13

(26)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 27.01.2011*
Judgment delivered on: 18.02.2011

(1) ITA 15/1999

MOTOR GENERAL FINANCE LTD. . . . APPELLANT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

VERSUS

DY. COMMISSIONER OF INCOME TAX. ....RESPONDENT
Through: Ms. Rashmi Chopra, Advocate

(2) ITA 16/1999

MOTOR GENERAL FINANCE LTD. ...APPELLANT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

VERSUS

DY. COMMISSIONER OF INCOME TAX. ...RESPONDENT
Through: Ms. Rashmi Chopra, Advocate

(3) ITA 124/2007

MOTOR GENERAL FINANCE LTD. ...APPELLANT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

VERSUS

COMMISSIONER OF INCOME TAX. ...RESPONDENT
Through: Ms. Rashmi Chopra, Advocate

Signature Not Verified
Digitally Signed By:ANULYA
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

(27)

(4) ITA 73/2002

COMMISSIONER OF INCOME TAX. ....APPELLANT
Through: Ms. Rashmi Chopra, Advocate

VERSUS

MOTOR GENERAL FINANCE LTD. ....RESPONDENT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

(5) ITA 117/2007

MOTOR GENERAL FINANCE LTD. . . . APPELLANT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

VERSUS

COMMISSIONER OF INCOME TAX. .RESPONDENT
Through: Ms. Rashmi Chopra, Advocate

(6) ITA 123/2007

MOTOR GENERAL FINANCE LTD. . . . APPELLANT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

VERSUS

COMMISSIONER OF INCOME TAX. ....RESPONDENT
Through: Ms. Rashmi Chopra, Advocate

(7) ITA 130/2007

COMMISSIONER OF INCOME TAX. ....APPELLANT
Through: Ms. Rashmi Chopra, Advocate

VERSUS

MOTOR GENERAL FINANCE LTD. ....RESPONDENT

(28)

Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

(8) ITA 209/2007

COMMISSIONER OF INCOME TAX. ....APPELLANT
Through: Ms. Rashmi Chopra, Advocate

VERSUS

MOTOR GENERAL FINANCE LTD. ....RESPONDENT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

(9) ITA 231/2007

COMMISSIONER OF INCOME TAX. ....APPELLANT
Through: Ms. Rashmi Chopra, Advocate

VERSUS

MOTOR GENERAL FINANCE LTD. ....RESPONDENT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

(10) ITA 331/2007

COMMISSIONER OF INCOME TAX. ....APPELLANT
Through: Ms. Rashmi Chopra, Advocate

VERSUS

MOTOR GENERAL FINANCE LTD. ....RESPONDENT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

(11) ITA 1233/2008

MOTOR GENERAL FINANCE LTD. . . . APPELLANT

Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha, Advocate

VERSUS

COMMISSIONER OF INCOME TAX. ....RESPONDENT
Through: Ms. Rashmi Chopra, Advocate

(12) ITA 1234/2008

MOTOR GENERAL FINANCE LTD. . . . APPELLANT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

VERSUS

COMMISSIONER OF INCOME TAX. ....RESPONDENT
Through: Ms. Rashmi Chopra, Advocate

(13) ITR 211/1990

COMMISSIONER OF INCOME TAX. ....APPELLANT
Through: Ms. Rashmi Chopra, Advocate

VERSUS

MOTOR GENERAL FINANCE LTD. ....RESPONDENT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

(14) ITR 248/1991

COMMISSIONER OF INCOME TAX. ....APPELLANT
Through: Ms. Rashmi Chopra, Advocate

VERSUS

MOTOR GENERAL FINANCE LTD. ....RESPONDENT

(30)

Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

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.

1. For orders, see ITR 458 of 1984.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

FEBRUARY 18, 2011
skb

1-15

(80)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+

% *Judgment Reserved on: 27.01.2011*
Judgment Delivered on:18.02.2011

(1) ITR 458/1984

MOTOR GENERAL FINANCE LTD. ...APPELLANT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

VERSUS

COMMISSIONER OF INCOME TAX. ...RESPONDENT
Through: Ms. Rashmi Chopra, Advocate

(2) ITA 15/1999

MOTOR GENERAL FINANCE LTD. . . . APPELLANT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

VERSUS

DY. COMMISSIONER OF INCOME TAX. ....RESPONDENT
Through: Ms. Rashmi Chopra, Advocate

(3) ITA 16/1999

MOTOR GENERAL FINANCE LTD. ...APPELLANT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

VERSUS

DY. COMMISSIONER OF INCOME TAX. ...RESPONDENT
Through: Ms. Rashmi Chopra, Advocate

(31)

(4) ITA 124/2007

MOTOR GENERAL FINANCE LTD. **...APPELLANT**

Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

VERSUS

COMMISSIONER OF INCOME TAX. **...RESPONDENT**

Through: Ms. Rashmi Chopra, Advocate

(5) ITA 73/2002

COMMISSIONER OF INCOME TAX. **....APPELLANT**

Through: Ms. Rashmi Chopra, Advocate

VERSUS

MOTOR GENERAL FINANCE LTD. **....RESPONDENT**

Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

(6) ITA 117/2007

MOTOR GENERAL FINANCE LTD. **. . . APPELLANT**

Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

VERSUS

COMMISSIONER OF INCOME TAX. **.RESPONDENT**

Through: Ms. Rashmi Chopra, Advocate

(7) ITA 123/2007

MOTOR GENERAL FINANCE LTD. **. . . APPELLANT**

Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

VERSUS

COMMISSIONER OF INCOME TAX. **....RESPONDENT**

(32)

Through: Ms. Rashmi Chopra, Advocate

(8) ITA 130/2007

COMMISSIONER OF INCOME TAX. ....APPELLANT
Through: Ms. Rashmi Chopra, Advocate

VERSUS

MOTOR GENERAL FINANCE LTD. ....RESPONDENT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

(9) ITA 209/2007

COMMISSIONER OF INCOME TAX. ....APPELLANT
Through: Ms. Rashmi Chopra, Advocate

VERSUS

MOTOR GENERAL FINANCE LTD. ....RESPONDENT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

(10) ITA 231/2007

COMMISSIONER OF INCOME TAX. ....APPELLANT
Through: Ms. Rashmi Chopra, Advocate

VERSUS

MOTOR GENERAL FINANCE LTD. ....RESPONDENT
Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

(11) ITA 331/2007

COMMISSIONER OF INCOME TAX. ....APPELLANT
Through: Ms. Rashmi Chopra, Advocate

VERSUS

MOTOR GENERAL FINANCE LTD. ....RESPONDENT

Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

(12) ITA 1233/2008

MOTOR GENERAL FINANCE LTD. . . . APPELLANT

Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha, Advocate

VERSUS

COMMISSIONER OF INCOME TAX. ....RESPONDENT

Through: Ms. Rashmi Chopra, Advocate

(13) ITA 1234/2008

MOTOR GENERAL FINANCE LTD. . . . APPELLANT

Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

VERSUS

COMMISSIONER OF INCOME TAX. ....RESPONDENT

Through: Ms. Rashmi Chopra, Advocate

(14) ITR 211/1990

COMMISSIONER OF INCOME TAX. ....APPELLANT

Through: Ms. Rashmi Chopra, Advocate

VERSUS

MOTOR GENERAL FINANCE LTD. ....RESPONDENT

Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

(15) ITR 248/1991

COMMISSIONER OF INCOME TAX. ....APPELLANT

Through: Ms. Rashmi Chopra, Advocate

VERSUS

MOTOR GENERAL FINANCE LTD. ....RESPONDENT

(34)

Through : Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N.Jha & Mr. B.K. Singh Advocates.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

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? Yes

A.K. SIKRI, J.

1. There is one question which is common in all these appeals. However, in ITR 458/1984 there are some additional questions which are referred for opinion. We would like to deal with these questions first and then approach the common question of law centre to all these cases. This ITR pertains to assessment year 1978-79 wherein the assessee had claimed certain medical expenses which were reimbursed to its employees. The Tribunal accepted the claim of the assessee that such reimbursement could not be regarded as perks. Following question has been referred by the Tribunal for our opinion in this behalf:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that reimbursement of medical expenses by the assessee company to its employees could not be treated as perquisites within the meaning of Section 40C/40A (5) of the Income-Tax Act, 1961?"

2. This question stands answered in favour of the assessee and against the Revenue in the case of ***Commissioner of Income Tax*** Vs. ***Mafatlal Gangabhai and Co. (P) Ltd.***, 219 ITR 644.

3. Another question which is referred by the Tribunal on the application of the assessee relates to assessee's claim that its sur-tax liability of ₹ 42,850/- for this year should be deducted in the computation of its total income. The Tribunal did not accept the contention of the assessee in the impugned order but on the application of the assessee, has referred the following question for opinion:-

> "Whether, on the facts and in the circumstances of the case, the sur-tax liability claim of ₹ 42,850/- was allowable as deduction in computing the total income of the assessee company for the assttt. Year 1978-79?"

4. It is also decided in favour of the assessee in 219 ITR 589. We thus answer the question in the affirmative i.e. in favour of the assessee and against the Revenue.

5. Coming to the pivotal issue which is common in all these years, which has arisen for the first time in the assessment year 1997-98 and concerns the treatment which is to be given to the surplus amount at the hands of the assessee which the assessee collected

from its customers on account of insurance premium and remained unclaimed because the persons who had paid the excess amount did not come forward to receive the same.

6. We may record that the assessee is a Limited Company carrying on business of financing for the purpose of purchase of commercial vehicles. There is a prescribed agreement under which finances are provided by the assessee to the purchaser of a vehicle. There are various terms and conditions mentioned in the agreement. According to clause (ix) the purchaser who is described as hirer has to get the vehicle insured for a comprehensive policy with an insurance company approved by the assessee with an endorsement assigning the policy in favour of the assessee. There is also transaction sheet in the name of the hirer indicating description of the vehicle purchased, cost of the same, initial payment to be made, hire purchase charges etc. etc. The initial insurance amount is also paid by the hirer. Insurance of the second year, third year and fourth year are also mentioned in the transaction sheets. Though the primary responsibility to insure the vehicle lies with the hirer, frequently the assessee collects the insurance amount in round figures and this is also added to the total amount financed by the assessee for the purchase of the vehicle and the installments are also determined accordingly. However, the amounts collected by

way of insurance are kept in separate account as deposits. Out of these deposits, the insurance premium is paid by the assessee on behalf of the hirer. Since the amount is collected in round sum which may be a little more than what is required to be paid towards insurance premium, there is small balance left in the account of each of the hirers. The amount so remaining in each of the hirers towards the excess insurance premium is returned to the hirer at the time of final adjustment of the account. At the same time, it is also a matter of record that many such hirers do not come at all to claim the balance amount. This balance remained with the assessee and over years, such amounts are accumulated. Since the amount remains as unclaimed balance, in the accounts relating to insurance premium after certain years, the assessee writes off this amount and the same is credited to the profit and loss account in that year in which it is written off. The insurance premium standing in the accounts was treated as liability in the balance sheets of the assessee company but after it is written off the amount was taken to the profit and loss account and it is no longer in the balance sheet. It is in this backdrop when in the successive assessment years a particular amount on account of unclaimed insurance premium was written off and credited to the profit and loss account, the question of treatment which is to be given to this amount came up before the Assessing Officer. As mentioned above, for the first

time, this issue arose in the assessment year 1997-98 when a sum of ₹ 47,0461/- was written off in that year. The Assessing Officer treated this as assessee's income and the order of the Assessing Officer was confirmed by the CIT (A) in appeal. However, the Tribunal reversed the orders of these two authorities below holding that it would not be treated as income of the assessee as the amounts were not the revenue receipts liable to tax. On application filed by the Revenue, reference was made to this Court which was registered as ITR 396/1983. Thereafter this issue kept cropping up in each successive year and went through the same legal moral with the orders of the Tribunal allowing the appeals of the assessee giving it tax relief on this amount. Interestingly, however, the Tribunal in respect of assessment year 1986-87 took somersault holding that this unclaimed amount taken to profit and loss amount would be the income of the assessee exigible to tax. This trend in the approach of the Tribunal continued for some years but again the Tribunal took 'U' turn and started holding in favour of the assessee. It is for this reason that some of these appeals are filed by the Revenue and some others are filed by the assessee.

7. Thus, even when appeals are preferred by the Revenue or the assessee, they unveiled same question of law. The question which

was referred to by the Tribunal in ITA 458/1984 can be stated here which would give a flavour of the controversy:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of ₹ 1,79,140/- being the balance of the amount collected by the assessee from the hirers towards insurance premium written book and credited to the Profit & Loss Account of the previous year ended on 30-6-1977 as unclaimed balance, was not a trading receipt of the assessee and hence it could not be brought to tax for assessment year 1978-79?"

8. We would like to point out here that the dispute which arose for the first in the year 1977-78 has been the subject matter of the agitation in all successive assessment years till 2003-04 which are before us. However, at the same time, in respect of five assessment years, where reference was made by the Tribunal, those references were returned unanswered for non-filing of the paper book by the Revenue.

9. We may also point out at this stage itself that in the assessment years 1986-87 when the Tribunal had taken the contrary view and against that order of the Tribunal, ITA 15/1999 is filed, one of the submissions of Mr. Bajpai, learned Sr. Counsel appearing for the assessee was that it was not permissible for the Tribunal to disregard the decision of the Coordinate Bench on the same issue in respect of the same assessee. He submitted that even if the Bench

which took the contrary view was of the opinion that decision of earlier Benches were not correct, the only course of action open for this Bench was to refer the matter to Larger Bench. No doubt, this grievance of Mr. Bajpai, learned Sr. Counsel is perfectly justified. Ordinarily, Bench of the Tribunal is bound by the orders passed by the Coordinate Bench and even if it is of the opinion that the view of the earlier Bench is not correct, it has no power to disregard that. The only course open in such a situation is to refer the matter to a Larger Bench and it is the prerogative of the Larger Bench to over-rule the judgment of the earlier Bench if it takes contrary view. However, at the same time, it would serve no purpose to set aside these orders of the Tribunal on this ground and refer the matter back to the Tribunal for constituting Special Bench. Reason is simple and more than obvious. The Revenue is before us against the earlier orders of the Coordinate Bench and in those References and appeals filed by the Revenue some question of law has to be necessarily decided by us. Once we are called upon to answer the reference/question of law and our answer on that issue would be binding on the Tribunal, the exercise of referring the matter for constituting Special Bench would clearly be unnecessary. Persuaded by these considerations, we are proceeding to decide the questions of law.

10. Facts of the matter have already been taken note of. Submission of Mr. Bajpai, learned Sr. Counsel appearing for the assessee is that on these facts hardly any question of law arises. He emphasized that these facts would clearly demonstrate that the amount collected from the hirer by the assessee represented the money of the hirers and it was handed over to the assessee in trust which remained that of the hirers. The assessee was under fiduciary to refund this amount back as and when any such hirer claimed the unspent amount namely the excess insurance premium. In fact, positive finding of fact was recorded by the Tribunal that the amount of the hirers towards the excess insurance premium was returned to them at the time of final adjustment of the accounts. Therefore, argued, the learned Senior Counsel even if certain hires did not claim the amount, the same remained trust money in the hands of the assessee and was never treated as its income. His argument, premised on the aforesaid facts was that once the money received from the hirer was treated as trust money and deposited as such with the assessee at the initial stage, subsequent events would not change the original character of this receipt. Further, for this reason even if the amount was written off and taken to the profit and loss account, in the year (s) in question it could not be treated as income of that year. He also relied upon the reasoning of the Tribunal wherein it was held that the insurance amount collected by the

assessee was not part of the purchase price. It was only on account of insurance of vehicle. Though the primary duty to get the vehicle insured was of the hirer, the assessee had taken up this job for the purpose of safety and security of hirer and to secure its interest in case vehicle is damaged or destroyed as the same was handed over to the hirer on hire purchase basis and during the currency of the agreement assessee remains the owner of the vehicle. Further, it was also an admitted case that assessee was not doing any insurance business and collecting of insurance premium was not the part of the assessee's business. This amount was in the nature of deposit with the assessee which had to be accounted for by the assessee ultimately. It is for this reason, insurance amount was taken to separate account from where the amounts were to be paid after due dates. It is for the same reason that the assessee was under obligation to return the excess amount to the hirer and with this understanding the amount was deposited by the hirer with the assessee. On these facts, claimed the learned counsel, the assessee was in a position of 'Trustee' and could not appropriate the said amount. He thus argued that this initial character at the time of receipt of this amount was the decisive and subsequent event could not alter the same. To support this submission, aide of judgment of English Court in ***Morley (Inspector of taxes)*** *Vs.* ***Tattershall*** [1939] 7 ITR 317 (CA) at page 329:-

> "The learned Judge took a different view, as I have said; he took the view that the balances when distributed to the partners were trading receipts. The distribution to which I imagine he is referring is the allocation of sums to the partner's account in the balance shset: but what was distributed to the partners was not an asset item, but a liability item. As I have pointed out, this liability was cut down by a certain sum. That sum was then used to feed the partner's account, but it was a liability not an asset; it is on the left-hand side of the balance-sheet, not on the right, and there was no dealing with any balance in the sense of an asset at all. It seems to me quite impossible, with the greatest deference to the learned Judge's view, to treat that accountancy transaction inter socies, by which they effected the rearrangement of the liabilities side of their balance-sheet as a distribution of trading profits. It was not."

11. On the other hand, as was expected and naturally so, Ms. Rashmi Chopra, learned counsel appearing for the Revenue sought to draw great sustenance from the reasoning adopted by the ITAT in its order which is the subject matter of ITA 15/1999. She emphasized the modus operandi of the assessee in dealing with such transactions by arguing that the insurance amount payable to the assessee by the hirer is not a statutory but a contractual obligation. Surplus insurance claimed by the assessee is kept in suspense amount and treated as a liability in the balance sheet which is written off after the period of 3-5 years and credited to the profit and loss account and debiting the insurance premium payable account. She, thus, argued that once this amount was unclaimed and treated as such on the basis of which it was credited

to the profit and loss account, it had certainly become income of the assessee in that year as the assessee got enriched itself by this amount. She also argued that pertinently, it is an admitted position as recorded by the ITAT that the assessee has led no evidence to show that the assessee has held the said money in trust for the hirers. Her further submission was that even when insurance amount at the time of receipt was not on account of trading activities but after a lapse of time owing to the transfer to the profit and loss account, it became a part of circulating capital of the assessee and thus income taxable. According to her, there was no such principle of law laid down by the Courts in India that the character of initial receipt would remain fixed and would be determinative of the issue. On the contrary, Courts in India had opined that even if a particular receipt is not income on the date when the amount is received by turn and subsequent years it can become an income in the hands of the assessee. She relied upon the judgment of the Apex Court in the case of ***CIT*** *Vs.* ***T.V. Sundram Iyengar & Sons Ltd.****[(1996) 222 ITR 344]* wherein it has been specifically held:-

> "Although the amount received originally was not of income nature, the amounts remained with the assessee for a long period unclaimed by the trade parties. By lapse of time, the claim of the deposit became time barred and the amount attained a totally different quality. It became a definite trade surplus. .....In other words, the principle appears to be that if an amount is received in

> course of trading transaction, even though it is not taxable in the year of receipt as being of revenue character, the amount changes its character when the amount becomes the assessee's own money because of limitation or by any other statutory or contractual right. When such a thing happens, common sense demands that the amount should be treated as income of the assessee."

12. She argued that the amount in question by efflux of time could become the assessee's own money and the transfer is not an unilateral entry, as held by the Supreme Court in the case of ***Iyengar*** (supra) in the following words:-

> "The true accountancy view would, I think, demand that these sums should be treated as paid into a suspense account, and should so appear in the balance sheet. The surpluses should not be brought into the annual trading account as a receipt at the time they are received. Only time will show what their ultimate fate and character will be. After three years that fate is such, as to one class of surplus, that in so far as the suspense account has not been reduced by payments to clients, that part of it which is remaining becomes by operation of law a receipt of the Company, and ought to be transferred from the suspense account and appear in the profit and loss account for that year as a receipt and profit. That is what it in fact is. In that year Jays become the richer by the amount which automatically becomes theirs, and that asset arises out of an ordinary trade transaction. It seems to me to be the common-sense way of dealing with these matters...."

13. She further submitted that the Apex Court in ***CIT*** Vs. ***Karam Chand Thapar*** [222 ITR 112] has held that the conduct of the assessee to take the amount as miscellaneous receipt to the profit & loss account belies the case of the assessee to hold the money in trust. It is further submitted that this Court in the case of ***Jay Engineering*** Vs. ***CIT*** [2009] 311 ITR 200 (Delhi)] by relying on the decision of ***T.V. Sundaram*** (supra) has held that the amounts received during the ordinary trading transaction even though not in the nature of income would change the character and become assessee's income if they remained unclaimed with the assessee for a longtime and the claim of such money becomes barred by limitation. The Court has held that the ratio of ***CIT*** Vs. ***Kesaria Tea Co. Ltd.*** [(2002) 254 ITR 434] and of the decision in ***CIT*** Vs. ***Sugali Sugar Works (P) Ltd***: [236 ITR 518] related to statutory liabilities. Further, in the following cases, the amounts transferred to the profit and loss account were held to be chargeable receipts of the assessee from trade:-

(a) CIT Vs. AVM, 146 ITR 355.
(b) Punjab Steel Scrap Merchants Ass. Vs. CIT, 43 ITR 164.
(c) CIT Vs. Batlibol, 149 ITR 664.
(d) Punjab Distilling Industries Vs. CIT, 35 ITR 519.

14. Ms. Chopra, thus concluded her arguments by submitting that since the amount collected by the assessee remained unclaimed,

and was never given back to any of the hirer after its transfer to the profit and loss account, as a part of the circulating capital income it assumed the character of income chargeable to tax.

15. We may first distill the principle of law laid down in various judgments cited by the learned counsel for the parties. We may mention here that in another judgment pronounced today i.e. ITA 1623/2010 & ITA 503/2010 titled ***Logitronics Pvt. Ltd.*** Vs. ***Commissioner of Income Tax*** and ***Commissioner of Income Tax*** Vs. ***Jubilant Securities Pvt. Ltd.*** respectively, these very judgments are analysed in detail and, therefore, for the sake of brevity we are not repeating the said discussion. Suffice it to point out that this issue cropped up again in the Supreme Court in the case of ***The Travencore Rubber & Tea Co. Ltd. v. C.I.T., Trivandrum*** **[243 ITR 158].** Analyzing these judgments, the Court reiterated that in ***Morley (supra)***, it had been held that the quality and nature of a receipt for income tax purposes were fixed once and for all when receipt was received and that no subsequent operation could change the nature of the receipt. However, in ***CIT Vs. Karam Chand Thapar*** **[1996] 222 ITR 112,** the Supreme Court held that the proposition enunciated in ***Morley (supra)*** was not absolute and that in given cases, amounts which were not received initially as trading receipts could eventually be regarded as business income by reason of subsequent events.

16. The principal of law which is clearly discernable and is distilled from the aforesaid judgment is that though normally initial character of the receipt would govern the treatment which is to be meted out to a particular sum received by the assessee. If the amount is received in the course of trade transaction even though it is not taxable in the year of receipt, the amount changes its character when it becomes the assessee's own money because of limitation or by statutory or contractual right. One has to adopt common sense approach in this behalf, as emphasized by the Supreme Court in the case of ***Sundaram Iyenger*** (supra) namely if it becomes the money of the assessee received in the course of trade transaction, it would be treated as income of the assessee.

17. Let us apply this principle to the cases at hand. It is not in dispute that the money was initially received by the assessee from the hirer as deposit to take care of the insurance premium payable on the vehicles given to the higher on hire charge basis. Of course, the prime obligation was that the hirer to get the vehicle insured but the assessee took up this job upto itself, wherever hirer agreed, to sub-serve its own interest as the assessee wanted the vehicle to remain insured. It is also correct that the money was received in lump sum in round figure to take care of the entire period during

which hire agreement was to operate and after expending the capital amount balance was to be refunded to the hirer. It is also true that many such hirers came forward to claim this refund which was duly handed over by the assessee to those persons.

18. Facts up to this stage give an indication that the money collected by the assessee on account of insurance did not belong to the assessee. The assessee was incurring the expenditure towards insurance premium on hirers account and was also supposed to refund the balance. The poser, however, is as to whether this amount would be treated as income and converted into the income of the assessees.

19. Before answering this question, we may recapitulate that though the primary responsibility of in securing the vehicle lies with the higher. It is the assessee who frequently collected insurance amount in round figures for obtaining this insurance on the vehicles. The assessee does so for its own benefit as it wants to assure that the vehicle remains insured for the hire purchase duration as the assessee remains the owner of the vehicle in question during that period. But the matter does not rest here. What is important is that the insurance amount collected by the assessee from the hirer in round figures is also added to the total amount financed by the

assessee for the purchase of the vehicle. Further, the installments which are fixed and are to be paid by the hirer are determined after inclusion of this amount. This would show that the receipt of the said amount becomes inseparable part of trading activity of the assessee as it becomes integral part and parcel of the transactions entered into between the assessee and the hirer. Again no doubt, at the time of final adjustment of the account, the hirer is entitled to seek refund of the excess insurance premium. Those hirers who come forward and seek the refund are paid. We are not concerned with that amount refunded by the assessee to those hirers. Here we are concerned with the balance amount which remains with the assessee and hirers do not come forward to claim their refunds. Over the years, this amount gets accumulated. With the passage of time when the amount remains unclaimed, the assessee becomes confident that there would not be any claimant, it writes off these amounts from those accounts in a particular year and the same is credited to the profit and loss account in that year. It is here the amount changes its character. Initial amount which was paid by the hirer on account of insurance premium and left over there from which remained with the assessee as unclaimed becomes the money of the assessee. In this year, therefore, it becomes the income of the assessee as the assessee is enriched by this amount and has itself taken the step of crediting the same to

the profit and loss account. The facts similar to ***Sundaram Iyenger*** *(supra)* would accrue here also.

20. Even in ***Karamchand Thapar***, (supra) the Supreme Court had emphasized that the conduct of the assessee to take the amount as miscellaneous receipt to the profit & loss account belies the case of the assessee to hold the money in trust. Thus, the movement it was taken to the profit and loss account, it no longer remained money in trust with the assessee. It is very significant that the assessee has not been able to give even a single instance as to whether any hirer came forward to claim the refund after it was written off and still it was refunded. It would result only in two possibilities namely either no person came forward to claim the amount after such a long delay or even if somebody wanted to refund, it was not given. Furthermore, another material aspect which needs to be emphasized is that the assessee has not come forward with any explanation as to why surplus money was taken to its profits and loss account even if it was someone's else money. In such circumstances, we are of the view that in the year in question in which the assessee had written off the aforesaid amount and credited to the profit and loss account, the character of this money changed and became income of the assessee in that year. For

coming to this conclusion, we are supported by the judgment of this Court in the case of ***Jay Engineering Works Ltd.*** (supra).

21. Mr. Bajpai, learned Senior Counsel for the assessee had argued that even if the limitation had expired, that would not extinguish the liability but only the remedy. However, what is forgotten in relying this principle is that as per this argument itself the remedy of the hirers to claim the unexpired insurance amount has been taken away and the hirers would not be in a position to claim the amount from the assessee. It is not the case of the assessee that the assessee still wanted to give the refund to these hirers *suo moto* without even hirers approaching the assessee. It is stated at the cost of repetition that the assessee itself treated the money as unclaimed by writing off the said amount and taking it to the profit and loss account. This action of the assessee would demonstrate that the assessee also form an opinion that these people would not come forward to claim the amount. Additionally, as pointed out above, the assessee could not cite even a single case that any of the hirer comes forward to claim the unclaimed amount and the amount was refunded by the assessee. Therefore, this argument would be of no avail to the assessee.

22. In view of the aforesaid analysis, we conclude:-

(53)

(a) Question of law framed is answered in favour of the Revenue and against the assessee;

(b) ITR 458/1984 is answered accordingly;

(c) Appeals filed by the Revenue are allowed;

(d) Appeals filed by the assessee are dismissed.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

FEBRUARY 18, 2011
skb

- Review petition - 164/11 - for review of order dt. 18-2-11.