

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, B, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.5936/Mum/2011
Assessment Year: 2008-09**

Mr. Madan Mohla, 301, Kings Apartments, Juhu Tara Road, Mumbai-400049	बनाम/ Vs.	ITO 11(1)(2) Aayakar Bhavan, M.K. Rd. Mumbai-
(Assessee)		(Revenue)
P.A. No.AAOPM1470C		

निर्धारिती की ओर से / Assessee by	Shri Sanjiv M. Shah (AR)
राजस्व की ओर से / Revenue by	Shri Rajguru (DR)

सुनवाई की तारीख / Date of Hearing :	21/04/2016
आदेश की तारीख / Date of Order:	29/04/2016

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

This appeal has been filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals), Mumbai-3 {(in short 'CIT(A)'}, dated 22.07.2011 passed against

assessment order u/s 143(3) dated 24.12.2010 for the Assessment Year 2008-09 on the following grounds:

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of a sum of Rs.17,71,210/- on account of amount payable to sundry creditors as ceased liability u/s 41(1) of the act. That the orders of both the CIT(A) and Ld. Assessing Officer are bad in law and on facts.”

2. During the course of hearing, arguments were made by Shri Sanjiv M. Shah, Authorised Representative (AR) on behalf of the Assessee and by Shri Rajguru, Departmental Representative (DR) on behalf of the Revenue.

3. The solitary issue raised in this appeal is with regard to addition of Rs.17,71,210/- made u/s 41(1) on the ground that liability of the assessee on account of amount payable to sundry creditors ceased to exist.

3.1. During the course of assessment proceedings, it was found that the balance sheet of the assessee's proprietary concern namely M/s. Seven Arts Pictures, reflected around 10 creditors aggregating to Rs.17,71,210/- which were outstanding for more than 3 years. He issued notice u/s 133(6) to some of these creditors, and in absence of proper response from the creditors, the AO held that the liability ceased to exist and accordingly he made addition u/s 41(1).

3.2. Being aggrieved, the assessee filed appeal before the Ld. CIT(A) wherein it was contended that merely because the

outstanding was for more than 3 years, it cannot be concluded that the assessee is not liable to pay these amounts. It was further submitted that there were no basis with AO to presume that these liabilities ceased to exist. But, Ld. CIT(A) was convinced with the submissions of the assessee and therefore, he confirmed the order of the AO and dismissed the appeal of the assessee.

3.3. Being aggrieved, the assessee filed an appeal before the Tribunal.

3.4. It has been submitted before us that impugned addition is contrary to the well settled position of law; no addition could have made under section 41(1) without proving that liability ceased to exist and that too in the year under consideration. Nothing has been brought on record by the AO to show that some benefit has actually accrued to the assessee during the year under consideration. The reliance has been placed on the following cases in support of proposition that no addition could have been made u/s 41(1), unless the liabilities actually ceased to exist and that too during the impugned year:-

1. CIT vs. Sugauli Sugar Works (P) Ltd 236 ITR 518(SC)
2. CIT vs. SI Group 379 ITR 326(SC)
3. CCIT v. Kesaria 254 ITR 434 (SC)
4. CIT v. Jain 85 CCH 66 (DEL)
5. PCIT v. Matruprasad 377 ITR 363(Guj)
6. ITO v. Bhavesh 46 SOT 268(AHM)
7. Mitin v. ACIT 40 SOT 253 (AHM)

3.5. On the other hand, Ld. DR relied upon the orders of the lower authorities.

3.6. We have gone through the orders of the lower authorities and judgments relied upon before us. The admitted facts are that the impugned creditors were continued to be shown by the assessee in its balance sheet. It means that assessee continue to acknowledge these liabilities in its books of accounts. Under these circumstances, even if more than 3 years have passed, then at the best these liabilities may be termed as not enforceable in the court of law, but that alone would not finally exonerate the assessee from these liabilities. The assessee is carrying in the business and for its respectful and peaceful existence in the business as well as in the society; he may prefer to pay off all the liabilities from social, moral, commercial or many other angles. The decision to pay or not to pay a liability can be taken by the businessman alone. So long as, the liabilities are acknowledged in the books of account, no presumption should be drawn that the liability ceased to exist that too merely on the basis of their age. Further, there is nothing to show that the creditors had discharged the assessee from payments of these liabilities and that too in the year under consideration. It is further noted by us that for the application of provisions of section 41(1), an assessee must get some benefit in real terms by way of remission or cessation of the liabilities. Our view is supported by many judgments which have been relied upon by the Ld. Counsel. We find it appropriate to reproduce relevant

observation of Hon'ble Supreme Court from its judgment rendered in the case of CIT vs. Sugauli Sugar Works (P) Ltd 236 ITR 518 as follows:

*"The following words in section 41(1) of the Income-tax Act, 1961, 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". 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 the sine qua non for the application of this section.** The mere fact that the assessee has made an entry of transfer in his accounts unilaterally will not enable the Department to say that section 41(1) would apply and the amount should be included in the total income of the assessee.*

The principle that 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, has been well settled. If that principle is applied, it is clear that mere entry in the books of account of the debtor made unilaterally without any act on the part of the creditor

will not enable the debtor to say that the liability has come to an end. Apart from that, that will not by itself confer any benefit on the debtor as contemplated by the section.

3.7. From the above judgment, it may be seen that Hon'ble Supreme Court has clearly observed that expiry of the period of limitation prescribed under the Limitation Act would not extinguish the debt but it would only prevent the creditors from enforcing the debt. It has further been clearly held that obtaining by the assessee a benefit by virtue of remission or cessation is the *sine-qua-non* for the application of section 41(1). Similar view has been taken by Hon'ble Supreme court in another judgment in the case of CIT v. SI Group 379 ITR 236. Thus, taking into account totality of all the facts and circumstances of the case and aforesaid judgments we find that addition made by the AO was not sustainable in the eyes of law and therefore, it is directed to be deleted.

4. In the result, this appeal filed by the assessee is allowed.

Order pronounced in the open court on 29th April, 2016.

Sd/-
(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 29/04 /2016

Patel, P.S. नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai