216 (SC) held as under:

"Where the Appellate Tribunal had held that an addition to the income of the assessee was unsustainable because it had been made "on the basis of pure guess work".Held that no question of law arose out of the order of Tribunal. The finding of the Tribunal was one of the fact in respect which the Tribunal's conclusion was final and there was no question of remanding the matter to Assessing Officer for re-examination of the same question".

The Hon'ble Punjab & Haryana High Court in CIT vs. Rajender Prasad Jain reported in 61 taxmann.com 310 (P&H) held as under:

"IT : Where Tribunal affirmed rejection of account books of assessee, but reduced net profit rate to 6 percent, since in preceding as well as following year a net profit rate of 6.75 percent and 5 percent respectively was applied by Assessing Officer. There was no error in discretion exercised by Tribunal in applying net profit rate of 6 percent".

i. It will appear clear what has been said above that the authority making a best judgment assessment must make an honest and fair estimate of the income of the assessee and though arbitrariness cannot be avoided in such estimate the same must not be capricious but should have a reasonable nexus to the available material and the circumstances of the case. I am of the opinion that the even though the profits have to be estimated, the estimation should have some nexus to the final accounts submitted by the assessee along with its return of income. I find that the assessment proceedings for assessment year2013-14 in the case of the appellant have been completed by the Assessing Officer on 22.02.2016 i.e. prior to date of passing the present assessment order i.e. 27.12.2016 vide order under section 143(3) of the Act by accepting the GP rates @ 5.99%respectively on turnover of Rs.11.96 cr which is almost 50% of turnover in the present AY. Accordingly, I find it reasonable to adopt the GP rate @ 5% which works out at Rs.1,07,36,161/- on receipts of Rs.21,47,23,223/- for the impugned assessment year for the purpose of estimating the profits of the appellant. The AO is therefore directed to re-compute the income of the appellant by taking GP @ 5% which works out at **Rs.1,07,36,161/-** as against **Rs.1,23,46,585/-** worked out by the AO after applying GP rate @ 5.75% and as against the GP rate @ 4.45% of **Rs.95,65,132/-** shown by the appellant. The addition made by the AO of **Rs.11,71,029/-** is upheld and consequent relief is allowed to the appellant. The ground of appeal 1 is partly allowed.

7.1 **Ground of appeal no. 9- Addition of Sundry Creditors Rs.1,38,31,516/-:**

The details of addition made is outlinded in para 10 of the assessment order and para 6.2 m of this order.

7.2 **Finding:**

a. It has not been mentioned by the AO as to under which section of the IT Act, these sundry creditors have been added. Non mentioning of the precise provision of law makes the addition on a weak ground.

b. If the addition has been made u/s 68, such addition cannot be made and that too of the whole amount as there was no sum received from these parties during the AY under consideration. The Hon'ble Delhi High Court in CIT vs. Vardhman Overseas Ltd. (2012) in 343 ITR 408 (Del) has held that section 68 cannot be applied for taxing the unconfirmed sundry creditors.

c. Thus, the said addition is held to be made u/s 41(1) of the Act. As per the ingredients of section 41(1), as per the judicial decisions, the burden of proof rests on the AO to prove that the liability has ceased to exist so as to attract section 41(1) of the Act.

d. On one hand the AO has accepted of purchases made by the appellant and on the other hand has disallowed of the sundry creditors. The purchase of appellant has increased by Rs.9,50,40,526/- whereas the creditors have increased by Rs.1,38,31,516/-. These sundry creditors are duly supported by purchase bills and they being paid off in the subsequent AY by appellant. Sundry creditor is a normal part of trade/business wherein immediate payments to creditors cannot be made. Complete list of sundry creditors with name, addresses and amountalongwith their ledger accounts was filed as Additional Evidence U/R 46Aalongwith confirmations from some parties which was forwarded to the AO for remand report.

e. Sundry Creditors can be added as income u/s 41(1) of the Act once there is remission or cessation of liability. Mere fact that these amounts were outstanding and the Auditor could not file the addresses of sundry creditors and other details u/s 133(6), the provisions of section 41(1) could not be applied. For purpose of section 41(1), it means irrevocable cessation of liability so that there is no possibility of the liability being revived in future. Such are not the facts of the present case as substantial amount of these sundry creditors were paid off by the appellant as on 31.03.2014 (as outlined in para 7.3(d) above).

f. If the AO intends to tax these sundry creditors u/s 41(1) then onus will be on AO to show that the liability appearing in Balance Sheet of appellant has ceased finally and there is no possibility of revival of liability.

7.3 a. The issue of Remission or cessation of a trading liability i.e. applicability of clause (a) of subsection (1) of section 41 of the Act has been discussed and decided in detail by **Hon'ble Delhi High Court in CIT-II vs. Shri Vardhman Overseas Ltd for AY 2002-03 vide order dated 23.12.2011.** The relevant part of the judgement is reproduced as under:

"12. That takes us to the next question as to what constitutes remission or cessation of the liability. It cannot be disputed that the words remission‖ and cessation‖ are legal terms and have to be interpreted accordingly. In State of Madras v. Gannon Dunkerley& Co., AIR 1958, SC 560, VenkataramaAiyyar J. explained the general rule of construction that words used in statutes must be taken in their legal sense and observed:- The ratio of the rule of interpretation that words of legal import occurring in a statute should be construed in their legal sense is that those words have, in law, acquired a definite and precise sense and that, accordingly, the legislation must be taken to have intended that they should be understood in that sense. In interpreting an expression used in a legal sense, therefore, we have only to ascertain the precise connotation which it possesses in law‖. In our opinion, this rule should be applied to the interpretation and understanding of the words remission and cessation‖ used in the section.

13. In Bombay Dyeing & Manufacturing Co. Ltd. v. State of Bombay, AIR 1958 SC 328, the legal position was summarized by T.L.VenkataramaAiyar, J., in the following manner:-
—It has been already mentioned that when a debt becomes time- barred, it does not become extinguished but only unenforceable in a Court of law. Indeed, it is on that footing that there can be statutory transfer of the debts due to the employees, and that is how the Board gets title to them. If then a debt subsists even after it is barred by limitation, the employer does not get, in law, a discharge therefrom. The modes in which an obligation under a contract becomes discharged are well-defined, and the bar of limitation is not one of them. The following passages in Anson's Law of Contract, 19th Edition, page 383, are directly in point:
— At Common Law lapse of time does not affect contractual rights. Such a right is of a permanent and indestructible character, unless either from the nature of the contract, or from its terms, it be limited in point of duration.

But though the right possesses this permanent character, the remedies arising from its violation are withdrawn after a certain lapse of time; interest reipublicaeutsi finis litium. The remedies are barred, though the right is not extinguished.‖ And if the law requires that a debtor should get a discharge before he can be compelled to pay, that requirement is not satisfied if he is merely told that requirement is the normal course he is not likely to be exposed to action by the creditor.‖(underlining ours) This was also the view taken by the Supreme Court in CIT v. Sugauli Sugar Works (P) Ltd. (supra).

14. Since the Tribunal has relied on the judgment of the Supreme Court in the case of CIT v. Sugauli Sugar Works (P) Ltd. (supra) we may usefully refer to the decision in order to appreciate the controversy therein and the ratio laid down. That was a case of a private limited company. In respect of the assessment year 1965-66, it transferred a sum of 3,45,000/- from the suspense account running from 1946-47 to 1948-49 to the capital reserve account. The Income Tax Officer found that a sum of 1,29,000/- out of the above amount repaymented deposits and advances which were paid back by the assessee. He, therefore, deducted this amount from the amount of 3,45,000/- and the balance of 2,56,529/- was brought to assessment under Section 41(1) of the Act. The assessee appealed unsuccessfully to the Appellate Assistant Commissioner and thereafter carried the matter in further appeal to the Tribunal. Its contention before the Tribunal was that the unilateral entry of transfering the amount from the suspense account to the capital reserve account would not bring the said amount within Section 41(1). The contention was accepted by the Tribunal whose decision was affirmed by the Calcutta High Court [reported as CIT v. Sugauli Sugar Works (P) Ltd. (1983) 140 ITR 286]. The revenue

*carried the matter in the appeal to the Supreme Court. The contention of the revenue (as noted at page 520 of 236 ITR) was that on the facts of the case, the liability came to an end as a peirod of more than 20 years had elapsed and the creditors had not taken any steps to recover the amount and consequently there was a cessation of the debt which would bring the matter within the scope ofSection 41(1). It may be noted that the contention of the revenue in the case before us is precisely the same. To recapitulate, the learned standing counsel contended before us that since a period of more than 4 years has admittedly elapsed from the debt on which the debts were incurred and since the creditors had not taken any steps to recover the amount, there was a cessation of the debts which brought the matter under Section 41(1). Turning back to the judgment of the Supreme Court, we find that the judgment of the Calcutta High Court under appeal was affirmed for two reasons. The first reason was based on a judgment of the Full Bench of the Gujarat High Court in Commissioner of Income-Tax v. Bharat Iron and Steel Industries (1993) 199 ITR 67. It was held by the Supeme Court that the Gujarat High Court was right in saying that in order to attract taxability under Section 41(1)the assessee should have obtained, whether in cash or in any other manner whatsoever, any amount in respect of the loss or expenditure earlier allowed as a deduction. This part of the reasoning, in the light of the amended clause(a) of sub-section (1) of Section 41 may not be relevant after substitution of the said clause by the Finance Act, 1992 with effect from 1st April, 1993, by which the words —some benefit in respect of such trading liability by way of remission or cessation thereof‖ were inserted. **After the amendment, therefore, it is not ncessary that in respect of a trading liability earlier allowed as a deduction, the assessee should have received any amount, in cash or otherwise, but it is necessary that the assessee should have received —some benefit‖ in respect of such trading liability. However, we have already seen that this benefit in respect of trading liability should be —by way of remission or cessation of the liability**, after the amendment made to the clause with effect from 1st April, 1993. The second part of the reasoning of the Supreme Court in CIT v. Sugauli Sugar Works (P) Ltd. (supra) is based on the interpretation of the words —cessation or remission‖ of the trading liability. The Supreme Court noticed a judgment of the Bombay High Court in J.K. Chemicals Ltd. v. CIT (19966) 62 ITR 34 in which it was explained as to what could bring out a cessation or remission of the assessee's liability. The observations of the Bombay High Court in the judgment cited above are as under:-*

The question to be considered is whether the transfer of these entries brings about a remission or cessation of its liability.

The transfer of an entry is a unilateral act of the assessee, who is a debtor to its employees. We fail to see how a debtor, by his own unilateral act, can bring about the cessation or remission of his liability. Remission has to be granted by the creditor. It is not in dispute, and it indeed cannot be disputed, that it is not a case of remission of liability. ***Similarly, a unilateral act on the part of the debtor cannot bring about a cessation of his liability. The cessation of the liability may occur either by reason of the operation of law, i.e., on the liability becoming unenforceable at law by the creditor and the debtor declaring unequivocally his intention not to honour his liability when payment is demanded by the creditor, or a contract between the parties, or by discharge of the debt -the debtor making payment thereof to his creditor.*** *Transfer of an entry is neither an agreement between the parties nor payment of the liability. We have already held in Kohinoor Mills' case [1963] 49 ITR 578 (Bom) that* ***the mere fact of the expiry of the period of limitation to enforce it, does not by itself constitute cessation of the liability.*** *In the instant case, the liability being one relating to wages, salaries and bonus due by an employer to his employees in an*

industry, the provisions of the Industrial Disputes Act also are attracted and for the recovery of the dues from the employer, under section 33C(2) of the Industrial Disputes Act, no bar of limitation comes in the way of the employees.

15. The Supreme Court noticed that the above observations of the Bombay High Court were quoted by the Calcutta High Court in the judgment under appeal before them, and observed as under while upholding the judgment of the Calcutta High Court:
—This judgment has been quoted by the High Court in the present case and followed. We have no hesitation to say that the reasoning is correct and we agree with the same. To reinforce the conclusion, the Supreme Court also noticed its earlier judgment in Bombay Dyeing and Manufacturing Company Ltd. v. State of Bombay AIR 1958 SC 328 wherein it was held that ***the expiry of the period of limitation prescribed under the Limitation Act could not extinguish the debt but it would only prevent the creditor from enforcing the debt.***

16. In our opinion, the judgment of the Supreme Court in CIT v. Sugauli Sugar Works (P) Ltd. (supra) is a complete answer to the contention of the learned standing counsel. In the case before the Supreme Court for a period of almost 20 years the liability remained unpaid and this fact formed the basis of the contention of the revenue before the Supreme Court to the effect that having regard to the long lapse of time and in the absence of any steps taken by the creditors to recover the amount, it must be held that there was a cessation of the debts bringing the case within the scope of Section 41(1). In the case before us, the identical contention has been taken on behalf of the revenue, though the period for which the amount remained unpaid to the creditors is much less. ***It was held by the Supreme Court that a unilateral action cannot bring about a cessation or remission of the liability because a remission can be granted only by the creditor and a cessation of the liability can only occur either by reason of operation of law or the debtor unequivocally declaring his intention not to honour his liability when payment is demanded by the creditor, or by a contract between the parties, or by discharge of the debt".***

7.3 b. From the ratio laid down in the aforesaid decision, I am of the view that there is nothing on record to show any cessation or remission of liability by the creditors or even an unilateral act by the appellant in this regard.

7.3 c. This issue of remission or cessation of liability has been discussed and decided in detail by **Hon'ble Karnataka High Court in CIT vs. Alvares and Thomas (2016) reported in 394 ITR 647 (Karnataka).** The relevant part is reproduced as under:

"7. As in the above referred order of the Tribunal, the relevant portion of section 41 is reproduced, we may not reproduced the same. But the relevant aspect is that there are two ***requirements for invoking the provision of section 41. The Sina qua non is the remission or cessation of the trading liability and the additional requirement is, some benefit in respect of such trade liability is taken by the assessee. If the aforesaid conditions are satisfied, then only section 41(1) could be invoked by the AO.***

8. Examining of the facts of the present case reveals that, it is not the case of the Department that, any benefit in respect of such trading liability was taken by the assessee but, the Revenue contends that since the burden was not discharged of existence of the liability, it be treated as cessation of the liability and therefore, section 41(1) could be invoked. Further, stand

of the Revenue is that, when in respect of debt in question, confirmation was called for, a letter was produced of the creditors with its address but, when the same was verified, the report was that , party could not be traced and therefore, it was not verifiable.

*9. In our view, **even if we accept the contenton of the Revenue that the party could not be traced and therefore debt could not be verified than also, by no stretch of imagination can it be held that is would satisfy the requirement of cessation of liability. In legal parlance, merely because the creditor could not be traced on the date when the verification was made, same is not a ground to conclude that there was cessation of the liability. Cessation of the liability has to be cessation in law, of the debt to be paid by the assessee to the creditor. The debit is recoverable even if the creditors has expired, by the legal heirs of the deceased creditor. Under the circumstances, in the present case, it can hardly be said that the liability had ceased. If the liability had not ceased or the benefit was not taken by the assessee in respect of such trade liability, in our view, the conditions precedent were not satisfied for invoking section 41(1) of the Act in the instant case.***

10. The Tribunal has rightly relied upon the decision of Delhi High Court in case of Vardhman Overseas Ltd. The discussion of the decision of Delhi High Court was relevant, for consideration of the facts of the case in order to find out as to under what circumstances it could be said that there is cessation of liability. Further, the decision of Delhi High Court is after considering the view taken by the Apex Court in case of CIT vs. Sugauli Sugar Pvt. Ltd. (1999) 236 ITR 518 (SC)."

7.4 This issue was also decided by **Hon'ble Karnataka High Court in case of PCIT vs. Ramgopal Minerals (2017) reported in 394 ITR 696 (Kar.).** The relevant part of judgement is as under:

*"8. We are satisfied that the judgment relied upon by the learned counsel for the respondent-assessee in the present case applies to the facts of the present case on all fours. We are further of the opinion that **the burden lies upon the Revenue to establish, before applying Section 41(1) of the Act, to make additions or disallow the deduction under Section 41(1) of the Act to establish that the liability of the respondent-assessee towards such creditors has ceased in law or so has been remitted by the creditors finally".***

7.5 Respectfully following the ratio of the above cited judgements, the addition made by the AO of Rs.1,38,31,516/- is decided as under:

a. It is not in dispute that appellant had claimed deduction towards these liabilities. The only dispute is whether the same can be brought to tax u/s 41(1) of the Act on account of cessation of liabilities or unexplained liabilities as done by the AO.

b. The appellant has not written back these creditors in P & L account as liabilities not payable. Thus, there is no unilateral write back of the creditors to the P & L account by the appellant. This leads to conclusion that that the these liabilities have not ceased to exist. The appellant has acknowledged his debt by accepting these sundry creditors liability to be discharged in future. Hence, there cannot be any cessation of liability as on 31.03.2014. A major portion of these sundry creditors have been paid off in the subsequent AY. The sundry creditors as on 31.03.2014 have increased just by

Rs. 1,38,31,516/- inspite of purchases having increased by Rs 9,50,40,526/- as compared to the earlier AY.

c. To invoke the provisions of section 41(1) there should be a clear finding that these liabilities had ceased to exist as on 31.03.2014. No such finding has been recorded by the AO. In absence of such a finding, the invocation of provisions of section 41(1) of the Act as deemed income does not arise in the hands of appellant.

d. The appellant has not obtained any benefit in respect of these trading liabilities and has duly acknowledged the debt payable to these parties in the books of accounts.

e. Thus, in the present case the AO has not discharged the onus cast on him to establish that liability of appellant towards creditors has ceased in law and some benefit in respect of such trading liability has been taken by the appellant or so has been remitted to the creditor finally. The AO has not brought any finding to show that the said creditors are fake or incorrect.

f. **Thus, conditions precedent were not satisfied for invoking section 41(1) of the Act in this case.**

g. The AO has made the addition by simply holding them as a Bogus and Unexplained liability. The AO has not mentioned any section of IT Act under which the said addition has been made. Non mentioning of the precise provision of law while making the said addition makes the addition appear on a very weak ground.

7.6 In view of the above facts and discussion and respectfully following the judgements outlined in the above paras of this order the **addition of Rs.1,38,31,516/- made by the AO as bogus and unexplained liabilities is hereby deleted.Ground of appeal no. 9 is allowed.**

4. At the time of hearing before us, the assessee was represented by Shri Ashok Seth, learned A.R. for the assessee and Revenue was represented by Shri Mazhar Akram, learned CIT, D.R. Learned A.R. for the assessee placed strong reliance on the impugned order of learned CIT(A) and strongly contended that the additions made by the Assessing Officer were unfair, unjust and high pitched, causing hardship and agony to the widow and legal heir of Late Mukesh Agarwal. He also drew our attention to submissions made along with Cross Objections filed by the assessee, relevant portion of which is reproduced as under:

1- The Assessee filed his ITR electronically for the A.Y. 2014-15, which was selected for scrutiny by Dy. Commissioner of Income Tax, Circle 4, Lucknow after the death of the Assessee on 29.09.2015.

2- The Assessing Officer arbitrarily made additions of ₹ 3,87,52,461/- on frivolous and flimsy grounds, which include low GP, disallowance of expenses, unsecured loans, unpaid liabilities, TDS, VAT Payable, Sundry Creditors etc..

3- The Legal Heir of the deceased Assessee opted for an appeal against the order. The appeal was decided on 12.12.2019 in favour of the Assessee, except the partial disallowance which was accepted by the Assessee to avoid further litigation.

4- However, against the appellate order, Dy. Commissioner of Income Tax, R-4, Lucknow filed appeal before the Hon'ble Appellate Tribunal. The appeal is only on two facts and grounds to be heard.

One is the addition in income of ₹ 1,68,61,600/- for Unsecured Loans to prove to be genuine.

The second is the addition in income of ₹ 1,38,31,516/- for disallowance of Sundry Creditors in the books of account as on 31.03.2014.

The basic fact and the resultant sufferings on which the case lies is the death of the Assessee, Mukesh Agarwal. This fact was repeatedly brought to the notice of the AO, which he chose to conceitedly brush aside. When the first date of 14th September, 2015 was fixed for hearing, the assessee was in hospital and died on 29th September, 2015 after a prolonged illness. After this great turbulence in the family and business, the business was gradually shifted to his wife Mrs. Mohini Agarwal. This took a long legal process and survival was at stake. The legal heir pleaded repeatedly to provide natural relief, but was deprived of. Law of the land is to provide justice to everyone and is designed with human touch, so Law and its executors cannot be inhuman. This premise was never in consideration during the proceedings of assessment. Now, in Tribunal we have fair chance of being heard and we plead before the Honorable bench to consider the facts and documents despite the fact that many information die with the person they belong to.

ADDITION OF ₹1,68,61,600/- FOR UNSECURED LOANS TAKEN

1- The addition of ₹1,68,61,600 for unexplained Unsecured Loan does not hold any ground. The statement by the AO that " this was Assessee's own unexplained money routed through the lender for investing in business for increasing the capital of Assessee." falls flat when we see that out of ₹1,68,61,600/- taken during the year ₹1,65,61,600/- was paid back and there is an opening balance of ₹8,25,000/- in the account of Mr. Akhil Agarwal. Unsecured Loan as on 31.03.2013 was ₹78,88,048/-, while as on 31.03.2014 outstanding fell down to ₹19,65,548/-. As a result, there is a decrease of ₹59,22,500/- in UL during the year. So routing the unexplained money through UL channel is untenable.

2- As regards credit worthiness of lenders, all the documents related to their financial strength and transactions executed from bank accounts were produced before the Assessing Officer, which he refused to entertain and take on records.

All the relevant documents are being produced herewith to prove the authenticity of the transactions.

1- As regards addition of ₹1,38,31,516/- for sundry creditors, we reiterate that all the creditors are genuine as the same can be verified from the ledger copies submitted; that show the purchase bills and corresponding payments. We have taken the confirmation from them. Moreover, when purchases have increased by ₹9,50,40,526/- the creditors have increased just by ₹1,38,31,516/-. These are verifiable and genuine. Therefore, not mentioning the precise provisions of law makes the impugned additions bad in law.

2- This was well established that Section 68 cannot be applied for taxing unconfirmed sundry creditors - CIT vs. Vardhman Overseas Ltd (2012) 343 ITR 0408 (Del).The A.O. has not established with evidence that the liability in respect of the above outstanding balances has ceased to exist. AO has gone on presumption and that too by placing the burden wrongly on the shoulders of the Assessee.

3- Sundry Creditors can be added as income u/s 41(1) of the IT Act once there is remission or cessation of liability. Mere fact that these amounts were outstanding and the AO was not satisfied with the documents submitted, the same cannot be a added as income. The parties are in continuation from previous years and were paid in future as per the practice of the business.

4- This is worth mention here that the Assessee was also scrutinized for the A.Y.2013-14 and all the accounts were scrutinized by the learned AO. When in the preceding year nothing untoward was found, how the same assessee can be projected as culprit for not maintaining proper records. We substantiated our submission with the copy of the assessment order passed.

5- The AO has not disallowed any purchases and all the purchases were found to be genuine, then the corresponding liability of the purchases cannot be fake or bogus not passing the test of genuineness. This gives a valid ground to provide genuineness to our prayer.

6- That the Cross Objector craves the leave to add, modify, amend or withdraw any of the grounds of cross objections at the time of hearing with the permission of the honourable bench and all the above grounds are without prejudice to each other.

5. The learned D.R. for Revenue relied on the order passed by the Assessing Officer. However, he could not bring out any facts or materials for our consideration to assail the impugned order of learned CIT(A). He also could not present us with any decided precedents in support of the additions made by the Assessing Officer. Learned D.R. was unable to show how the impugned order of learned CIT(A) was erroneous, unfair, unjust or lacking any merit having regard to facts and circumstances, applicable law and decided precedents. No case has been made from the side of the Revenue to persuade us to take a view different from the view taken by learned CIT(A) in relation to aforesaid additions of Rs.1,38,31,516/- and Rs.1,68,61,600/- respectively. Therefore, we decline to interfere with the impugned order of learned CIT(A).

6. In the result, the appeal filed by the Revenue is dismissed and Cross Objection filed by the assessee is allowed.

(Order pronounced in the open court on 17/12/2024)

Sd/.	Sd/.
(ANADEE NATH MISSHRA)	**(SUBHASH MALGURIA)**
Accountant Member	**Judicial Member**

Dated:17/12/2024
*Singh

<u>Copy of the order forwarded to</u> :

1. The Appellant
2. The Respondent
3. Concerned CIT
4. The CIT(A)
5. D.R. ITAT, Lucknow

Asstt. Registrar