

Case :- INCOME TAX APPEAL No. - 224 of 2012

Appellant :- The Commissioner Of Income Tax

Respondent :- M/S Vihsal Transormers And Swithgears Pvt. Ltd.

Counsel for Appellant :- S.S.C. I.T., Krishna Agarwal, Shubham Agrawal

Counsel for Respondent :- Suyash Agarwal, R.R. Agarwal

Hon'ble Bharati Sapru, J.

Hon'ble Harsh Kumar, J.

Heard Shri Shubham Agrawal, learned counsel for the appellant and Shri Suyash Agrawal, learned counsel for the respondent-assessee.

This appeal under Section 260-A of the Income Tax, 1961 (hereinafter referred to as the 'Act') has been filed by the department against the order of the Income Tax Appellate Tribunal dated 19.08.2011 for the assessment year 2007-08. The questions of law sought to be answered are as hereunder:

"(2) Whether the Hon'ble ITAT, erred in law in deleting the addition made in A.Y. 2007-08 on account of Sundry Creditory relying on the credit balances shown in A.Y. 2008-09 which were not disputed by the department ignoring the law that the principle of res judicata is not applicable in Income Tax. Further, once the addition on account of unexplained credit added in A.Y. 2007-08 the same amount could not be added in A.Y. 2008-09 ?

(3) Whether Hon'ble ITAT erred in law in deleting the addition made on account of unclaimed liability ignoring the fact that unclaimed credit liability which is barred by limitation and no possibility of any claim in further is covered by Section 41(1) as it is held in Distince Property and Leasing Ltd. Vs. ITO (ITAT Delhi ISOT 46 Delhi).

(4) Whether Hon'ble ITAT erred in law in deleting the addition on account of Bad Debts the judgment of assessee should revel iirrecoverability of Debts from angle of Debtors and before that the assessee must honestly from an opinion that the Debt has become bad. As it is held in various cases which are given as under-

(iv) CIT vs. Coates of India Ltd. (Cal) 232 ITR 324

(v) Industrial Cables (I) Ltd. ACIT (ITAT) (CH) 97 ITR 267

(vi) CIT Financial Retail Services India Ltd. Vs. ACIT 2008-TIOL-05-ITAT MAD."

Insofar as the question nos.2 and 3 are concerned the Tribunal has made an observation in its judgment with regard to the deletion of an addition of Rs.1,63,53,539/- made by the Assessing Officer on account of sundry creditors. The grievance of the Assessing Officer was that the assessee had

not filed any evidence before the Assessing Officer with regard to the actual existence of these liabilities or to show that the liabilities existed. The question sought to be answered is whether the provision of Section 41(1) of the Act could have been invoked. Section 41(1) of the Act reads as hereunder:

"1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year –

a. the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

b. the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.

Explanation 1 - For the purposes of this subsection, the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof" shall include the remission or cessation of any liability by a unilateral act by the first mentioned person under clause (a) or the successor in business under clause (b) of that subsection by way of writing off such liability in his accounts.

Explanation 2 - For the purposes of this subsection, "successor in business" means –

i. where there has been an amalgamation of a company with another company, the amalgamated company;

ii. where the first-mentioned person is succeeded by any other person in that business or profession, the other person;

iii. where a firm carrying on a business or profession is succeeded by another firm, the other firm;

iv. where there has been a demerger, the resulting company.

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In the present case there is nothing on record to show that there have been cessation of trading liability or that some benefits have been taken in respect of the trading liability by the assessee. The necessary ingredients for invoking the

provisions of Section 141 are two folds; firstly, there should have been a cessation of the trading liability and secondly that some benefit in respect of the trade liability had been taken by the assessee.

Out of total amount of Rs.1 crore and odd, approximately 86 lacs had still remained unrecoverable as the creditors were untraceable. This is the finding recorded. In any event, it could not be said that the liability had ceased or that any advantage had been taken by the assessee on account of this.

Learned counsel for the assessee has placed reliance on a decision of the Karnataka High Court where this very issue was being considered in the case of **Commissioner of Income Tax, Bangalore Vs. Alvares & Thomas, reported in [2016]69 taxmann.com 257 (Karnataka)**, wherein the Court came to the conclusion that merely because creditor could not be traced on date when verification was made, is not a ground to conclude that there cessation of liability because cessation of liability has to be cessation in law, of debt to be paid by assessee to the creditor and, therefore, Section 41(1) of the Act could not have been invoked.

The findings of fact being similar in the present case, the question nos.2 and 3 are answered in favour of the assessee and against the department.

Insofar as the question no.4 is concerned, the law is well settled by the Apex Court in the case of **T.R.F. Ltd. Vs. Commissioner of Income Tax reported in 323 ITR 397 (SC)**. The relevant para 4 is quoted hereunder:

" The position in law is well-settled. After 01.04.1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. However, in the present case, the Assessing Officer has not examined whether the debt has, in fact, been written off in accounts of the assessee. When bad debt occurs, the bad debt account is debited and the customer's account is credited, thus, closing the account of the customer. In the case of companies, the provision is deducted from sundry debtors. As stated above, the Assessing Officer has not examined whether, in fact, the bad debt or part thereof is written off in the accounts of the assessee. This exercise has not been undertaken by the Assessing officer. Hence, the matter is remitted to the Assessing Officer for de novo consideration of the above mentioned aspect and that too only to the extent of the write off."

Thus, the question no.4 is also answered in favour of the assessee and against the department.

The appeal is accordingly dismissed.

Order Date :- 9.3.2018

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