

**आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ "SMC", अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL AT AHMEDABAD,**  
**"SMC" BENCH**

**सर्वश्री श्री जी.सी.गुप्ता, माननीय उपाध्यक्ष के समक्ष ।**  
**BEFORE SHRI G.C. GUPTA, VICE-PRESIDENT**

ITA No.3133/Ahd/2011  
[Asstt.Year : 2008-2009]

Shri Ahmedabad Flexible Tube Mfg. & Yarn Proc. Co. P. Ltd.  
25, New Cloth Market  
O/s.Raipur Gate  
Ahmedabad 380 002.

बनाम/Vs. ITO, Ward-1(1)  
Ahmedabad.

**PAN : AAECA 9201 A**

**(अपीलार्थी / Appellant)**

**(प्रत्यर्थी / Respondent)**

निर्धारिती की ओर से/ Assessee by	:	Shri N.C. Amin
राजस्व की ओर से/ Revenue by	:	Shri Shubrata Verma, JDIT
सुनवाई की तारीख/ Date of Hearing	:	14 <sup>th</sup> October, 2013
घोषणा की तारीख/ Date of Pronouncement	:	13.11.2013

**आदेश / ORDER**

This appeal of the assessee for the assessment year 2008-09 is directed against the order of the CIT(A)-XVI, Ahmedabad dated 18. 10.2011.

2. The ground nos.1 and 2 of the assessee's appeal are as under:

*1) That the CIT(A) has erred in law and on the facts o the case in confirming the additions of Rs.99,724/- made by ld.AO u/s.41(1) of the IT Act.*

*2) Having regard to the peculiar facts and circumstances of the case of the appellant and without properly appreciating the decisions cited by the appellant during the course of appellate proceedings and considering the same, disallowance made by ld.CIT(A) be allowed..*

3. The learned counsel for the assessee submitted that the issue of cessation of liability under section 41(1) of the Act is covered in favour of the assessee with the decision of the Hon'ble jurisdictional high Court in CIT Vs. Nitin S. Garg, 71 DTR (Guj) 73. He submitted that the liabilities are still outstanding in the balance sheet, and therefore, it cannot be said that the same has ceased to exist. The learned DR has opposed the submission of the learned counsel of the assessee. He submitted that the assessee could not prove that the liabilities are still outstanding as on the last date of the relevant assessment year. He relied on the orders of the AO and the CIT(A).

4. I have considered rival submissions and perused the orders of the AO and the CIT(A). I find that the liabilities are still outstanding in the balance sheet as on the last date of relevant accounting period in the statement of account submitted with the department. There is no material on record to prove that the said liabilities have ceased to exist. The assessee has not written off the said outstanding liability in its books of accounts. In these facts of the case, I hold that the ratio of the decision of the Hon'ble jurisdictional high Court in the case of CIT Vs. Nitin S. Garg (supra) applies to the facts of the case of the assessee, and respectfully following the decision of the Hon'ble

jurisdictional High Court, the issue is decided in favour of the assessee, and the addition of ₹ 99,724/- is deleted, and the ground nos.1 and 2 are allowed.

5. The ground nos.3 and 4 of the assessee's appeals are as under:

*“3. That the ld.CIT(A) has further erred in confirming income shown at Rs.78,800/- as property income, instead of business income shown by the appellant.*

*4. Having regard to the facts and circumstances of the case of the appellant the income of Rs.78,800/- shown by appellant may please be held as business income instead of property income assessed by AO and confirmed by CIT(A).”*

6. The learned counsel for the assessee submitted that due to temporary lullness in the textile business of the assessee, the assessee has let out its premises to a lessee. However, no written agreement was entered into with the lessee-party. He submitted that the assessee has not dismantle its business, and still all the equipments and infrastructure is in place at its premises. He referred to the decision of the Hon'ble Supreme Court in Guntur Merchants Cotton Press Co. Ltd. v. Commissioner of Income-tax, 154 ITR 861, and submitted that income from let out of the property due to temporary lullness in the business of the textile should be assessed under the head business income, as shown by the assessee. The learned DR has relied on the orders of the AO and the CIT(A).

7. I have considered rival submissions and perused the orders of the AO and the CIT(A). In reply to a specific query from the Bench, the learned counsel for the assessee submitted that till the date the property is continued to be let out to the lessee and the assessee could

not take back its premises or to start its business. In these facts of the case, as the assessee right from the accounting year 2007-2008 till the date, could not start its business and the business premises are continuously let out to third party, as a tenant, it could not be said that it is a case of temporary lullness in the business of the assessee. The CIT(A) has referred number of decisions in support of his conclusion that the income from let out of the business premises was assessable under the head "Income From House Property". The business premises were admittedly let out on rent to the lessee, and the position of let out of the premises continued for the last about six years. The income from exploitation of a property has to be taxed under the head income from house property, and there seems to be no element of business in let out the premises by the assessee on rent in the facts and circumstances of the case of the assessee. In these view of the matter, I hold that no interference in the order of the CIT(A) is called for on this issue, and accordingly, the ground nos.3 and 4 of the assessee are dismissed.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in Open Court on the date mentioned hereinabove.

Sd/-

(जी.सी.गुप्ता/G.C. GUPTA)

उपाध्यक्ष /VICE-PRESIDENT

Copy of the order forwarded to:

- 1) : Appellant
- 2) : Respondent
- 3) : CIT(A)
- 4) : CIT concerned
- 5) : DR, ITAT.

BY ORDER

DR/AR, ITAT, AHMEDABAD