
(2014) 11 GUJ CK 0023
In the Gujarat High Court
Case No : Tax Appeal No. 7 of 2004

Aims Oxygen Pvt. Ltd.

APPELLANT

Vs

Dy. C.I.T.

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 41, 41(1)

Citation : (2014) 11 GUJ CK 0023

Hon'ble Judges : Kaushal Jayendra Thaker, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : S.N. Divatia, Advocate for the Appellant; K.M. Parikh, Advocate for the Respondent

Judgement

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K.S. Jhaveri, J.—Being aggrieved and dissatisfied with the impugned order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench "B" (hereinafter referred to as "the Tribunal") dated 23.06.2003 in ITA No. 1134/Ahd/98 for the Assessment Year 1991-92, the assessee has preferred the present Tax Appeal for consideration of the following substantial question of law which was framed while admitting this appeal:

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the addition made by the Assessing Officer of Rs. 11,13,788/- on account of cylinder security deposit transferred to capital reserve account under Section 41(1) of the Income Tax Act, 1961?"

2. The assessee filed its return of income for the assessment year 1991-92 declaring total income as NIL. The assessment order under section 143(3) of the I.T. Act, 1961 was passed in respect of the assessee. During the course of assessment proceedings, the assessing officer made addition of Rs. 1113788/- being cylinder security deposit received in past transferred to capital reserve

account. On appeal, the CIT (Appeals) allowed the same and deleted the addition on the ground that there was no cessation of appellant's liability to repay the said security deposit to the customer inasmuch as the said deposits were repayable to the customers and even various amounts were repaid in subsequent years to the customers out of the said security deposit.

3. On appeal before the Tribunal by the revenue, by impugned order, Tribunal allowing the appeal, reversed the order passed by CIT(A) and restored the order passed by the Assessing Officer.

4. Being aggrieved and dissatisfied with the impugned order passed by the Tribunal, the assessee has preferred the present Tax Appeal for consideration of the aforesaid substantial question of law.

5. The issue involved in the present Tax Appeal is now not res integra in view of the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Calcutta Vs. Sugauli Sugar Works P. Ltd., wherein the Hon'ble Supreme Court has held that the principle that expiry of period of limitation prescribed under the Limitation Act could not extinguish the debt but it would only prevent the creditor from enforcing the debt, has been well settled and that if that principle is applied, it is clear that mere entry in the books of accounts of the debtor made unilaterally without any act on the part of the creditor will not enable the debtor to say that the liability has come to an end. Apart from that, that will not by itself confer any benefit on the debtor as contemplated by the Section.

6. Mr. K.M. Parikh, learned advocate on behalf of the revenue is not in a position to dispute the above and is not in a position to show and/or point out any contrary decision.

7. Having heard learned advocates appearing on behalf of the assessee and the revenue and the question posed for consideration before us reproduced hereinabove and considering the decision of the Hon'ble Supreme Court in the case of Sugauli Sugar Works (Supra), the question, which is raised in the present appeal is required to be answered in favour of the assessee. We are not giving any elaborate reasons for the same as in the case of Sugauli Sugar Works (Supra) it is held by the Hon'ble Supreme Court as under:

"We fully agree with the view taken by the Division Bench in Commissioner of Income Tax, Gujarat-I Vs. Rashmi Trading, that the only meaning that can be attached to the words "obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure" incurred in any previous year clearly refer to the actual receiving of the cash of that amount. The amount may be actually received or it may be adjusted by way of an adjustment entry or a credit note or in any other form when the cash or the equivalent of the cash can be said to have been received by the assessee. But it must be the obtaining of the actual amount which is contemplated by the Legislature when it used the words "has obtained; whether in cash or in any other manner

whatsoever, any amount in respect of such loss or expenditure in the past". As rightly observed by the Division Bench in the context in which these words occur, no other meaning is possible." we are in agreement with the said reasoning.

There is another judgment of the Bombay High Court which was rendered much earlier in J.K. Chemicals Ltd. Vs. Commissioner of Income Tax, Bombay City-II, . The Bench observed:

"The transfer of an entry is a unilateral act of the assessee, who is a debtor to its employees. We fail to see how a debtor, by his own unilateral act, can bring about the cessation or remission of his liability. Remission has to be granted by the creditor. It is not in dispute, and it indeed cannot be disputed, that it is not a case or remission of liability. Similarly, a unilateral act on the part of the debtor cannot bring about a cessation of his liability. The cessation of the liability may occur either by reason of the operation of law, i.e., on the liability becoming unenforceable at law by the creditor and the debtor declaring unequivocally his intention not to honour his liability when payment is demanded by the creditor, or a contract between the parties or by discharge of the debt - the debtor making payment thereof to his creditor. Transfer of an entry is neither an agreement between the parties nor payment of the liability."

This judgment has been quoted by the High Court in the present case and followed. We have no hesitation to say that the reasoning is correct and we agree with the same.

The principle that expiry of period of limitation prescribed under the Limitation Act could not extinguish the debt but it would only prevent the creditor from enforcing the debt, has been well settled. It is enough to refer to the decision of Court in Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others, , If that principle is applied, it is clear that mere entry in the books of accounts of the debtor made unilaterally without any act on the part of the creditor will not enable the debtor to say that the liability has come to an end. Apart from that, that will not by itself confer any benefit on the debtor as contemplated by the Section."

8. In view of the above, it is clear that section 41(1) of the Act contemplates the obtaining by the assessee of an amount either in cash or in any other manner whatsoever or a benefit by way of remission or cessation and it should be of a particular amount obtained by him. Thus, the obtaining by the assessee of a benefit by virtue of remission or cessation is sine qua non for the application of this Section. The mere fact that the assessee has made an entry of transfer in his accounts unilaterally will not enable the Department to say that Section 41 would apply and the amount should be included in the total income of the assessee. The finding of facts by the Tribunal is erroneous and we do not agree with the same. Accordingly, the question is answered in the negative i.e. against the revenue and in favour of the assessee.

9. In view of the above, the impugned judgment and order passed by the

Tribunal is quashed and set aside. The order passed by CIT(A) is hereby restored. Present Tax Appeal is allowed accordingly.