# No addition on account of cessation of liability if amount related of sundry creditors was credited to P&L a/c

**Summary – The Mumbai ITAT in a recent case of National Building Corporation., (the Assessee) held that where on account of sundry creditors, assessee had already declared credit to profit and loss account in other years on account of cessation of liability under section 41(1) and offered relevant amount to tax, no addition could be made under section 41(1) in current year**

**Where Assessing officer disallowed foreign travel expenses in respect of partner's visit to U.S. along with his wife and minor son while assessee submitted that said visit was for studying new designs, new concepts of constructions etc. for business purpose, matter was to be remanded**

**Facts**

- In the assessment proceedings, the Assessing Officer noticed that the assessee had shown the sundry creditors of Rs. 48,50,875. According to the Assessing Officer, the amounts were outstanding for long-time and the assessee also failed to prove the genuineness of the credit balances. He presumed that these sundry creditors had ceased to exist. The assessee had already written off credit balances of Rs. 16,62,350 in the return of income filed for the Assessment year 2011-12. Therefore, the balance liability amounting to Rs. 31,88,525 was brought to tax under section 41(1) in the relevant year.
- On appeal, the Commissioner (Appeals) observed that the none of the creditors asked for the payment of said amounts. The Commissioner (Appeals) held that the explanation offered by assessee was make believe argument which had no evidentiary value and did not explain the amount of Rs. 31,88,525 outstanding in its books of account which have not been written off till assessment year 2011-12. The Commissioner (Appeals) upheld the order of the Assessing Officer.
- On second appeal to the Tribunal, the assessee contended that a sum of Rs. 18,16,481 had already been offered in assessment year 2013-14 and credited to the profit and loss account of that year. Further, a sum of Rs. 5.90 lakhs in Assessment year 2015-16 and balance sum of Rs. 16,62,350 in the financial year 2011-12 was credited to the profit and loss account of the respective year and offered to tax. The assessee also claimed that the amounts paid to the creditor in the relevant year was Rs. 7,82,044.

**Held**

- Following conditions must be fulfilled before section 41(1) could be held as applicable:

  (i) In the assessment of an assessee, an allowance or deduction has been made in respect of any loss, expenditure or trading liability incurred by him.

(ii) (*a*) Any amount is obtained in respect of such loss or expenditure, or
(*b*) Any benefit is obtained in respect of such trading liability by way of remission or cessation thereof.

(iii) Such amount or benefit is obtained by the assessee, and

(iv) Such amount or benefit is obtained in a subsequent year.

- Provisions of section 41(1) has two effects, namely :-

(i) That although ordinarily the amount of remission or cessation, etc., would not be profits and gains, it has to be regarded as such profits and gains, and

(ii) Such an amount so for given by way of remission or cessation, etc., has to be regarded as profits and gains of business or profession accruing or arising in the previous year wherein it is obtained.

- In either of these events happened, the deeming provision enacted in the closing part of section 41(1) comes into play. Accordingly, the amount obtained by the assessee or value of benefit accruing to him is deemed to be the profits and gains of business or profession and it becomes chargeable to tax as the income of that previous year relevant to the assessment year under consideration. In the present case, admittedly in the year under consideration, *i.e.*, the assessment year 2010-11 by way of remission or cessation, no gain has accrued or arisen to the assessee in the given facts and circumstances of the case. The assessee had already declared the credit to the profit and loss account on account of cessation of liability under section 41(1) on account of sundry creditors and offered to tax. The assessee fairly agreed that this fact can be verified by the Assessing Officer. In view of the above given facts and the fact that assessee fairly agreed for verification of factum of offering of this amount of sundry creditors as income in their respective years, the Assessing Officer can verify the same. However, in the relevant year no addition can be made under section 41(1) and delete the addition and allow the appeal of the assessee.