

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “A”, BANGALORE**

**Before Shri Chandra Poojari, AM & Shri George George K, JM**

ITA No.1223/Bang/2017: Asst.Year 2012-2013

The Dy.Commissioner of Income-tax, Circle 4(1)(1) Bangalore.	v.	M/s.Karnataka Agro Industries Corporation Ltd. #24, Bellary Road, Hebbal Bangalore – 560 024. <b>PAN : AABCK2579C.</b>
(Appellant)		(Respondent)

Appellant by : Ms.Neera Malhotra, CIT-DR  
Respondent by : Sri.K.Y.Ningoji Rao, CA

<b>Date of Hearing : 01.09.2021</b>	<b>Date of Pronouncement : 02.09.2021</b>
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**ORDER**

**Per George George K, JM**

The above appeal was disposed of by the ITAT vide its order dated 31.01.2018. The Revenue filed Miscellaneous Petition in MA No.263/Bang/2018 for the limited purpose of non-adjudication of ground Nos. 4 and 5 by the ITAT in its order dated 31.01.2018. The MP filed by the Revenue was allowed by ITAT vide its order dated 28.09.2018. The relevant finding of the ITAT reads as follow:-

*“3. From the discussion in para 3 of the order (supra), it is clear that the mistake that crept into the Tribunal order for Assessment Year 2012-13, in the case on hand, was that grounds 4 and 5 have not been adjudicated by the tribunal. These grounds are extracted hereunder:-*

*“4. On facts of the case, whether the learned CIT (Appeals) is right in allowing the appeal of the assessee on the issue of advances received against sales / services as disallowed under Section 41(1) without any valid reasoning. The learned CIT (Appeals) has held*

that these payments are live credits, whereas the business operations of the assessee company was ordered to close on 3.9.2003 by the State Govt. of Karnataka.

5. On facts of the case, the learned CIT(Appeals) ought to have appreciated that the assessee is not doing any business since 3.9.2003. Hence, the liability shown in the balance sheet cannot be advances received against sales / services. Hence, liable to be added under Section 41(1) of the Act.”

4. *In the above circumstances, we recall the impugned order of the Tribunal in the case on hand in ITA No.1223/Bang/2017 dt.31.1.2018 for Assessment Year 2012-13 for the limited extent of adjudication of grounds 4 & 5 (supra) raised before the Tribunal as they were not adjudicated therein.*

5. *The Registry is directed to refix the hearing of the case, in due course, by issue of notice to both parties.*

6. *In the result, Revenue’s Miscellaneous Petition for Assessment Year 2012-13 is allowed as indicated above.”*

2. Brief facts of the case are as follow:

An amount of Rs.6,03,90,079 was disallowed u/s 41(1) of the I.T.Act and added to the total income by the Assessing Officer vide assessment order completed u/s 143(3) of the I.T.Act (order dated 13.02.2015). The relevant finding of the Assessing Officer reads as follow:-

*“4.0 Advance received against sales / services : It is seen that assessee company has Advance received against sales / services of Rs.6,03,90,079/- as of 31.03.2012 under current liabilities. Assessee company was asked to furnish the details of trade payables along with the movement there in. Vide letter dated 27.10.2014, the assessee company submitted :*

*“These amount have been received prior to 2003 against services / sales rendered by the company. Major portion have been received from Govt. departments to be adjusted to receivables after reconciliation.”*

*4.1 Assessee has not furnished any other details. The contention of the assessee company is not acceptable. These amounts were received prior to 2003. It is seen that even after the Government of Karnataka, vide order dated 03.09.2003 directed to stop all business activities of the assessee company, the company is yet to reconcile the advances which the company itself claims to have received from the Government departments and as the Government has directed that all business activities has to be stopped, it is highly unlikely that there would be any advance liabilities. Hence, as assessee has not reconciled and adjusted the receivables, the amount of Rs.6,03,90,079/- is disallowed u/s 41(1) and added to total income.”*

3. Aggrieved, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority it was contended that the assessee had received this advance prior to 2003 against sales / services rendered by the assessee. It was submitted that major portions have been received from the Government Departments. It was stated that these advances were outstanding due to non-adjustment of receivables on account of closure of assessee-company and the same has been adjusted to receivables after reconciliation during the subsequent assessment years. It was stated that the advances received against sales amount is ‘Nil’ as per Balance Sheet as on 31.03.2016. The assessee also filed details with regard to how the advances were adjusted against the receivables. The CIT(A) allowed the issue of the assessee and deleted the additions made u/s 41(1) of the I.T.Act. The relevant finding of the CIT(A) reads as follow:

“6.3 .....

*The basic question that arises in respect of applicability of section 41(1) of the I.T.Act, is whether the liability appearing in the accounts is extinguished / remitted in the hands of the creditor as well as the debtors respectively. It is only in such a*

*situation of this finality that, an impugned amount can be said to have assumed the character of income in the Assessee's hands. The issue therefore, in the present case is primarily a question of fact; as to whether the liability ceased to exist in the current year under assessment. The various judicial pronouncements on the subject also lead to the same understanding.*

*The AO in the present case, apart from stating that, these were still-liabilities for several years has not delved any further into the facts. Therefore the conclusion drawn appears to be rather premature, in light of the submissions made by the Assessee. The appellant, during the course of the proceedings has submitted that, the impugned amounts have been adjusted towards receivables after reconciliation during subsequent years. A detailed abstract of the same has been submitted herewith marked as Annexure 5 [5A to 5D]. As per this statement, the advance received against sale amount is Nil as per Balance Sheet as on 31-03-2016 (Page No.8 of Anneexure-1). The Appellant contends that, this being the actual status, the disallowance made by the learned Assessing Office is not justifiable. It clearly emanates from the above details that the impugned amounts, under question were live credits, in respect of which the liabilities remained intact. In these facts and circumstances, the impugned liabilities cannot be construed to have extinguished, and much less, to have assumed the character of income as envisaged u/s 41 (1) of the I.T. Act. The Assessee has placed reliance on the judgments of Delhi High Court in the case of CIT Vs Shri. Vardhman Overseas Ltd 343 ITR 408, in which it is held that, liabilities appearing in the B/S are tantamount to acknowledgement of debt, which neither ceased to exist nor amounted to remission in terms of section 41 (1) of the I.T. Act.*

*In background of the above discussion, facts submitted by the appellant; judicial position on the subject and in absence of valid evidenciary support of the AO's findings, the addition made u/s 41 (1) of the I.T. Act to the extent of Rs. 6,03,90,079/- is directed to be deleted."*

4. Aggrieved, the Revenue has raised this issue before the ITAT. The learned Departmental Representative relied on the assessment order. The learned AR relied on the findings of the CIT(A).

5. We have heard rival submissions and perused the material on record. Admittedly, these amounts were received

prior to 2003 and was outstanding due to closure of assessee-company. The advances so received were adjusted to the receivables and reconciliation was filed. As on 31.03.2016, the advances received against sales amount is 'Nil' as per the Balance Sheet. Therefore, the liability cannot be construed to have been extinguished and assumed the character of income as envisaged in section 41(1) of the I.Act. In this context, we rely on the judgment of the Hon'ble Delhi High Court in the case of CIT v. Shri Vardhman Overseas Ltd. reported in 343 ITR 408, wherein it was held that the liability appearing in the Balance Sheet tantamount to acknowledgement of debt. Therefore, it was held by the Hon'ble High Court that the liability has neither ceased to exist nor there is a remission of liability in terms of section 41(1) of the I.T.Act. In view of the judgment of the Hon'ble High Court of Delhi (supra) and aforesaid reasoning, we uphold the order of the CIT(A). It is ordered accordingly.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on this 02<sup>nd</sup> day of September, 2021.

**Sd/-**  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 02<sup>nd</sup> September, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-4, Bangalore
4. The Pr.CIT-4, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore