

-आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**AHMEDABAD – BENCH ‘B’**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER**  
**AND**  
**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.349/Ahd/2018**  
**निर्धारण वर्ष/ Asstt.Year: 2013-14**

Shivacid India Private Ltd. 284, 1 <sup>st</sup> Floor New Cloth Market Raipur, Ahmedabad 380 002. PAN : AACCS 7353 K	Vs.	ITO, Ward-4(1)(3) Ahmedabad.
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(Applicant)		(Responent)
Assessee by :		Shri Aseem L. Thakkar, AR
Revenue by :		Shri N.K. Goel, Sr.DR

सुनवाई की तारीख/Date of Hearing : 03/10/2019  
घोषणा की तारीख /Date of Pronouncement: 11/12/2019

**आदेश/O R D E R**

**PER RAJPAL YADAV, JUDICIAL MEMBER:**

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-8, Ahmedabad dated 22.12.2017 passed for the assessment year 2013-14.

2. In the first ground of appeal, the assessee has challenged confirmation of disallowance of Rs.11,32,791/-made by the AO with help of section 41(1) of the Income Tax Act, 1961.

3. Brief facts of the case are that assessee is engaged in the business of pharmaceutical products, chemicals etc. Assessee has e-filed its return on 26.9.2013 declaring total income at NIL, which was processed under section 143(1) of the Act. Thereafter, the case of the assessee

was selected for scrutiny assessment by issuance of notice under section 143(2). During the scrutiny assessment it was noticed by the AO that though no transaction has been made with the following parties, however, their outstanding balance remained reflected in the balance sheet since long. The details are as under:

1) Binit Dyes & Chemicals	:	Rs. 64,896/-
2) Indian Dyes & Chemicals	:	Rs.3,45,369/-
3) Shreeji Marketing	:	<u>Rs.7,22,526/-</u>
		Rs.11,32,791/-

The ld.AO show-caused the assessee to prove genuineness of outstanding liability and as to why such liability be not considered to have ceased to exist, and be not treated as deemed income under section 41(1) of the Act. The ld.AO also asked the assessee to furnish PAN and address of the above parties. The assessee after relying upon various judicial authorities submitted that merely because assessee has shown the outstanding liability for years and non-furnishing of complete details, cannot be the reason for considering the liability has ceased to exist. The ld.AO did not accept the explanation of the assessee, and added the same to the total income of the assessee under section 41(1) of the Act. In appeal before the ld.CIT(A), the assessee did not get any relief. Therefore, the assessee is before the Tribunal.

4. Before us, the ld.counsel for the assessee reiterated submissions made before the ld.Revenue authorities. He also relied upon the judgment of Hon'ble Gujarat High Court in the case of Dattatray Poultry Breeding Farm P.Ltd. Vs. ACIT, 104 taxmann.com 366 (Guj). He submitted that Hon'ble Gujarat High Court again reiterated position of

law as was propounded in the case of CIT Vs. Bhogilal Ramjibhai Atara reported in 43 taxmann 313. On the other hand, the Id.DR relied upon the order of the AO.

5. We have considered rival submissions and gone through the record carefully. Section 41(1) of the Income Tax Act has been incorporated to cover a particular fact situation. The section applies where a trading liability was allowed as a deduction in an earlier year in computing the business income of the assessee and the assessee has obtained a benefit in respect of such trading liability in a later year by way of remission or cessation of the liability. In such a case the section says that whatever benefit has arisen to the assessee in the later year by way of remission or cessation of the liability will be brought to tax in that year. The principle behind the section is that the provision is intended to ensure that the assessee does not get away with a double benefit - once by way of deduction in an earlier assessment year and again by not being taxed on the benefit received by him in a later year with reference to the liability earlier allowed as a deduction.

6. At this stage, we would like to take note of the following finding of the Hon'ble Gujarat High Court in the case of Bhogilal Ramjibhai Atara (supra). It reads as under:

*“8. We are in agreement with the view of the Tribunal. Section 41(1) of the Act as discussed in the above three decisions would apply in a case where there has been remission or cessation of liability during the year under consideration subject to the conditions contained in the statute being fulfilled. Additionally, such cessation or remission has to be during the previous year relevant to the assessment year under consideration. In the present case, both elements are missing. There was nothing on record to suggest there was remission or cessation of liability that too during the previous year relevant to the assessment year 2007-08 which was the year*

*under consideration. It is undoubtedly a curious case. Even the liability itself seems under serious doubt. The Assessing Officer undertook the exercise to verify the records of the so called creditors. Many of them were not found at all in the given address. Some of them stated that they had no dealing with the assessee. In one or two cases, the response was that they had no dealing with the assessee nor did they know him. Of course, these inquiries were made ex parte and in that view of the matter, the assessee would be allowed to contest such findings. Nevertheless, even if such facts were established through bi-partite inquiries, the liability as it stands perhaps holds that there was no cessation or remission of liability and that therefore, the amount in question cannot be added back as a deemed income under section 41(c) of the Act. This is one of the strange cases where even if the debt itself is found to be non-genuine from the very inception, at least in terms of section 41(1) of the Act there is no cure for it. Be that as it may, insofar as the orders of the Revenue authorities are concerned, the Tribunal not having made any error, this Tax Appeal is dismissed.*

7. In the light of the above, if we examine facts of the present case, then it would reveal that liability has not ceased. The facts remain undisputed by both authorities are that these amounts were debited by the assessee and allowed by the Revenue. We find that the impugned addition was made by the Revenue authorities by doubting existence of these liabilities and that the assessee has not written back and continue to show these liabilities as outstanding in the balance sheet. The AO has not brought any evidence on the record to show that liability has ceased. The assessee has not written off the liability in the accounts. Therefore, there would not be any addition under section 41(1) of the Act. Hon'ble High Court in the case of Bhogilal Ramjibhai Atara (supra) considered this aspect and observed that even if debt itself is found to be non-genuine from the very inception that also in terms of section 41(1) of the Act, there is no solution for that. In other words, addition cannot be made unless liability in the accounts has been written off. Therefore, following the decision of the Hon'ble

Gujarat High Court in the case of Bhogilal Ramjibhai Atara (supra), we allow this ground of appeal and delete disallowance.

8. So far as second ground regarding non-granting of set off of unabsorbed depreciation and carry forward of short term capital loss are concerned, we find that the Id.CIT(A) has recorded a finding that no discussion on these issues has been made by the AO, and also the assessee has not made any submission on this ground. The Id.CIT(A) has set aside this issue to the file of the AO with direction to verify the records and allow the claim if allowable as per law. We are of the view that no prejudice will be caused to the assessee with this direction of the Id.CIT(A) to the AO, and therefore, no interference is called for on this issue.

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

**Order pronounced in the Court on 11<sup>th</sup> December, 2019 at Ahmedabad.**

**Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

**Sd-  
(RAJPAL YADAV)  
JUDICIAL MEMBER**