

Unverified creditors shall not be deemed to exist; will be taxed under sec. 41(1): ITAT

Summary – The Ahmedabad ITAT in a recent case of Dattatray Poultry Breeding Farm (P.) Ltd., (the Assessee) held that where assessee had shown outstanding sundry creditors for several years but failed to produce such creditors and furnish correct address of all creditors, their PAN numbers and confirmations, Assessing Officer was justified in holding that there was cessation of liability and merely because liabilities were shown in books of account by assessee and not written back, such liabilities could not be held to be subsisting liability

Facts

- The assessee-company was engaged in the business of job work of hatching of eggs for SPF. The assessee had shown sundry creditors outstanding for payment.
- The Assessing Officer made inquiries with certain creditors under section 133(6) in which it was found that certain creditors had categorically denied that they had not made any transaction with the assessee. It was also observed that notices in some cases had returned unserved by the postal authority and the assessee failed to produce the said creditors as directed. The Assessing Officer also noted that the assessee had not even furnished the correct address of all the creditors, PAN numbers and confirmation in respect of creditors. The Assessing Officer also observed the claim of the assessee that outstanding was on account of purchases made did not appear plausible considering the nature of business carried out by the assessee. It was observed that the assessee was only doing job work and hence, there was no possibility of the purchases from the creditors as claimed. Creditors were standing in the books for last many years without payment. The assessee had not furnished any corroborative evidences regarding purchases made from the creditors. The Assessing Officer therefore came to the conclusion that in the light of these peculiar facts where the creditors were outstanding for long period and the parties were not traceable, denied transactions and not demanded money etc. the genuineness of the creditors remained unproved and the onus cast upon the assessee in this regard had not been discharged. Consequently, the Assessing Officer held that amount shown as creditors' liability were not genuine and treating the same as cessation of liability within the meaning of section 41(1) and added the same to the total income of the assessee.
- On appeal, the Commissioner (Appeals) observed that where the assessee had not written back these amounts as income in its books of account such outstanding liabilities could not be regarded as income under section 41(1).
- On revenue's appeal to the Tribunal:

Held

- Section 41(1) states that where an allowance in respect of an expenditure or trading liability etc. is made in a year and the assessee obtains any benefit, whether in cash or otherwise in a subsequent

year, such benefit shall be deemed to be profits & gains of the business of that subsequent year, whether such business is in existence or not in that subsequent year. The section has an effect of deeming such cessation or remission of liability as income in departure with the general law where such remission or cessation is not regarded as an income. Coming to the facts, as noted above, it is the case of the revenue that the trading liabilities claimed to be payable to several parties was not found to be subsisting liability as per the outcome of inquiries made in this regard. The Assessing Officer noted on facts that the creditors shown in the books are for purchase of goods whereas the assessee is engaged in job work and, therefore, outstanding towards purchase of goods is a high suspect. The Assessing Officer, based on inquiry, observed that many of the creditors could not be traced on the address given by the assessee. Many others have denied making any transaction with the assessee. Coupled with this, such huge amounts of outstanding remains in the books for last six to twenty years without any repayment. On these facts, the Assessing Officer concluded that liability shown in the balance sheet to be a non-existing liability and, accordingly, invoked section 41(1) for the purposes of taxability of such non-existent liability as chargeable income of the assessee owing to the fact that the assessee had obtained benefit in the past against such outstanding trading liabilities. The Commissioner (Appeals), in first appeal, however, has set aside the action of the Assessing Officer primarily on the ground that the assessee has not written back of these amounts in the books of account.

- In this backdrop, where the revenue authorities have found as a matter of fact after detailed inquiry that the liabilities shown in the balance sheet do not, in fact, exist, the revenue authorities are not expected to put blinkers while looking at the outstanding trading liability. Merely because the liabilities have been shown in the books of account and not written back, would not, tie down the revenue to hold such liabilities to be subsisting liability. The ground realities on facts were found to be altogether different in the present case. It does not accord with human probabilities to infer that trading liabilities do exist where the parties are not traceable, denied the outstanding, no repayment made for last many many years and till date. Such approach would be quite theoretical and abstract .
- Adverting to the legal claim made by the assessee that liabilities shown in the balance sheet was itself sufficient to hold such liability exists and *bona fide* is not understood at all. The liabilities shown in the balance sheet as existing by assessee was found to be symbolic by Assessing Officer. The onus is on the assessee to show the reasons why it believed at the time of filing the return that the liabilities were true. No such attempt was even made to prove the existence of liabilities. In this view of the matter, the incidence of taxation under section 41(1) cannot be escaped on non-existing liability. Thus, the conclusion apparently leans against the assessee. However, one pertinent question hurled on behalf of the assessee *i.e.* year of taxability is left. In this regard, the plea is not impressive that the Assessing Officer did not bring anything on record to allege that cessation took place during the financial year in question for the purposes of taxability under section 41(1) . The Assessing Officer has assertive justification to bring the outstanding liability within the net of section

41(1) in the financial year under inquiry. The onus is on the assessee to show that year of cessation is different. In the instant case, the assessee does not admit cessation at first place. The Assessing Officer therefore is within its right to hold the financial year in question as the right year for taxability when the facts concurring the non-existence were unrevealed. The assessee was failed to discharge onus. Besides, the defect of year of taxation if any can be cured under section 153(6) in such cases. However, it is not expedient to dwell further. In the totality of the facts and circumstances, the view taken by the Assessing Officer was proper that addition made in respect of trading liabilities which had ceased to exist represents taxable business income in terms of section 41(1).

- In the result, the appeal of the revenue is allowed.