

IN THE INCOME TAX APPELLATE TRIBUNAL,
“ A ” BENCH, AHMEDABAD
Before Shri A. K. GARODIA, ACCOUNTANT MEMBER
and Shri KUL BHARAT, JUDICIAL MEMBER
I.T.A. No. 896/ Ahd/2011
(Assessment year 2007-08)

M/s. Nitisha Silk mills Pvt. Ltd., Vs. ITO, Wad 1(4), Surat
584. Adarsh Market,
Ring Road, Surat

PAN/GIR No. : AABCN2056K

(APPELLANT) .. (RESPONDENT)

Appellant by: Shri Sapnesh Seth, AR
Respondent by: Shri Rahul Kumar, Sr. DR

Date of hearing: 19.06.2012

Date of pronouncement: 20.07.2012

ORDER

PER SHRI A. K. GARODIA, AM:-

This is assessee's appeal directed against the order of Ld. CIT(A)-I, Surat dated 21.02.2011 for the assessment year 2007-08.

2. The grounds raised by the assessee are as under:

“1. On the facts and circumstances of the case as well as law on the subject, the learned CIT (A) has erred in confirming the action of the Assessing Officer in making addition of Rs.33,97,308/- on account of 'sundry creditors' and 'advance from customers' as deemed income u/s. 41(1) of the act.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT (A) has erred in confirming the action of the Assessing Officer in making addition of Rs.9,26,856/1 u/s 68 of the Act by treating cash sales as unexplained cash credits. If

3. It is therefore prayed that various addition made by Assessing Officer and confirmed by CIT (A) may please be deleted.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal. Fornjtisha Silk mills Pvt. Ltd.”
3. Regarding ground No.1, brief facts of the case are that it is noted by the A.O. in the assessment order in para 4 that the assessee company was engaged in the business of manufacturing and trading of synthetic dress material and in the present year, the assessee company has decided to discontinue the business activities and therefore, no fresh purchases were made and only opening stock was sold. He further noted that assessee is showing outstanding credit of Rs.33,16,939/- from 9 creditors and also showing outstanding advance from customers of Rs.80,369/- shown in the name of seven customers and the total amount so outstanding was Rs.33,97,308/-. The A.O. made detailed inquiry regarding these outstanding creditors. He also stated in the assessment order that on query raised from these parties, no reply was received in most of the cases and, therefore, the balance remained unconfirmed. He invoked provisions of Section 41(1) of the Income tax Act, 1961 and made addition of this outstanding amount in the name of various creditors and customers. Being aggrieved, assessee carried the matter in appeal before Ld. CIT(A) but without success and now, the assessee is in further appeal before us.
4. It was submitted by the Ld. A.R. that all these balances are opening balance and liability is shown in the balance sheet and under these facts, the provisions of Section 41(1) are not applicable. He further submitted that details are available on pages 39-52 of the paper book and from the same, it can be seen that all are brought forward opening balance and there is no fresh credit in the present year. He also submitted that the balance sheet of the assessee company of the present year is available on

page 27 of the paper book and the details of current liability in Schedule 'J' is available on page 32 of the paper book which is showing outstanding amount of Rs.30,80,374/- in respect of credit for goods and Rs.80,369/- in respect of advances from customers. Regarding advances from customers, it was submitted that it is explained before the A.O. also that in most of the cases, payments were made by the customers wrongly to the assessee company although the same was to be paid to the sister concerns and in the subsequent year, the amount was transferred to sister concern and, therefore, there is no advance received from the customers. It is also submitted that in some of the cases, goods were returned by the customers and the credits appearing in the balance sheet is in respect of such goods returned by the customers and for the same, payments were made to those customers in the subsequent period. Regarding the sundry creditor M/s. Parag Prints Ltd. to whom the largest amount is payable of Rs.30,06,454/-, it was submitted that the payment was not made to this party because of some dispute with regard to quality of goods. He further submitted that the dispute was settled in the next year and it was agreed to supply goods of the same worth and the terms were finalized with the help of one broker M/s. Lohiya agency and accordingly, such goods were supplied to this party in the subsequent period. It is further submitted that in case of most of the creditors, the amount was already surrendered for tax in subsequent period when the company considered it that the liability no longer exists and since the same was offered to tax in subsequent period, no addition should be made in the present year by invoking the provisions of Section 41(1) of the Income tax Act, 1961.

5. Ld. D.R. of the revenue supported the order of Ld. CIT(A).

6. We have considered the rival submissions, perused the material on record and have gone through the orders of authorities below. We find that there is no dispute on this aspect that the total amount was shown as liability in the balance sheet and there is no credit in current year. In the light of these facts, we find that the provisions of Section 41(1) are not applicable because nothing has been brought on record to show that the liability in question has ceased to exist. In the case of Parag Prings Ltd., goods of equal amount were supplied by the assessee to this party in the subsequent period and in most of the cases of the creditors, the assessee has surrendered the amount for taxation in subsequent period. As per the judgement of Hon'ble Apex Court in the case of Sugoli Sugar Works as reported in 236 ITR 518 and in the case of Kesaria Tea Co. Ltd. as reported in 254 ITR 434, it was held by the Hon'ble Apex Court that even if liability has been written back by the assessee in its books of account, this unilateral action of the assessee will not result into cessation or remission of liability. Subsequently there is amendment in Section 41(1) as per which if the assessee write back certain liability in its books then even this unilateral action of the assessee will result into remission of the liability but in the present case, even this condition is not fulfilled by the assessee. Therefore, in the light of these two judgements of Hon'ble Apex Court, the provisions of Section 41(1) are not applicable in the present case considering the facts of the present case. The judgement of Hon'ble Apex Court rendered in the case of T V Sundaram Aiyenger as reported in 222 ITR 344 is against the assessee in respect of advances from customers but in the present case, this judgement is also not applicable because the facts are different. Regarding the amount outstanding in respect of various customers of Rs.80,369/-, it was the

submission of the assessee that the amount was not received as advance from these customers but in fact, in most of the cases, the amount was paid by the customers to the assessee company although the same was payable to a sister concern of the assessee and adjustment between sister concerns was made by the assessee in the subsequent period. For the remaining parties, it was submitted that those are not on account of advances received but on account of goods returned by the customers for which the payments were made to them in subsequent period and, therefore, the facts in the present case are different and therefore, this judgement of Hon'ble Apex Court is not applicable in the present case. In view of the above discussion, we are of the considered opinion that addition made by the A.O. and confirmed by Ld. CIT(A) is not justified because the provision of Section 41(1) are not applicable in the present case. We, therefore, delete this addition.

7. In the result, ground No.1 is allowed.

8. Regarding ground No.2, it was submitted by the Ld. A.R. that the addition was made by the A.O. in respect of cash sale declared by the assessee on 16.5.2006, 17.5.2006 and 31.3.2007. He further submitted that the amount in question was already credited by the assessee to the P & L account by way of sale and, therefore, the same cannot be added again. Reliance was placed on the judgment of Hon'ble Bombay High Court rendered in the case of R.B. Gurnam Fatehchand Vs ACIT as reported in 75 ITR 33.

9. As against this, Ld. D.R. of the revenue supported the order of authorities below.

10. We have considered the rival submissions, perused the material on record and have gone through the orders of authorities below and the

judgment cited by the Ld. A.R. We find that this is noted by the A.O. on page 30 para 7 of the assessment order that the assessee has claimed to have effected cash sales of grey cloth on three dates i.e. 16.5.2006, 17.5.2006 and 31.3.2007 totaling an amount of Rs.9,95,870/-. The A.O.'s objection is this that why cash sale is only on these three dates in the year and not on other dates. With regard to this objection of the A.O., it was submitted by the assessee before the A.O. vide written submission dated 29.12.2009 that since the assessee decided to discontinue the business, major quantity of grey cloth lying in various process houses were called back without processing and the grey cloth so received was sold in cash. It is also submitted that some of the process houses could not trace grey cloth of the assessee and therefore, cash equal to that value of grey cloth was given by the owners of the process houses. Considering these facts of the present case, in its entirety, we are of the considered opinion that the claim of the assessee regarding cash sales under peculiar conditions that the assessee was discontinuing its business and therefore some sales were made in cash cannot be summarily rejected. We also find that it is observed by the Ld. CIT(A) on pages 51-52 of his order that the assessee could not provide even the names and addresses of those parties to whom cash sales were claimed to have been made. This is the main basis on which Ld. CIT(A) has confirmed the decision of the A.O. In our considered opinion, it cannot be said that in the case of cash sales, the assessee is bound to keep record of the names and addresses of the buyers. The judgement of Hon'ble Bombay High Court cited by the Ld. A.R. rendered in the case of R B Gurnam Fatehchand vs ACIT as reported in 75 ITR 33 also supports the case of the assessee. In that case also, the assessee was not in a position to give the addresses of the

customers to whom cash sales were made. Under these facts, it was held by the Hon'ble Bombay High Court that this cannot be the basis to reject the book results. Respectfully following the judgment of Hon'ble Bombay High Court, we delete this addition also. Ground No.2 is also allowed.

11. In the result, appeal of the assessee is allowed.
12. Order pronounced in the open court on the date mentioned hereinabove.

Sd./-
(KUL BHARAT)
JUDICIAL MEMBER
Sp

Sd./-
(A. K. GARODIA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The applicant
2. The Respondent
3. The CIT Concerned
4. The Ld. CIT (Appeals)
5. The DR, Ahmedabad
6. The Guard File

By order

AR,ITAT,Ahmedabad

1. Date of dictation.....16/7
2. Date on which the typed draft is placed before the Dictating Member 17/7.Other Member
3. Date on which the approved draft comes to the Sr. P.S./P.S.
4. Date on which the fair order is placed before the Dictating Member for pronouncement20/7
5. Date on which the fair order comes back to the Sr. P.S./P.S.20/7
6. Date on which the file goes to the Bench Clerk ...20/7/12
7. Date on which the file goes to the Head Clerk
8. The date on which the file goes to the Assistant Registrar for signature on the order
9. Date of Despatch of the order.