IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No. 467 of 2008

The Commissioner of Income Tax,
Chennai. .. Appellant

Vs.

M/s. Metropolitan Transport
Corporation (Chennai) Limited,
Pallavan House, Anna Salai,
Chennai – 2. .. Respondent

Prayer : Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Chennai 'B' Bench, Chennai, dated 16.11.2007 in I.T.A.No. 2012/Mds/ 2006 for the Assessment Year 2001-02.

For Appellant :Mr. Karthik Ranganathan
Senior Standing Counsel

For Respondent : Mr.A.S.Sriraman

* * *

Judgment was delivered by ***T.S.Sivagnanam, J***

This appeal by the Revenue filed under Section 260-A of the 'Income Tax Act, 1961' (hereinafter referred to as 'the Act') is directed against the order dated 16.11.2007 passed by the Income Tax Appellate Tribunal Madras 'B' Bench in ITA.No.2012/Mds/2006 for the Assessment Year 2001-02.

2. The appeal was admitted on 07.07.2008 on the following substantial question of law:

> *"Whether on the facts and circumstances of the case, the Tribunal was right in holding that the conversion of the loan as well as the unpaid interest into share capital did not amount to cessation of liability under Section 41(1) of the Income Tax Act ?"*

3. The respondent/assessee is a wholly owned Tamil Nadu Government undertaking, operating transport services. For the Assessment Year under consideration (2001-02), the assessee filed its return of income on 24.10.2001 declaring total loss of Rs.35,55,32,390/-. The return was processed under Section 143(1) of the Act on 10.04.2002. A notice under Section 148 of the Act dated 30.07.2003 was served on the assessee along with a questionnaire.

In this appeal, we are concerned about the interest payable by the respondent/assessee on the loans availed from the Government of Tamil Nadu.

4. The assessee had taken over the assets and liabilities of the transport services, which were previously run by the Tamil Nadu State Government. The State Government treated a part of the net worth of the undertaking as its share capital and the balance was treated as loan, on which, the assessee was claiming interest payable year after year and the same was allowed as deduction under Section 37 of the Act. The Government of Tamil Nadu took a decision and issued G.O.(Ms).No.18 dated 07.03.2001 converting the interest outstanding of Rs.8264.17 lakhs payable by the assessee company on 31.10.2000 into equity shares. The question posed by the Assessing Officer was as to whether the sum of Rs.8264.17 lakhs was assessable under Section 41(1) of the Act. The assessee's explanation was that as the liability to pay interest was converted into another liability namely share capital, there was no cessation of liability. The Assessing Officer did not agree with the stand taken by the assessee that the State Government upon converting the loan as well as the unpaid interest liability into share capital would result in cessation of liability of the assessee. Further, the

Assessing Officer held that the expenditure in the earlier year which was not paid, there was cessation of liability and Section 41(1) of the Act was attracted. For such reason, the Assessing Officer held that the said amount was assessable under Section 41(1) of the Act.

5. As against the order passed by the Assessing Officer dated 25.3.2005, the assessee preferred an appeal before the Commissioner of Income-Tax (Appeals)-5, Chennai [hereinafter referred to as 'CIT(A)']. The CIT(A) concurred with the view taken by the Assessing Officer and held that the assessee company was no longer required to pay off outstanding interest subsequent to its conversion into equity share capital and this clearly showed cessation of liability.

6. Before the CIT(A), the authorised representative of the assessee pointed out that the disallowance of Rs.82,64,17,000/- included a sum of Rs.5,22,23,376/-, which already stood disallowed under Section 43-B of the Act for the Assessment Year 1996-97 and by including the said amount, it led to double addition. The CIT(A), upon perusal of the documents produced by the assessee, the year-wise chart and the rectification order passed by the Assistant Commissioner of Income Tax, Company Circle IV(2), Chennai on 25.08.2003,

accepted the stand taken by the authorised representative of the assessee. Accordingly, the Assessing Officer was directed to reduce the disallowance of Rs. 82,64,17,000/- by a sum of Rs.5,22,23,376/- and the addition to the extent of Rs.77,41,93,624/- was upheld.

7. Aggrieved by the order passed by the CIT(A) dated 18.8.2006, the assessee filed an appeal before the Tribunal by raising the contentions, which they advanced before the CIT(A) and after producing a copy of the Government Order in G.O(Ms)No.18 dated 07.03.2001, the assessee stated that the Government had treated the amount as interest received and debited its account towards capital outlay and there was no question of application of Section 41(1) of the Act, because interest liability stood discharged and instead of that, the assessee company had issued share capital to the Government.

8. The Tribunal, after noting the facts, held in favour of the assessee that the assessee company had discharged its interest liability and instead of making the payment in cash, it had issued share capital to the Government as per G.O.(Ms)No.18 dated 07.03.2001 and that the provisions of Section 41(1) of the Act were not attracted. Accordingly, the Tribunal allowed the appeal filed by the assessee, set

aside the order of the CIT(A) and remitted the matter to the Assessing Officer for verification of the actual figures in the light of the observation made by the Tribunal that conversion into share capital had to be treated as proper discharge of interest payments and that the provisions of Section 41(1) of the Act were not attracted. The Revenue is before us challenging the order passed by the Tribunal and the appeal has been admitted on the above mentioned substantial question of law.

9. Mr.Karthik Ranganathan, learned Senior Standing Counsel appearing for the appellant/Revenue contended that the assessee is a wholly owned 100% Government undertaking and obtained various loans from the Government and the interest was not paid to the Government, yet, deduction was claimed by the assessee from year to year. Subsequently, the Government took a decision and all the outstanding liability was converted into equity shares, thereby, the Government took a risk by deducting the equity shares instead of interest amount payable to the Government.

10. The question would be as to whether the conversion into equity share capital would replace the loan and interest.

11. In this regard, learned Senior Standing Counsel referred to Section 41(1)(a) of the Act and submitted that if some benefit accrues to the assessee resulting in cessation of liability, that will be treated as deemed profits. Learned Senior Standing Counsel placed much emphasis on Section 41(1)(a) of the Act and more particularly, the words 'remission or cessation'.

12. It is further submitted that the liability, which has been shown by the assessee in the profit and loss account, has been shifted to the share capital account, on account of which, the liability ceased to be a trading liability and undoubtedly, the assessee derived benefit in respect of trading liability and therefore the Assessing Officer was right in invoking Section 41(1) of the Act. In support of such contention, learned Senior Standing Counsel placed reliance on the decisions in the case of ***CIT, LTU Vs. Compaq Electric Ltd [***reported in ***[2011] 16 taxmann.com 385 (Karnataka)]*** as affirmed by the Hon'ble Supreme Court in the decision ***reported in (2019) 101 Taxmann. com 400*** and in the case of ***CIT-I Vs. Pradeshiya Industrial & Investment Corporation. U.P (PICUP) [***reported in (***2013) 37 Taxmann.com 144 (Allahabad)].***

13. Mr.Karthik Ranganathan, learned Senior Standing Counsel, as an alternate submission, referred to Section 28 of the Act, which deals with 'Profits and Gains of business or profession' and seeks to bring the assessee's case under Clause (iv) of Section 28 of the Act, which states that the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession shall be chargeable to income tax under the head of 'profits and gains of business or profession'.

14. Relying upon the decision in the case of of ***CIT Vs. Jindal Equipments Leasing & Consultancy Services Ltd. [***reported in (***2010) 325 ITR 87 Delhi],*** it is submitted that this submission being a question of law, the Revenue should be permitted to raise this alternate submission on the above ground. Learned Senior Standing Counsel seeks to restore the order passed by the CIT(A) and to answer the substantial question of law in favour of the Revenue.

15. Mr.A.S.Sriraman, learned counsel appearing for the respondent/assessee submitted that the Tribunal rendered a clear finding that the assessee discharged its interest liability, that instead of making the payment in cash, it had issued share capital to the

Government as per G.O.(Ms)No.18 dated 07.03.2001 and that the provisions of Section 41(1) of the Act were not attracted. Further, it is submitted that Section 28 of the Act could never be applied to the facts of the present case. That apart, such a plea was never raised at any earlier point of time. It is further submitted that the change of nomenclature in the balance sheet would not amount to cessation of liability, but it was a case of discharge of liability as rightly held by the Tribunal. Learned counsel distinguishes the decisions in the case of ***Compaq Electric Ltd*** and ***Pradeshiya Industrial & Investment Corporation U.P. (PICUP)***. Learned counsel has also drawn our attention to G.O.(Ms) No.18 dated 07.03.2001 and the decisions in the case of ***CIT Vs. Auto Kashyap India (P) Ltd [***reported in (***2001) 330 ITR 0435 (Delhi)]*** and in the case of ***CIT vs. Indo Widecom International Ltd. [***reported in ***(2018) 89 taxmann.com 89 (Allahabad)].***

16. We have elaborately heard the learned counsel for the parties and carefully perused the materials on record.

17. The question to be answered by us in this appeal filed by the Revenue is as to whether the Tribunal was right in holding that the

conversion of the loan as well as the unpaid interest into share capital did not amount to cessation of liability under Section 41(1) of the Act.

18. Section 41 of the Act deals with 'Profits chargeable to tax'. Section 41(1)(a) of the Act states 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 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.

19. The endeavour of Mr.Karthik Ranganathan, learned Senior Standing Counsel is to convince us to agree with the submission that since the interest liability was converted into equity shares, the

liabilities ceased to exist and in that, the respondent/assessee obtained some benefit consequent upon the cessation of liability and this would be treated as deemed profit and chargeable to tax in terms of Section 41(1)(a) of the Act. Further to make this point clear, it is submitted that the interest liability, which was shown in the profit and loss account, had been shifted to the share capital account and on account of the same, the interest liability ceased to be a trading liability and this was undoubtedly resulting in a benefit to the assessee in respect of such trading liability and it was as good as the amount has been written off. Therefore, it is submitted that the provisions of Section 41(1)(a) of the Act stand attracted to the assessee's case and the Tribunal erroneously reversed the order passed by the CIT(A). Referring to the decision in ***Compaq Electric Ltd.***, it is submitted that interpretation given by the CIT(A) needs to be sustained. Alternatively, it is submitted that Section 28(iv) of the Act would stand attracted and this being a question of law, the assessee should be permitted to raise the same as has been held in the case of ***Jindal Equipments Leasing & Consultancy Services Ltd.***

20. The first aspect, which we have to steer clear is as to whether there has been cessation of liability or it is a case of discharge of liability.

21. We have perused the Government Order in G.O.(Ms) No.18 dated 07.03.2001. The Government issued the said order for restructuring the transport undertakings by converting existing Government loans and advances and interest outstanding as equity share capital. The respondent corporation is one among the 20 State Government Corporations, to which, the said Government Order was made applicable. The Government, under the said order, converted existing Government loans and advances and interest outstanding as on 31.10.2000 pending with the State transport undertakings as Government equity share of the respective undertakings during the year 2000-01. The expenditure on account of the conversion of the existing loans and interest was directed to be debited and contra-credited to the head of account as shown in the Annexure II and III to the said Government Order. The expenditure on equity investment by way of conversion of the Government loans and advances and interest was directed to be included in the first supplementary estimates for 2001-02 at the appropriate time.

22. The Under Secretary to Government, Transport (Budget) Department was requested to prepare and present necessary adjustment bill at the Pay and Account Office, Chennai – 9, with

reference to the orders issued after the Regular Budget for 2001-02 was voted by the Legislature. The Managing Directors of the respective State Transport Undertakings including the respondent/ assessee were requested to take suitable steps and complete the formalities to increase the authorised share capital and pending completion of the formalities, the expenditure was directed to be treated as share advance. In the annexure-I to the Government Order, the details of Government loans and advances and interest outstanding converted into equity shares in respect of the Metropolitan Transport Corporation, Chennai Division -I and Chennai Division -II are found in serial Nos.1 & 2. Annexure -II gives the details of the account viz., Debit Head of Account and Contra-Credit Head of Account. In annexure III, the details of conversion of interest outstanding into equity shares with regard to the respondent assessee for both Chennai Division – I and Chennai Division -II are shown in serial Nos.1 & 2.

23. Given these facts, we have to decide as to whether the conversion of the existing Government loans, advances and interest outstanding as equity share capital would amount to discharge of loan/ liability or cessation.

24. In this regard, we take note of the decision in the case of ***Auto Kashyap India (P) Ltd.*** The facts of the case were more or less identical to the assessee's case. One Mr.Parmanand Kashyap father of Mr.Rajinder Kashyap was the director of the assessee company therein, who used to purchase spare parts from different parties, on credit, in his own name and an amount was payable to Mr.Parmanand Kashyap for the purchase made by him for the assessee company. The outstanding credit balance was shown in the books of accounts of the assessee company under the sub-head "other supplier" of the main-head "sundry creditors". Since the purchases were being handled by Mr.Parmanand Kashyap, the assessee decided to make the matter simple by transferring the credit balance to Mr.Parmanand Kashyap and consequently, the nomenclature of the outstanding balance was changed from "other suppliers" to Mr.Parmanand Kashyap in the audited financial statement of the said assessee company. The Assessing Officer was of the view that the transfer of the account of "sundry creditors" by way of book entry in the name of Mr.Parmanand Kashyap constituted cessation of liability, which is taxable under Section 41 of the Act. While, the matter was pending before the CIT(A), Mr.Parmanand Kashyap died. Consequently, the CIT(A) was of the view that the liability had ceased to exist. However, it did not say

that mere transfer by way of book entry amounted to cessation of liability of the assessee. When the matter was carried on appeal to the Tribunal, it was noticed that the liability was acknowledged as outstanding for the Assessment year under consideration and the amount due to Mr.Parmanand Kashyap, ultimately was paid after his death, in the form of issue of share capital in favour of his son and legal heir Mr.Rajinder Kashyap in the subsequent year. Thus, the Tribunal concluded that there was no cessation of any liability and in fact, the assessee had actually discharged the liability at a future date, thereby the very claim of cessation made by the Department did not arise. The Court confirmed the order passed by the Tribunal and in doing so, referred to Section 41 of the Act and explained as to what remission would mean and also considered as to whether the change of nomenclature in the books of accounts would amount to extinguish one's liability. We refer to following paragraphs of the said judgment:

> *"6. It is, therefore, a prerequisite condition before taking recourse to the S.41 of the Act that assessee mush have either obtained the amount in respect of the loss, expenditure or trading liability incurred earlier by it or it should have received any benefit in respect of such trading liability by way of remission or cessation thereof. The objective is to tax the amount or benefit received by the assessee thereby*

making him pay back for the benefit availed earlier by him by way of claiming loss, expenditure or liability in respect of that amount.

7. Remission is a positive conduct on the part of the creditor. In the present case, admittedly there has been no remission of the liability of the assessee. Therefore, the only question which arises in this case is whether there was any cessation of liability as has been claimed by the Revenue. The cessation of the liability may accrue either by operation of law, i.e., on the liability becoming unenforceable in law by the creditor, provided the debtor unequivocally declares his intention not to own the liability even if demanded by the creditor. It may also accrue by way of a judicial pronouncement, absolving the assessee from the liability. It may accrue if there is a contract between the parties whereby the liability gets extinguished or it may come to an end by discharge of the debt. Some benefit however must accrue to the assessee by virtue of remission or cessation of the liability, as the case may be.

8. Mere change of nomenclature in the books of account without anything more brings no benefit to the assessee and its liability to pay to the creditor does not get extinguished merely by change of nomenclature or by change of the sub-head under which the liability is shown in the account books of the assessee. What is relevant is that the liability of the assessee to pay the amount of Rs.11,81,045 to its creditor(s) did not come *to any end merely on account of the aforesaid change in the sub-head under which the liability was shown in the account books. Transfer of liability from one sub-head to another does not absolve the assessee of its obligation to pay that amount. There is no cessation of liability in such a case and the company still remains liable to its assessee (sic-creditor). It cannot be said that the creditors of the assessee would not have been able to recover the aforesaid amount from it merely on account of a change made in the sub-head under which the liability was shown in the account books of the assessee company. The company was liable to pay for the purchases made on its behalf and for its benefit and it continued to remain liable even after aforesaid change in the account books. No benefit accrued to the assessee by changing the nomenclature and, therefore, the outstanding credit balance cannot be deemed to be profit and gains of the business of the assesse company within the meaning of S.41 of the Act.*

9. As noted by the Tribunal, the liability was actually discharged by the assessee company in the asst. year 1999-2000 by issuing share capital to Shri. Rajinder Kashyap, legal heir of late Shri. Parmanand. Originally the assessee company would have received money from him while issuing shares to Shri Rajinder Kashyap. Since the amount due from the assessee to late Shri Parmanand had fallen to his share in the settlement amongst the legal heirs of late Shri Parmanand, the assessee company adjusted the *aforesaid liability instead of taking money from Shri Rajinder Kashyap for the shares issued to him.*

10. Explanation 1 to S.41 has no applicability to the facts of this case since there has been no writing off of liability and only the sub-head under which the liability was shown in the account books of the assessee was changed in this case. The company acknowledged its liability to make payment of this liability and actually discharged it at a later date by issuing shares to the legal heir of late Shri Parmanand against it. In fact, the conduct of the assessee in adjusting this amount towards share money is a strong indicator that the liability had not ceased merely on account of its transfer from one sub-head to another."

25. In terms of the above decision, when there was no writing off of liabilities and only the sub-head, under which, the liability was shown in the account books of the assessee was changed, there could be no cessation of liability. As pointed out earlier, remission is a positive conduct on the part of the creditor and cessation may accrue either by operation of law and it may also accrue by way of a judicial pronouncement, absolving the assessee from the liability or if there is a contract between the parties whereby the liability gets extinguished or it may come to an end by discharge of the debt. However, some benefit accrued to the assessee by virtue of remission or cessation of

liability, as the case may be. When the assessee company was liable to pay and it continued to remain liable even after change of entries in the books of account, no benefit would accrue to the assessee company merely on account of change of nomenclature and consequently the question of treating the same as profit and gain would not arise. The decision in ***Auto Kashyap India (P) Ltd*** is applicable in full force to the assessee's case.

26. In the decision in the case of ***Indo Widecom International Ltd case,*** the assessee received Rs.1 crore by way of share application money from its holding company, continued to retain the money without allotment of any shares being made by it. Subsequently, the assessee made sales to the holding company and the assessee adjusted the amount as against the said sales made to the holding company and made book entries to transfer the amount to the general account under a narration 'share application money transfer' and adjusted the share application money to the sale price realisable from the holding company. The question was whether the same would amount to cessation or remission of liability as contemplated under Section 41 of the Act. The Court answered the question in the negative and held that Section 41 of the Act would not be applicable. The

relevant paragraphs of the judgment read as follows:

"10. In the instant case, the principle would have no application for the reason that the assessee had in the first place made sale of goods to M/s. Widecom Group INC. for which it became entitled to receive money from that purchaser/entity. Then instead of receiving full value of goods sold by it to M/s. Widecom Group INC., the assessee passed entries in its books of account and thus recovered its money from the said purchaser through transfer of the share application money Rs. One crore to its general account evidenced by proper entries recorded in its books of account. It thus adjusted the credit entry arising on account deposit of Rs. One crore by M/s. Widecom Group INC. against share application against the price of goods sold by it to M/s. Widecom Group INC. Thus, looked at from the assessee's perspective, it is case of discharge of liability and not cessation or remission of liability.

11. The fact that the assessee did not show the amount in its profit and loss account may itself not invite applicability of Section 41 of the Act. Treatment given in accounting entires does not give rise to taxable event. To invoke section 41 of the Act, the initial burden was on the Revenue to establish cessation or remission of liability of Rs. One crore. That burden was not discharged. In as much as it had been found by the CIT(Appeals) and the Tribunal that the amount of Rs. One crore received by the assessee from M/s. Widecom Group INC. had been adjusted against the sale price *payable to the assessee by that entity, there did not survive any scope to invoke section 41 of the Act in favour of the Revenue. Thus Question no.1 as raised in the memo of appeal is answered in favour of the assessee and against the Revenue."*

27. In our considered view, the above rendered judgments will clearly support the case of the assessee and we have no hesitation in holding that there is no cessation of liability and change of nomenclature has not resulted in extinguishing of liability and Section 41(1) of the Act can have no application to the facts of the case.

28. Now, we proceed to consider as to the effect of the decisions relied by the Revenue to justify that there is a cessation of liability. As rightly pointed out by the learned counsel for the assessee, the issue in the case of ***Compaq Electric Ltd.,*** did not pertain to converting an unsecured loan into equity share capital and it pertains to the balance amount, which was written off as not payable. This is clear from a reading of paragraph 2 of the order, wherein the Court noted that the assessee is a wholly owned subsidiary company of M/s. Dr.Reddy's Laboratories Limited (DRL) and in view of huge losses suffered by the assessee company, the operations of the company had been funded by way of unsecured loans by M/s.DRL from year to year and the loan

accumulated to about Rs.11.64 Crores during the year. The assessee therein proposed and M/s.DRL accepted the request for conversion of the unsecured loan partly into equity share capital and waive the balance as not recoverable. Accordingly, the assessee company converted unsecured loan into equity share capital to the extent of Rs.9 Crores and wrote back the balance amount of Rs.2.64 Crores as not payable. This amount of Rs.2.64 Crores was the subject matter in this decision. In the said decision, the question was whether there was remission or cessation of trading liability. Therefore, in the case of ***Compaq Electric Ltd.,*** no question was raised by the Revenue with regard to the conversion of unsecured loans into share capital and therefore, we are of the view that the decision can render no assistance to the case of the Revenue.

29. In the case in ***Pradeshiya Industrial & Investment Corporation U.P. (PICUP)***, the loan was converted into non-refundable interest free unsecured loan and the Court held that there was no provision in the Income Tax Act for conversion of one capital from another capital and it would be treated as Revenue receipt. We find that this decision would support the case of the assessee rather than the Revenue.

30. Thus, we conclude by holding that by virtue of the Government Order in G.O.No.18 dated 07.03.2001 where the Government converted the existing Government loans, advances and interest outstanding into equity share capital, the assessee company had discharged its interest liability in the sense that instead of making payment in cash, it issued share capital to Government. Consequently Section 41(1) of the Act will not stand attracted to the case of the assessee. Therefore, the finding rendered by the Tribunal is perfectly valid.

31. Next we need to consider as to whether the Revenue could be permitted to raise alternate submission at this juncture, for the first time, without even raising a supplementary ground in this appeal.

32. To be noted that this appeal was admitted on 07.07.2008 and is pending for over 10 years. Mr.Karthik Ranganathan, learned Senior Standing Counsel for the appellant/Revenue, relying upon the decision in the case of ***Jindal Equipments Leasing & Consultancy Services Ltd.***, would submit that the Revenue should be permitted to raise alternate submission under Section 28(iv) of the Act.

33. In the said case, the Assessing Officer made an addition in terms of Section 41(1) of the Act read with Section 28(i) of the Act, which was upheld by the Commissioner of Income Tax(Appeals). The Tribunal held that Section 41(1) of the Act did not apply, which legal position was conceded by the Revenue before the Court. But, the Revenue still wanted the addition to be sustained under the provisions of Sub-Clause (iv) of Section 28 of the Act and sought to amend the grounds raised by it before the Court. Considering the facts of the case and the fact that the Revenue sought for amendment of the grounds, the prayer was allowed. To be noted that in the said decision, the Assessing Officer made an addition in terms of Section 41(1) of the Act read with Section 28(i) of the Act. The question was as to whether Section 28(i) of the Act would be applicable or whether Section 28(iv) of the Act would be applicable. So far as the applicability of Section 41(1) of the Act, the Revenue conceded before the Tribunal that it would not apply, but wanted to sustain the addition by relying Section 28(iv) of the Act. Considering the facts of the case, that amendment petition was allowed by the Court on the ground that it was a pure question of law.

34. In our considered view, this decision will, in no manner, render assistance to the Revenue's case. They would be entitled to raise an alternate plea when Section 28(iv) of the Act stands attracted. Such a belated plea without amendment of the ground and raising the same for the first time before this Court during the course of argument cannot be permitted. Therefore, we reject the alternate submission made by the learned Senior Standing Counsel for the Revenue.

35. For all the above reasons, the appeal filed by the Revenue is dismissed and the substantial question of law is answered against the Revenue. No costs.

(T.S.S., J.) **(V.B.S., J.)**
09.07.2019

Speaking order: Yes/No
Index: Yes/No

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T.S.SIVAGNANAM, J.
and
V.BHAVANI SUBBAROYAN, J.

mp/ska

<u>Tax Case Appeal No. 467 of 2008</u>

09.07.2019