**(2000) 01 KAR CK 0018**

**In the Karnataka High Court**

**Case No :** Income Tax R.C. No. 53 of 1999

Commissioner of Income Tax APPELLANT

Vs

Polyflex (India) Pvt. Ltd. RESPONDENT

**Date of Decision :** 05-01-2000

**Acts Referred:**
Income Tax Act, 1961 — Section 256 (1), 41 (1)

**Citation :** (2001) 171 CTR 419 : (2001) 251 ITR 527 : (2002) 121 TAXMAN 1

**Hon'ble Judges :** V.K. Singhal, J;T.N. Vallinayagam, J

**Bench :** Division Bench

**Advocate :** K.R. Prasad, for the Appellant; M.V. Seshachala, for the Respondent

# Judgement

T.N. Vallinayagam, J.—The Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated August 12, 1996, in respect of the assessment year 1989-90 u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that excise duty refund is not assessable u/s 41(1) of the Income Tax Act ?"

2. The facts of the case are that for the assessment year 1989-90, excise duty refund of Rs. 9,64,206 was brought to tax u/s 41(1) of the Income Tax Act. On appeal by the assessee, the Commissioner (Appeals) held that though the assessee was in receipt of excise duty refund, the same cannot be brought to tax till the final decision of the Supreme Court before which the SLP filed is pending is obtained. Reliance has been placed on the decisions of the Allahabad High Court in J.K. Synthetics Ltd. Vs. O.S. Bajpai, Income Tax Officer, Central and Another, and Rameshwar Prasad Kishan Gopal Vs. V.K. Arora, Income Tax Officer and Another, . This Bench of the Tribunal has upheld the order of the first appellate authority who decided that refund of excise duty cannot be treated as remission or cessation of liability to be taxed u/s 41(1) till the issue is decided by

the Supreme Court. Hence, this reference application by the Revenue was moved.

3. In respect of remission of liability if the assessee has obtained the refund from the Government, then the provisions are applicable as held in Commissioner of Income Tax, Madras Vs. Thirumalaiswamy Naidu and Sons, .

4. Learned counsel for the assessee submitted that the amount has not been received by the assessee and, therefore, there is no remission of liability. The Income Tax Appellate Tribunal may consider the application of the judgment given in Commissioner of Income Tax, Madras Vs. Thirumalaiswamy Naidu and Sons, in the context as to whether the excise duty has actually been refunded to the assessee or not. If the amount as mentioned in the statement of case has already been refunded then the decision which has been given by the Tribunal cannot be considered in accordance with law. The view which has been taken by the Tribunal is not in accordance with the law laid down by the apex court. Therefore, it can be said that the Tribunal was not right in holding that the excise duty refund was not assessable u/s 41(1) of the Income Tax Act. While giving effect to this order, the Tribunal may consider the factual position as raised by learned counsel for the assessee and pass appropriate orders in accordance with law.