

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10873 OF 2011

COMMISSIONER OF INCOME TAX, DELHI ... Appellant

VERSUS

M/s. SI GROUP INDIA LTD. ... Respondent

WITH

CIVIL APPEAL NO. 10874 OF 2011

O R D E R

By the impugned judgment dated 10.06.2010, the Division Bench of the Bombay High Court has decided the following issue in favour of the respondent-assessee herein: -

"Whether on the facts and in the circumstances of the case and in law, the Hon'ble High Court erred in holding that since the assessee's payment to SICOM had not been accepted by Sales Tax Authorities, the same cannot be held to be a remission/cessation of liability u/s 41(1)(a), even though Maharashtra Sales Tax Tribunal had granted the liberty to the assessee to take credit for payment of sales tax after filing proper documents."

The aforesaid issue arose in the following circumstances:

The assessee has set up a unit at District Raigad in Maharashtra which is a notified area. By virtue of packaged incentives scheme by Government of Maharashtra, the assessee became entitled to collect sales tax from customers and defer its payments to the State Government. Under the aforesaid scheme, the assessee was entitled to pay the sales tax so collected in five equal installments starting from

April 20, 2010. In the return filed by the assessee, the deduction towards the sales tax was claimed. The Assessing Officer, however, disallowed the same while applying the provisions of Section 41(1)(a) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') on the ground that the said sales tax had not been remitted to the State Government. The appeals of the assessee till the stage of Income Tax Appellate Tribunal failed. However, the decision of the Income Tax Appellate Tribunal has been reversed by the High Court by way of the impugned judgment.

We may note that the main contention of the respondent-assessee herein before the High Court was that the principal requirement for the applicability of Section 41 of the Act is that the assessee must obtain a benefit in respect of a trading liability by way of a remission or cessation thereof. He argued that in the present case, there was no cessation of the liability of the assessee in respect of the payment of the sales tax dues and even if there was such a cessation, no benefit was obtained by the assessee. This contention was supported by the fact that the issue pertaining to the sales tax liability was decided by the Sales Tax Tribunal by its judgment dated 08.02.2008 and the Tribunal has specifically upheld the decision of the assessing authorities declining to grant credit to the assessee of payment which was made to State Industrial and Investment Corporation of Maharashtra Limited (SICOM) of Maharashtra. This contention is accepted by the High Court

in the following manner: -

"10. The net result of the order of the Sales Tax Tribunal dated 8th February 2008 is to uphold the decision of the assessing authority declining to grant credit of the payment made by the assessee to SICOM towards discharge of the deferred sales tax liability. As a matter of fact, on 22nd July 2008 a notice of demand was issued under Section 38 of the Bombay Sales Tax Act of 1959 to the assessee by the Deputy Commissioner of Sales Tax, Navi Mumbai in the total amount of Rs. 1,33,13,555/-. Having regard both to the order passed by the Sales Tax Tribunal on 8th February 2008 and the notice of demand issued on 22nd July 2008, it is not possible for the Court to accept the contention that there was a remission or cessation of liability. Since the record before the Court does not disclose that there was a remission or cessation of liability, one of the requirements spelt out for the applicability of Section 41(1)(a) has not been fulfilled in the facts of the present case."

In view of the aforesaid facts, which clearly demonstrate that the assessee had not been granted the benefit of the said cessation for the Assessment Years in question, the High Court has rightly held that one of the requirements for the applicability of Section 41(1)(a) of the Act had not been fulfilled in the present case.

We, thus, do not find any error in the order of the High Court. The appeals lack any merit and are, accordingly, dismissed.

....., J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
November 04, 2015.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 10873/2011

C.I.T DELHI

Appellant(s)

VERSUS

M/S SI GROUP INDIA LTD.

Respondent(s)

WITH

C.A. No. 10874/2011

Date : 04/11/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. K. Radhakrishnan, Sr. Adv.
Mr. Arijit Prasad, Adv.
Ms. Sadhana Sandhu, Adv.
Ms. Swarupama Chaturvedi, Adv.
Ms. Natasha Vinayak, Adv.
Mr. S. A. Haseeb, Adv.
Ms. Anil Katiyar, Adv.
Mr. B. V. Balaram Das, Adv.

For Respondent(s)

Mr. Jehangir D. Mistri, Sr. Adv.
Mr. Niraj Sheth, Adv.
Mr. Rustom B. Hathikhanawala, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed
order.

(Nidhi Ahuja)
COURT MASTER

(Renu Diwan)
COURT MASTER

[Signed order is placed on the file.]