DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 1288 OF 2016

Pr. Commissioner of Income Tax-19 ..Appellant
Vs.
Pukhraj S. Jain ..Respondent

…........

Mr. Ashok Kotangle a/w. Ms. Padma Divakar for appellant.
Mr. Tanzil Padvekar for respondent.

…........

CORAM : AKIL KURESHI & M.S. KARNIK, JJ.
DATE : 4th JANUARY, 2019

P.C. :

The Revenue is in Appeal against the judgment of Income Tax Appellate Tribunal dated 10/11/2015. Following questions have been presented for our consideration :

1. Whether on the facts and circumstances of the case and in Law, the Hon. ITAT was justified in upholding the decision of the Ld. CIT(A) by completely ignoring the contention of the revenue in respect of violation of Rule 46A of the I T Rules, 1962 ?
2. Whether on the facts and circumstances of the case and in Law, the Hon. ITAT was justified in upholding the decision of the Ld. CIT(A) wherein the addition by the A.O., by invoking section 41 of the I T Act, 1961 was deleted ?

2. Briefly stated the facts are that,

The respondent – assessee is an individual and engaged in the business of imports. The Assessing Officer while assessing return of the respondent – assessee for the assessment year 2010-11 noticed that there were several sundry creditors towards whom the assessee had not repaid a sum of Rs.1.79 crores (rounded off) for over three years. The Assessing Officer therefore after putting the assessee to notice invoked Section 41(1) of the Income Tax Act, 1961 ('the Act' for short).

3. The assessee carried the matter in Appeal and in addition to raising legal contentions, the appellant contended that in subsequent years most of the creditors were paid off. The evidence in this respect was produced before the Commissioner (Appeals). The Commissioner (Appeals) allowed the Appeal upon which the Revenue approached the Tribunal. The Tribunal by the impugned judgment dismissed the Revenue's Appeal. The Tribunal noted that the assessee was unable to repay the creditors because of weak financial position and further that the

assessee had never completely stopped making repayments. The Tribunal also noted that in next couple of years the assessee had in fact repaid a sum of Rs. 1.54 crores out of Rs.1.79 crores. The Tribunal, therefore, concluded that the assessee never treated the liability to have ceased.

4. It is well settled through series of judgments that merely because a debt has not been repaid for over three years, would not automatically imply cessation of liability. Exhaustion of period of limitation may prevent filing of recovery proceedings in a Court of law, nevertheless it cannot be stated by itself that the liability to repay the amount had ceased. Going by this logic itself, the Assessing Officer, in our opinion, committed an error invoking Section 41(1) of the Act. Further the assessee had produced additional evidence on record before the Appellate Authority after following the procedure and pointed out that substantial portion of the debt was cleared in later assessment years.

5. We do not find any error in the decision of the Tribunal. Income Tax Appeal is dismissed.

(M.S. KARNIK, J.) **(AKIL KURESHI, J.)**