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IN THE HIGH COURT OF DELHI AT NEW DELHI

{ITA No. 719/2010}

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Judgment delivered on: October 28,2010

Mr. Lachman Dass Bhatia

....Appellant

Through Mr. R.M. Mehta, Advocate
Versus

The Commissioner of Income Tax

....Respondent

Through Mr. Sanjeev Rajpal, Advocate

CORAM:-

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI,J. (ORAL)

1. In this appeal, the appellant/assessee seeks to challenge the order dated 11th December, 2009 passed by the Income Tax Appellate Tribunal. The case pertains to the assessment year 2000-01.

2. By the impugned order, the Tribunal has upheld the additions made by the Assessing Officer which was affirmed by the Commissioner of Income Tax (A) as well.

3. The Assessing Officer while carrying out the assessment noticed that the appellant had shown in its balance sheet certain sundry creditors. In the financial year, this amount was shown as ₹ 39,96,951/-. The Assessing Officer was of the opinion that the creditors shown appeared to be bogus. In support of this opinion, following instances were given by the assessing Officer:-

“In the Balance Sheet for financial year ending 31.03.2002 assessee has given a detail of this amount of ₹ 39,96,951/- as outstanding since 1982-83 onwards. Surprisingly, these details show the name of one “Banssa Lal” who had outstanding recoverable from assessee in 1982-83 for ₹ 5.56 lacs. Banssa Ram again claimed to have supplied material in A.Y. 1986-87 for ₹ 3.94 lacs, without recovering his earlier balance of ₹ 5.56 lacs pertaining to A.Y. 1982-83. Similar in the story of one “Sh. Jai Singh” who was assessee’s creditor in A.Y. 1988-89 to the extent of about ₹ 12.00 lacs and he again supplied material to become an unrecoverable creditors in A.Y. 1991-92 for ₹ 3.98 lacs and again in A.Y. 1992-93 for ₹ 4.35 lacs. On a particular note these facts cannot be digested, why would come one keep on supplying without making earlier recoveries.”

4. The Assessing Officer also took note of the fact that ultimately all these creditors were written back by the assessee in the assessment year 2003-04. Significantly, in that year, the assessee had shown loss in the income and, therefore, it was convenient and easy for the assessee to correct the aforesaid amount after writing back in that year. As mentioned above, the CIT (A) as well as ITAT affirmed the aforesaid addition.

5. Learned Counsel for the assessee argues that the conditions for applicability of Section 41 (1) of the Act for obtaining the benefit of remission or cession of the liability were not satisfied in the instant case. He argues that no material was brought on record by the Assessing Officer to show that remission or cession in respect of the aforesaid liability had taken place. It is the submission of learned counsel that following two conditions are required to be satisfied for the applicability of section 41 (1) of the Act and further that onus is upon the department to show that these conditions are satisfied:-

“i) For the relevant year, an allowance or deduction has been made in respect of any loss, expenditure or trading liability incurred and secondly the assessee must have

subsequently (1) obtained any amount in respect of such loss or expenditure or

(ii) obtained any benefit in respect of such trading liability by way of remission or cessation thereof. In the case of the appellant, the first condition stands satisfied in as much as it is not the case of the department that the liabilities in question have not been allowed in the preceding assessment year in which they have been incurred. The second condition is however not satisfied inasmuch as the appellant during the year under appeal has not obtained any amount or obtained any benefit of way of remission or cession thereof. The liabilities continue to be shown in the books of account.”

6. In support of the aforesaid principle, learned counsel has referred to the following judgments:-

- (i) ***CIT Vs. Sugauli Sugar Works (P) Ltd.***, 236 ITR 518 (SC)
- (ii) ***Polyflex (India) Pvt. Ltd. Vs. CIT***, 257 ITR 343 (SC)
- (iii) ***CIT Vs. Pre-stressed Concrete Co. (SI) P. Ltd.*** 162, ITR 315 (Mad)
- (iv) ***Liquidator, Mysore Agencies (P) Ltd. Vs. CIT***, 114 ITR 853 (Kar.)
- (v) ***CIT Vs. G.P. International***, 325 ITR 25 (P & H)
- (vi) ***CIT Vs. Delhi Automobiles***, 272 ITR 381 (Delhi)

7. While there is no dispute about the proposition of law laid down in the aforesaid judgments for applicability of Section 41 (1) of the Act, what is conveniently omitted by the learned counsel for the appellant is that the authorities below have found that though the purported creditors' liabilities were shown in record for number of years, none of these creditors ever took any steps for recovery of their amount from the assessee. Ultimately the assessee himself had written off these creditors in his assessment year 2003-04. After taking note of all the attendant circumstances, a concurrent finding

of fact is recorded by all the authorities below that these creditors appeared to be bogus.

8. The ITAT, in the process, has further observed as under:-

“We have carefully considered the rival contentions and gone through the records. The liabilities that exist in the balance sheet have to be proved by the assessee. Although in the year years, these liabilities were shown to be existing, it is seen from the record, what sort of evidence he produced in support of the claim of these liabilities is not clear. There was not even a confirmation letter coming in support of the liabilities. Apart from this, the conduct of the assessee has to be seen. He writes off in a subsequent year where the department says, it was the year of loss and the assessing officer has made a specific comment that the writ off has been made only in the year of loss so that if does not have any tax implication. It is in this background that we have to examine the issue and since the assessee has failed to establish the existence of the genuineness of the liabilities as at the end of the previous year and has in fact written back the liability to the P & L A/c, clearly justifies the stand of the assessing officer that the liabilities were non-existing from a period earlier to the assessment year 2003-04. The addition sustained by the CIT (A), having regard to the facts and circumstances of the case is therefore sustained.”

9. On these facts, we are of the opinion that no substantial question of law arises. The appeal is accordingly dismissed.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

OCTOBER 28, 2010
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