

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 380 OF 2018

Pr.Commissioner of Income Tax-14. ... Appellant.  
V/s.  
Batliboi Environmental Engineering Ltd. ... Respondent.

Mr.Suresh Kumar with Ms.Swapna Gokhale for the Appellant.  
Mr.Sanjiv M. Shah for the Respondent.

**CORAM :** NITIN JAMDAR AND  
N.R. BORKAR, JJ.

**DATE :** 10 June 2022.

**P.C. :**

Heard learned counsel for the parties.

2. By this appeal filed under section 260-A of the Income Tax Act, 1961, the Appellant- Revenue has challenged the judgment and order dated 15 March 2017 passed by the Income Tax Appellate Tribunal. The relevant assessment year is 2011-12.

3. The Appellant- Revenue has pressed before us following two questions as substantial questions of law:

(1) Whether, on the facts and in the circumstances of the case and in law, the Tribunal is right in upholding the view of the learned CIT(A) to delete the

disallowance of Rs.28,07,058/- made by the AO on account of bogus purchases?

(2) Whether, on the facts and in the circumstances of the case and in law, the Tribunal is right in upholding the view of the learned CIT(A) to delete the disallowance of Rs.1,52,29,070/- made by the Assessing Officer u/s. 41(1) of the Income Tax Act, 1961 on account of cessation of liability ignoring the Assessing Officer's finding that the said liabilities were not payable as they stood barred by limitation?

4. As regards first question, the Tribunal has upheld the finding and conclusion of the Commissioner of Income Tax (Appeals) whereby the Commissioner (Appeals) directed the Assessing Officer to disallow 12.5% bogus purchases and to add 12.5% of the amount of purchases as income of the Appellant. The argument advanced is that the bogus purchases ought to have been disallowed in totality. The learned counsel for the parties have placed before us the decisions of the Division Bench in the cases of *Pr.Commissioner of Income Tax v. M/s.Mohammad Haji Adam & Co.*<sup>1</sup> and *Pr.Commissioner of Income Tax v. Pramshakti Distributors Pvt.Ltd.*<sup>2</sup> wherein the Division Bench has observed that if the factum of sales has been accepted by the Department then even if it is established that there were bogus purchases, it is not necessary that entire amount should be added to the income of the Assessee as there cannot be a sale without purchase. The facts of the present

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1 ITXA No.1004/2016 decided on 11 February 2019.

2 ITXA No.413/2017 decided on 15 July 2019.

case are identical wherein the sales have been accepted. Therefore, in light of the aforesaid decisions first question of law does not survive for consideration.

5. As regards second question of law is concerned, it was argued by the Appellant- Revenue that since the Respondent-Assessee had around 25 creditors whose payments were outstanding for more than three years and some transactions which are eight to nine years old, the same were barred by the provisions of the Limitation Act, 1963 and, therefore, they will have to be treated as Assessee's income and to be added under section 41(1) of the Income Tax Act. This issue has been dealt with by both the Commissioner (Appeals) and the Tribunal relying upon the decision of the Gujarat High Court in the case of *Commissioner of Income Tax v. G.K.Patel*<sup>3</sup> and the decision of the Delhi High Court in the case of *Commissioner of Income Tax v. Jain Exports Pvt.Ltd.*<sup>4</sup>

6. The Delhi High Court in the case of *Jain Exports Pvt.Ltd.* has relied upon the decisions of the Supreme Court in the case of *Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay*<sup>5</sup> and *CIT v. Sugauli Sugar Works (P) Ltd.*<sup>6</sup>. In *Sugauli Sugar Works (P) Ltd.*, the Supreme Court has referred to the decision of the Division Bench of this Court in the case of Kohinoor

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3 212 Taxman 384

4 89 DTR 265

5 AIR 1958 SC 328

6 (1999) 236 ITR 518 (SC)

Mills v. C.I.T.<sup>7</sup> The Delhi High Court, after following these decisions concluded that merely because the liability is barred by limitation, it does not cease to be a debt. This view is also taken by this Court in the case of *CIT v. Indian Rayon and Industries Ltd.*<sup>8</sup>. Therefore, the submission made by the Appellant that because the liability is barred by the period of limitation the same would be treated as income and added under section 41(1) of the Act cannot be accepted as no other decision contrary to the above is shown to us. Thus, the second question of law does not survive for consideration.

7. Appeal is dismissed.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)

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<sup>7</sup> (1963) 49 ITR 578 (Bom)

<sup>8</sup> (2011) 336 ITR 479 (Bom)