

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

**[Coram: Pramod Kumar (Vice President)
And Saktijit Dey (Judicial Member)]**

ITA No. 3027/Mum/2019
Assessment Year: 2014-15

**Deputy Commissioner of Income Tax,
Circle-8(2)(2), Mumbai**

.....Appellant

Vs

Surbhit Impex Pvt. Ltd.
412/413, Mandvi Navjeevan,
Sayed Street Masjid Bunder,
Mumbai-400 003 [PAN: AADCS 4949 J]

.....Respondent

Appearances by

Vijaykumar G. Subramanyam *for the appellant*
Dr. K. Shivaram, *Senior Advocate for the respondent*

Date of concluding the hearing : September 17, 2021
Date of pronouncement : September 17, 2021

ORAL ORDER
(Dictated in the open court)

Per Pramod Kumar, VP:

1. By way of this appeal, the Assessing Officer has challenged correctness of the order dated 03.12.2018 passed by the learned CIT(A)-14, Mumbai in the matter of assessment u/s.143(3) of the Income Tax Act, 1961, for the assessment year 2014-15.

2. The grievance raised by the appellant, by way of a question posted for our consideration, is as follows:

Whether on the facts and in the circumstances of the case and in law, ld. CIT(A) was correct in deleting the disallowance of Rs.3,13,65,360/- made by the Assessing Officer u/s.41(1)(a) of the Income Tax Act?

3. To adjudication on this appeal, only a few material facts needs to be taken note of. The assessee before us, *inter alia*, is a company engaged in the business of trading. During the course of assessment proceedings, the Assessing Officer noticed that the assessee owes Jiangsu Go Intl. Group Hua Tai Import & Export Co., China Rs.1,25,10,400/- and M/s. Zhejiang Hengdian Apeloa Imp. & Exp. Co. Ltd. Rs.1,88,54,960/-, respectively. It was noted that these credit entries are still to be paid. The details filed in the return of income and its annexure according to the Assessing Officer clearly shows that the liabilities are a trading liability, the assessee has purchased and sold the consignment and since the consignment was not of good quality, the payment is not made. It was for this reason that these two parties, as noted by the Assessing Officer, were shown as creditors. The Assessing Officer proposed to treat the same as ceased liabilities, but the assessee opposed the same on the ground that the liability has not ceased even though it is disputed. The Assessing Officer however proceeded to reject the submission made by the assessee and at these amounts aggregating to Rs.3,13,65,060/- to the income of the assessee u/s.41(1)(a) of the Act by observing, *inter alia* as follows:

- a) **The assessee has shown purchase of consignment from two different parties & sold it to one party named Actigen. It is unusual to understand, how both purchases from two separate party can be stated of inferior quality.**
- b) **The import cost is a trading liability, which is taken as expenses in the books of earlier years, but till 2016 , the payment to the above creditors has not been done .**
- c) **The assessee, states that due to the quality dispute, they do not intend to pay the creditor.**
- d) **The assessee has unusual difference in quality of purchase & sale value, which is enumerated above in his trading activity .**

Considering the above facts, Rs.3,13,65,060/- (Rs.1,25,10,400/- plus Rs.1,88,54,960/-), which is a trading liability & is not paid till date is treated as deemed income of business by cessation of trading liability u/s 41(I)(a) of I.T.Act.

(Addition of Rs.3,13,65,060/- u/s. 41(I)(a))

4. Aggrieved by the additions so made, the assessee carried the matter in appeal before the learned CIT(A). The learned CIT(A) took note of the submissions made by the assessee, as also the fact that the proceedings for recoveries with respect of these amounts were still in progress, as at the relevant point of time and, therefore, these amounts cannot be treated as ceased liability u/s.41(1)(a) of the Act. He deleted the impugned addition by holding it to be an existing liability. While doing so, the learned CIT(A) in his well reasoned order, observed as follows:

4.1 Decision

During the course of assessment proceedings it was noticed by the AO that the appellant had following trading liabilities in respect of which no payment was made by the appellant during the course of the relevant previous year and even until the time of assessment i.e. December 2016, the payments were outstanding as such: -

Jiangsu Go Intl Group HuaTai Import & Export Co, China	Rs 1,25,10,400/-
Zhejiang Hengdian Apeloa Imp & Exp Co Ltd	Rs 1,88,54,960/-
Total	Rs.3,13,65,060/-

The A.O. did not accept the submission of the appellant that the goods received from the parties were inferior and the appellant has not received payments against the sale of these goods. Since the quality of the goods is under dispute, no payment has been made by the appellant. The appellant also stated that they do not intend to make payment due to disputes regarding quality. In view of this, the AO treated the amount of Rs,3,13,65,060/- as the amount in respect of which liability has ceased and taxed the same u/s 41(I)(a) of the IT Act.

During the course of appellate proceedings, the appellant has submitted that the parties have filed suit in the Bombay High Court for recovery of the amount and the matter is pending. Therefore, there is no case for cessation of liability as held by the A.O. The appellant has also filed copies of the petitions filed by these parties as additional evidence during the course of appellate proceedings. The documents were forwarded to the AO vide this office letter dated 13/10/2017 for his comments. The AO has not offered any comments on these documents in his report dated 07/02/2018. Looking to the fact that adequate opportunity of being heard was not provided to the appellant during the course of assessment proceedings, additional evidence filed by the appellant is admitted. From the evidences submitted by the appellant it is seen that the matter is sub - judice, therefore, the AO was wrong in concluding that the liability of the appellant has ceased to exist. Accordingly, addition of Rs.3,13,65,060/- made by the AO is directed to be deleted and this ground of appeal is allowed.

5. The Assessing Officer is aggrieved and is in appeal before us.
6. We have heard the rival contentions, perused the material on record and duly considered the facts of the case in light of the applicable legal position.
7. As Dr. K. Shivaram, learned Senior Advocate appearing for the assessee rightly points out, it is undisputed position that as on the relevant point of time, the proceedings against the assessee for recovery of these amounts were pending before the Hon'ble judicial forums. It was only on 29.01.2018, i.e., which much after the end of the relevant previous year, that Their Lordships of Hon'ble Bombay High Court dismissed the Winding up Petitions filed by these creditors in the judgments reported at Jiangsu Go Intl Group Hua Tai Import & export Co., China vs. Surbhit Impex Private Limited (CP 744 of 2014) dated December 21, 2017 and Zhejaing Hengdian Apeloa Imp & Exp Co Ltd. vs. Surbhit Impex

Private Limited (CP 501 of 2015) dated January 29, 2018. Clearly, therefore, as on the relevant point, even the proceedings with respect to the recoveries of these amounts were pending in the judicial forums and by no stretch of logic, it can be said that these amounts ceased to be payable by the assessee. It is only elementary that in order to bring an amount to tax u/s.41(1)(a), three fundamental conditions are to be satisfied, but the very foundational condition is that there has to be benefit in respect of such trading liability by way of 'remission and cessation' and clearly that condition was not satisfied atleast in this year. We, therefore, approve the well reasoned finding given by the learned CIT(A) and decline to interfere in the matter.

8. It's a pity that sometimes the departmental appeals are filed without carefully looking at undisputed foundational facts in a routine manner. In the present case, even though the Assessing Officer is in appeal before us, the foundational facts are not even in disputes and these foundational facts indicate that there was no remission or cessation of liability in the relevant previous year. Yet, the Assessing Officer is in appeal before us. That does not make any sense. We only hope that the Income Tax Authorities are more careful in taking a call on which decisions needs to be pursued in further appeals. We leave it at that for the time being.

9. In the result, the appeal is dismissed. Dictated and pronounced in the open court on 17th day of September, 2021.

Sd/-
Saktijit Dey
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 17th day of September, 2021
Roshani, Sr. PS

Copies to:

(1)	<i>The Applicant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

Assistant Registrar/Sr. PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai