

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No.4820/Mum/2024
Assessment Year: 2017-18**

FCG Flameproof Control Gears Private Limited A1/53, Shah and Nahar Industrial Estate, Sitaram Jadhav Road, Lower Parel West, Mumbai-400013. PAN: AAACC 2688 K	Vs.	ACIT, Circle-6(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Nishant Somaiya, Sr. DR

Date of Hearing : 09.12.2024
Date of Pronouncement : 30.12.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

This appeal of the assessee for the assessment year 2017-18 is directed against the order dated 21.07.2024 passed by the Id. Commissioner of Income-tax (Appeal), NFAC, Delhi. The solitary grounds of appeal of the assessee is filed against the order of First Appellate Authority in sustaining the disallowance of Rs. 9,69,810/- u/s 41(1) of the Act.

2. Fact in brief is that return of income declaring total income of Rs. 2,98,60,100/- was filed on 30.11.2017. The case was subject to scrutiny assessment and assessment u/s 143(3) of the Act was finalized on 12.12.2019. During the course of assessment, the assessing officer noticed that assessee company has shown outstanding creditors exceeding more than 3 years at Rs.

74,49,694/- . On query assessee submitted that these creditors were outstanding since F.Y. 2016-17 as reflected in the audited financial statement. However, the assessing officer opined that creditors were outstanding more than 3 years to the amount of Rs. 74,49,694/- therefore, same were liable for disallowance u/s 41(1) of the Act as cessation of liability.

3. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has partly allowed the appeal of the assessee. The ld. CIT(A) has restricted the disallowance to the extent of Rs. 9,69,810/- after considering the fact that assessee had already made payment in the nature of advances to the creditors of purchases amounting to Rs. 64,79,854/- during the F.Y. 2016-17.

4. We have perused the provision of section 41(1) of the Act which provide that where any allowance or deduction for any loss, expenditure or trading liability is made in any year or subsequently, the assessee has derived any benefit in respect of such loss, expenditure or trading liability by way of remission or cessation, the value of such benefit shall be deemed to the income of the previous year in which such benefit is derived. However, we find that in the case of the assessee it has not claimed any remission or cessation of liability as prescribed in section 41(1) of the Act. As per the financial statement for the A.Y. 2016-17, the assessee still has shown the liability under the head sundry creditors payable. Further before the ld. CIT(A), the assessee has also referred the judicial pronouncement in the case of Sugauli Sugar Works (P) Ltd. 236 ITR 518, Kohinoor Mills 49 ITR 578 on the proposition that merely on the expiry of period of limitation it does not by itself constitute cessation of the liability. Therefore, we consider that only on the ground that sundry

creditors liability was more than 3 years old, it is not justified to treat as the income of the assessee for the deemed cessation of liability, therefore, the decision of ld. CIT(A) is not justified. Accordingly, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 30.12.2024.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 30.12.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai