(2013) 11 RAJ CK 0008

In the Rajasthan High Court

Case No : IT Appeal No. 405 of 2011

CIT APPELLANT

Vs

Narendra Mohan Mathur RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2013) 11 RAJ CK 0008

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Judgement

J.K. Ranka, J.—Both these income tax appeals u/s 260A of the Income Tax Act, 1961 (for short, Income Tax Act) are directed against the order of the income tax Appellate Tribunal, Jaipur Bench B, Jaipur (for short, Tribunal) in ITA No. 554/ Jp/2007 and ITA No. 555/Jp/2007, both dt. 20-3-2009 and relate to the assessment year 2002-03.

2. Since the controversy involved is identical, both these income tax appeals are being decided by this common order.

3. The brief facts, as emerging on the face of record, are that the respondent-assessee (Narendra Mohan Mathur), while carrying on business in the name of M/ s. Trade Links, Gem Enterprises and M/s. Ajanta Enterprises respectively, had certain liabilities in the shape of sundry creditors to the tune of Rs. 15,38,282, Rs. 20,16,695 and Rs. 12,60,381 in the books of M/s. Trade Links, Gem Enterprises and M/s. Ajanta Enterprises respectively.

4. These liabilities came to be examined in the assessment year, 2005-06 and the respondent-assessee was directed to verify the credit entries appearing in the balance sheet of the proprietary concern, referred to hereinabove.

5. During the course of hearing, necessary letters/summons were sent to all the trade creditors as per list furnished by the respondent-assessee and the respondent-assessee was asked to prove genuineness of the trade credit entries

appearing in the respective balance sheets. It is observed by the assessing officer that neither any reply was received from the trade creditors to whom letters were issued nor the respondent-assessee was able to prove the genuineness of the trade creditors appearing in the balance sheets of the proprietary concerns, referred to hereinabove. Since these liabilities according to the assessing officer pertained to the assessment year 2002-03 herein, therefore, a notice u/s 147 r/w s. 148 of the Income Tax Act was issued to show cause as to why the assessment may not be reopened and why addition may not made by invoking provisions of s. 41(1) of the Income Tax Act. It was submitted by the respondent-assessee that the respondent-assessee carried on business in the name and style of M/s. Trade Links, "Gem Enterprises and M/s. Ajanta Enterprises respectively of trading in the items such as furnishing materials, curtain cloths, upholstery fabrics, bedding, rugs, accessories, sofa cloth, floor furnishing, decorative vases, wall hangings, curtain rods, wall paintings, floor mattings, decorative articles, artificial carpets, room fountains, glass paintings, decorating paintings, artificial plants and flowers and decorative lightings etc. and the business of the aforesaid firms was closed and the business was not being carried during the previous year relevant to the assessment year under appeal, however, it was stated by the respondent-assessee that the respondent-assessee did charge interest and such interest was being shown as an expenditure and was allowed. It was further reiterated that the trade creditors are genuine and the respondent-assessee may be called to pay the liabilities as and when the creditor demanded the amount and therefore, there was no justification for invoking of provisions of section 41(1) of the Income Tax Act. On the observation of the assessing officer to treat them as cash credits, it was submitted by the respondent-assessee that they are not in the nature of cash credits rather trade credits and are in the nature of trade liability. However, the assessing officer was not satisfied and assessment was reopened. While framing the assessment, after adverting to the objection raised by the respondent-assessee and in the light of the case laws and further in the light of the fact that the respondent-assessee was unable to produce the books of accounts for the assessment year in question, the genuineness was doubted by the assessing officer and accordingly the said amount of Rs. 48,15,538 was added u/s 41(1) of the Income Tax Act. Consequently, interest was also disallowed.

6. Both, reopening of the assessment u/s 147 r/w s. 148 of the Income Tax Act so also the addition of Rs. 48,15,358 u/s 41(1) of the Income Tax Act, was challenged by the respondent-assessee before the Commissioner (Appeals), however, insofar as reopening of the assessment is concerned, the CIT(A) agreed with the reopening of the assessment and thus decided against the respondent-assessee. However, it transpired that in the meanwhile, the respondent-assessee himself credited the aforesaid liability appearing in the balance sheet of three proprietary concerns in the assessment year 2006-07 along with interest to the extent of Rs. 55,77,779. It was submitted by the respondent-assessee before the Commissioner (Appeals) that the liabilities were written off during the year

ended 31-3-2006 relevant for the assessment year 2006-07, as the liabilities actually ceased in the financial year 2005-06, relevant to the assessment year 2006-07. It was also claimed that the entire tax on the aforesaid amount was also deposited by the respondent-assessee in the return for the assessment year 2006-07. After analyzing the facts on record and agreeing with the contention of the respondent-assessee that the liability, if any, pertained to the assessment year 2006-07, in which year the same was declared along with interest and admittedly the amount of Rs. 24,13,591 was shown as payment of tax towards the said liability, the Commissioner (Appeals) deleted the addition in question.

7. The matter was carried in appeal by the Revenue before the Tribunal and the respondent-assessee also, by way of cross-objection, objected to the invoking of s. 41(1) of the Income Tax Act so also reopening of the assessment u/s 147/148 of the Act.

8. The Tribunal also accepted, as a finding of fact, that the said liabilities, appearing in the balance sheet, were converted into loans during the previous year relevant to the assessment year 2006-07 and that the respondent-assessee duly credited the same in the assessment year 2006-07 and there could not be any double taxation and therefore, upheld the deletion of the addition and dismissed the appeal of the Revenue.

9. In the case of Smt. Rita Mathur, DB IT Appeal No. 536 of 2009, certain liabilities did exist in her name where she was also proprietor namely of M/s. Inter Links, M/s. Wipro Enterprises and M/s. Air Links amounting to Rs. 23,06,049, Rs. 12,71,926 and Rs. 46,90,780 respectively, in total Rs. 82,68,755 and same queries were raised and almost on identical basis, the addition was made in the case of the assessee. The Commissioner (Appeals), in her case, also observed that the entire liability ceased in the assessment year 2006-07 and it has been written off and showed as income in the assessment year 2006-07 and it was, in fact, found as a finding of fact that the assessee also paid an amount of Rs. 38,87,002 by way of tax and accordingly deleted the addition (total surrender) to the tune of Rs. 82,68,755.

10. The Tribunal also, following the case of respondent-assessee Narendra Mohan Mathur observed that since the liability crystallized in the assessment year 2006-07 and same having been shown surrendered in the assessment year 2006-07 and accordingly, in the light of the judgment of respondent-assessee Narendra Mohan Mathur, deleted the same.

11. Shri R.B. Mathur, learned counsel for the Revenue submits that substantial question of law arises out of the order of the Tribunal as the Tribunal has ignored many aspects and in a summary manner dealt with the issue which has wide ramifications. He submits that the order is totally perverse and without proper application of mind. He further submits that the Commissioner (Appeals), while on the issue of reopening of the assessment, was in favour of the Revenue but the Tribunal, deciding the cross-objection, has even allowed claim of the

respondent-assessee that reopening of assessment was bad. He further submits that on the addresses provided by the respondent-assessee notices were issued and almost all notices returned unserved and therefore, the assessing officer was justified in holding that the liability claimed by the respondent-assessee was a paper liability and did never existed while the claim is that the liabilities pertained to earlier years but the same continued to be carried in the books of accounts of the respondent-assessee it was proved that the liabilities were fictitious or not payable and therefore, the assessing officer rightly assessed the same by invoking the provisions of section 41(1) of the Income Tax Act. He submits that admittedly these were trade liabilities and since they were not payable even after more than 10 years and the respondent-assessee was unable to prove genuineness of the payments, therefore, the assessing officer rightly came to the conclusion that the liabilities ceased to exist and had correctly made the addition by invoking provisions of section 41(1). He submits that there was a claim by the respondent-assessee that there was a mutual agreement between the respondent-assessee and the claimants (trade creditors) that the amount would be retained on payment of interest but the so-called agreement was never placed on record and even the present status of such credit entries was not proved by the respondent-assessee. Several queries repeatedly were raised but one way or the other, the respondent-assessee tried to seek time. He lastly submitted that no prudent man/businessman will keep his funds for all times to come with the respondent-assessee and had it been so, some evidence had to be led but no evidence was led. However, counsel for the Revenue admitted that the respondent-assessee offered the said amount in the assessment year 2006-07 as observed by the Commissioner (Appeals) as well as Tribunal and paid due tax. Nevertheless, he submitted that it does not make a difference and submits that substantial questions of law arise out of the order of the Tribunal and be considered by this Court.

12. Per contra, Shri Pawan Sharma, learned counsel for the respondent-assessee vehemently contended that the liabilities were trade liabilities and were genuine and being shown in the books of accounts of the respondent-assessee from year to year and had it not been payable, no interest would have been paid to such creditors. He further submits that the provisions of s. 41(1) cannot be invoked on such facts and circumstances of the case. He further contended that not only the entire amount but the accrued interest also has been written off in the previous year relevant to the assessment year 2006-07 and he submits that provisions of section 41(1), if at all could be invoked for the assessment year 2006-07 and not the year under appeal. He further submits that admittedly, the amounts have been offered for taxation in the assessment year 2006-07. The entire tax has been paid in the assessment year 2006-07 and there is no loss to the Revenue whether to tax the same in the assessment year 2006-07 or in the assessment year 2002-03 as the tax rate remains the same. He submits that under the taxation laws, double tax cannot be levied and since the amount has already been taxed in the assessment year 2006-07, therefore, both the appellate

authorities namely, CIT(A) as well as Tribunal have deleted the same. He submits that it is totally a finding of fact and no substantial question of law arises for consideration.

13. We have heard learned counsel for the parties and perused the impugned orders.

14. It will be fruitful to quote section 41(1) of the Income Tax Act, which provides as under :

"41(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."

15. It is true that these liabilities were being shown in the books of accounts of the respondent-assessee from year to year and it was the claim of the respondent-assessee that these liabilities are payable to the persons from whom the goods were purchased earlier and are trade creditors. On perusal of the facts, it has not been proved by the assessing officer as to how the so-called liabilities ceased or crystallized during the previous year relevant to the assessment year under appeal. Merely because there was no response by the creditors it does not prove that the liabilities ceased during the assessment year 2002-03. Merely because the parties chose not to appear or did not respond or even did not come forward on the request of the respondent-assessee before the assessing officer, it does not prove that the trade creditors were not genuine and were not in existence so as to invoke provisions of section 41(1).

16. Section 41(1) requires that the onus is on the assessing officer to come to the conclusion that the liabilities ceased to exist or the assessee 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. On the one hand, the assessee claims that the amount was payable and the assessee may be justified in saying so because one never knows when a creditor will come and raise the demand. May be, the creditor was justified that interest was being paid, so he did not turn up to take the principal amount. Therefore, it was for the assessing officer to come to a definite finding that the liability ceased to exist during the previous year relevant to the year under appeal which, in our view, has not been proved by the assessing officer.

17. The assessee, however, after a lapse of four years, when the parties did net turn up on his own, has written off the said amount of liabilities in its books of accounts and came to the opinion that the liabilities ceased to exist in the financial year 2005-06, relevant for the assessment year 2006-07 and offered the same to tax in the assessment year 2006-07. It is a finding of fact by the CIT(A) as well as by the Tribunal that in the case of Narendra Mohan Mathur, the assessee offered as deemed income u/s 41(1) amounting to Rs. 55,77,779 and even paid total tax payment of Rs. 24,13,591 in the assessment year 2006-07. In the case of Smt. Rita Mathur, the assessee offered as deemed income u/s 41(1) amounting to Rs. 94,08,970 (including interest) and even paid total tax payment of Rs. 38,87,002 in the assessment year 2006-07.

18. This factum has not been disputed by counsel for the Revenue also that such amount was not offered and that the tax thereon was not paid. Therefore, when the entire amount, as claimed by the assessing officer along with accrued interest, has been offered to tax, in the assessment year 2006-07, in our view, it could not have been taxed again in the year under appeal. The same cannot be taxed in two different years and the income has to be rightly taxed only in the year to which it pertains and in our view, both the appellate-authorities have come to a correct conclusion that the income, to be offered and shown, was the assessment year 2006-07 and not the assessment year 2002-03 i.e., the year under appeal. We also agree with the submission of counsel for the assessee that there is no loss to the Revenue whether to tax in this year or in assessment year 2006-07.

19. The Bombay High Court in the case of Commissioner of Income Tax Vs. Modest Maritime Services P. Ltd., observed that the Tribunal, while deleting, held that there is no infirmity in the method followed by the assessee and moreover, the balance refund amount has been offered to tax in the subsequent assessment years which the Department has accepted and accordingly held that no question of law arises and accordingly did not entertain the appeal and dismissed the appeal as such.

20. The Punjab & Haryana High Court, in the case of Commissioner of Income Tax Vs. Smt. Sita Devi Juneja, held that merely because such liabilities are outstanding for the last six years, it cannot be presumed that the said liabilities

have ceased to exist.

20.1. It is also a conceded position that there is no bilateral act of the assessee and the creditors, which indicates that the said liabilities have ceased to exist. In the absence of any bilateral act, the said liabilities could not have been treated to have ceased. Accordingly, it was held that no addition could be made by invoking provisions of section 41(1) of the Act. Same position exists in the present appeal though the liabilities may be outstanding for the last several years but it is the claim of the respondent-assessee, that they are payable and had it not been payable, the assessee would not have paid any interest and that too year after year. Therefore, the liabilities, in our view, certainly did not cease to exist in the year under appeal.

21. The Delhi High Court, in the case of The Commissioner of Income Tax, Delhi-IV, New Delhi Vs. M/s. Rajasthan Golden Transport Co.(P) Ltd., , held that if amount is received in the course of a trading transaction, even though it is not taxable in the year of receipt as being of revenue character, the amount changes its character when the amount becomes the assessees own money because of limitation or by any other statutory or contractual right. When such a thing happens, common sense demands that the amount should be treated as income of the assessee and in the instant case, the assessee came to the conclusion and rightly so when the amount changed its character in the assessment year 2006-07 and not during the previous year relevant to the year under appeal.

22. The Delhi High Court, in the case of Commissioner of Income Tax Vs. Delhi Automobiles, after referring to the judgment of the Hon''ble Apex Court in the case of Commissioner of Income Tax Vs. Sugauli Sugar Works (P) Ltd., and of Bombay High Court in the case of J.K. Chemicals Ltd. Vs. Commissioner of Income Tax, Bombay City-II, has observed as under :

"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 of 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."

23. The Hon''ble Apex Court, in the case of Commissioner of Income Tax,

Madurai Vs. T.V. Sundaram Iyengar and Sons Ltd., held as under:

"In the present case, the money was received by the assessee in the course of carrying on his business. Although it was treated as deposit and was capital in nature at the point of time it was received, by efflux of time the money has become the assessees own money. What remains after adjustment of the deposits has not been claimed by the customers. The claims of the customers have become barred by limitation. The assessee itself has treated the money as its own money and taken the amount to its P & L a/c. There is no explanation from the assessee why the surplus money was taken to its P & L a/c even if. it was somebody else''s money. In fact, as Atkinson J. pointed out that what the assessee did was the common sense way of dealing with the amounts."

24. In view of the above facts and circumstances, the amount having been already offered to tax in the year 2006-07 and it being a finding of fact, in our view, no substantial question of law arises for consideration by this Court.

25. Insofar as the issue of reopening of the assessment u/s 147 r/w section 148 of the Income Tax Act is concerned, the same question is only academic in nature and remains academic as ultimately amount as found by the assessing officer has been taxed though in a subsequent year and therefore, is not required to be considered.

26. In view of the discussion made above, we do not find any illegality, infirmity or ambiguity in the orders impugned passed by the authorities below so as to call for interference of this Court. It is essentially a finding of fact and no substantial question of law can be said to arise.

27. Accordingly, both the appeals, being devoid of merits, are being dismissed and accordingly dismissed.

