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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1010 OF 2014

Commissioner of Income Tax-6 ..Appellant
Versus
M/s. Aasia Business Ventures Pvt.Ltd. ..Respondent

....
Mr. Suresh Kumar for the Appellant.
Mr. Ruturaj Gurjar i/b. Mihir Naniwadekar for the Respondent.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 24th JANUARY, 2017

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 8th November, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2007-08.

2. The Revenue urges the following question of law for our consideration :-

> *“Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the addition made with regard to amount shown as 'advance against export' outstanding since 1997, allegedly received from Amas*

Mauritius Ltd. failing to appreciate the prevailing business/economic reality that no genuine buyer would allow substantial amounts to remain outstanding for more than 10 years?"

3. The facts relevant to the present appeal are that during the course of assessment for the subject assessment year, the Assessing Officer noticed that an amount of Rs.3.04 crores was reflected under the head "current liabilities" (being advance against exports) in its balance sheet for the year ending 31st March, 2007. On inquiry, the Assessing Officer found that the advance had been received as far back as on 24th January, 1997 from one M/s. Amas Mauritius Ltd. in order to export goods. However the exports could not be made till date and the balance is still due and payable to M/s. Amas Mauritius Ltd. in the books of respondent-assessee. The Assessing Officer in the above view held that the transaction of advance from M/s. Amas Mauritius Ltd. was not a genuine transaction and it was not to be repaid. Therefore an addition of Rs.3.04 crores was made on application of Section 41(1) of the Act as cessation of liability.

4. Being aggrieved the respondent carried the issue in appeal to the Commissioner of Income Tax (Appeals) (CIT(A)). However, the order of the Assessing Officer was upheld by the CIT(A).

5. Being aggrieved by the order of the CIT(A), the assessee filed an appeal to the Tribunal. During the hearing before the Tribunal the respondent-assessee pointed out that it had approached the Reserve Bank of India for permission to return the amount of Rs.3.04 crores shown as an advance against export to M/s. Amas Mauritius Ltd. However the approval of Reserve Bank of India had not yet been received.

6. The impugned order of the Tribunal allowed the respondent-assessee's appeal by following the decisions of this Court in ***Commissioner of Income Tax v/s. Chase Bright Steel Ltd. 177 ITR 128*** to hold that where an amount has shown as an advance in the balance sheet by the assessee it amounts to acknowledgment of liability and it does not cease to exist. So far as the genuineness of the transaction as well as creditworthiness of the creditor is concerned, the impugned order holds that the same was appearing in the books of account for all the earlier assessment years and the same was accepted by the Revenue as genuine. Further the impugned order placed reliance upon a decision of its Co-ordinate bench in Jayram Holidngs Pvt. Ltd. (Income Tax Appeal No.6914/Mum/2010) rendered on 4th July, 2012 wherein in almost identical fact situation, advance received for exports was also shown in the accounts as a liability for a period of more than 10 years, the Tribunal took a view that there can be no addition of the amount shown as a

liability either under Section 41(1) and/or under Section 28(iv) of the Act. This is so as long as the liability exists.

7. The grievance of the Revenue is that the above transaction is not genuine. This particularly in view of the fact that M/s. Amas Mauritius Ltd. is a 40% shareholder in the respondent company. Thus related. Therefore the impugned order of the Tribunal requires consideration by this Court to determine its correctness.

8. Mr. Gurjar, the learned counsel appearing on behalf of respondent was granted permission to file an affidavit dated 6th January, 2017 of one Mr. Ramesh Seth, the Director of the respondent company. This affidavit brings on record event subsequent to the passing of the impugned order of the Tribunal. The affidavit states that necessary permission had been granted by Reserve Bank of India on 21st April, 2014 to remit the amount of Rs.3.04 crores shown as an advance received for export to M/s. Amas Mauritius Ltd. Consequent to the aforesaid permission, the amounts have in fact been repatriated on 16th May, 2014. Therefore the aforesaid amount is now no longer shown as a liability in its financial accounts relating to Assessment Year 2015-16.

9. We find that the issue as arising herein was also a subject matter of

consideration before the Tribunal in the case of M/s. Jayram Holdings Pvt. Ltd. (supra) and it is relied upon in the impugned order to conclude that Section 41(1) of the Act cannot be applied in the present facts. In fact a copy of the order passed by the Tribunal in the case of M/s. Jayram Holdings Pvt. Ltd. (supra) was handed over by Mr. Suresh Kumar, the learned counsel for the Revenue. We notice that in the above case also the assessee therein had received from its sister concern an advance for export and shown in its books over a period of 10 years as a liability. However the Tribunal held that Section 41(1) of the Act cannot be applied so long as the liability is acknowledged. This by placing reliance upon the order of this Court in Chase Bright Steel Ltd. (supra) wherein the Court has held that Section 41(1) of the Act will only apply if any deduction or allowance has been allowed for any assessment year on account of any loss or expenditure and in a subsequent year any benefit is obtained in respect of the above expenditure by way of remission or cessation of liability. The Court held that the liability does not cease, so long as the party acknowledges its liability. The Court also held that this is substantially a question of fact. We are informed that the Revenue has not filed any appeal from the order of the Tribunal in Jayram Holdings Pvt. Ltd. (supra). It therefore means that the order of the Tribunal in Jayram Holdings Pvt. Ltd. (supra) has been accepted. No distinguishing features in the present case have been indicated either in the memo of appeal or even during the course of the hearing which would warrant the Revenue taking a different view from which it took while accepting the order of the Tribunal in M/s. Jayram Holdings Pvt. Ltd. (supra) on an identical legal and factual situation.

10. Moreover, as pointed out in the affidavit of the Director of the respondent, on obtaining the permission from Reserve Bank of India on 21st April, 2014, the amounts have been repatriated to M/s. Amas Mauritius Ltd. on 16th May, 2014. Thereafter this amount is not now shown as a liability.

11. In the above view, the question as proposed does not give rise to any substantial question of law in the subject assessment year as an identical issue as decided by the Tribunal in M/s. Jayram Holdings Pvt. Ltd. (supra) has been accepted by the Revenue. The impugned order has merely followed the view of its Co-ordinate bench in the decision of M/s. Jayram Holdings Pvt. Ltd. (supra) and in the absence of any distinguishing features in fact or law in this case being shown, no interference is warranted.

12. Accordingly the appeal is dismissed. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**