

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Shri, M. Balaganesh, Accountant Member

ITA No.1907/Kol/2016
Assessment Year :2001-02

ACIT, Cicle-36, Aayakar Bhawan, Poorva, 8 th Floor, 110, Shantipally, Kolkata-107	V/s.	M/s Soorajmull Nagarmull, 8 B.B.D. Bag (East), Kolkata-700001 [PAN No.AAAAB 0601 N]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Md. Usman CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Akkal Dudhwewal, FCA
सुनवाई की तारीख/Date of Hearing	26-06-2018
घोषणा की तारीख/Date of Pronouncement	20-07-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This Revenue's appeal for assessment year 2001-02 calls into question correctness of the Commissioner of Income Tax (Appeals)-10, Kolkata's order dated 08.07.2016, passed in case No.142/CIT(A)/10/Cir-36/15-16/Kol, reversing Assessing Officer's action invoking section 41(1) after treating the assessee's liability amount of ₹12,97,47,322/- to be a case of cessation of liability assessment order dated 30.03.2015, involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

2. We notice at the outset that CIT(A)'s detailed discussion on the above sole issue of cessation of liability u/s 41(1)(a) of the Act reads as follows:-

"06. DECISION:

1. I have carefully considered the action of the Ld.AO in adding an amount of Rs.12,97,47,322/- u/s. 441(1) of the Income Tax Act, 1961, on grounds that there was a cessation of liability on the part of the assessee for the impugned amount, and that therefore it would constitute part of the income of the assessee-firm. It is to be observed that this is the 2nd round of the assessment order for the A.Y 2001-02, and

in the first round the matter had travelled to the Hon'ble ITAT. Briefly, the facts are that the appellant is a very old partnership firm and has been carrying Sundry Creditors over an extended passage of time.

*2. For the subject Assessment Year, 2001-02 the appellant-firm had filed return of income u/s 139(2) on 30th July, 2001, declaring loss of Rs.18,740/-. The appellant-firm thereafter received notice u/s 148 of the Income Tax Act, 1961, dated 21.11.2006 reopening the assessment for AY 2001-02. In response the appellant filed a return of income declaring loss of Rs.83,923/-. Thereafter, the Ld.AO framed the assessment u/s 148 on 31.12.2007, at an income of Rs.13,02,16,901/-. In the aforesaid order the Ld.AO had made addition on account of Section 41(l) amounting to Rs.12,97,47,322/- and disallowed bad debts of Rs.5,63,402/-. Against the said order, the appellant preferred an appeal before the Ld. CIT(A)-XX, Kolkata. In the appellate order passed u/s 250 dated 31.03.2008, the Ld. CIT(A) deleted both the additions made by the AO. Against this appellate order, the Department preferred an appeal before the Hon'ble ITAT, Kolkata. The said appeal was adjudicated by the 'C' Bench of Hon'ble ITAT, Kolkata on 04.03.2014 in **ITA No. 1326/Kol/2008**. After giving consideration to the arguments put forth by the Revenue as well as the appellant, the Hon'ble ITAT set aside the matter back to the file of the Assessing Officer. I have therefore carefully examined the applicable legal provisions and the judicial decisions available on the subject and relied upon by both, the Ld.AO and the Ld.A.Rs for the appellant-firm. As such it is the second round of litigation and the scope of the present proceedings are restricted to directions contained in the appellate order of the Hon'ble Tribunal. The relevant observations of the Hon'ble ITAT, Kolkata are as under:*

[quote]

"The question arises under Sec. 41(1)(a), on whom the onus lies to prove whether the liability has been remitted or ceased. The AO, in this case, has made inquiry and given opportunity to the Assessee to produce the evidence to prove that the liability still exists but no such confirmation or evidence were produced by the Assessee. In case the onus lies on the revenue, then the revenue has to prove and bring evidence that the interest payable outstanding in the books got remitted or ceased during the year. In case, the onus lies on the Assessee, then the Assessee has to prove that there is no remission or cessation of the interest payable liability during the impugned assessment year. It is not denied that the liability respecting the interest payable is in existence for over 3 decades and under these facts, the immediate question that will arise in the mind of an ordinary person is how the liability for the interest was not paid for over 30 years, whether the liability could be regarded to remain in existence or not and whether the parties to whom the interest is payable by the Assessee are still surviving or not. In our opinion, all these questions are much more relevant to come to a concrete finding whether it can be said that there is remission or cessation of interest payable liability. We noted that the CIIT (A) has deleted the addition mainly on the basis that the AO has not brought any material or record to show that there had been a remission or cessation of the liability and benefit has been granted to the Assessee by the loan creditor in any modes of remission without deciding the issue first whether the onus lies on the AO to prove the remission or cessation of the liability during the year or the onus lies on the Assessee to prove that the liability is in existence during the year. If the onus lies on the AO, then the AO was duty bound to prove that there is remission or cessation of the liability during the year. In our opinion, whether the liability is in existence or not, the burden of proving is on the Assessee and Assessee has to bring evidence on record which may prove that the liability is in

existence during the assessment year even if it is barred by limitation. It cannot be within the domain of the AO to prove that the liability has ceased or remitted during the year even if the Assessee has not filed any confirmation or evidence to prove the existence of the liability. We, therefore, in the interest of justice and fair play to both the parties, set aside the order of CIT (A) and restore this issue to the file of AO with the direction that the AO shall re-examine this issue afresh and give proper and sufficient opportunity to the Assessee to prove that the interest payable which are more than 3 decades old are still liability in praesenti. The AO is also directed that while deciding the issue afresh, to look into the relevant provisions of the Income Tax Act as well as the relevant case laws on the issue for ascertaining on whom the burden to prove lies u/s 41.(1.) (a). In the result, this ground of appeal is allowed for statistical purposes. "

[unquote]

3. In the impugned order, it is to be seen whether both parties, as required by the Hon'ble Tribunal carried out these directions appropriately and only thereafter the Ld.AO could have sustained the addition u/s 41(1) as made in the original assessment u/s 147/143(3). In the present case the facts on record bring forth that in the assessee's Balance Sheet, it had disclosed outstanding current liabilities of Rs.12,97,47,322/- which were added by the AO u/s 41(1) of the Act on the ground that there was cessation or remission of liability. The addition so made in the original order was deleted by first Appellate Authority on the ground that no material was brought on record by the Ld.AO to demonstrate that the assessee-appellant was actually granted remission of the impugned liabilities. However when the matter travelled before the Hon'ble Tribunal, it issued the directions as have been incorporated in the order, and these were required to be carried out both by the assessee-appellant, as well as the Ld.AO. I find that in the first instance the assessee was directed to demonstrate with evidence that there existed valid liability and these were properly accounted in its books of accounts. From the submissions made by the Ld. A.R before the AO as also in this forum, it is to be observed that the appellant had furnished the complete details of outstanding liabilities as on 31.03.2001 amounting to Rs.12,97,47,322/-. The details furnished inter-alia included the names and complete addresses of the Creditors and the amounts due to each of them. The assessee also furnished copies of the Balance Sheet of the assessee-firm and the detailed list of sundry creditors for the AY.s 2000-01, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14. With reference to these details, the Ld. A.R of the assessee demonstrated that the liability of Rs.12,97,47,322/- which is the subject matter of dispute in the impugned proceedings was consistently disclosed by the assessee on its liability side and by including the amounts due to the said parties in its financial statements filed with the tax authorities the assessee had acknowledged that the liabilities were subsisting and outstanding. In making the complete declaration in the form of liabilities shown in the Balance Sheet, the assessee was acknowledging that it had obligation to pay these amounts to the Sundry Creditors named in the financial statements and the liabilities had not ceased to exist. From the perusal of the assessment order as also from the details available in record, I find that the assessee had not only furnished the detailed list of sundry creditors outstanding as on 31.03.2001, but the assessee had also filed letters of confirmations issued by the parties wherein they had confirmed the balances shown outstanding as per assessee's books of accounts. I thus find that as per the Balance Sheets of the assessee for the immediate preceding year as also for the relevant assessment year, and for the subsequent years till AY 2013-14, the assessee had declared the details of outstanding liabilities due to sundry creditors. Besides disclosing the liabilities in Annual Financial Statements, the assessee-firm had supported existence of liabilities by producing balance

confirmations of the parties for the year ended 31.03.2001. The Ld. A.R for the assessee was directed to file copies of the assessment orders for the years prior to AY 2000-01 to substantiate that in the earlier years when the liabilities accrued, no adverse inference was drawn by any of the AOs under Section 41(1). In response the Ld. A.R of the assessee produced copies of the assessment orders for AYs 1998-99, 2000-01, 2002-03 and 2003-04. From these assessment orders it is apparent that even though the same set of creditors had appeared in the appellant's books of accounts upto 31.03.2000, the Ld. AO had not disbelieved or doubted the genuineness of the liabilities and accordingly no inference with regard to remission or cessation of liability was drawn. All these years, had been subjected to scrutiny and orders were passed u/s 143(3) of the Income Tax Act. On the other hand, these assessment orders demonstrated that even though the same set of creditors appeared in the assessee's books, the Ld. AO had accepted these liabilities to be genuinely outstanding and due to the Creditors, as listed. Similarly in the subsequent assessments also the AO never disputed nor disbelieved the assessee's transactions with these sundry creditors when the assessee had made payments against outstanding balances due as on 31.03.2001. I also find that even though the same set of sundry creditors were shown outstanding as on 31.03.2004, in the assessment framed u/s 143(3) for AY 2004-05, the Ld.AO had not made any adverse comment about the genuineness of the outstanding liabilities. An assessee in the ordinary course of its dealing with the creditors is expected to maintain the basic records in support of the transactions with the parties. When called upon to substantiate the transaction, the assessee is required to furnish names and addresses and the details of financial transactions conducted. Further the assessee may also support the transactions by producing the party confirmations. Therefore with reference to the set of facts and documentary evidences as discussed, I am inclined to observe and hold that the assessee had discharged its onus of proving that as of 31.03.2001, that the assessee had subsisting liability to pay Rs.12,97,47,322/- to sundry creditors; details whereof were not only furnished before the Ld.AO but the assessee had also furnished confirmations from these creditors. In the light of the aforesaid facts, I therefore hold that the assessee had duly discharged the onus cast upon it of proving the fact that the assessee had subsisting and genuine obligation to pay Rs.12,97,47,322/- to the sundry creditors. The directions contained in the order Hon'ble ITAT, Kolkata which the assessee was required to comply were thus satisfactorily carried out by the assessee and therefore the onus of carrying out the other directions of the Hon'ble ITAT, Kolkata shifted on the Revenue, more specifically the Ld A.O.

4.From perusal of the assessment order, it is observed that the Ld. AO had also carried out enquiries and investigation into the details of creditors as furnished by the appellant. It is noted that the Ld. AO had identified the parties who had large outstanding sums which together accounted for more than 850/0 of the outstanding liability considered as income u/s 41(1) and had issued summons u/s 131 on sample basis to six creditors. From the impugned order it is observed that all the summons were served upon all the six creditors. The summons was also complied with by four creditors. The remaining two creditors did not personally appear but furnished the details as sought by the Ld.AO by way of a letter which was submitted in receipt / by post. The statements which were recorded on oath by the Ld.AO from the four creditors have been extensively reproduced in the assessment order at Pages 17 to 24. After carefully perusing the statements u/s 131 of the Income Tax act, 1961, it is to be noted that that none of the creditors denied the facts that the debts were due by the appellant. None of the persons admitted or stated that the liabilities due to them had ceased to exist or stood remitted. In the said context, it is to be noted that the Directors of the Creditor Companies who had appeared before the Ld.AO were appointed on the Board of the companies much after F.Y. 2000-01, and therefore

they had expressed their inability to explain the financial transactions of their respective companies conducted a few years back in the F.Y 2000-01. Based on such statements therefore the Ld. AO had inferred that the inability of the Directors of the creditor companies to explain the transactions with the appellant in F.Y. 2000-01 established that the liabilities had ceased to exist in terms of Section 41(1) of the Act. In this factual matrix, it is observed that, firstly, the Ld. AO had attempted to comply with the directions of the ITAT, Kolkata as when the appellant had discharged its onus of establishing that the liabilities of Rs.12,97,47,322/- were genuine and subsisting as on 31.03.2001, the Ld.AO conducted enquiries from such creditors to ascertain whether the liabilities actually existed or not. However on careful perusal of statements u/s 131 and the facts as available on record, I note that the conclusions drawn by the Ld.AO based on the statements recorded u/s 131 was without proper and complete consideration of the circumstances eminent. From the statements u/s 131, it is observed that none of the creditors had denied the fact that the debts were not outstanding nor had they stated that the liabilities due by the appellant had ceased to exist. It is further material to note that the letters of confirmations issued by these parties were filed before the Ld.AO, genuineness of which was never denied or disputed by the Directors when they were examined on oath by the Ld.AO. The Directors who had appeared on behalf of the Creditor Companies had only expressed their inability to explain the transactions which were conducted with the appellant during FY 2000-01 since they were not on the Board of Directors back then and that such old books of accounts were not available with them. Taking into account the fact that these Directors were not the Directors during the relevant previous year and also that more than 15 years had elapsed since then, I find myself in agreement with the contentions of the Ld. A.Rs for the appellant that the inability of the Directors to explain the transactions conducted by their companies with the appellant in F.Y 2000-01 could not be viewed adversely. I also note that even under the Companies Act, 1956; the corporate creditors were required to maintain and preserve the books of accounts and other records of their business transactions for period not exceeding 8 years and therefore in view these legal provisions if the Directors of the creditor companies expressed their inability to produce the books of the relevant year or provide explanations with regard transaction of FY 2000-01 then no adverse view appears to be permissible in law. The mere fact that the persons who had appeared were not aware of the transactions which had occurred more than 15 years back cannot be taken as an admission by them that the liabilities due by the appellant had ceased or they were remitted by the creditors. I therefore, hold that the conclusions drawn by the Ld.AO from the statements u/s 131 was wholly unjustified. On the contrary, I find that the enquiries conducted by the Ld.AO actually advance the case for the appellant-assessee. Admittedly the summons u/s 131 were served upon the creditors and were also complied with. The Directors of the creditor companies had personally appeared and their statements on oath was recorded. None of the creditors had denied the liabilities due by the appellant nor had they admitted that they had granted remission of the amounts due from the appellant either in FY 2000-01 or at any time. These facts therefore go on to point that no inference could have been drawn by the Ld. AO to the effect that the creditors of the appellant which were brought forward from the earlier year had granted any remission or cessation of liability during FY 2000-01, so as to constitute as benefit contemplated in Section 41(1) of the Act. Therefore from the facts as were gathered in the course of assessment proceedings, I find that the material collected by the Ld.AO sufficiently indicate that the impugned liabilities of Rs.12,97,47,322/- as reflected in the Balance Sheet for FY 2000-01 had not ceased to exist. For the reasons set out in the foregoing, and in light of the aforesaid facts as discussed, I hold that although the Ld. AO had enquired into the liabilities as reflected by the appellant as outstanding as on 31.03.2001, but the enquiries did not in any manner suggest or prove that the liabilities had ceases to exist or that the sundry creditors

had granted remission of the liabilities to the appellant during the relevant previous year so as to assess the income under the deeming provisions of Section 41(1) of the Income Tax Act.

5. For the reasons discussed in the foregoing therefore, the second direction of the Hon'ble ITAT, Kolkata to the Ld.AO was not fully complied with as no convincing material or irrefutable evidence was brought on record to prove that the Sundry Creditors had granted remission of the amounts due or otherwise the assessee's liability due to the sundry creditors had ceased by 31.03.2001.

6. Further, it is to be observed that in the appellate order dated 04.03.2014, the Hon'ble ITAT had further directed the Ld.AO to bring on record clinching evidence to show that the liabilities if existed, the same were remitted during the relevant year or there was a cessation of the liability during the FY 2000-01 so as to constitute as appellant's income chargeable for AY 2001-02. In this regard I find that the relevant provision of the Act reads as follows:

"(1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,-

(a) the first-mentioned person has 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 such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

(b) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.

Explanation 1. -For the purposes of this sub-section, the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof" shall include the remission or cessation of any liability by a unilateral act by the first mentioned person under clause (a) or the successor in business under clause (b) of that sub-section by way of writing off such liability in his accounts. "

A plain reading of Section 41(1) shows that before the deeming provisions thereof are invoked, it is necessary for the Ld. AO to demonstrate with tangible material and admissible evidence that in reality the creditors had granted remission of the liabilities and such remission was granted during the relevant previous year. Since Section 41(1) is a deeming provision of the Act, in terms of which cessation or remission of a trading liability is deemed to be assessee's income; the onus is on the Revenue to prove that in fact there was a remission or cessation of the liability and secondly such remission or cessation occurred during the relevant previous year consequent to which the income accrued to the assessee. For this reason the

Hon'ble ITAT in its order dated 04.03.2014 had required the Ld. AO to bring on record not only the fact the liability was remitted or there was a cessation of liability, but further the AO was required to bring on record sufficient material to prove that such remission or cessation of the liability was granted or occurred during the FY 2000-01 being the relevant previous year for AY 2001-02. From a careful perusal of the impugned assessment order, however I find that the Ld. AO did not bring on record any evidence or document which proved that the assessee derived the benefit in the form of remission granted by the creditor during FY 2000-01 so as to constitute as income under Section 41(1) of the Act.

7. The last direction of the Hon'ble ITAT, Kolkata required the Ld. AO to consider the scope of Section 41(1) of the Income Tax Act, 1961 in light of the prevailing judicial views on the subject. It is observed that In the impugned order the Ld.AO referred to a solitary judgment of the Delhi High Court in the case of CIT Vs Chipsoft Technology (P) Ltd (26 taxmann.com 109) for justifying invocation of S. 41(1) of the Act. On analysis of this decision it was noted that in the decided case, unpaid dues of the employees had remained outstanding in assessee's books for more than 7-8 years. It was therefore the Revenue's case that under the Industrial Disputes Act, the workmen's dues had become time-barred and therefore there was a cessation of liability within the meaning of Section 41(1) of the Act. On these facts therefore the Hon'ble High Court held that the unpaid dues of employees, whose recovery had got time barred, legally ceased to be the employer's liability and therefore it was rightly assessed as income by the AO u/s 41(1) of the Act. Applying the decision rendered by the Delhi High Court in the above said factual content the Ld. AO justified the addition of Rs.12,97,47,322/- the outstanding liabilities of the appellant which remained outstanding for several years. The Ld. A.Rs for the appellant, in the submission in appeal, however, in my considered view have correctly aptly pointed out that this decision was distinguishable since the facts involved in appellant's case were different. The Ld.A.Rs submitted that in the case before the Hon'ble Delhi High Court, the outstanding liabilities were workmen dues which had become time-barred under the relevant labour Law. These facts are however not involved in the appellant's case. It was explained that the outstanding liabilities did not involve a single rupee of labour dues. Instead all the liabilities were "**trading liabilities**" It was explained by the Ld. A.Rs that under the Limitation Act, 1903 which governed such liabilities, since the appellant had acknowledged the liabilities in its books of accounts, they had not become time-barred but remained subsisting and outstanding. After perusing the judgment of Hon'ble Delhi High Court and the facts involved therein vis-a-vis the facts of the appellant's case, I therefore find merit in the contentions of the Ld.A.Rs. I find that, in the present case, undeniably the outstanding liabilities are not workmen's dues and therefore not governed by Industrial Dispute Act. I find that unlike the facts involved in the judgment of Hon'ble Delhi High Court, there is no material on record that the liabilities of Rs.12,97,47,322/- had become time-barred or there was a cessation thereof in the relevant year. In the course of appellate hearing, the Ld.A.Rs for the appellant filed copy of a decision of Hon'ble ITAT, Bangalore in the case of Asst. CIT Vs Alvares & Thomas (62 taxman.com 286) wherein this particular aspect was considered by the Hon'ble Tribunal. In the decided case also the liabilities of the assessee had remained outstanding for several years. Before the Hon'ble Tribunal the Revenue relied on the judgment of the Delhi High Court in the case of CIT Vs Chipsoft Technology (P) Ltd (supra) to claim that the liabilities had become time barred and therefore there was a cessation of liability. The Tribunal however distinguished the said judgment as it found that the liabilities involved were not workmen dues but they were trading liabilities and therefore the judgment of Hon'ble Delhi High Court had no application to the facts of the assessee's case. The relevant findings of the ITAT, Bangalore in this regard were as follows:

"The learned DR placed reliance on a decision of the ITAT Mumbai in the case of ITO v. Shailesh D. Shah [IT Appeal No. 7012 (Mum) of 2010, dated 11-12-2013]. We have perused the said decision and we find that was a case where the liability in question was outstanding labour charges in the case of an Assessee engaged in the business of civil construction. The Tribunal followed the decision of the Hon'ble Delhi High Court in the case of CIT v. Chipsoft Technology (P.) Ltd. [2012J 26 taxmann.com 109/210 Taxman 173 (Delhi) wherein the Hon'ble Delhi High Court on the facts of that case where the outstanding liability was wages of workman, expressed the view that it was illogical that wages of workman would remain unpaid for a long duration of time and therefore held that the liability should be considered as having ceased. The present case is a case of trading liability, which cannot stand on the same footing as due to workman. We are therefore of the view that the decision relied upon by the learned counsel for the Revenue would not be of any assistance to the plea of the Revenue. "

(Emphasis supplied)

8. I further note that this judgment of the ITAT, Bangalore was thereafter upheld by the Karnataka High Court & the relevant decision is reported as CIT Vs Alvares Br. Thomas (239 taxman 456). The relevant findings of High Court were as follows:

"7. As in the above referred order of the Tribunal, the relevant portion of Section 41 is reproduced, we may not reproduce the same. But, the relevant aspect is that, there are two requirements for invoking the provision of Section 41. The Sine qua non is, the remission or cessation of the trading liability and the additional requirement is, some benefit in respect of such trade liability is taken by the Assessee. If the aforesaid conditions are satisfied, then only Section 41(1) could be invoked by the Assessing Officer.

8. Examining of the facts of the present case reveals that, it is not the case of the Department that, any benefit in respect of such trading liability was taken by the assessee but, the Revenue contends that since the burden was not discharged of existence of the liability, it be treated as cessation of the liability and therefore, Section 41(1) could be invoked. Further, stand of the Revenue is that, when in respect of debt in question, confirmation was called for, a letter was produced of the creditor with its address but, when the same was verified, the report was that, party could not be traced and therefore, it was not verifiable.

9. In our view, even if we accept the contention of the Revenue that the party could not be traced and therefore debt could not be verified then also, by no stretch of imagination can it be held that it would satisfy the requirement of cessation of liability. In legal parlance, merely because the creditor could not be traced on the date when the verification was made, same is not a ground to conclude that there was cessation of the liability. Cessation of the liability has to be cessation in law, of the debt to be paid by the assessee to the creditor. The debt is recoverable even if the creditor has expired, by the legal heirs of the deceased creditor. Under the circumstances, in the present case, it can hardly be said that the liability had ceased. If the liability had not ceased or the benefit was not taken by the assessee in respect of such trade liability, in our view, the conditions precedent were not satisfied for invoking Section 41(1) the Act in the instant case.

10. The Tribunal has rightly relied upon the decision of Delhi High Court in case of Shri Vardhman Overseas Ltd. (supra). The discussion of the decision of Delhi High Co was relevant, for consideration of the facts of the case in

order to find out as to under what circumstances it could be said that there is cessation of liability. Further, the decision of Delhi High Court is after considering the view taken by the Apex Court case of CIT v. Sugauli Sugar Works (P.) Ltd. [1999J 236 ITR 518/102 Taxman 713.

9. I further find that the Supreme Court in the case of CIT v. Sugauli Sugar Works (P.) Ltd. (236 ITR 518) had considered the issue concerning cessation or remission of liability and whether the cessation of liability can occur by reason of operation of the respective law. In the said judgment the Supreme Court referred to the decision of Hon'ble Bombay High Court in J.K. Chemicals Ltd. v. CIT (62 ITR 34), the relevant observations are as under:

"The question to be considered is whether the transfer of these entries brings about a remission or cessation of its liability. The transfer of an entry is a unilateral act of the assessee, who is a debtor to its employees. We fail to see how a debtor, by his own unilateral act, can bring about the cessation or remission of his liability. Remission has to be granted by the creditor. It is not in dispute, and it indeed cannot be disputed, that it is not a case of remission of liability. Similarly, a unilateral act on the part of the debtor cannot bring about a cessation of his liability. The cessation of the liability may occur either by reason of the operation of law, i.e., on the liability becoming unenforceable at law by the creditor and the debtor declaring unequivocally his intention not to Honour his liability when payment is demanded by the creditor, or a contract between the parties, or by discharge of the debt the debtor making payment thereof to his creditor. Transfer of an entry is neither an agreement between the parties nor payment of the liability. We have already held in Kohinoor Mills Co. Ltd. v. CIT (1963) 49 ITR 578 (Bom.) that the mere fact of the expiry of the period of limitation to enforce it, does not by itself constitute cessation of the liability. In the instant case, the liability being one relating to wages, salaries and bonus due by an employer to his employees in an industry, the provisions of the Industrial Disputes Act also are attracted and for the recovery of the dues from the employer, under s. 33C(2) of the Industrial Disputes Act, no bar of limitation comes in the way of the employees. "

From the observations as contained in the judgement of the Supreme Court, I find that it in fact the Court went a step ahead and held that even upon the expiry of the period of limitation prescribed under the Limitation Act, the debt or liability will not stand extinguished but it would only prevent the creditor from enforcing the debt and in that view of the matter the deeming provisions of Section 41(1) could not be invoked on the premise that the liability had become time-barred.

10. I further note that in another decision of the Hon'ble Delhi High Court in the case of CIT Vs Vardhaman Overseas Ltd (343 ITR 408) facts involved were similar to one involved in the appellant's case. Facts involved in this case were; the liabilities in question were trading liabilities and not workmen dues. Before the AO, the assessee was unable to furnish confirmations from the creditors which appeared to be old and the assessee was unable to furnish the complete addresses of all the creditors. The outstanding creditors were therefore assessed as income u/s 68. On appeal the CIT(A) though deleted addition u/s 68 but confirmed the addition by invoking Section 41(1) of the Act. On appeal the ITAT found that in the assessee's books, the amounts payable to the creditors were not written back but shown as outstanding to the parties and therefore Section 41(1) was held inapplicable. On appeal the High Court observed that to invoke Section 41(1) it was necessary to show that the assessee was actually granted remission of trading liabilities for which deduction was earlier allowed. The High Court further held that it was not enough that the assessee

derived some benefit of trading liability but such benefit should necessarily arise on account of remission of the liability. The Court noted that the assessee had not transferred the outstanding amounts from the creditors' account to its Profit & Loss Account but the amounts were shown as "liabilities" in the Balance Sheet and the assessee had acknowledged the debts as due to the creditors. The High Court therefore held that Section 41(1) was not applicable. I find that the facts involved in the decision of Delhi High Court were similar. Rather facts involved in assessee's case brings its case on much stronger footing because in this case the assessee not only acknowledged liability in the Balance Sheet but was able to file confirmations from creditors as well. The decision of the Hon'ble Delhi High Court in the case of Vardhaman Overseas Ltd is therefore fully applicable in the present case.

11. The ratio laid down by the Hon'ble Delhi High Court in the case of CIT Vs Vardhaman Overseas Ltd (supra) was reiterated by coordinate Bench of the same Court in a subsequent decision in the case of CIT Vs Jain Exports (P) Ltd (217 taxman 43) which was rendered after the decision of the same Court in the case of CIT Vs Chipsoft Technology (P) Ltd (supra).

In view of this factual & legal position and the decisions discussed in the foregoing, I therefore find that the lone decision in the case of CIT Vs Chipsoft Technology (P) Ltd (supra) relied upon by the AO in facts was not applicable to appellant's case. Instead the reliance placed by the Ld. A.Rs on the subsequent decisions of Hon'ble Karnataka High Court in the case of CIT Vs Alvares & Thomas (supra), Hon'ble Delhi High Court in the case of CIT Vs Jain Exports (P) Ltd (supra) were more appropriate in the appellant's case.

12. It is to be further observed that the proposition put forth by the Hon'ble Delhi & Karnataka High Courts was also laid down by the Hon'ble Punjab & Haryana High Court in the case of CIT Vs Sita Devi luneja (325 ITR 593) wherein the Hon'ble High Court while allowing the assessee's claim observed as follows:

"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 acknowledgement 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.

5. 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."

13. This decision of the Punjab & Haryana High Court was followed by another Bench of the same High Court in the subsequent judgment rendered in the case of CIT Vs Speedways Tyre Ltd (364 ITR 401). Moreover, it is to be noted that the Hon'ble Gujarat High Court in the case of CIT Vs Nitin 5 Garg (208 Taxman 16) came to identical conclusions. In the case decided by the Hon'ble Gujarat High Court facts involved were almost similar to facts involved in the appellant's case. While decide the appeal the High Court took note of the fact that the assessee had not written back the outstanding liabilities in its books but continued to disclose the outstanding amounts as liabilities in the balance sheet from year on year. According to the Hon'ble High Court merely because the amounts remained outstanding for many years, it could not be inferred that the liabilities had ceased to exist. Merely because the assessee was allowed the deduction of trading liabilities in the earlier years and the balances were carried forward in the subsequent years, did not prove that the trading liabilities had ceased to exist. This decision was followed by the coordinate Benches of the same High Court while deciding the appeals in the cases of CIT Vs Puridevi M. Chaudhary (41 taxmann.com 329), CIT Vs Bhogilal Ramjibhai Atara (222 Taxman 313) & CIT Vs Matruprasad C Pandey (59 taxmann.com 428).

14. The Ld. A.Rs reliance on the decision of the Hon'ble Madras High Court in the case of CIT vs Tamil Nadu Warehousing Corporation (292 ITR 310) also appears to be relevant since the facts of the assessee's case were similar to the facts of the decided case. The High Court in the decided case found that the assessee had disclosed in its balance sheet the liabilities outstanding to the trade creditors which were old and brought forward from earlier years. The AO assessed the outstanding liabilities u/s 41(1). The Hon'ble High Court upheld the ITAT's order allowing relief on the ground that there was no evidence that there was cessation of liability. The Court found that in fact the assessee had acknowledged the liabilities by disclosing them as payables in the Balance Sheet. Following the foregoing decision of the Madras High Court, the Hon'ble jurisdictional ITAT, Kolkata Benches in the following cases deleted additions made u/s 41(1) in respect of the old & outstanding creditors.

- ITO Vs M.L. Sarkar & Bros (ITA No. 1550/Kol/2010)
- ITO Vs Amusar Services & Suppliers Pvt Ltd (ITA No. 609/Kol/2012)
- ITO Vs Multiwyn Industrial Corporation (ITA No. 2165/Kol/2010)

On close examination of the foregoing Hon'ble ITAT decisions, I find that in all the 3 cases the Assessing Officers had invoked Section 41(1) of the Income Tax act; 1961 in respect of old trade creditors on the ground that either the assessee did not furnish the complete particulars of the creditors brought forward from the earlier years or that the notices issued u/s 133(6) remained un-served or non-complied. The CIT(A) & ITAT however held that so long as the assessee disclosed the amounts outstanding in its Balance Sheet and had acknowledged the liabilities as due, provisions of Section 41(1) had no application and therefore additions were not tenable.

From the legal principles as culled out in the above judgments, the position which emerges is that before the deeming provisions of Section 41(1) are invoked, the burden is cast on the Ld.AO to bring on record some tangible and credible material to prove that the assessee had in fact enjoyed benefit in the form of remission granted by the Creditor(s). Moreover it is also necessary for the Assessing Authority to show that benefit in the form of remission was derived by the assessee during the relevant previous year. It is observed that in the present case the assessee has never denied

its obligation to pay the outstanding amounts to the creditors. The material fact which was apparent from the audited accounts was that the assessee never claimed that it had no legal obligation to pay to the sundry creditors. Applying the ratio laid down in these decisions to the appellant's case, I therefore find that both on facts as well as in law the assessee has proved that no material was available with the Ld.AO which in any manner which established that the creditors had granted remission of liabilities to the assessee during the previous year relevant to A.Y. 2001-02. The Ld. AO did not bring on record any tangible material to prove that the creditors had granted remission of liabilities during the relevant previous year because of which the assessee's liabilities ceased to exist in FY 2000-01. I therefore agree with the submissions of the Ld.A.Rs, and hold that addition of Rs.12,97,47,322/- u/s 41(1) was not sustainable in law. The Ld. AO is accordingly directed to delete the addition made u/s 41(1) of the Act.

These grounds are therefore allowed in favour of the appellant-assessee."

3. We have heard both the parties reiterating their respective stands against and in support of impugned section 41(1) remission / cessation of liability involving the amount of ₹12,97,47,322/-. The instant proceedings appear to be second round of litigation between the parties *qua* the very issue before this tribunal. Earlier co-ordinate bench had remitted the instant issue back to the assessing authorities for afresh adjudication (*supra*).

4. The Assessing Officer took up consequential proceedings. There is no dispute about the assessee to have been carrying forward the impugned liability in its books for a time span of almost three decades. It is an admitted fact that the department did not raise any issue in all intervening assessment years in question. It emerges that Assessing Officer had issued summons to six directors of the concerned entities on test check basis in the instant second round. Four of the said six entities' directors put in appearance. They expressed their ignorance about any such trading transactions with the assessee in their respective statements. This made the Assessing Officer to issue a show-cause dated 12.03.2015 proposing to treat the above sum as a mere book entry as ceased u/s 41(1) of the Act. The assessee stated reiterated the fact of having claimed the impugned liability in its books almost three decades earlier for the first time followed by similar treatment in the intervening assessment years without any change relevant in facts. Its case was that none of its creditors had ever remitted their respective sums so as to

attract section 41(1) of the Act. It highlighted the fact that above random creditors had supported its case as per their written replies in response to the respective summons. All this failed to convince the Assessing Officer. He noticed that one of the said written replies did not contain even concerned party's signatures. He thereafter narrated the entire backdrop and quoted four of the tested check parties statements to conclude that the impugned liability was not genuine one so as to be taken as subsisting upto impugned assessment year. He took cognizance of the fact that said four directors had expressed their complete ignorance about any corresponding transactions to have taken place in the past. Relevant intervening period had also not seen any payment from the taxpayer's side for a very long period of time as per the Assessing Officer. He was therefore of the view that neither the creditors in question had taken any steps to recover their respective dues nor the instant taxpayer had discharged even a single penny of the impugned liability. All this formed sufficient reason for him to opine that the assessee had no intention to pay that money in question. He alleged creditors non confirmation as well as lack of their identity in his assessment order based on an assumption that they had either vanished or there was no effort at their behest to claim this liability sum. The Assessing Officer was further of the opinion that hon'ble Delhi high court's decision in *CIT vs. Chipsoft Technology Pvt. Ltd.* on 20.07.2012 in **ITA No. 598/2011** had made it clear that section 41(1) Explanation sufficiently indicated the same to be inclusive provision since the legislature had not used "**means**" clause therein. He therefore made the impugned addition u/s 41(1) on cessation of trading liability of ₹12,97,47,322/- in question.

5. The assessee preferred appeal. The CIT(A) has reversed the Assessing Officer's action in his above extracted detailed discussion. This leaves the Revenue aggrieved.

6. Learned Departmental Representative vehemently argues in the light of Assessing Officer's findings that assessee's impugned liability is not a genuine one first of all as per the four parties's directors' statements. He thereafter submits that it can be safely assumed that the liability in question as ceased u/s. 41(1) of the Act. We do not find merit in either of these two arguments. Case file revealed that the assessee has throughout been claiming the impugned liability for a time span of almost three decades without any such objection from department. Relevant sundry creditors list runs into 96 parties; amount and address-wise, particularly in paper book pages 55 to 56 as on 31.03.2001. The assessee partly paid the sum in case of five of the said parties involving gross amount of ₹21,95,04,000/-. Paper book pages 93 to 95 and 57 to 59 contains the summarized statement of liability in question as to 31.03.2000 and from 01.04.1989 to 31.03.2013 involving the sum of ₹12,87,24,079/-; respectively.

7. Case file further suggests that the impugned liability claim has nowhere been doubted in preceding or succeeding assessment years involving regular assessment at least in assessment years 1998-99, 2000-01, 2003-04 and 2004-05. The CIT(A)'s clinching findings that four directors of corresponding entities have been appointed in financial year 2001-02 only whereas the impugned liability dates back to almost 30 years; have gone unrebutted from the Revenue side. We therefore do not see any merit in Revenue's above twin submissions. Its former plea that the impugned liability is not genuine at this belated stage carries no weight. Hon'ble Karnataka high court's decision in *CIT vs. Alvares & Thomas* (2010) 69 Taxman 257 (Kar) holds that mere non verification of such a liability for or for that any doubt raised thereupon does not attract cessation of liability principle u/s 41(1) of the Act as the same has to be a case of cessation in law only. Hon'ble Gujarat high court's judgment in *CIT vs. Nitin S Garg* (2012) 22 Taxman 59 (Guj) has placed reliance on much a celebrate judgment of hon'ble apex court in *CIT vs. Sugauli Sugar Works (P) Ltd.* (1999) 236 ITR 518 (SC) to hold that the mere fact of a liability having

continued to be shown for very many years would not attract section 41(1) since it is for the Assessing Officer has who has to show that concerned assessee has drawn any benefit by way of cessation or remission thereof. We further make it clear that CIT(A)'s above extracted detailed discussion has examined all the facts as well as the relevant legal position at length which has nowhere been rebutted from the Revenue side. We therefore conclude that the CIT(A) has rightly reversed the assessment findings holding the amount in question of ₹12,97,47,322/- to be a case of cessation of liability u/s 41(1) of the Act.

9. This Revenue's appeal is dismissed.

Order pronounced in the open court 20/07/2018

Sd/-

(लेखा सदस्य)

(M.Balaganesh)

(Accountant Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 20/07/2018

कोलकाता ।

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ACIT,Circle-36, Aayakar Bhawan, Poorva,8th Floor, 10, Shantipally, Kolkata-107
2. प्रत्यर्थी/Respondent-M/s Soorajmull Nagarmull 8 B.B.D Bag(East), Kolkata-001
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata (sent through e-mail)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata (sent e-mail)
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO

आयकर अपीलीय अधिकरण,

कोलकाता ।