

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Amitabh Shukla, Accountant Member

आयकर अपील सं./I.T.A. No.1993/Chny/2024
निर्धारण वर्ष/Assessment Year: 2014-15

Maideen Pitchai Rawther Peer
Mohammed, New No. 55, Old No. 16,
Perianna Meistry Street, Periamet,
Chennai 600 003.

Vs. The Assistant Commissioner of
Income Tax,
Non Corporate Circle - 5,
Chennai.

[PAN: AAJPP4740R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri K. Meenatchi Sundaram, C.A.
प्रत्यर्थी की ओर से/Respondent by : Ms. R. Anita, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 11.11.2024
घोषणा की तारीख /Date of Pronouncement : 13.11.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order dated 28.06.2024 passed by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi for the assessment year 2014-15.

2. Ground Nos. 1(i) to (iv) raised by the assessee in challenging the action of the Id. CIT(A) in confirming the addition made under section 41(1) of the Income Tax Act, 1961 ["Act" in short].

3. Brief facts relating to the issue are that the assessee is an individual and filed his return of income declaring total income of ₹.1,01,29,340/-. The assessing Officer concluded the assessment under section 143(3) of the Act and determined the total income of the assessee at ₹.1,71,57,581/-, inter alia making addition on account of cessation of liability under section 41(1) of the Act and also addition of ₹.85,795/- under section 14A of the Act vide order dated 31.12.2016. Against such additions, the assessee preferred an appeal before the Id. CIT(A), wherein, the Id. CIT(A) upheld the additions made by the Assessing Officer. The assessee, aggrieved therein, preferred an appeal before the ITAT. The ITAT set aside the additions and remitted the issues to the file of the Assessing Officer for fresh consideration vide its order dated 16.02.2018 in ITA No. 2307/Chny/2017. The Assessing Officer, by giving an opportunity, made addition on account of cessation of liability under section 41(1) of the Act to an extent of ₹.59,42,446/- as against ₹.69,42,446/- and no addition made on account of disallowance under section 14A of the Act. The Id. CIT(A) confirmed the order of the Assessing Officer. As aggrieved, the assessee is in appeal before us in second round of litigation by raising the above mentioned grounds.

4. Before us, the Id. AR Shri K. Meenatchi Sundaram, C.A. submits that the addition under section 41(1) of the Act does not attract to a gift received from brother. He drew our attention to para (i) at page 2 of the assessment order. The Assessing Officer was of the opinion that the assessee received gift of ₹.59,42,446/- from his brother during the financial year 2007-08, but shown as as outstanding liability of the assessee towards his brother in the accounts. Further, he drew our attention to para (ii) at page 2 of the assessment order and submits that the brother of the assessee confirmed that he wrote off the debit balance of the assessee in his accounts as personal help to come up in his business. Further, the brother of the assessee filed confirmation this effect along with his P&L account and balance sheet. Further, he argued that even if it is accepted, the addition under section 41(1) of the Act on account of cessation of liability, the same is not maintainable in the year under consideration, but, it should have been taxed in the FY 2007-08. The Id. AR vehemently argued that alternatively, the addition is not maintainable in the year under consideration as the assessee received the gift during the FY 2007-08. He prayed to delete the addition made on account of cessation of liability under section 41(1) of the Act. Further, he drew our attention to

the case law in the case of Rajesh Kumar v. ACIT [2012] 24 taxmann.com 133 (Coch.) and argued that gift given by a person to another person who is personally related to him, the addition under section 41(1) of the Act is not attracted between close relatives/personal relationship.

5. The Id. DR Ms. R. Anita, Addl. CIT submits that the assessee has taken benefit of expenditure and no credit should be given to the argument that the provision under section 41(1) of the Act is not attracted. She drew our attention to the assessment order and submits that the Assessing Officer found outstanding liability in the accounts of the assessee upto to the year under consideration and the argument of gift received from his brother is not justified. She argued that no material was furnished before the Assessing Officer in support of the arguments made before this Tribunal. She submits that the addition made by the Assessing Officer and as confirmed by the Id. CIT(A) is correct and prayed to dismiss the ground raised by the assessee.

6. Regarding 2nd issue of maintainability of addition in the year under consideration, she argued that the Assessing Officer proceeded to make such addition on verification of the accounts of the assessee,

wherein, it is clear that the assessee has shown outstanding liability to his brother till the year under consideration instead of writing off. She argued that it is a trading liability and thus, the addition under section 41(1) of the Act is justified. Regarding the order of the Tribunal relied on by the Id. AR, she submits that the facts therein before the Tribunal is entirely different and the order cannot be relied on to the facts on hand.

7. Heard both the parties and perused the material available on record. We note that the Assessing Officer made addition in the giving effect proceedings in terms of the directions of the ITAT vide its order dated 16.02.2018. The Assessing Officer observed from the reply of the assessee that an amount of ₹.59,42,446/- standing as outstanding credit liability of the assessee towards his brother till AY 2014-15 though the gift received from his brother during AY 2008-09. Further, it is also observed from the confirmation letter of assessee's brother and P & L account & balance sheet that an amount of ₹.59,42,446/- as receivable from assessee's proprietary concern, which was debited to his capital account in FY 2007-08 [AY 2008-09] wrote off. The Assessing Officer did not accept the statement of the assessee's brother that he wrote off debit balance of the assessee in his account

as personal help to come-up in his business only for the reason that the said amount has been continued by the assessee as liability in the balance sheet till AY 2014-15 i.e., the year under consideration. The Id. AR did not dispute reflection of liability towards his brother in the balance sheet for AY 2014-15. The Id. AR has given only reason that was happened due to misunderstanding between the assessee and his brother. We find force in the argument of the Id. DR that when the liability is reflecting in the balance sheet in the year under consideration and the assessee enjoyed the benefit of expenditure out of it and no income offered in case of written off the said liability, the provisions under section 41(1) of the Act is attracted. The Id. CIT(A) discussed the issue in detail at page 6 of the impugned order. On perusal of the same, we note that the Id. CIT(A) examined the case of the assessee in detail like the business activity of the assessee and the details leading to the purchases from his brother's firm. He clearly held that the assessee consistently showing the figure of liability under the head liability/unsecured loan in his balance sheet. The relevant portion in para 5 & 6 of the impugned order is reproduced herein below:

5. On examination of the submissions of the appellant it is observed that the appellant is engaged in the business of export and sale of semi-finished leathers. The appellant had made purchases from his own brother's firm M/s. Peer Moideen Tanners, amounting to Rs.59,42,446. These purchases were made in FY 2007-08 and the appellant has claimed this expenditure in the form of

purchases in the Profit and Loss Account. As the payment with respect to these purchases was not made to brother's firm M/s. Peer Moideen Tanners the appellant had been consistently showing this figure in liability side as liability/unsecured loan in his Balance Sheet. During the course of assessment proceedings, Assessing Officer has called for the confirmation of this credit liability in the name of his brother's firm M/s. Peer Moideen Tanners, along with P&L A/c and Balance sheet. During the assessment proceedings in AY 2014-15 M/s. Peer Moideen Tanners filed response against the notice issued and stated that this credit liability of appellant was no longer payable as the brother of the appellant has written off this debit balance of the assessee in his account. But the assessee continued to show this amount as liability in the Balance Sheet till A.Y.2014-15, Therefore, the contention of the appellant that such liability it is taxable only in the FY 2007- 08 is not a valid argument since the issue could never have come to the light if there was no selection of the assessment proceedings of AY 2014-15. Any write-off has to be given effect to in the books of both the creditor and the debtor In the instant case as the appellant had not written off the amount till now even when the same had been written off by his brother means that the same is to be written off in the year AO has established the same as not payable and subject to provisions of Section 41(1) of the IT Act, 1961. Thus, the fact that the amount is present as liability in the books of the appellant during the F.Y. 2013-14 relevant to the A.Y. 2014-15, then the same was rightly treated as ceased liability in the same year i.e. F.Y. 2013-14 relevant to the A.Y. 2014-15, as the income of the appellant by the AO.

6. *When the person from whom the amount was borrowed has written off the amount in his accounts, the liability ceased to exist. As there was cessation of liability, the same cannot be part of sundry creditors of the assessee. Therefore, AO has rightly made the addition of Rs.59,42,446/- u/s.41(1) as cessation of liability. Therefore the Assessing Officer was justified in making the addition on account of rescission of Liability u/s.41(1) of the Act, the order of the Assessing Officer is confirmed and the appeal is dismissed.*

8. On perusal of the same, we note that the issues raised before us were also raised before the Id. CIT(A) regarding non applicability of the provisions under section 41(1) of the Act to a gift received from relative and the alternative issue whether the addition is maintainable in the year under consideration or in the AY 2008-09. We find that the Id. CIT(A), in detail, held the same against the assessee and we completely agree with the reasons recorded by the Id. CIT(A) in holding

the same against assessee. The facts and circumstances in the case of Rajesh Kumar v. ACIT (supra), as relied on by the Id. AR, are not similar to the facts on hand and therefore, the findings therein are not applicable in the present case. Therefore, we find no infirmity in the order of the Id. CIT(A) in confirming the view of the Assessing Officer. Thus, the grounds raised by the assessee are dismissed.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 13th November, 2024 at Chennai.

Sd/-
(AMITABH SHUKLA)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 13.11.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.