

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI

BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 2354/DEL/2017
[A.Y 2012-13]

M/s HPL Additive Ltd
803, Vishal Bhawan,
95, Nehru Place, New Delhi

Vs.

The Dy. C.I.T
Circle - 11(2)
New Delhi

PAN: AAACH 0110 P

(Applicant)

(Respondent)

Assessee By : Shri Manish Kumar, Adv.

Department By : Shri S.N. Meena, Sr. DR

Date of Hearing : 19.12.2019

Date of Pronouncement : 31.12.2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 18, New Delhi dated 20.01.2017 pertaining to assessment year 2012-13.

2. The first grievance of the assessee relates to the addition of Rs. 4,17,252/- made by the Assessing Officer u/s 41(1) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] treating the outstanding as cessation of liability.

3. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings, the assessee was asked to furnish complete details of sundry creditors. The assessee furnished details of sundry creditors which were as under:

Name of the Creditors	Amount I
Arizona Ceramics	9768
Arun Agencies	2277
Asian international	8594
Bansal insulation & mica hou	3321
Caltex lubricants India limited	1226
Diamond electrical	1823
Egl-Eagle Global logistics	110204
Era Tech Builders I Ltd	119568
Exactway water proof co	9200
General composites p ltd	7741
Haryana Indl, Security services	38812
Jyoti Electricals store	5927
Ravika engineers	4000

Ricoh India ltd.	2236
Slice & Chilling plant ,	1500
Sona industrial corp	8394
Superior contractors	31618
Transducers and controls pvt ltd.	14402
Vishwakarma pattern works	3000
Abbott air systems	1470
Agarwal agencies	1152
Arya decorative	1147
B.G. fashioners	3780
Bansal Plywood House	2465
C.C. Valves Mfg. Co. Pvt Ltd.	20376
Chandigarh bearing 8b Mills	3251
Total	417252

4. After perusing the details, the Assessing Officer noticed that the aforementioned creditors were static since long. The assessee was asked to show cause as to why these creditors be not treated as ceased liability and added back to the total income of the assessee u/s 41(1) of the Act.

5. In its reply, the assessee stated that it is under discussion with the parties to sort out differences which arose on account of short supply and defective goods and as the liability of the assessee to pay has not ceased to exist, the same cannot be treated as cessation of liability u/s 41(1) of the Act.

6. The submissions of the assessee did not find any favour with the Assessing Officer who made the addition of Rs. 4,17,252/- u/s 41(1) of the Act.

7. The assessee carried the matter before the ld. CIT(A) but without any success.

8. Before us, the ld. counsel for the assessee vehemently stated that merely because the creditors are outstanding for the past three years cannot be a ground to treat the liability of the assessee as ceased.

9. Per contra, the ld. DR strongly supported the findings of the lower authorities.

10. We have given thoughtful consideration to the orders of the authorities below. It is not in dispute that the creditors were outstanding for more than three years. In our considered opinion, merely because the period of limitation prescribed under the Limitation Act has expired, would not extinguish the debt. For this proposition, we draw support from the decision of the Hon'ble Supreme Court in the case of CIT Vs. Sugauli Sugar Works P. Ltd 236 ITR 518 has held as under:

"The assessee had 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 him". Thus, the section Contemplates the obtaining by the assessee of an amount either in cash or in any other manner whatsoever or a benefit by way of remission or cessation and it should be of a particular amount obtained by him. Thus, the obtaining by the assessee of a benefit by virtue of remission or cessation is sine qua non for the application of this Section. The mere fact that the assess has made an entry of transfer in his accounts unilaterally will not enable the Department to say that [Section 41](#) would apply and the amount should be included in the total income of the assessee.

The principle that expiry of period of limitation prescribed under the Limitation Act could not extinguish the debt but it would only prevent the creditor from enforcing the debt, has been well settled. If that principle is applied, it is clear that mere entry in the books of accounts of the debtor made unilaterally without any act on the part of the creditor will not enable the debtor to say that the liability has come to an end. Apart from that, that will not by itself confer any benefit on the debtor as contemplated by the Section."

11. As the liability still exists in the balance of the assessee, additions made u/s 41(1) of the Act are unwarranted and deserve to be deleted to be deleted in the light of ratio laid down by the Hon'ble Supreme Court [supra]. The Assessing Officer is directed to delete the addition of Rs. 4,17,252/-. Ground Nos. 1 to 3 are allowed.

12. Next substantive grievance relates to the addition of Rs. 3 lakhs out of total advertisement and marketing expenses of Rs. 1,19,49,371/-.

13. The underlying facts in this issue are that the assessee was asked to furnish the details of advertisement and marketing expenses and to produce books of account alongwith supporting documents and vouchers.

14. On perusing the details furnished by the assessee, the Assessing Officer found that some of the expenses were paid in cash and in respect of some other expenses, bills/vouchers were not properly maintained by the assessee. The Assessing Officer, accordingly, made addition of Rs. 3 lakhs.

15. The assessee carried the matter before the ld. CIT(A) but without any success.

16. Before us, the ld. counsel for the assessee stated that it is not the case of the Assessing Officer that cash payments violated the provisions of section 40A(3) of the Act. The ld. counsel for the assessee further stated that some of the expenses which were not supported by bills were supported by internal vouchers.

17. Per contra, the ld. DR strongly supported the findings of the Assessing Officer.

18. We have given thoughtful consideration to the orders of the authorities below. It is true that there is no violation of provisions of section 40A(3) of the Act. Merely because some payments were made

in cash would not justify the impugned addition. It is equally true that some of the expenses were supported by internal vouchers. In our considered opinion, an addition of Rs. 1 lakh would meet the ends of justice. We, accordingly, direct the Assessing Officer to restrict the disallowance to Rs. 1 lakhs. The assessee will get relief of Rs. 2 lakhs. Ground Nos. 4 to 6 are partly allowed.

19. In the result, the appeal of the assessee in ITA No. 2354/DEL/2017 is partly allowed.

The order is pronounced in the open court on 31.12.2019.

Sd/-

**[SUSHMA CHOWLA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 31st December, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	