

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "B" BENCH: NEW DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER &
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.4278/Del/2019
[Assessment Year : 2013-14]**

ACIT, Circle-9(2), New Delhi.	vs	Foot Mart Retail India Pvt.Ltd., Plot No.82, Sec-32, Gurgaon, Haryana-121001. PAN-AAACF9308F
APPELLANT		RESPONDENT
Appellant by	Shri Sita Ram Meena, Sr.DR	
Respondent by	None	
Date of Hearing	31.05.2022	
Date of Pronouncement	31.05.2022	

ORDER

PER CHANDRA MOHAN GARG, JM :

This appeal filed by the Revenue against the order of Ld. CIT(A)-34, New Delhi dated 30.01.2019 in Appeal No.112/16-17 for the assessment year 2013-14.

2. The grounds raised by the Revenue are as follows:-

1. *“Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts of the case in interpretation of cessation of liability as mentioned u/s 41(1) of IT Act, 1961 which is applicable to the case of the assessee.*
2. *Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts of the case in deleting the addition of Rs.4,73,03,16/- made by the AO on account of fact that the assessee had failed to discharge its onus of proving its genuineness of the Sundry Creditors which were outstanding liabilities since many years.”*

3. When the appeal was called up for hearing, neither the assessee-respondent or his authorized representatives appeared nor any adjournment application has been filed. On perusal of the relevant appellate record, we are of the considered opinion that this appeal can be heard and disposed off in the absence of the assessee after hearing the arguments of Ld. Sr. DR.

4. The Ld. Sr. DR drawing our attention to para 3 of the assessment order, submitted that the Assessing Officer ("AO") was right in treating the impugned amount to the seized/non-existence, because of the fact that the liability was being shown outstanding for many preceding years and the assessee could not provide confirmations from the respective creditors and also failed to provide necessary details like PAN, address etc. of the creditors. Ld. Sr. DR therefore, submitted that the AO was right in holding that the impugned liability to the extent of the impugned amount, no longer existed and he was right in invoking the provisions of section 41(1) of the Income Tax Act, 1961 ("the Act") and making additions in the hands of the assessee. Ld. Sr. DR submitted that the impugned first appellate order may kindly be set aside by restoring that of the AO as Ld.CIT(A) has granted relief to the assessee without any justified reason and basis.

5. From the relevant part of the first appellate order, we observed that Ld.CIT(A) discussed the issue in details from paras 6 to 6.7 and after considering the submissions of the assessee, granted relief to the assessee. Before Ld.CIT(A), it was submitted by the assessee that the books of accounts were audited, there were sundry creditors and the management had no intention to write off the same. It was also submitted by the assessee that the

assessee company is unable to pay the impugned outstanding liability due to financial crunches therefore, the same was existing since several years. It was also explained before the First Appellate Authority that the assessee has submitted PAN and other details pertaining to 33 creditors out of total 42 creditors and amount pertaining to these 33 creditors is approximate to 90% of total outstanding amount. It was also contended that the AO has not made any necessary inquiry by invoking either provision of section 133(6) of the Act or provision of section 131 of the Act. To examine and verify the amount of liabilities/creditors showing in the balance sheet and in the absence of such exercise, no addition can be made in the hands of the assessee u/s 41(1) of the Act as the appellant has not written off the impugned outstanding liability in the books of accounts and these are still in existence.

6. From the relevant part of first appellate order, we observed that Ld.CIT(A) has granted relief to the assessee with following observations and findings:-

6.3. "I have considered the facts of the case, finding of the AO and submissions of the appellant. The addition u/s 41(1) was made by the AO on account of sundry creditors in respect of whom appellant failed to furnish confirmed copy of account. The appellant has provided the list of the sundry creditors alongwith confirmation on major parties and it is observed that the appellant has provided PAN No. of most of the parties except the creditors amounting to Rs. 31,69,207/-. The appellant has filed the copy of accounts of the creditor in its books of account and it is submitted by it that it has not written off sundry creditors in its books of account therefore there is no cessation of liability. The AO has added Rs. 4,73,03,416/- in the taxable income of the appellant on account of sundry creditors whose confirmation appellant failed to file during the

assessment proceedings treating it cessation of liability. No independent enquiry was conducted by the AO in respect of those creditors. The appellant has filed the confirmation in respect of 72% of creditors and provided the detail of the PAN in respect of 92% of creditors. The AO is not justified to make addition treating cessation of liability as the creditors are outstanding many years as appellant has not written off in their books of account. It is held by Hon'ble Delhi High Court in the case of CIT Delhi Vs New World Synthetics Ltd. [2018] 97 taxmann.com 399 (Delhi) that Non-payment of outstanding liability which is admitted and acknowledged as due and payable by an assessee does not indicate remission or cessation of liability.

6.4. In the case of Smt. Sudha Loyalka Vs ITO [2018] 97 taxmann.com 303 (Delhi - Trib.), it is held by Hon'ble ITAT that "Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability (Cessation of liability) - Assessment year 2012-13 – Whether in view of facts stated under heading 'Unexplained expenditure', impugned addition could not be sustained even under section 41(1) because amount was being shown as payable in balance sheet of assessee which would establish that there was no cessation of liability."

6.5. In the case of Satpal & Sons (HUF) Vs ACIT [2017] 85 taxmann.com 283 (Delhi - Trib.) it is held by Hon'ble ITAT that "Where assessee had shown outstanding sundry creditors for last three years in its balance sheet and no provision was made to write off outstanding liabilities in its books of account, there would be no remission or cessation of liability under section 41(1) even if sundry creditors were not in existence at address provided and PAN of creditors were found to be invalid."

6.6 The provisions of section 41(1) are applicable in the cases where the liability stood remitted or ceased during the year under consideration. In the instant case, it has not been established by the revenue that the assessee has written off the outstanding liabilities in the books of account, rather continued to show the impugned liabilities in

the balance sheet. The revenue has also failed to establish that the assessee had obtained any benefit of reduction in the earlier years of such liabilities by way of their remission or cessation. All these being the conditions to be satisfied under the provisions of section 41(1), the addition so made taking shelter of these provisions cannot be sustained for want of satisfaction of such conditions.

6.7 Considering the above facts, addition made by the AO at Rs. 4,73,03,416/- u/s 41(1) is not sustainable and it is hereby deleted.”

7. In view of the above conclusion of Ld.CIT(A) and after considering the stand of the AO for invoking the provision of section 41(1) of the Act and submissions of the assessee before the First Appellate Authority, we are of the considered view that undisputedly the liabilities were outstanding since many previous year in the balance sheet of the assessee and the assessee has not written off the outstanding liabilities/creditors in its audited books of accounts and thus, it has to be presumed that the impugned outstanding liabilities/creditors were existing at the end of the Financial Year 2012-13 pertaining to Assessment Year 2013-14. As per mandatory requirement of section 41(1) of the Act, the AO entitled to make additions in the hands of the assessee where the liabilities/creditors ceased to exist but in the present case, neither the assessee company has written off the impugned amount as bad debts in its books of accounts nor there was any other positive material on the record and in the hands of the AO showing that the impugned amount of the liabilities/creditors ceased to exist during the relevant Financial Year. Therefore, we are unable to see any ambiguity, perversity or any valid reason to interfere with the findings recorded by Ld.CIT(A). Thus, we uphold the same. Accordingly, Ground Nos. 1 & 2 raised by the Revenue are dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 31st May, 2022.

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI