

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**ITA No.338 of 2019 (O&M)
Date of decision : 30.03.2022**

Om Parkash

....Appellant

Versus

Commissioner of Income Tax-1 Aayakar Bhawan, Jalandhar

...Respondent

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. S.K. Mukhi, Advocate
for the appellant.

PANKAJ JAIN, J.

Assessee is in appeal challenging the order dated 31st of October, 2018, passed by Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (SMC) in ITA No.756/ASR/2017 pertaining to the Assessment Year 2014-2015.

2. Assessee's appeal against the order of the Commissioner of Income Tax (Appeals) whereby addition of Rs.4,60,581/- made by the Assessing Officer under Section 41(1) of the Income Tax Act, 1961 (for short, 'the Act') was upheld, has been dismissed.

3. Assessee filed return declaring income of Rs.3,93,610/- on 2nd September, 2014 for the relevant year. As per Profit & Loss account furnished by the assessee during the assessment proceedings total sale of Rs.87,81,060/- was declared showing gross profit of Rs.12,03,004/- and Net Profit of Rs.3,53,950/-. During the course of assessment proceedings,

vide questionnaire dated 13th June, 2016 the assessee was asked to furnish details of opening and closing stock (quantitative and in value) and produce the stock register, if maintained. The assessee could not furnish the quantitative details of the opening and closing stock and neither produced any stock register. It was further noticed that the GP rate for the years ending 31st March, 2012, 31st March, 2013 and 31st March, 2014 was constant i.e. 13.70% and NP rate was shown at 4.36%, 4.03% and 4.03% respectively for these years. In view of above, the books of accounts were rejected under Section 145(3) of the Act. The Assessee vide letter dated 16th November, 2016 filed through the Ld. Counsel, submitted that the assessment be completed by calculating NP rate of 8% of gross turnover since the turnover of the firm is below Rs.1.00 Crore as provided u/s 44AD of the Act. Net profit rate of 8% was accordingly applied on the gross receipts of Rs.87,81,060/- and net profit of Rs.7,02,485/- was calculated. The assessee had declared net profit of Rs.3,53,950/-. Addition of Rs.2,48,535/- (702485-353950) was made to the total income of the assessee.

4. During the course of assessment proceedings, the assessee was asked to furnish confirmed copies of account of sundry creditors namely (i) M/s Bansal Iron Traders, Tanda Road Jalandhar (ii) Sanjeev Tweezers Amit, 143 Basti Sheikh Near Post Office Jalandhar (iii) M/s Satish Surgical Works (Soniya) Basti Seikh. Information u/s 133(6) was also called from

these parties. The letters addressed to M/s Satish Surgical Works and Sanjeev Tweezers were received back undelivered with the postal remarks 'no such' person at this address. No reply was received from M/s Bansal Iron Traders, Jalandhar. As per the copies of account furnished by the assessee, there were following closing balances in the account of these parties :

(i)	Sanjeev Tweezer, Jalandhar	
	01.04.2013 Opening balance B/F	2,91,722.00 Cr.
(ii)	Satish Surgincal Works	
	01.04.2013 Opening balance B/F	<u>1,68,859.00 Cr.</u>
	Total	<u>4,60,581.00 Cr.</u>

5. In the absence of any confirmation from the above parties, it was held that the trading liability amounting to Rs.4,60,581/- had ceased to exist as per provisions of Section 41(1) of the Income Tax Act, 1961 and addition of Rs.4,60,581/- was made to the total income of the assessee apart from other additions.

6. The assessee preferred an appeal before the CIT (Appeals). The same was partly allowed. Addition of aforesaid amount of Rs.4,60,581/- was upheld and the rest of the addition was ordered to be deleted. Aggrieved of the same, the appellant preferred an appeal before the Tribunal which has been dismissed vide impugned order holding that -

“To conclude, all that stands clarified per this order is that a benefit arising on account of remission or cessation of a trading liability, attracting section 41(1)(a), need not

necessarily be reflected in the assessee's account; it being otherwise trite law that the accounting entries are not conclusive or determinative of the matter and are subject to verification and/or being proved. In the facts of the instant case, the assessee's accounts are admittedly not reliable, so that they cannot even otherwise be regarded as representing a true and fair view of its affairs, i.e., generally. Speaking in the context of the impugned liabilities, the facts and circumstances stand examined to find the assessee's claim of being liable qua the impugned sums being wholly unproved, if not disproved (refer paras 3.3 & 3.4 of this order). It is the substance of the transaction that is relevant. The same, apart from representing settled law, stands also explained in Motilal Ambaidas v. CIT [1977] 108 ITR 136 (Guj) in the context of a sec. 41(1) addition, wherein no entries in respect of sale-tax collected (from customers) and paid to the Government were made by the assessee in his books of account, contending that therefore no deduction qua sales-tax paid had been claimed by him for section 41(1) to apply on the refund of the sales-tax from the Government. The contention was not accepted by the Hon'ble Court, further explaining that the provision is a machinery provision. In fact, as explained in CIT v. Balabux Birla & Co. [1986] 157 ITR 759 (P&H), the method of accounting, cash or mercantile, adopted by the assessee is also irrelevant as far as section 41(1) is concerned, so that as soon as the assessee is found to have benefited from the remission or cessation of a trading liability, allowed in an earlier year, the provision would get attracted in the facts and circumstances of the case. The said condition, in view of the foregoing, stands satisfied, so that in my view section 41(1)(a) stands rightly invoked by the Revenue in the instant case qua the impugned liabilities.”

7. Assailing the aforesaid finding, counsel for the appellant states that following substantial questions of law arise in the present appeal :-

“A) “Whether the Income Tax Appellate Tribunal and the authorities below are justified in making addition of Rs 4,60,581/- u/s 41(1) of Income Tax Act, 1961 due to non-confirmation of credit by the creditors which is against the facts and circumstances, legal provisions, judicial pronouncements and evidences on record ?”

B) “That without prejudice to above, the appellant disputes the findings of ITAT on the above said issue being perverse.”

8. We have heard counsel for the appellant and have carefully gone through the record of the case.

9. It goes uncontroverted that the appellant has not been able to lead any evidence to prove the existence of liability. The creditors could not verify the liability of the appellant as projected by him. The existence of liability is purely a matter of fact. Proposition of law is well settled that where a party is expected to be in possession of evidence but fails to produce the same, an adverse inference has to be drawn. Reference can be made to the law laid down in case of **Commissioner of Income Tax, Madras vs. R. Venkata Swamy Naidu (1956) 29 ITR 529 (SC)**, wherein Apex Court held that -

“10. The assessee was solely responsible for the paucity of these materials inasmuch as it did not furnish any materials to

the Income-tax Officer in spite of the latter having given it an adjournment for the purpose. Counsel for the assessee, as an ultimate resort, appealed to us that we should send back the case to the High Court for calling a further statement of case from the Income-tax Appellate Tribunal but we declined to entertain the application at that late stage, the assessee having not availed itself of the opportunity given by the Income-tax Officer to it in the earlier stages of the enquiry and having rested merely on the position in law as emerging from the judgment of Roberts, C.J. in Commissioner of Income-tax, Burma v. Kokine Dairy, Rangoon.”

Moreover, questions framed sought to be projected as substantial question of law, are pure questions of fact.

10. In view of the aforesaid discussion, we find no substantial question of law arises in the present appeal. The same is thus dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

March 30, 2022

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No