

No cessation of liability under sec. 41(1) just because liability was more than 7 years old

Summary – The Bangalore ITAT in a recent case of Alvares & Thomas, (the Assessee) held that where AO made addition under section 41(1) in respect of amount payable by assessee to a creditor, since there was no act of remission or cessation of said liability, mere fact that liability was more than seven years old, could not be a ground to make impugned addition

Facts

- In the course of assessment, the Assessing Officer found that assessee had shown certain amount payable to 'D' Traders.
- It was not in dispute that none of the transactions with the creditor took place during the previous year and the amount payable was opening balances of the earlier financial years.
- The Assessing Officer conducted enquiries which revealed that no concern/enterprise by name 'D' Traders, existed at address given by assessee.
- The Assessing Officer thus opined that liability of assessee to pay 'D' Traders ceased to exist and outstanding amount was to be added to assessee's income under section 41(1).
- The Commissioner (Appeals) was of the view that since there was no transaction during the previous year, no addition could be made on the ground that the transaction giving rise to liability of the assessee was itself not genuine. The Commissioner (Appeals) on the question of applicability of section 41(1), was of the view that just because liabilities was more than 7 years old, that could not be the basis to conclude that liability of the assessee ceased to exist. He thus deleted the addition made by Assessing Officer.
- On revenue's appeal:

Held

- Firstly, on the applicability of section 68, it is opined that those provisions will not apply as the balances shown in the creditors account do not arise out of any transaction during the previous year relevant to assessment year 2009-10. The provisions of section 68 are clear inasmuch as they refer to 'sum found credited in the books of account of an assessee maintained for any previous year'. Since the credit entries in question do not relate to previous year relevant to assessment year 2009-10, the same cannot be brought to tax under section 68. The proper course in such cases for the revenue would be to find out the year in which the credits in question were credited in the books of account and thereafter make an enquiry in that year and make an addition in that year, if other conditions for applicability of section 68 are satisfied.
- As far as applicability of section 41(1) is concerned, *Explanation 1* to section 41(1) which was inserted with effect from 1-4-1997 is not attracted to the present case since there was no writing off of the liability to pay the sundry creditors in the assessee's accounts. The question has to be

considered *de hors Explanation 1* to section 41(1). In order to invoke clause (a) of section 41(1) of the Act, it must be first established that the assessee had obtained some benefit in respect of the trading liability which was earlier allowed as a deduction. There is no dispute in the present case that the amounts due to the sundry creditors had been allowed in the earlier assessment years as purchase price in computing the business income of the assessee. The second question is whether by not paying them for a period of four years and above the assessee had obtained some benefit in respect of the trading liability allowed in the earlier years.

- The words 'remission' and 'cessation' are legal terms and have to be interpreted accordingly. In the present case, there is nothing on record to show that there was either remission or cessation of liability of the assessee. In fact, there is no reference either in the order of the Assessing Officer or the Commissioner (Appeals) to the expression 'remission or cessation of liability'. In such circumstances, the provisions of section 41(1) could not be invoked by the revenue.
- There is nothing on record to show any cessation or remission of liability by the creditor or even an unilateral act by the assessee in this regard. In view of the above, the impugned addition cannot be sustained and the same was rightly directed to be deleted by the Commissioner (Appeals). The order of the Commissioner (Appeals) is therefore confirmed.