

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

I.T.A. No. 619 of 2009

DATE OF DECISION : 02.12.2009

Commissioner of Income Tax, Faridabad

.... APPELLANT

Versus

Smt. Sita Devi Juneja

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE MEHINDER SINGH SULLAR

Present: Ms. Urvashi Dhugga, Advocate,
for the appellant-revenue.

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SATISH KUMAR MITTAL , J.

The revenue has filed this appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), against the order dated 26.3.2009, passed by the Income Tax Appellate Tribunal, Delhi Bench 'G' Delhi (hereinafter referred to as 'the ITAT') in ITA No. 18 (Del) 2008, pertaining to the assessment year 2004-05, while raising the following substantial questions of law :

- (i) Whether on the facts and circumstances of the case, the learned ITAT was justified in law in confirming the order of CIT (A) deleting the addition of Rs. 1,47,71,696/- made on account of cessation of liability despite the fact that the liabilities were outstanding for a period of more than six years and on inquiry conducted by the Assessing Officer creditors were untraceable and also the assessee

failed to produce the creditors, their Income Tax particulars and even present address of the creditors despite opportunity being afforded to the assessee?

- (ii) Whether on the facts and circumstances of the case and in law, the learned ITAT was right in holding that “confirmations from the creditors were produced, which were not doubted” despite the fact that the Assessing Officer in his assessment order has observed that though copies of accounts of sundry creditors appearing in the books of the assessee signed by the concerned creditors were filed by the assessee, the assessee herself admitted during the assessment proceedings that she had lost contact with the creditors and their latest addresses are being located and further, the addresses of creditors and their PANs were also not given during the assessment proceedings?
- (iii) Whether the learned ITAT was right in holding that no trading liability existed in the case which was necessary to attract Section 41 (1), thereby totally disregarding the basic facts of the case that the conditions necessary for invoking Section 41 (1) were fulfilled, since the Assessing Officer had invoked these provisions in the assessee's case where there were cessation of liability by trade creditors with regard to their trading dues or trading liability owed to the assessee for goods supplied?

In the present case, the Assessing Officer made an addition of Rs.1,47,71,696/- on account of outstanding sundry credit balances as on 31.3.2004, while holding that liability in respect of these creditors had ceased to exist and as such, it had become liable to be treated as deemed

income under Section 41 (1), Explanation-I of the Act. On appeal filed by the assessee, the CIT (A) partly allowed the appeal and the aforesaid addition was deleted, while coming to the conclusion that in the facts and circumstances of the case, the Assessing Officer has wrongly invoked the provision of Section 41 (1), Explanation-I of the Act. It has been observed that in the instant case, there was no unilateral cessation or remission of liabilities of Rs. 1,47,71,696/-, therefore, the provision of Explanation-I to Section 41 (1) of the Act is not attracted. It was further observed that if the income is to be assessed under Section 41 (1) of the Act, the burden is on the revenue to prove this income, whereas the Assessing Officer has failed to give any finding in his assessment order regarding the mandatory requirement of Section 41 (1) of the Act. The Assessing Officer has also not given any finding regarding obtaining of any benefit of these trading liabilities in the earlier year.

Against the order of the CIT (A), the revenue filed appeal, which has been dismissed by the ITAT, while observing as under :-

“It was for the AO to show that the liabilities in question had ceased to exist. In fact, these liabilities were payable to the assessee and unless demonstrated, they were to be shown as outstanding. These liabilities were appearing in the assessee's balance-sheet, indication acknowledgment of the debts payable by the assessee, as has been held in “CIT v. Tamil Nadu Warehousing Corpn.” 292 ITR 310 (Mad), and “Ambika Mills Ltd. v. CIT” 54 ITR 167 (Guj.). As such, these liabilities could not have been treated to have ceased and so, invocation of the

provisions of Section 41 (1) was not at all called for. Moreover, as held by the Hon'ble Supreme Court in “Sugauli Sugar Works v. CIT” 236 ITR 518 (SC), the cessation of the liability can come about only by a bilateral act and not unilateral act. In the present case, the assessee treated the liability as existing. Further, section 41 (1) of the Act provides for a deeming fiction, as per which an amount not having the nature of income is treated as income. That being so, the burden of proving the fiction is in the department. Sans the discharging of this burden, the addition cannot be made. Here, the AO has not made out any case of applicability of section 41 (1). To attract section 41 (1), there must exist a trading liability, regard, which the deduction had been claimed and allowed. No such trading liability had been proved herein. The addition was clearly made on the basis of mere presumptions, conjectures and surmises. The AO failed to show that in any earlier year, allowance of deduction had been made in respect of any trading liability incurred by the assessee, nor was it proved that any benefit was obtained by the assessee concerning such trading liability by way of remission or cessation thereof during the concerned year. There thus, did not accrue any benefit to the assessee which could be deemed to be the profits or gains of the assessee's business which would otherwise not be the assessee's income. The assessment order, as such, is directly against the decision of the Hon'ble Supreme Court in the case of “Chief Commissioner of Income Tax v. Kesaria Tea Co. Ltd.” (2002) 254 ITR 434 (SC).”

After hearing learned counsel for the appellant and going through the impugned order, we do not find any merit in the instant appeal. It is the conceded position that in the assessee's balance sheet, the aforesaid

liabilities have been shown, which are payable to the sundry creditors. Such liabilities, shown in the balance sheet, indicate the acknowledgment of the debts payable by the assessee. Merely because such liability is outstanding for the last six years, it cannot be presumed that the said liabilities have ceased to exist. It is also conceded position that there is no bilateral act of the assessee and the creditors, which indicates that the said liabilities have ceased to exist. In absence of any bilateral act, the said liabilities could not have been treated to have ceased. In view of these facts, the CIT (A) as well as the ITAT have rightly come to the conclusion that the Assessing Officer has wrongly invoked the Explanation-I of Section 41 (1) of the Act and made the aforesaid addition on the basis of presumption, conjectures and surmises. It has been further found that the Assessing Officer failed to show that in any earlier year, allowance of deduction had been in respect of any trading liability incurred by the assessee. It was also not proved that any benefit was obtained by the assessee concerning such trading liability by way of remission or cessation thereof during the concerned year. Thus, there did not accrue any benefit to the assessee which could be deemed to be the profit or gain of the assessee's business, which would otherwise not be the assessee's income. It has been further found as fact that the assessee had filed the copies of accounts of sundry creditors signed by the concerned creditors. In view of this fact, in our opinion, the ITAT has rightly come to the conclusion that confirmation from the creditors were produced.

In view of the above, we do not find any illegality in the

impugned order passed by the ITAT and in our opinion, no substantial questions of law, as raised by the revenue in this appeal, arise from the order of the ITAT.

Dismissed.

**(SATISH KUMAR MITTAL)
JUDGE**

December 02, 2009
ndj

**(MEHINDER SINGH SULLAR)
JUDGE**