
(2007) 09 DEL CK 0072
In the Delhi High Court
Case No : ITR No. 119 of 1987

Jay Engineering Works Ltd. APPELLANT
Vs
The Commissioner of Income Tax RESPONDENT

Date of Decision : 13-09-2007

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 35B, 40A(5), 41(1)
Income Tax Rules, 1962 — Rule 3

Citation : (2009) 311 ITR 299 : (2008) 167 TAXMAN 130 : (2008) 166 TAXMAN 55

Hon'ble Judges : Madan B. Lokur, J; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Santosh K. Aggarwal, for the Appellant; P.L. Bansal, for the Respondent

Judgement

Madan B. Lokur, J.—In this reference relevant for the assessment year 1980-81, the following three questions of law have been referred u/s 256(1) of the Income Tax Act, 1961 ["Act"], by the Income Tax Appellate Tribunal ["Tribunal"] for our opinion:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that for disallowance u/s 40A(5) of the I.T. Act, 1961:
 - a) Taxable part of the House rent allowance paid to the employees of the assessed be treated as salary and not the total HRA paid in cash.
 - b) Conveyance allowance which is not exempt u/s 10(14) of the I.T. Act would only form part of the salary and not the total conveyance allowance.
 - c) Car perquisite should not be determined in accordance with Rule 3 of the I.T. Rules, 1962.
2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the following expenses do not qualify for weighted

deduction u/s 35B of the Income Tax Act, 1961:

i) Commissioner paid for procuring export orders 23,28,426/- ii) D.D. Stamps 17,856/- iii) Foreign exchange difference 23,352/- iv) Photocopy charges of export documents 1,930/- v) Inspection charges 24,822/- Total 23,96,386/-

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the sum of Rs. 1,16,240/- written back by the assessed to the credit of its profit and loss account during the accounting period under consideration constituted income of the assessed company u/s 41(1) of the I.T. Act, 1961

2. In so far as the first and second question are concerned, learned Counsel for the assessed does not press these questions and accordingly the reference is returned unanswered in respect of these two questions.

3. In so far as the third question is concerned, we find from a reading of the paper book that the assessed had written back in its accounts unclaimed balances under the following heads -

(a) cheques issued in regard to wages lying unclaimed - Rs. 16,313/- (b) Sundry credit balance - Rs. 99,927/- Total Rs. 1,16,240/-

4. These amounts, it will be seen, are not statutory liabilities but contractual liabilities. These amounts were unilaterally written off by the assessed and the Inspecting Assistant Commissioner (Assessment) (who was the Assessing Officer) added back this amount to the income of the assessed. The view expressed by the Assessing Officer was upheld in appeal by the Commissioner of Income Tax (Appeals) as well as by the Tribunal.

5. According to learned Counsel for the assessed, the amounts do not represent the income of the assessed and in this regard reliance has been placed on the decision of the Commissioner of Income Tax, Calcutta Vs. Sugauli Sugar Works P. Ltd., . It may be mentioned at this stage that this decision is rendered by two learned Judges of the Supreme Court. In this decision it has been held that a mere entry in the books of account 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 and that will not by itself confer any benefit on the debtor as contemplated by Section 41(1) of the Income Tax Act, 1961 ("the Act"). It may be noted that the liability in Sugauli Sugar Works (P) Ltd. was not a statutory liability.

6. However, much earlier in Commissioner of Income Tax, Madurai Vs. T.V. Sundaram Iyengar and Sons Ltd., , the Supreme Court was concerned with a trading liability. It was held that on a commonsense view of the matter, if some amounts received in the course of an ordinary trading transaction, even though they were not originally in the nature of income, would change their character and become the assessed's income if they remained unclaimed with the assessed for a long time and the claim of such money became barred by

limitation.

7. The decision in T.V. Sundaram Iyengar was rendered by three learned Judges of the Supreme Court and it pertained to a contractual liability. This decision, however, does not appear to have been noticed by the Bench of two learned Judges while deciding Sugauli Sugar Works (P) Ltd.

8. In The Chief Commissioner of Income Tax, Cochin Vs. Kesaria Tea Co. Ltd., , which was relied upon by learned Counsel for the assessed, both the aforesaid decisions of the Supreme Court were considered. The decision in the case of T.V. Sundaram Iyengar was distinguished by the Supreme Court as not being relevant to the facts of the case on hand while the case of Sugauli Sugar Works (P) Ltd. was followed. The decision of three learned Judges of the Supreme Court in Kesaria Tea Co. Ltd. pertained to a statutory liability, namely, a purchase tax liability. It was held by the Supreme Court, with reference to Section 41(1) of the Act, that a unilateral action on the part of the assessed by way of writing off such purchase tax liability in its accounts does not necessarily mean that the liability ceased in the eye of law. Great emphasis was laid by learned Counsel for the assessed on this conclusion of the Supreme Court. We hasten to add that the view expressed by the Supreme Court was in the context of the facts of the case which involved a statutory liability for purchase tax. It was not made in a general context relating to all liabilities whether statutory or contractual. This, we think, is the true ratio of the decision in Kesaria Tea Co. Ltd. and also the true ratio of the decision in Sugauli Sugar Works (P) Ltd.

9. Learned Counsel for the assessed also drew our attention to a decision of this Court in Commissioner of Income Tax v. J.L. Gupta [2005] 144 Taxman 692, wherein this Court relied upon Sugauli Sugar Works (P) Ltd. to come to the conclusion that unclaimed liability written off by the assessed was not taxable as income.

10. Finally, learned Counsel for the assessed referred to Commissioner of Income Tax Vs. Abdul Ahad Najar, where again Sugauli Sugar Works (P) Ltd. and T.V. Sundaram Iyengar were considered. In this decision the Jammu and Kashmir High Court held that there is no conflict between the aforesaid two decisions of the Supreme Court.

11. In so far as the decision rendered by this Court in J.L. Gupta is concerned, it made no reference either to T.V. Sundaram Iyengar or to Kesaria Tea Co. Ltd. In fact, there is no discussion on the facts of the case in J.L. Gupta and we have doubts whether it can be said to have any precedential value.

12. Learned Counsel for the assessed has drawn our attention to the Explanation which has been inserted in Section 41(1) of the Act with effect from 1st April, 1997.

13. He submits that the legislative intention behind insertion of the said amendment was that with effect from 1st April, 1997, unilateral cessation of a

liability by the assessed would be treated as income. In other words, it was his contention that prior to 1st April, 1997 a unilateral writing off of a liability could not be treated as an income of the assessed.

14. We are not in agreement with this contention. The position in law, which already existed, and was settled by the Supreme Court in T.V. Sundaram Iyengar, has only been made explicit by the said amendment.

15. Under these circumstances, we are of the view that the third question is required to be answered in the affirmative, in favor of the Revenue and against the assessed.

16. The reference is disposed of accordingly.