

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
**INCOME TAX APPEAL NO.1803 OF 2014**

Commissioner of Income Tax-9,  
3<sup>rd</sup> Floor, Room No.315, Aayakar Bhawan,  
M.K. Road, Mumbai-400 020.

.... Appellant

- Versus -

M/s. Graham Firth Steel Products (I) Ltd.,  
B-212, Shreyash Industries Estate,  
Near Jai Coach, Western Express Highway,  
Goregaon (E), Mumbai-400 063.

.... Respondent

Mr. Arvind Pinto for the Appellant.

Mr. J.D. Mistri, Senior Counsel with Mr. Atul K. Jasani  
& Mr. P.C. Tripathi for the Respondent.

**CORAM:** S.C. DHARMADHIKARI &  
SMT. VIBHA KANKANWADI, JJ.

**DATE** : AUGUST 07, 2017

**ORAL ORDER (Per Shri S.C. DHARMADHIKARI, J.):**

1. This appeal of the Revenue challenges an order of the Income Tax Appellate Tribunal dated 23-4-2014.

2. Mr. Arvind Pinto, appearing for the Revenue, would

submit that the questions of law at pages 6 & 7 of the paper-book are substantial questions of law deserving admission of this appeal.

3. Before we turn to his submissions based on the legal provisions and which he says are attracted, the facts, as noted by the Assessing Officer, are that the respondent/assessee filed its e-return of income for the Assessment Year 2006-07 on 29-11-2006 declaring total loss of Rs.1,22,04,360/-. This return was revised on 31-10-2007 declaring Nil income. The case was selected for scrutiny and notice under Section 143(2) of the Income Tax Act, 1961 (for short, "the I.T. Act") was issued on 29-11-2007 and served on the assessee on the next day, i.e. 30-11-2007. Further notice under Section 142(1), dated 11-1-2008, was issued along with a detailed questionnaire and served on the assessee. Then, a fresh notice had been issued and in response to which the assessee attended. The assessee pointed out that in the past it has been engaged in the manufacture and sale of cold rolled steels. There have been huge losses incurred by the assessee during the past several years, and during the

year under assessment no business activities have been carried out by it. After the receipts credited in the accounts and the other income are noted, the Assessing Officer proceeded to note the non-business receipts. Pertinently, there was no production nor any sales, nor any business activity. The assessee was requested to explain the claim of allowability of Expenses and Depreciation.

4. By a written clarification dated 4-11-2008, the assessee contended that during the year, based on the Board for Industrial and Financial Reconstruction's order, there has been restructuring and demerger. The company has incurred expenses and they are incurred for the very survival of the company. The business activities were temporarily halted due to labour problems, financial constraints for working capital, lack of demand and pendency of the proceedings before the Board for Industrial and Financial Reconstruction (for short, "BIFR"). Subsequently, the BIFR issued show cause notice for winding up, but a proposal for revival of the company was submitted. The BIFR passed an order on 29-5-2007 approving a scheme of

rehabilitation/demerger of the company. As per this order, the Goregaon unit of the assessee (only land and building) along with certain liabilities will be hived off in a new corporate entity, namely, Graham Firth Mumbai Limited. All the residue assets and liabilities will continue in the existing company.

5. With effect from the appropriate date of demerger, the hiving off took place and what the scheme envisaged thereafter is that the assessee is going to start production at Aurangabad. The machineries are being shifted from Goregaon, Mumbai to Aurangabad. The company is in the process of revival. The company, therefore, argued that the expenses which have been incurred were for survival.

6. We are not concerned with everything that the Assessing Officer dealt with but for the claim of depreciation. The claim of depreciation was sought to be disallowed by the Assessing Officer on the ground that there is no business activity and the plant and machineries are not in use. The assessee submitted that business may not have been carried out but the

depreciation claimed of Rs.74,04,808/- includes depreciation claim amounting to Rs.69,26,452/- on goodwill of written down value of Rs.2,77,05,807/-. The Assessing Officer held that depreciation on goodwill is not allowable under Section 32(1)(ii) of the I.T. Act.

7. Then, the argument is with regard to loan liability. It is stated that the loan liability having been written off, the real effect is the cost of the assets reimbursed under the one time settlement scheme. Therefore, the cost of the assets and plant and machinery was reduced from the opening written down value which will give the value of actual cost of assets to the assessee. The assessee's claim for depreciation was disallowed and added to the total income of the assessee and the closing written down value of depreciable asset is determined at Nil.

8. Then, the argument is that the Assessing Officer while assessing the revised return of income filed on 31-10-2007, computed the net profit at Rs.29,08,56,591/- from which adjustments on account of depreciation and on account of

Sections 28 to 44 have been made setting it off against loss and reducing the total income to Nil. In that regard, it is stated that this claim for additional deduction which has been made and to the extent of Rs.19,43,73,928/- is by not filing a revised return but only in the form of a letter. That cannot be entertained.

9. Finally, the argument before the Assessing Officer was that the company, based on a BIFR order, may have arrived at one time settlement of loan with Banks and financial institutions, but out of the credit which the assessee made in the same year of the principal and interest to the tune of Rs.17,34,01,111/- in the profit and loss account, and in the computation of income reduced the same. There is no dispute that interest amounting to Rs.8,97,01,648/- was disallowed. As regards this component of the principal amount of the loan, the assessee credited a sum of Rs.8,36,99,463/- in the profit and loss account and also showed it in the revised return of income. Subsequently, during the course of the assessment proceedings a claim was made that the receipt is of capital nature and not the taxable income of the assessee and requested that the same be

allowed as deduction. The Assessing Officer called upon the respondent/assessee to substantiate its claim that remission of the principal amount of Rs.8.37 crores approximately and loans from Banks and financial institutions credited to profit and loss account are not chargeable to tax.

10. A detailed note was submitted and it was contended that remission is capital receipt since it is remission of loan liability. Then, reliance was placed upon a Judgment of this Court in the case of ***Mahindra and Mahindra Ltd. Vs. Commissioner of Income-Tax***, {(2003) 261 ITR 501}. That was distinguished by the Assessing Officer by holding that in the case of **Mahindra and Mahindra** (supra), there was no one time settlement. In the case of one time settlement for waiver of loan and interest, the position would be different. The Assessing Officer relied upon Section 28(iv) and Section 41(1). The Assessing Officer held as under:-

“The provisions of section 41 are in conformity with the provisions of section 28(iv) and deals with certain specific receipts with reference to allowance/deduction or any other benefit availed by

*the assessee in earlier years. The assessee has availed the benefit of deduction of interest expenses in earlier years. In the earlier assessment years, the assessee has also availed depreciation on entire WDV of assets of which cost was met by loans from banks/financial corporations which have now been written off. In view of explanation 10 to section 43, the cost to the assessee should be reduced by such written off amounts. This also proves that the assessee received benefit in earlier years of claiming higher depreciation which needs to be charged to tax u/s.41(1) of the I.T. Act, 1961 during the year on account of cessation of liability.*

*Thus, writing off of loans payable by the assessee due to one time settlement with the Bank and financial institution amounts to benefit obtained by the assessee arising out of business and therefore such benefit becomes the income of the assessee by virtue of the definition of profit and gain of the business as per the provisions of section 28(iv) and also in view of section 41(1) of the IT Act, 1961.*

*These liabilities were shown in the books of accounts payable to banks. However, these loan were written off by the banks as a result of one time settlement which undoubtedly amounts to benefit derived by the assessee as a result of extinguishments of liability to repay the loan and this benefit has certainly arisen out of business and not from any where else. Further, in accordance with agreement of one time settlement with the Banks/Financial corporations in whose hand the debts would have written off by debiting the equal amount of principal and the interest to its profit and loss accounts. Consequently the benefit received by the assessee becomes taxable under the provisions of section 28(iv) and also in view of section 41(1) of the I.T. Act, 1961.*

*In view of the above discussion it is clear that the contention of the assessee that the benefit received by the assessee in the form of extinguishments of the liability by entering into agreement of one time settlement with the banks not covered by the provisions of section 28(iv) is totally devoid of merit and hence is not acceptable. I have no hesitation in holding that due to remission of principal amount of Rs.8,36,99,463/- payable by the assessee, which were utilised during the conduct of the business, interest on the fund so borrowed were also paid and debited to the profit and loss account in the earlier years, the assessee has derived a benefit as a result of extinguishments of the liability. The assessee company owed to the banks and the benefit undoubtedly has arisen out of the conduct of business. The benefit derived by the assessee is assessed to tax as offered in the revised return of income filed by the assessee. Considering the provisions of section 28(iv) and sec.41(1) of the I.T. Act, 1961 and the decision of Hon'ble Supreme Court in the case of Goetz (India) Ltd, the additional claim of deduction of Rs.19,43,73,928/- made during the assessment proceedings pertaining to benefits received on account of principal amount of loans liabilities written off and increase in value of land hire off is not allowed.*

*Penalty proceedings u/s 271(1)(c) are initiated for concealment of income and furnishing inaccurate particulars of income.”*

11. It is the correctness of these two findings, namely, on the point of depreciation and the applicability of Sections 28(iv) and 41(1) of the I.T. Act that the matter was carried in appeal

before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide his order allowed the appeal in part but on other ground. He maintained the Assessing Officer's observations. More or less the same observations as made by the Assessing Officer have been made in the First Appellate Authority's order.

12. Further aggrieved, the matter was carried by the assessee in appeal to the Tribunal, and the Tribunal in considering the three grounds: firstly, whether the upholding of disallowance of conveyance expenses, the Assessing Officer was directed to allow the same. We do not think that we should bother ourselves with this ground of the assessee and accepted by the Tribunal for the amount thereunder is Rs.1,31,999/-.

13. Then, as far as depreciation on account of goodwill is concerned, the orders of the authorities were perused, including the Tribunal's order in the assessee's own case for the previous Assessment Years 2004-05 and 2005-06 wherein the Tribunal has allowed the claim of depreciation holding that the assets

said to have been put to use as the claim of depreciation allowed in the earlier years and the facts are no different in the order under consideration. Thus, when the Tribunal allowed the claim of depreciation holding that the assets said to have been put to use were identical, the depreciation on assets was directed to be allowed.

14. As far as goodwill is concerned, a specific observation is made in para 25 by relying on the Judgment of the Hon'ble Supreme Court in the case of *Smifs Securities Limited*, which Judgment was relied upon by the assessee. That Judgment of the Hon'ble Supreme Court is reported in **(2012) 348 ITR 302 (SC)** [*Commissioner of Income-Tax Vs. Smifs Securities Ltd.*]. The ground No.2, therefore, of the assessee's appeal pertaining to this claim was allowed. The goodwill was held to be an asset eligible for depreciation.

15. Then came the Assessing Officer's observation and finding that the claim of the assessee for additional deduction was made otherwise than by filing a revised return and,

therefore, it cannot be entertained. That was set aside by the Tribunal by relying on the Judgment of the Hon'ble Supreme Court in the case of ***Goetze (India) Ltd. Vs. Commissioner of Income Tax***, reported in (2006) 284 ITR 323 (SC).

16. We have then the remaining component of the principal amount of Rs.8,36,99,463/-. In that regard, we have already culled out the Assessing Officer's observations above.

17. The argument of the Revenue was that Sections 28(iv) and 41(1) of the I.T. Act apply. The Tribunal in that regard extensively referred to the arguments on merits of this claim in paras 30, 31 and 32. The Tribunal held that the additional claim made by the assessee is on account of the surplus on one time settlement with Banks. Before us also, Mr. Pinto argued that this claim, said to be additional in nature, was not allowed on merits.

18. He would submit that the Assessing Officer was right in urging that both Sections 28(iv) and 41(1) are attracted.

Mr. Pinto heavily criticised the observations in para 34 of the Tribunal's order. He would submit that the Tribunal failed to appreciate that if the principal amount of the loan was waived, then, the Tribunal could not return a finding that no remission or cessation of liability takes place. The Tribunal erroneously relied upon the view taken by the Hon'ble Rajasthan High Court in the case of *Commissioner of Income-Tax Vs. Shree Pipes Limited* {(2008) 301 ITR 240 (Raj)} and its own earlier view. The Rajasthan High Court's view in *Shree Pipes Limited* (supra) was brought to the notice of the Tribunal and the Tribunal's order in the case of *Rama Pulp & Paper Limited* (ITA No.3573/M/2011), as also in the other cases referred in para 31 of the Tribunal's order. Mr. Pinto submits that the facts of the present case are distinguishable from these cases. The amount was credited to the profit and loss account. It is only during the course of assessment that a different plea or submission was canvassed and that could not have been accepted. The reasoning of the Tribunal, therefore, in paras 34 and 35 squarely raises a substantial question of law. At least on that count the appeal

should be admitted.

19. On the other hand, Mr. Mistri, learned Senior Counsel appearing for the assessee would submit that on the undisputed facts the Tribunal was right in refusing to apply both Sections 28(iv) and 41(1) of the I.T. Act. He would submit that the only three questions which survive in this appeal are the ones pertaining to the benefit that was allegedly accruing in terms of Sections 28(iv) and 41(1). Mr. Mistri would submit that the first two questions are properly covered by the Orders and Judgments of the Hon'ble Supreme Court. There is no need to entertain this appeal.

20. Even on the above surviving questions, the Tribunal has rightly concluded that there was a waiver of the principal amount of loan of Rs.8,36,99,463/-. Mr. Mistri heavily relied on the Judgment of the Rajasthan High Court which held that treatment of such waiver by the assessee in his books of account does not alter the effect of the order of the BIFR. No remission or cessation of liability results as far as interest nor the assessee

became entitled to waiver of interest and, therefore, Section 41(1) was not attracted, is the only view which one can take. The Section 41(1) has been interpreted in that Judgment to mean that remission can only be by an act of creditor and cessation of liability can come by agreement or by law. The principal amount of loan in this case has been waived. The liability may have been reduced under the scheme of the BIFR. The assessee has not enjoyed any actual benefit or remission of the liability. In such circumstances, Mr. Mistri, relying upon the Judgment of the Division Bench of this Court in Mahindra and Mahindra would submit that Mr. Pinto's reliance on another Judgment of a Division Bench of this Court is not well-placed. Mr. Pinto had relied upon the Judgment in the case of **Solid Containers Ltd. Vs. Deputy Commissioner of Income-Tax and another**, reported in (2009) 308 ITR 417 (Bom).

21. The Section 28(iv) of the I.T. Act reads as under:-

***“28. Profits and gains of business or profession.***  
*The following income shall be chargeable to income-tax under the head “Profits and gains of business or*

*profession”-*

*(i) to (iii) .... ....*

*(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;”*

Thus, a plain reading of the said section would reveal that the income and which has been set out in the clauses shall be chargeable to income tax under the head, profits and gains of business or profession. Clause (iv) deals with the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession.

22. Then, Section 41(1) was relied upon and it is a common ground that Section 41 deals with profits chargeable to tax. The sub-section (1), Clause (a) thereof reads as under:-

***“41. Profits chargeable to tax.***

*(1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,-*

*(a) the first-mentioned person has not obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not;”*

23. A bare perusal of the same would indicate that where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee and subsequently during any previous year if the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year.

24. On the own showing of the Revenue, in this case, the liability towards payment of interest and on which the assessee derived no benefit, has rightly been brought to tax. It is only waiver of the principal amount of loan of Rs.8,36,99,463/- and increase in value of land hived off that the issue survived.

25. It is a common ground that before the Assessing Officer as well, the assessee had argued that these two provisions are not attracted. The Assessing Officer gave his reasoning. The Assessing Officer came to the conclusion that these liabilities were shown in the books of account as payable to Banks. If the loans were written off by the Banks as a reason of one time settlement, it undoubtedly amounts to benefit derived by the assessee as a result of extinguishment of liability to repay the loan and this benefit has certainly arisen from business and not from anywhere else.

26. In the case of Mahindra and Mahindra (supra), the Division Bench of this Court was concerned with somewhat

identical demand. There, Mahindra and Mahindra was proceeded against on the facts which have been noted. The facts were that, whether a sum of Rs.57,74,064/- due by the assessee- Mahindra and Mahindra to one Kaiser Jeep Corporation of America and written off by the lender constituted taxable income of the assessee? and whether, on the facts and circumstances of the case, the assessee having obtained deduction of a certain sum by way of depreciation on the cost of machinery and toolings, was taxable under Section 41(1) of the I.T. Act as the cost of the machinery/toolings being forgone by Kaiser Jeep Corporation during the Assessment Year 1976-77? Then the related questions to these were questions 3 and 4.

27. The facts were noted in detail by the Division Bench on pages 504 to 506 and the arguments from pages 507 to 509. Then the findings, as far as Section 28(iv) are concerned, were rendered. After referring to the Agreement, which was executed between the parties, it was held that the Agreement for purchase of tooling was entered into and that Agreement in its entirety was not obliterated by the waiver. The Division Bench held that

Section 28(iv) was not attracted.

28. In the present case as well, we find that when Section 28(iv) was pressed into service on the basis that the assessee argued that the benefit received by the assessee in the form of extinguishment of the liability by entering into an agreement of one time settlement does not attract Section 28(iv), the Assessing Officer held that due to remission of principal amount payable by the assessee, which was utilised during the conduct of business, interest on the funds so borrowed were also paid and debited to the profit and loss account in the earlier years, the assessee has derived a benefit as a result of extinguishment of the liability. This benefit is undoubtedly arising out of the conduct of business.

29. The Division Bench in Mahindra and Mahindra held that the assessee has not received any benefit or perquisite in kind which could be valued and in any event such benefit should be in the nature of income. The Division Bench noted that the loan was advanced to the assessee Mahindra and Mahindra, the

assessee paid interest at 6% per annum for ten years being the period of contract, and it never got deductions for payment of interest under Section 36(1)(iii) or under Section 37 of the Act. The Division Bench held that there was a waiver of the principal amount and not the interest. In that case also the Assessing Officer held that when there was a waiver of the loan, the credits became part of business income and that prior to such waiver, they represented liability. Here also these are the findings and overlooking the aspect of payment of interest which has not been waived and in regard to which no relief was claimed. The loan agreement, in its entirety, was not obliterated in the present case as well. Therefore, we are of the opinion that in the present case Section 28(iv) was not attracted.

30. As far as Section 41(1) is concerned, the Division Bench in Mahindra and Mahindra came to the conclusion that the same circumstances and admitted position would enable it to hold that it was a remission. The remission is not income and in order to get over such Judgments rendered earlier, Section 41 came to be enacted. The Division Bench held that the most

fundamental fact that is to be borne in mind is that no deduction was given in the earlier years and, therefore, the loan waived could not be included as income under Section 41(1) of the I.T. Act.

31. In the case at hand, the only observation of the Assessing Officer and confirmed by the Commissioner of Income Tax (Appeals) is that writing off of the loans payable by the assessee due to one time settlement with Banks and financial institutions amounts to benefits obtained by the assessee arising out of business. Therefore, such benefit becomes the income of the assessee.

32. Mr. Pinto would rely upon the Judgment of the Division Bench of this Court in the case of **Solid Containers** (supra). Solid Containers involved the facts of addition made on the ground that the credit balance written back is the income of the assessee in view of the fact that it is a gain directly arising out of the business activity and the same was liable to tax under Section 28. Reliance was placed on Mahindra and Mahindra.

However, the Division Bench, in Solid Containers, noted that a loan of Rs.6,86,071/- was taken during the previous year for business purposes. This was written back, as a result of the Consent Terms arrived at between M/s. P.S. Jain Motors on the one hand and the assessee on the other. The assessee claimed that the said loan was the capital receipt and has not been claimed as deduction from the taxable income as expenses and, therefore, did not fall within the purview of Section 41(1). The Division Bench, deciding Solid Containers, referred to the finding in the previous orders. The Tribunal in that case held that the assessee company had obtained certain loans from M/s. P.S. Jain Motors. This amount was payable to them with interest of Rs.2,83,819/-. That party filed a Suit for recovery and the assessee filed counter-claim. The matter was settled out Court whereby the assessee-company was not to pay any amount. The assessee-company credited to the profit and loss account the interest amount and offered the same for taxation. With regard to the addition of Rs.6,86,071/-, the assessee-company directly credited the amount to the reserves account

considering the same as capital receipt. The Division Bench found that the Tribunal should have relied on the Judgment of the Hon'ble Supreme Court in the case of the ***Commissioner of Income Tax Vs. T.V. Sundaram Iyengar and Sons Ltd.*** {(1996) 222 ITR 344}. The Division Bench found that the Judgment in Mahindra and Mahindra was distinguishable. The amount which initially did not fall within the scope of the provision rendering it liable to tax, subsequently becomes the assessee's income, being part of trading of the assessee. This was a clearly distinguishing factor and which prevailed upon the Division Bench in Solid Containers to dismiss the assessee's appeal. Before us, the Tribunal relied on the Division Bench Judgment of the Rajasthan High Court in Shree Pipes Limited. There, on identical facts, the assessee was a sick industrial company and proceedings were pending before the BIFR. Under the scheme of its rehabilitation, interest liability in respect of certain debts of the assessee due to Banks and financial institutions stood waived. With the waiver of the interest liability of the assessee under the scheme, it was also ordered that the assessee would be entitled to exemption

from the operation of Section 41(1) of the I.T. Act. The assessee had written off in its books of account its liability towards interest and the payment of commission, expenses incurred and allowed as deduction in the earlier years. The Assessing Officer considered this unilateral action as remission or cessation of its liability and made additions for the assessment year concerned, including under Section 41(1). As in our case, the Tribunal deleted the addition. The Revenue was in appeal before the Rajasthan High Court. The Division Bench held that the act of remission was attributable to the creditor and it could not be unilaterally attributed to the debtor himself declaring that he would not pay. There was no material which suggested any act or omission on the part of the creditor which resulted in extinguishment of the liability of the assessee on its account. Writing off such liability in the books of account by the debtor only conveyed the intention of the assessee not to pay. The Revenue relied on the circumstances stated by the Income Tax Officer that claims had not been filed before the Board by Creditors. However, as rightly observed by the Division Bench of

the Rajasthan High Court that, there is no provision in the Sick Industrial Companies (Special Provisions) Act, 1985 permitting lodging or raising of claims by the creditor before the BIFR. Before us as well, the BIFR issued notices to those whose debts are secured and equally those whose stakes are involved. As far as the company is concerned, the BIFR could have recommended winding up but it took on record a scheme of rehabilitation and revival of the company. In that process, the arrangements as carved out have been made. Therefore, as held by the Tribunal, in the present case the ingredients of sub-section (1) of Section 41 are not attracted. The liability remains and because under the scheme of the BIFR the principal sum was waived, the assessee has not enjoyed any actual benefit of remission of liability in the nature of trading. It is in these circumstances that the claim of deduction in respect of the waiver of loan amounting to Rs.8,36,99,463/- was granted. The Assessing Officer was directed to allow it.

33. We are not concerned with the addition of Rs.11,07,74,465/- being increase in the value of land hived off

for that is restored to the file of the First Appellate Authority. To our mind, reliance placed by Mr. Pinto on “Solid Containers” is misplaced. The Tribunal has neither misdirected itself in law nor its order can be termed as perverse when it took assistance of the Division Bench Judgment of Rajasthan High Court, as also the Division Bench Judgment of this Court in Mahindra and Mahindra. In the facts and circumstances, the view taken by the Tribunal is imminently possible.

34. We are, therefore, of the opinion that neither of the questions and from paras 6.1 to 6.5 can be termed as substantial questions of law. The appeal is, therefore, devoid of merits and is dismissed but without any order as to costs.

(SMT. VIBHA KANKANWADI, J.)

(S.C. DHARMADHIKARI, J.)