

(2010) 01 DEL CK 0050

In the Delhi High Court

Case No : Income Tax A. No. 14 of 2010

Commissioner of Income Tax

APPELLANT

Vs

Saden Vikas India Ltd.

RESPONDENT

Date of Decision : 15-01-2010

Acts Referred:

Citation : (2010) 236 CTR 29 : (2010) 320 ITR 538 : (2010) 191 TAXMAN 162

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Subhash Bansal, for the Appellant; None appeared, for the Respondent

Judgement

Badar Durrez Ahmed, J.—C. M. No. 198 of 2010

2. The delay in re-filing the appeal is condoned. This application stands disposed of.

I.T.A. No. 14 of 2010

3. The Revenue is aggrieved by the Income Tax Appellate Tribunal's order dated November 14, 2008, passed in I. T. A. No. 4233/Del/2005 in respect of the assessment year 2002-03. The Commissioner of Income Tax (Appeals) as well as the Income Tax Appellate Tribunal deleted the addition of Rs. 50 lakhs made by the Assessing Officer under the provisions of Section 41(1) of the Income Tax Act, 1961 (hereinafter referred to as the said Act) on account of alleged cessation of liability.

4. It appears that the assessee had received an order from Premier Automobiles Limited (PAL) for supply of components for Fiat Automobiles manufactured by the latter. PAL advanced a sum of Rs. 50 lakhs to the assessee towards capital cost to be incurred by the assessee for development/procurement of tools, jigs, dies, fixtures and moulds required for manufacture of products by the assessee to be supplied by them to PAL. Immediately after the said order was placed and

the said sum of money was advanced by PAL, a strike took place in the plant of PAL at Kurla, as a result of which PAL had to suspend production and all transactions. Consequently, PAL requested the assessee to subscribe the amount of Rs. 50 lakhs advanced by the former to the latter in debentures of PAL's sister concern, namely, PAL Enterprises Private Limited (hereinafter referred to as Enterprises). Consequent to the said request by PAL, the assessee invested the said sum of Rs. 50 lakhs in 12 per cent. optionally convertible debentures of Enterprises. However, both PAL and Enterprises ran into difficulties and the assessee never received any interest from Enterprises and even the prospect of recovery of the maturity value of the debentures became uncertain. In this context, the board of directors of the assessee-company considered the question of writing off the said amount of Rs. 50 lakhs and it was decided that the said amount be written off both in the debit and credit side of the balance-sheet. The assessee's stand throughout has been that the said writing off had no effect on the profit and loss account.

5. The Assessing Officer, however, did not agree with the explanation given by the assessee and made the addition of Rs. 50 lakhs, invoking the provisions of Section 41(1) of the said Act. The Commissioner of Income Tax (Appeals) decided in favour of the assessee and deleted the addition. It was held that as no income ever accrued nor any benefit was obtained by the assessee in the said transaction, no income in the form of cessation of liabilities arose in the present case. The Commissioner of Income Tax (Appeals) also returned a finding that there was no indication or material on the basis of which the assessee could be said to have derived any income or benefit from the sum of Rs. 50 lakhs received from PAL. It was concluded that there was no finding by the Assessing Officer that the assessee was allowed any deduction or allowance in respect of the said sum of Rs. 50 lakhs in the past assessment years so as to tax it under the provisions of Section 41(1) of the said Act and, therefore, it was concluded that the assessee was entitled to write off the said amount.

6. The said view was accepted by the Income Tax Appellate Tribunal also. We have examined the impugned order and we find that the Tribunal has set out the facts in detail and also examined the relevant terms in respect of the advance of Rs. 50 lakhs which are mentioned in the letter dated May 22, 1996. The said terms have been set out in the impugned order itself. The Tribunal noted that from the said terms it was clear that the assessee had received the sum of Rs. 50 lakhs only on the capital account for infrastructure on behalf of PAL and that the assessee had a right to use such capital assets for manufacture of air-conditioning systems for cars to be produced by PAL. It was also noted by the Tribunal that it was an undisputed fact that the amount of Rs. 50 lakhs written off was not allowed as deduction nor does it represent trading liability which had gone to the computation of income for earlier years. Therefore, writing off the said amount would not attract provisions of Section 41(1) of the said Act. After referring to several decisions of the Supreme Court and other High Courts, the Tribunal concluded as under:

10. From the judicial pronouncements discussed above it is clear that the provisions of Section 41(1) can be pressed into operation only in the cases where any expenditure or loss has been allowed in any of the assessment year and the assessee derives any benefit in the relevant assessment year or the assessee had incurred any trading liability which has entered into computation of income in earlier years and the assessee obtains some benefit in the relevant assessment year. In the instant case, the amount received by the assessee at the instructions of PAL was invested in debentures of PAL Enterprises Ltd., a sister concern of M/s. PAL. In fact the assessee was left with no amount with him. On paper he was debtor of PAL to the extent of Rs. 50 lakhs and creditor to PAL Enterprises Ltd. to the same extent. By writing back the amount standing in the books of account the assessee had not obtained any benefit in the year under consideration. The amount of Rs. 50 lakhs was not entered in computation in any of the earlier years nor was any claim of expenditure or loss was made in earlier years therefore the provisions of Section 41(1) are not applicable. The decision of the hon"ble Supreme Court in the case of Commissioner of Income Tax, Madurai Vs. T.V. Sundaram Iyengar and Sons Ltd., is also not applicable to the facts of the case before us. Both the amounts on debit and credit sides have been written back/off resulting in no benefit to the assessee. The assessee had not become richer by any amount so as to apply the ratio of the decision of the hon"ble Supreme Court in the case of Commissioner of Income Tax, Madurai Vs. T.V. Sundaram Iyengar and Sons Ltd., . Accordingly, in our considered view, the learned Commissioner of Income Tax (Appeals) was justified in deleting the addition.

7. We are of the view that the Tribunal has arrived at the correct conclusion and has correctly appreciated the provisions of Section 41(1) of the said Act. No error can be discerned from either the order of the Commissioner of Income Tax (Appeals) or that of the Income Tax Appellate Tribunal. In any event, no substantial question of law arises for our consideration.

8. The appeal is dismissed.