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Court : Delhi

Decided On : Jun-11-2003

Reported in : (2004)91TTJ(Del)296

Appeal No. : ITA No. 4051/Del/1999 11 June 2003 A.Y. 1996-97

Appellant : Dy. Cit

Respondent : Himalaya Refrigeration and Air Conditioning Co. (P) Ltd.

Advocate for Pet/Ap. : R.R. Prasad,;for the assessed; Ashok Malik,;for the revenue

Judgement :

ORDER

Sikander Khan, A.M.:

In this appeal the revenue has raised the following ground

'On the facts and in the circumstances of the case, the Commissioner (Appeals) has erred in deleting the addition of Rs. 2,30,850 made on account of unconfirmed outstanding liabilities.'

2. The assessing officer noticed outstanding liability of Rs. 2,30,850 in the balance sheet in the name of M/s Ever air Industrial Corporation and M/s Climate Tumer India. He found that these outstanding liabilities were more than three years old.

He was of the view that the amount was includible in the total income under section 41(l) of the Act. He added the amount to the total income saying that the assessed had agreed vide order-sheet entry. The assessing officer also relied on the decision reported in CIT v. T.V. Sundaram Iyengar & Sons Ltd. : [1996]222ITR344(SC) .

3. Aggrieved, the assessed preferred first appeal before the learned Commissioner (Appeals) who after considering the submissions made before him deleted the addition of Rs. 2,30,850. He observed that the said liabilities had not been ceased and the assessed had been showing the amounts due to the aforesaid parties. He added that the assessed continued to acknowledge these amounts payable to the said parties. Thus, there was no cessation of liabilities. He further observed that the Supreme Court decision in the case of CIT v. T.V. Sundaram Iyengar & Sons Ltd. (supra) relied upon by the assessing officer was not applicable to the present case because in the cited case the assessed had unilaterally transferred unclaimed trade liability to the credit side of the P&L; a/c. This was not so in the present case.

4. Aggrieved, the revenue has come up in second appeal before this Tribunal.

5. We have heard both the sides and considered the materials on the file including copies of confirmation, accounts of the aforesaid parties to show that the said parties held that the assessed was liable to pay the aforesaid amounts and that there was settlement of accounts between the parties later vide pp. 1 to 9 of the paper book filed before this Tribunal.

6. The departmental Representative relied on the assessing officer's order. The learned Authorised Representative of the assessed relied upon the order of the learned Commissioner (Appeals) as also decisions reported in CIT v. Sugauli Sugar Works (P) Ltd. : [1999]236ITR518(SC) , CIT v. Abdul Ahad , Income Tax Officer v. R.B. Seth Moolchand Nemichand (P) Ltd. (1986) 24 Taxman 26 (Jp) and New Commercial Mills Co. Ltd. v. Dy. CIT .

7. We are of the view that in the interest of justice and for coming to fair and just conclusion in the case, the verification of the accounts was imperative. The assessing officer had not brought any material on record to show that the aforesaid parties had given up their claim resulting into cessation of liabilities. He had given his finding and added the amount under section 41(l) merely on the ground that the liabilities were outstanding for more than 3 years and, therefore, they were time-barred. This was not sufficient ground for adding the amount under section 41(l) of the Act. There was no evidence of cessation of liabilities. The assessed has filed confirmation of accounts and settlement of accounts with the said parties. Before taking action under section 41(l), it was imperative that the assessing officer should have verified the existence and continuity of the liabilities from the concerned parties. The assessing officer had added the amount without such verification. Since the assessed has filed confirmation of accounts and settlement of accounts we consider it imperative to direct the assessing officer to verify the genuineness and the existence of the aforesaid liabilities and if it is found that the creditors held the assessed liable to pay the aforesaid amounts on 31-3-1996, the assessing officer should refrain and desist from adding the amount under section 41(l) of the Act.

8. In the result, the appeal is treated as allowed for statistical purposes.