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

+ **ITA No. 806/2018**

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Reserved on: 09th August, 2018
Pronounced on: 27th August, 2018

THE PR. COMMISSIONER OF INCOME TAX-6 Appellant
Through: Mr. Ruchir Bhatia, Advocate.

versus

NEW WORLD SYNTHETICS LIMITED, Respondent
Through

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.

Present appeal by the Revenue under Section 260 A of the Income Tax Act, 1961 (the Act, for short) assails the order dated 5th February, 2018 passed by the Income-tax Appellate Tribunal ('Tribunal' for short) in the case of New World Synthetics Limited (the respondent-assessee, for short).

The appeal pertains to the Assessment Year 2005-06, for which year the respondent-assessee had filed its return on 30th October, 2005, declaring a loss of Rs.32,27,360/-.

2. The issue raised in the present appeal relates to addition of Rs.2,61,72,160/- made by the Assessing Officer under Section 41(1) of the

Act, which addition was deleted by the Commissioner of Income-tax (Appeals) [‘CIT (Appeals)’ for short]. The Tribunal vide impugned order has dismissed the second appeal filed by the Revenue holding that there was no evidence of cessation of liability.

3. It is an undisputed and admitted fact that the respondent-assessee had an outstanding liability of Rs.2,61,72,160/- due and payable to M/s. P.T. Polysindo, Jakarta, Indonesia since 31st March, 2003. This liability was shown and acknowledged in the balance-sheet and the accounts prepared by the respondent-assessee for the year ending 31st March, 2006, and filed with the Registrar of Companies and the Income Tax department. M/s. P.T. Polysindo, was shown and recorded as a sundry creditor, to whom the respondent-assessee was liable to pay Rs.2,61,72,160/-.

4. While liability to pay was not disputed and doubted by the respondent-assessee, albeit, the Revenue insists and claims that there was cessation of liability as Rs.2,61,72,160/- had remained outstanding and unpaid since 31st March, 2003 till 31st March, 2006. The debt due to M/s. P.T. Polysindo, it is stated, had become barred by limitation. Further there was no likelihood of the respondent-assessee making the said payment as the respondent-assessee had incurred huge losses and stopped business operations during the period relevant to the Assessment Year 2000-01.

5. Section 41(1) of the Act, for the sake of convenience is reproduced below:

“Profits chargeable to tax.

41. (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 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; or
- (b) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.

Explanation 1.—For the purposes of this sub-section, the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof" shall include the remission or cessation of any liability by a unilateral act by the first-mentioned person under clause (a) or the successor in business under clause (b) of that sub-section by way of writing off such liability in his accounts.

Explanation 2.—For the purposes of this sub-section, "successor in business" means,—

- (i) where there has been an amalgamation of a company with another company, the amalgamated company;
- (ii) where the first-mentioned person is succeeded by any other person in that business or profession, the other person;
- (iii) where a firm carrying on a business or profession is succeeded by another firm, the other firm;

(iv) where there has been a demerger, the resulting company.”

The provision states that when an assessee makes an allowance or deduction in respect of loss, expenditure or trading liability incurred, any amount obtained in cash or in any other manner; or when there is remission or cessation, the amount obtained or the value of benefit accruing by way of remission and cessation shall be deemed to be profit and gain of the business or profession. The word "cessation" in common parlance and in context in which it is used in Section 41(1) of the Act connotes that the debt has become extinct, has come to an end or it has been forfeited. "Remission" implies cancellation or extinguishment of all or part of the financial obligation on part of the creditor.

6. Explanation to the Section states that the loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof, shall include remission and cessation of any liability by unilateral act of the first mentioned person i.e. the assessee. The explanation therefore refers to the conduct of the assessee. We need not refer to Clause (b) to Section 41(1) for the said clause is not applicable.

7. In the present case there was no unilateral act by way of remission or cessation by the assessee, for the respondent-assessee had not written off the outstanding amount of Rs.2,61,72,160/- payable to M/s.P.T. Polysindo. This is also not a case where benefit in any form or in cash was received by the respondent-assessee. Hence, the first part of Clause (a) to Section 41(1) of the Act, would not apply.

8. Whether the debt had ceased to exist, was forfeited, or was extinct or whether there was remission in whole or part, would normally be a question of fact, unless there was cessation or remission by operation of law. When it comes to facts, the conduct and understanding of the parties is relevant and important. For the conduct would reveal existence or extinction and forfeiture of the liability.

9. Non-payment of outstanding liability which is admitted and acknowledged as due and payable by an assessee does not indicate remission or cession of liability. When an assessee suffers losses, payments and debts due including those due to financial institutions are not paid. Delay or non-payment, even when the Assessing Officer is of the opinion that likelihood of payment was remote as business has stopped, would by itself not denote and mean cessation or remission of liability. In the winding up or bankruptcy proceedings, payments are made, mostly partly, on sale of assets.

10. In ***Bombay Dyeing & Manufacturing Company Limited Vs. State of Bombay & Ors.***, AIR 1958 SC 328, it was held and observed that the debt or liability may subsist notwithstanding its recovery was barred by limitation for the law of limitation merely bars the creditor from invoking legal remedy. In ***Commissioner of Income Tax Vs. Sugauli Sugar Works (P) Ltd.***, (1999) 2 SCC 355, it was elucidated that expiry of period of limitation as prescribed in the Limitation Act does not extinguish the debt but only prevents the creditor from enforcing the debt. This is the right and correct position in law as held by the Bombay High Court in ***Kohinoor Mills Co. Ltd. Vs. Commissioner of Income-tax*** [1963] 49 ITR 578 (Bom.) and ***Bhagwat Prasad and Co. Vs. Commissioner of Income-tax*** (1975) 99 ITR 111 (All). In this context the

admission and acknowledgement of the debt and liability by the respondent-assessee is significant and important.

11. The patent flaw in the argument raised by the Revenue is to ignore and overlook admission of liability to pay as the respondent-assessee had acknowledged that Rs.2,61,72,160/- was due and payable to M/s.P.T. Polysindo. This liability was accepted and acknowledged in the books of accounts and the returns filed with the Registrar of Companies and with the Income-tax department. Debt acknowledged and admitted in the balance-sheet and accounts filed with the Registrar of Companies is an acknowledgement within the meaning of Section 18 of the Limitation Act, so as to give a fresh period of the limitation as has been held in ***Ambica Mills Ltd. Ahmedabad Vs. Commissioner of Income-tax, Gujarat, Ahmedabad*** AIR 1964 Guj. 208. The Supreme Court in ***Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India & Ors.*** (2000) (7) SCC 120 has reflected and pronounced on admission in the balance sheet and accounts for the purpose of Order XII, Rule 6 of the Code of Civil Procedure.

12. Decision in the case of ***Polyflex (India) Pvt. Ltd. Bangalore Vs. Commissioner of Income Tax Karnataka*** (2002) 7 SCC 188, is distinguishable, as in the said case assessee had received and obtained an amount in cash, which amount received was earlier recorded and treated as expenditure in the profit and loss account. In the said case excise duty paid had been refunded, though the Revenue had preferred an appeal and the decision on refund had not attained finality. The Supreme Court therefore drew distinction between receipt of cash or amount; and remission or cessation of liability in respect of loss or expenditure under the second part of clause (a) of Section 41(1) of the Act. In the present case the respondent-

assessee has not obtained any money or benefit under the first part or the deeming part of Clause (a) to Sub-section 1 to Section 41 of the Act.

13. There was no remission or cessation of liability.

14. In view of the aforesaid settled legal position, we are not inclined to issue notice in the present appeal and the same is dismissed.

(SANJIV KHANNA)
JUDGE

(CHANDER SHEKHAR)
JUDGE

AUGUST 27, 2018
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