

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI  
BEFORE SHRI A.T.VARKEY, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.1034/Del/2013  
(Assessment Year: 2003-04)

Dalmia (Broas) Pvt. Ltd., 2 <sup>nd</sup> Floor, Indraprakash Building, 21, Barakhamba Road, New Delhi PAN:AAACD3525G	Vs.	DCIT, Circle-10(1), C.R. Building, New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by :Sh.M.L. Dujari, Adv  
Respondent by:Sh. Yatendra Singh, Sr. DR

Date of Hearing	18/01/2016
Date of pronouncement	17/03/2016

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. This appeal is preferred by the assessee against the order of learned Commissioner of Income-tax (Appeals)-XIII, New Delhi dated 14.12.2012 for the Assessment Year 2003-04 confirmation of addition of Rs.1970672/- on account of liabilities u/s 41(1) of the Act. The assessee has preferred seven grounds of appeal but are concerned only with the addition of Rs.1970672/- u/s 41(1) of the Act.
2. The brief facts of the case is that the assessee is a private limited company which is engaged in the business of the consultancy services. The original assessment u/s 143(3) was completed on 27<sup>th</sup> March 2006 on taxable income of Rs.21980970/-. Subsequently, the case of the assessee was reopened and notice u/s 148 was issued on 04.09.2009, wherein the AO was of the opinion that an Rs.166.37 lacs liability of the assessee has seized to exist. Against this reopening the assessee challenged the same before the Hon'ble Delhi High Court vide order dated 17.10.2011, the reopening was held to be valid. Subsequent to that AO with respect to the credit of Rs.3297000/- which outstanding has trading liabilities was added to the income of the assessee. The main reason for such an addition is that till the passing of the assessment order i.e. on 12.11.2011 the assessee has not made any payment of

outstanding liability as on 31<sup>st</sup> March 2003. The AO was therefore of the view that the assessee could not substantiate that those creditors still exists. Hence the addition of Rs.3297000/- was made. The assessee carried the matter before the learned Commissioner of Income-tax (Appeals), who in turn deleted the addition of Rs.1326835 from the sundry creditors out of total addition of Rs.3297507/- therefore confirming the balance addition of Rs.1970672/-. Against this the assessee has preferred an appeal before us.

3. Before us it was contended by the Id AR of the assessee that lower authorities has not given a finding why the provisions of section 41(1) is applicable to the various liabilities outstanding. It was stated that out of liabilities some of the liabilities are created during the year and for some of the liabilities the addition have already been made by the AO for assessment year 2001-02 of Rs.267731/- in Assessment Year 2002-03 Rs.2145164/- and for Assessment Year 2003-04 Rs.60,90,531/-. Therefore it was contended that without examining the details the addition have been made. It was further submitted that as per P.g. 34 of the Paper Book some of the liabilities added are pertaining to the current year. Therefore it was argued that when the expenses has not been found in genuine how the liabilities can be added u/s 41(1) of the Act. It was further contended that previous assessment years as stated above were not perused by the lower authorities. Another argument that was advanced vide letter dated 08.11.2011 the assessee sought time before the AO, however the AO passed the order without grating adjournment and therefore the assessee could not have adequate opportunity before the AO. Hence he requested that in absence of adequate opportunity the assessee could not explain all these facts before the AO.
4. Against this the Id DR relied on the order of the lower authorities and supported them stating that when the assessee has failed to establish that the liabilities it exists the addition has rightly been made. However regarding adequate opportunity not granted to the assessee before the AO, he did not raise any objection for setting aside the matter to the file of AO.
5. We have carefully considered the rival contention we are of the view that the has raised a substantial point that when the addition has already been made of the some liabilities for previous years no further addition can be made of the same liabilities in this year. However, it is not clear how the AO

has disallowed the liabilities which are stated to have arisen by the AO of the appellant during the current year when the expenditure have not found to be in genuine. However, though the assessee sought an adjournment before the AO vide letter dated 08.11.2011, however the AO has passed the order on 12.11.2011. Therefore it is apparent that the assessee did not get adequate opportunity to represent its case before the AO. In view of this and in the interest of justice we set aside the matter to the file of AO to re-appreciate the argument advanced by the assessee to verify the facts produced before him and then to take decision in accordance with law.

6. In the result the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 17/03/2016.**

**Sd/-**  
**(A.T.VARKEY)**  
**JUDICIAL MEMBER**

**-Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated: 17/03/2016  
*A K Keot*

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi