

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.456/Bang/2019 : Asst.Year 2012-2013

Shri K A Rame Gowda C/o.Vagus Super Speciality Hospitals, No.6, 7 and 8, 4 th Main, 18 th Cross, Malleshwaram Bangalore – 560 003. PAN : AFDPG7452A.	v.	The Assistant Commissioner of Income-tax, Circle 2(3)(1) (Exemption) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.V.Sridhar, CA
Respondent by : Smt.Priyadarshini Besaganni., JCIT-DR

Date of Hearing : 10.11.2021	Date of Pronouncement :12.11.2021
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ORDER

Per George George K, JM:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 28.12.2018. The relevant assessment year is 2012-2013.

2. The additions contested are as follows:-

- (i) Addition u/s 41(1) of the I.T.Act Rs.4,65,11,898
- (ii) Disallowance of depreciation on motor car and revolver Rs.8,35,388
- (iii) Disallowance of interest on car loan Rs.3,94,623

We shall adjudicate the above issues as under:-

Addition u/s 41(1) of the I.T.Act – Rs.4,65,11,898

3. Brief facts in relation to the above addition are as follows:

During the year, the assessee had invested in property to the extent of Rs.79 lakh and taken unsecured loan to the extent of Rs.7 crore. The closing balance of the unsecured loans is shown at Rs.20,58,62,729. The assessee was asked to furnish the confirmation from the loan creditors. The assessee did not furnish the confirmation. Therefore, the assessee was show caused by the Assessing Officer vide letter dated 02.03.2015 as to why the unsecured loans claimed should not be added back to the total income. The assessee appeared before the A.O. on 18.03.2015 and stated that loans were taken from friends and business partners to invest in hospital, where he is one of the Directors and in return promised to allot shares to them. As the hospital was not running well, the assessee could not repay the loan nor allot shares in their name. It was stated that the lenders filed complaints / petition against the assessee before Court. However, the assessee stated before the A.O. that he would try to furnish the confirmation. The assessee appeared on 23.03.2015 and furnished few confirmations. On verification of confirmations furnished, it was noticed by the A.O. that the assessee could not produce confirmation to the extent of Rs.3,18,11,898. It was further noticed by the A.O. that the confirmations produced by the assessee did not contain PAN to the extent of Rs.1,47,00,000. Therefore, according to the A.O., the assessee failed to establish the creditworthiness of the lenders to the extent of Rs.4,65,11,898 (Rs.3,18,11,898 + 1,47,00,000). Accordingly, an amount of Rs.4,65,11,898 was treated as cessation of liability u/s 41(1) of the I.T.Act and added to the total income of the assessee.

4. Aggrieved, the assessee filed an appeal to the first appellate authority. The CIT(A) dismissed the appeal of the assessee. The CIT(A) held that despite several opportunities, the assessee could not furnish any further confirmation from the loan creditors. Therefore, it was concluded by the CIT(A) that he was constrained to uphold the addition made by the A.O. for want of confirmation.

5. Aggrieved, the assessee has raised the issue before the Tribunal. The learned AR filed a paper book comprising of 65 pages enclosing therein the orders of the Income Tax Authorities, the return of income along with financial statements for the relevant assessment year, the judicial pronouncements relied on, etc. The learned AR submitted that the Assessing Officer and the CIT(A) have failed to appreciate that the outstanding liability shown in the books cannot be held as ceased to exist. It was submitted that it is also a fact that the assessee has not written off the outstanding liability in the books of account and are still in existence. Therefore, it was contended that the assessee has acknowledged his liabilities as per the books of account. Further, it was submitted that the assessee has not derived any benefit on such liability since the liability is on account of loans obtained, and therefore, the provisions of section 41(1) does not have application. In support of the contentions of the assessee, the learned AR relied on the following judicial pronouncements:-

- (i) Pr.CIT v. B.T.Nagraj Reddy in ITA No.791 of 2018 dated 01.04.2019 (Karnataka HC)
- (ii) CITv. Sugauli Sugar Works Pvt. Ltd. (1991) 236 ITR 518 (SC)
- (iii) CIT v. Alvares & Thomas (239 Taxman 0456 (Kar.))
- (iv) Pr.CIT v. Ramgopal Minerals (246 Taxman 0267) (Kar.)
- (v) CIT v. Smt.Sita Devi Juneja 325 ITR 593 (P&H)
- (vi) Brothers Pharma (P) Ltd.v. ITO (2015) 174 TTJ 0773, ITAT Jodhpur.

6. The learned Departmental Representative, on the other hand, supported the orders of the Income Tax Authorities.

7. We have heard rival submissions and perused the material on record. Admittedly in this case, the addition has been made by invoking the provisions of section 41(1) of the I.T.Act. A plain reading of section 41(1) of the I.T.Act make it clear that the said section will have application only if the following conditions are satisfied:-

- (i) an allowance or deduction had been made, in the computation of profits and gains of a business or profession, in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and
- (ii) subsequently during any previous year 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.

7.1 In the instant case, admittedly, it is loan creditors and not a trading liability. So, the assessee has not obtained allowance or deduction in computing the profits and gains of

business or profession in respect of assessment of any year. Therefore, the first condition enumerated u/s 41(1) of the I.T.Act does not have application to the facts of the instant case. Hence, the addition made by the A.O. and sustained by the CIT(A) is deleted. Therefore, ground No.4 is allowed.

Addition of Rs.8,35,388 and Rs.3,94,623

8. The assessee had claimed depreciation on revolver and motor cars amounting to Rs.8,35,388. The assessee has also claimed interest on car loans to the extent of Rs.3,94,623 totaling to Rs.12,30,011. The claim made by the assessee of depreciation and interest on car loan was disallowed by the A.O. by holding that these are personal in nature. The view taken by the A.O. was confirmed by the CIT(A).

9 Aggrieved, the assessee has raised this issue before the Tribunal.

10 We have heard rival submissions and perused the material on record. The learned AR during the course of hearing had fairly submitted that the assessee did not place necessary evidences for claiming depreciation and interest before the Income Tax Authorities. Even before the ITAT, no evidence are placed on record for claiming deduction / disallowance. Hence, the claim of deduction of depreciation and interest is sustained. Hence, ground No.6 is dismissed.

11. Other grounds raised were not argued during the course of hearing. Hence, the same are dismissed.

12. In the result, the appeal filed by the assessee partly allowed.

Order pronounced on this 12th day of November, 2021.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 12th November, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-2, Bangalore.
4. The Pr.CIT-2, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore