IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.285 of 2018

The Commissioner of Income tax,
Chennai. .. Appellant

-vs-

M/s.Wheels India Ltd.,
Padi, Chennai-600 050.
PAN: AAACW0315K .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961, against the order dated 31.10.2017 made in I.T.A.No.1904/Mds/2017 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai for the assessment year 2011-12, as against the order of the Commisioner of Income Tax (Appeals)-17 made in ITA No.3/14-15/CIT(A)-17 dated 08/06/2017 as against the order of the Deputy Commissioner of Income Tax, Large Tax Payer Unit-II, Chennai 600 101, dated 07/03/2014 in GI.No./PAN AAACW0315K for the Assessment Year 2011-12.

For Appellant : Mrs.R.Hemalatha,
Senior Standing Counsel

For Respondent : Mr.R.Venkatanarayanan,
for M/s.Subbaraya Aiyar
Padmanabhan & Ramamani

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal, by the Revenue filed under Section 260A of the Income-tax Act, 1961 is directed against the order dated 31.10.2017 passed by the Income Tax Appellate Tribunal 'C' Bench, Chennai (for brevity, “the Tribunal”), in I.T.A.No.1904/Mds/2017 for the assessment year 2011-12.

2.The above appeal has been filed raising the following substantial questions of law:-

> "(i) Whether the Tribunal was right in holding that the difference between the sales-tax loan amount and the amount paid on Net present value basis under the sales-tax deferral scheme of Maharashtra Government is not a remission of liability u/s.41(1) of the I.T.Act 1961?
>
> (ii) Whether the Tribunal ought to have followed the judgment of the Madras High Court in the case of Ramaniyam Homes P Ltd - reported in 68 Taxman.com page 289 wherein it was held that the waiver of a portion of the loan would certainly tantamount to value of a benefit that arose from business which was to be treated as a revenue receipt?
>
> (iii) Whether the difference between the sales-tax loan amount and amount paid on the Net Present Value basis as per Scheme of Maharashtra Government sales-tax deferral scheme is a revenue receipt and is to be considered as a income as per Sec.28(iv) of the I.T.Act, 1961?"

3.Heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant/Revenue; and Mr.R.Venkatanarayanan, learned counsel for the respondent/assessee.

4.The Tribunal has followed the assessee's own case decided by the Special Bench of the Tribunal at Mumbai in the case of Sulzer India Ltd. vs. JCIT reported in 138 ITD 137. The said decision was challenged before the Hon'ble High Court of Bombay, which was dismissed by judgment dated 05.12.2014 reported in [2014] 369 ITR 717 (Bombay). The decision of the Hon'ble High Court of Bombay was affirmed by the Hon'ble Supreme Court in CIT vs. Balkrishna Industries Ltd., reported in [2017] 88 taxmann.com 273 (SC). The Hon'ble Supreme Court approved the said decision of the Bombay High Court wherein it was held as follows:-

> "The argument of the revenue is not that the assessee having paid Rs.3.37 crores has obtained for himself anything in terms of section 41(1), but the assessee is deemed to have received the sum of Rs.4.14 crores, which is the difference between the original amount to be remitted with the payment made. The revenue terms this as deemed payment by the State to the assessee. The Tribunal has found that the first requirement of section 41(1) is that the allowance or deduction is made in respect of the loss, expenditure or a

trading liability incurred by the assessee and the other requirement is the assessee has subsequently obtained any amount in respect of such loss and expenditure or obtained a benefit in respect of such trading liability by way of a remission or cessation thereof. As rightly noted by the Tribunal, the Sales Tax collected by the assessee during the relevant year was treated by the State Government as loan liability payable after 12 years in 6 annual/equal instalments. Subsequently and pursuant to the amendment made to the 4th proviso to section 38 of the Bombay Sales Tax Act, 1959, the assessee accepted the offer of SICOM, the implementing agency of the State Government, paid certain amount to SICOM, which, according to the assessee, represented the NPV of the future sum as determined and prescribed by the SICOM. In other words, what the assessee was required to pay after 12 years in 6 equal instalments was paid by the assessee prematurely in terms of the NPV of the same. That the State may have received a higher sum after the period of 12 years and in instalments. However, the statutory arrangement and vide section 38, 4th proviso does not amount to remission or cessation of the assessee's liability assuming the same to be a trading one. Rather that obtains a payment to the State prematurely and in terms of the correct value of the debt due to it. There is no evidence to show that there has been any remission or cessation of the liability by the State Government."

5.While affirming the order passed by the High Court of Bombay, the Hon'ble Supreme Court in Balkrishna Industries Ltd. (supra) held that the approach of the High Court of Bombay is without any blemish, inasmuch as all the requirements of Section 41(1) of the Act could not be fulfilled in the case on hand.

6.In the light of the above, the appeal filed by the Revenue fails and the same is dismissed and the substantial questions of law are answered against the Revenue. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commissioner of Income-tax,
Large Taxpayer Unit-II, Chennai-600 101.

2.The Commissioner of Income-tax (Appeals)-17,
Chennai-600 101.

3.The Income-tax Appellate Tribunal 'C' Bench, Chennai.

+1cc to Mr.T.Ravikumar, Advocate Sr.46852
+1cc to M/s.Subbaraya Aiyar, Advocate Sr.47293

T.C.A.No.285 of 2018

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srg 19/07/2019