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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 241/2022

PR. COMMISSIONER OF INCOME TAX DELHI-1 Appellant

Through: Mr. Zoheb Hossain, Sr. Standing
Counsel for Revenue with Mr. Vipul
Agrawal & Mr. Parth Semwal, Jr.
Standing Counsels for Revenue .

versus

ARVIND KUMAR ARORA

..... Respondent

Through: Mr. Ved Kumar Jain & Mr. Nishchay
Kantoor, Advocates.

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Date of Decision: 01st September, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. Present appeal has been filed by Revenue challenging the order dated 16th July, 2021, in ITA No. 1850/Del/2017, with respect to the Assessment Year 2013-14 ('AY') whereby the appeal of the Revenue has been dismissed and in light of the said dismissal, the cross objections of the Assessee have also been dismissed. The Assessee is an individual and proprietor of a firm named M/s Aroma Aromatics.



2. Learned counsel for the appellant states that the ITAT has erred in deleting the addition of Rs. 6,44,29,650/- made by the Assessing Officer ('AO') under Section 41(1) of the Income Tax Act, 1961 ('the Act'). He states that the AO had made the said addition after relying upon the order dated 29th July, 2010 passed by Commissioner, Central Excise & Customs, Meerut-II wherein the said Commissioner had held that purchases made by the Assessee's firm from a sister concern M/s Ruchi Infotek Systems, were non-genuine, bogus and there was no real production or movement of goods. The AO, further, took note that the said trade credit liability of M/s Ruchi Infotek Systems appearing in the books of the Assessee's firm had been converted into a loan liability and was now shown as an unsecured loan from Mr. Suresh Chand Arora, proprietor of M/s Ruchi Infotek Systems. The AO concluded in the aforesaid facts and circumstances that by converting the trading liability into an unsecured loan, the said liability had ceased to exist and she, therefore, added the said unsecured loan to the total income of the Assessee under Section 41(1) of the Act.

3. The Assessee filed an appeal against the order of the AO before the Commissioner of Income Tax (Appeals) ['CIT(A)'] which allowed the appeal and deleted the said addition of the AO after returning the finding that the books of accounts of the Assessee have not been rejected by the AO. The CIT(A) observed that the Assessee had filed details of purchases *vis-a-vis* sales, which figures of sales and purchase were not doubted by the AO. With respect to the order of the Commissioner, Central Excise & Customs, Meerut-II which was relied upon by the AO, the CIT(A) noted that the said order of the Commissioner had been stayed by Customs Excise and Service Tax Appellate Tribunal ('CESTAT') and the said proceedings were pending.



The CIT(A) also noted that the relevant documents pertaining to M/s Ruchi Infotek Systems which duly evidenced its transactions with the Assessee duly produced before the AO and a perusal of the documents evidence that the Assessee had been transacting with M/s Ruchi Infotek Systems since AY 2006-07 and the parties were maintaining the running account. The summary of the yearly transactions is enlisted in the order. The CIT(A) noted that the amount payable by the Assessee's firm to M/s Ruchi Infotek Systems was converted as a loan and this loan was admittedly repaid in the subsequent Financial Years (FYs) in the following manner:-

Financial Years (FYs)	Amounts (Rs.)
2013-14	3,00,000/-
2014-15	15,00,000/-
2015-16	5,91,00,000/-
Balance Amount in June 2016	35,29,650/-

The CIT(A) noted that in this manner the amount payable to M/s Ruchi Infotek Systems was reduced to nil.

4. The CIT(A) also noted that proprietary business carried on in the name of M/s Arora Aromatics by the Assessee was taken over by a company M/s Arora Aromatics Private Limited which was incorporated on 01st April, 2013, along with all the assets and liabilities of the proprietorship firm. As per the agreement between the firm and the newly incorporated company the trade liability of M/s Ruchi Infotek Systems was treated as a loan and this action of the party cannot be treated as a concession. After appreciating the said facts, the CIT(A) deleted the aforesaid addition and concluded that the



liability shown by the Assessee was neither bogus nor was it remitted and he, therefore, concluded that applying the provision of Section 41(1) of the Act was not justified.

5. The ITAT vide impugned order dismissed the appeal of the Revenue and held as follows:

“7. Now coming to the observations of the learned Assessing Officer that the assessee had converted the trading credit liability in the name of M/s Ruchi Infotech Systems into the loan liability, and such liability also seized to exist, it could be seen that the outstanding liability existing as on 31/3/2013 was paid subsequently as per the books of accounts of the assessee and the assessee demonstrated with reference to page Nos 329 2/3/1957 of the paperbook. Insofar as these entries are concerned after verification of the account books, Ld. CIT(A) returned a factual finding that the accounts were not rejected by the learned Assessing Officer nor any defect in such books was found and therefore, the details of purchase vis-à-vis sales produced by the assessee which were not doubted by the learned Assessing Officer, establish the case of the assessee. This finding of fact of the Ld. CIT(A) is not disputed by the Revenue. It, therefore, goes to establish that such liability as was existing as on 31/3/2013 and was repaid subsequently between 1/4/2013 and 31/3/2017, and such fact is well evidenced by the books of accounts.”

The ITAT held that the provisions of Section 41(1) of the Act are not applicable to the facts of the case and in this regard relied upon the judgment of this Court in ***CIT Vs Shri Vardhman Overseas*** reported in ***[2012] 343 ITR 408 (Del)***.

6. Learned Senior Standing Counsel for the appellant has contended that the ITAT has erred in not considering that the credit balance standing in the books of the Assessee's firm i.e., M/s Arora Aromatics to the account of M/s Ruchi Infotek Systems was a bogus transaction as held by the



Commissioner, Central Excise & Customs, Meerut-II and it was this bogus transaction which was transferred to the loan account in AY 2013-14. He contended that this loan amount standing in the books of the Assessee as an unsecured loan from Mr. Suresh Chand Arora the proprietor of M/s Ruchi Infotek Systems was, therefore, not genuine and was rightly added to the income of the Assessee.

7. Learned counsel for the respondent/Assessee who appears on advance notice has submitted that the contention of the Revenue is incorrect and the reliance placed by Revenue on the order of the Commissioner, Central Excise & Customs, Meerut-II, is also misplaced since the said order of the Commissioner has since been set aside by CESTAT vide its order dated 21st February, 2019. He stated that the said fact is duly noted by the ITAT in the impugned order and, therefore, the ITAT rightly concluded that the transactions between the Assessee and M/s Ruchi Infotek Systems were genuine and did not merit any further enquiry.

8. Learned counsel for the appellant did not contest the aforesaid submissions of the respondent.

9. We have heard the learned counsel for the parties. In view of the fact that the entire basis of the AO for doubting the balance of Rs. 6,44,29,650/- was the order of the Commissioner, Central Excise & Customs, Meerut-II, and since the very said order has been set aside by the CESTAT and has become final, there can be no doubt that the finding of the AO that the purchases were bogus has no legs to stand on. The finding of the CIT(A) and ITAT that the said liability which was converted into an unsecured loan and subsequently stood repaid has not been challenged by the Revenue in the present appeal. Further, the reliance placed by the ITAT on the judgment of



this Court in *Shri Vardhman Overseas (supra)* is also apposite wherein the Court held as follows:-

“20...If and when there is evidence in a particular later year to show that the liability has ceased or has been remitted, the same can be brought to tax as provided in Section 41(1). In this manner the statute prescribes that a deduction for a trading liability allowed earlier can be brought to tax on the ground that the liability to pay the same has been remitted or ceased.”

In the facts of the present case as well as noted above the unsecured loan had not been transferred to profit & loss account by the assessee and it was infact repaid in the subsequent years.

10. The Revenue has also not challenged the findings of the CIT(A) that the two firms had been transacting for many years and had a running account which are fact findings. In light of concurrent findings of fact returned by ITAT and CIT(A), this Court, in view of the aforesaid facts, do not find that any substantial question of law arises in the present appeal and there is no infirmity in the order passed by the ITAT.

11. Accordingly, the present appeal is dismissed.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

SEPTEMBER 01, 2022/msh