Sec. 41(1) can't be invoked for liability against purchase of defective machinery that was never put to use: ITAT

Facts of the case: Marvelore Mining & Allied Industries (P.) Ltd. v. ITO - [2023] (Surat-Trib.)

Assessee was a private limited company. It was engaged in the business of Calcium Carbonate powder and trading of Calcium Bauxite. The assessee has filed its return of income for the Assessment Year 2016-17 declaring total income of Rs. Nil.

During the scrutiny assessment, the Assessing Officer (AO) noted outstanding sundry creditors against machinery that was purchased in Assessment Year 2011-12. The assessee was shown cause as to why the said amount should not be added to the total amount.

The assessee contended that the machinery was defective and was never put to use. The assessee had not claimed depreciation on this machinery in any of the assessment years and the supplier was also instructed to take back the machinery. In absence of any claim of expenditure, the provision of section 41(1) cannot be applied.

AO didn't accept the assessee's contention and made additions under section 41(1). On appeal, the CIT(A) upheld the order of AO. Aggreived-assessee filed the instant appeal before the Tribunal.

Decision of the case:

- The Tribunal held that AO added the amount to the assessee's income as per provisions of section 41(1) by holding that assessee had not demonstrated that liability was on account of capital expenditure. It was noted that lower authorities had not disputed the purchase of machinery and no adverse evidence was brought on record that liability was other than the purchase of machinery (Capital asset).
- It was also noted that machinery was not put to use and the assessee had never claimed depreciation thereon. Therefore, the amount shown by the assessee could not be taxed as a remission of liability under section 41(1).