

**(1986) 10 RAJ CK 0045**

**In the Rajasthan High Court**

**Case No :** Income Tax Reference No. 52 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Sadul Textiles Ltd.

RESPONDENT

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**Date of Decision :** 27-10-1986

**Acts Referred:**

Income Tax Act, 1961 — Section 41(1)

**Citation :** (1987) 59 CTR 98 : (1987) 167 ITR 634

**Hon'ble Judges :** J.S. Verma, C.J;N.C. Sharma, J

**Bench :** Division Bench

**Advocate :** C.R. Mehta, for the Appellant; R. Mehta, for the Respondent

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## **Judgement**

J.S. Verma, C.J.—This is a reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue to answer the following question of law:

"Whether, on the facts and in the circumstances of the case, and on the weight of the entire record, the Tribunal was justified in holding that there was no cessation of liability of the assessee-company in respect of the two amounts, namely, Rs. 16,336 and Rs. 98,091, being unclaimed wages and unclaimed bonus, respectively, and in deleting the said two amounts from the total income of the assessee-company for the assessment year 1972-73?"

2. The relevant assessment year is 1972-73. The assessee was allowed deduction of the sums of Rs. 16,366 and Rs. 98,091 towards wages and bonus in earlier years but the same remained unclaimed by the workmen. For this reason, the question arose during the relevant assessment year 1972-73 whether these amounts of unclaimed wages and unclaimed bonus were taxable in that year u/s 41(1) of the Act. The Income Tax Officer included these amounts in the assessee's income treating the same as profits and gains of business during the relevant assessment year and the assessee's appeal to the Commissioner of Income Tax (Appeals) also failed. However, the Tribunal accepted the assessee's contention that these amounts could not be deemed to be profits and gains of

business in order to be taxable u/s 41(1) of the Act. This view was taken on the basis that these amounts representing the unclaimed wages and bonus, though time-barred, had not resulted in either remission or cessation of the trading liability of the assessee without which the same could not be taxed u/s 41(1) of the Act. Aggrieved by the view taken by the Tribunal, the Revenue applied for a reference u/s 256(1) of the Act which was made by the Tribunal to answer the above-quoted question of law.

3. The preponderance of authorities on the point is in the assessee's favour. The High Courts of Bombay, Kerala, Karnataka, Calcutta and Allahabad have held that where such amount represents time-barred trading liability of the assessee, there is neither remission nor cessation of the trading liability inasmuch as the law of limitation merely bars the remedy but does not wipe out the liability. On this basis, the view taken by these High Courts is that there is neither remission nor cessation of the trading liability of the assessee in such cases, since there is neither any unilateral act of the creditor amounting to remission nor any bilateral act of the parties resulting in the liability ceasing to exist in law, merely because the recovery of the same has become time-barred. It has also been held in these cases that the mere fact that the assessee has not shown such an amount as his trading liability in his account books does not affect this consequence since this unilateral act of the assessee is neither remission nor cessation of his trading liability. These decisions are SHRIDHAR UDAI NARAYAN Vs. COMMISSIONER OF Income Tax, U. P. and V. P., , J.K. Chemicals Ltd. Vs. Commissioner of Income Tax, Bombay City-II, , Gannon Dunkerley and Co. Ltd. Vs. Commissioner of Income Tax, Bombay, , Commissioner of Income Tax, Bombay City-VI Vs. Sadabhakti Prakashan Printing Press (P.) Ltd., , Commissioner of Income Tax Vs. V.T. Kuttappu and Sons., , Liquidator, Mysore Agencies Pvt. Ltd. Vs. Commissioner of Income Tax, Mysore, , Commissioner of Income Tax Vs. Sugauli Sugar Works P. Ltd., , Bijli Cotton Mill (P.) Ltd. Vs. Commissioner of Income Tax, and Bhagwat Prasad and Co. Vs. Commissioner of Income Tax, .

4. Learned counsel for the Revenue placed reliance on a decision of the Allahabad High Court in Indian Motor Transport Co. v. CIT [1978] 114 ITR 677 . In our opinion, this decision of the Allahabad High Court cannot be construed as taking a contrary view on account of the fact that this too is a decision by the Division Bench like the earlier decision and, therefore, it is reasonable to assume that a subsequent Division Bench of the same High Court would not take a view inconsistent with the earlier Division Bench. Moreover, Satish Chandra C.J., who was a party to this decision, was also a party to the earlier decision in Bhagwat Prasad and Co. Vs. Commissioner of Income Tax, . That apart, the earlier decision in Bhagwat Prasad and Co. Vs. Commissioner of Income Tax, has also been distinguished in this case on the ground that in Bhagwat Prasad and Co. Vs. Commissioner of Income Tax, , the remedy had become time-barred, whereas in this case it had not. This alone is sufficient to indicate that this decision relied on by the learned counsel for the Revenue cannot be construed as a contrary decision. There is no other decision taking the view cited at the bar.

5. We find no reason to take the contrary view suggested by the learned counsel for the Revenue in the face of a catena of decisions cited earlier, taking the view in the assessee's favour. Following those cases, it is to be held that the Tribunal was justified in the view it has taken.

6. Consequently, the reference is answered against the Revenue and in favour of the assessee as under :

" The Tribunal was justified in holding that there was no cessation of the liability of the assessee in respect of the amounts of Rs. 16,336 and Rs. 98,091, being unclaimed wages and unclaimed bonus, respectively, and in deleting these amounts from the total income of the assessee for the assessment year 1972-73."

7. The parties shall bear their own costs.