IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1672 OF 2013

Commissioner of Income Tax-2, Mumbai. … Appellant

v/s

M/s.Elde Electricals Agencies P. Ltd., Mumbai. … Respondent

Mr.Suresh Kumar for the appellant.

CORAM: M.S. SANKLECHA &
N.M. JAMDAR, JJ.

DATED : 16TH JUNE, 2015

P.C.:

This appeal by the revenue challenges the order dated 30 January 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). By the impugned order dated 30 January 2013, the appeal of the revenue from the order of the Commissioner of Income Tax (Appeals) was dismissed.

2 The appellant has formulated the following questions for our consideration :

(1) Whether on facts and in circumstances of the case and in law the Tribunal was justified in deleting the addition made under Section 41(1) of the Income Tax Act, 1961 of Rs.64,27,366/-

representing creditors outstanding for more than three years in the books of respondent-assessee without appreciating the fact that the assessee was not able to substantiate its claim with evidences ?

(2) Whether on the facts and in circumstances of the case the Tribunal erred in law in relying on the decision of the Supreme court in the case of Commissioner of Income Tax v/s Kesaria Tea Company, reported in 254 ITR 434 in deciding the case ?

3 During the course of the assessment proceedings for the subject assessment year, the Assessing Officer noticed that the sundry creditors to the extent of Rs.97.01 lacs were reflected in the respondent-assessee's accounts. On verification, he found that dues of some of the creditors were outstanding for more than three years. Thus, the Assessing Officer held that an amount of Rs.64.27 lacs be added to the respondent-assessee's income under Section 41(1) of the Act being the creditors outstanding for more than three years had ceased. The respondent-assessee's submission that the said amount of Rs.64.27 lacs continued to be shown as its liability and therefore cannot be added back, was not accepted.

4 In appeal, the Commissioner of Income Tax (Appeals) held that, the respondent-assessee had in its balance-sheet acknowledged their liabilities to the extent of Rs.64.27 lacs. Thus, there was no question of cessation of liability for the purpose of attracting Section 41(1) of the Act. Consequently, the appeal of the

respondent-assessee was allowed.

5 On further appeal, the Tribunal upheld the order of the Comissioner of Income Tax (Appeals) by following the decision of the Apex Court in the case of ***Chief Commissioner of Income Tax v/s Kesaria Tea Co. Ltd.***, reported in ***(2002) 122 TAXMAN 91 (SC)***.

6 The grievance of revenue is that the decisions relied upon by the Tribunal dealt with a period prior to 1 April 1997. It was pointed out that Explanation-1 to Section 41 was introduced with effect from 1 April 1997 which *inter-alia* provided that even a unilateral act by a party by way of remission or cessation of liability would be covered by provisions of Section 41 of the Act. Consequently, it is submitted that the proposed questions of law requires consideration.

7 We find that in the present facts, the amount of Rs.64.27 lacs continues to be shown as the liability in the respodnent-assessee's balance-sheet for the subject assessment year. The occasion to write back the amount of Rs.64.27 lacs in this particular case, even unilaterally by the the respondent-assessee has not arisen. This is so as the amount of Rs.64.27 lacs continues to be shown in its balance-sheet as a liability. Consequently, the occasion to invoke the Explanation-1 to Section 41 of the Act does not arise. The settled position in law is that showing the amount due to the

creditors in the balance-sheet amounts to acknowledgment of liability. Consequently, the decision of the Apex Court in ***Kesaria Tea Co. Ltd.*** (supra) continues to apply in the facts of this case.

8 Accordingly, no substantial question of law arise for our consideration.

9 Appeal dismissed. No order as to costs.

(N. M. JAMDAR, J.) ***(M.S. SANKLECHA, J.)***