

OD - 21

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITA/60/2014

COMMISSIONER OF INCOME TAX, KOL-
III

-Versus-

M/S. KOTHARI GLOBAL LTD.

BEFORE :

THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI

And

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

Date : 30th November, 2023

Appearance :

Sri Tilak Mitra, Adv.

..for the appellant.

Sri S.M. Surana Adv.

Sri Bhaskar Sengupta, Adv.

...for the respondent.

The Court :We have heard Sri Tilak Mitra, learned counsel appearing for the appellant/revenue and Sri S.M. Surana, learned counsel for the respondent/assessee.

This appeal was admitted on 12th August, 2014 on the following question :

"Whether on the facts and in the circumstances of the case, the learned Tribunal has erred in law in quashing the order passed by the CIT under section 263 of the I.T. Act, 1961 by disregarding that the Assessing Officer failed to examine the crucial aspect as to whether the waived loan in question was taken for trading purpose or for acquisition of a capital asset or for day to day running of the business since the question as to whether the waived loan in question can be treated as income under

section 28(IV) or 41(1) of the I.T. Act, 1961, depends upon this?"

We find that the question raised in this appeal arising from the impugned order of the Income Tax Appellate Tribunal, is concluded by the judgment of the Hon'ble Supreme Court dated 24th April, 2018 in Civil Appeal Nos.6949-6950 of 2004 (The Commissioner Vs. Mahindra and Mahindra Ltd. thrgh. M.D.) and other connected appeals. Relevant paragraphs 5 and 12 to 18 of the aforesaid judgment are reproduced below :

"5) The short point for consideration before this Court is whether in the present facts and circumstances of the case the sum of Rs.57,74,064/- due by the Respondent to Kaiser Jeep Corporation which later on waived off by the lender constitute taxable income of the Respondent or not ?

12) The first issue is the applicability of Section 28(iv) of the IT Act in the present case. Before moving further, we deem it apposite to reproduce the relevant provision herein below :-

"28. Profits and gains of business or proression.-The following income shall be chargeable to income-tax under the head "Profits and gains of business profession", ---xxx

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

xxx"

13) On a plain reading of Section 28 (iv) of the IT Act, prima facie, it appears that for the applicability of the said provision, the income which can be taxed shall arise from the business or profession. Also, in order to invoke the provision of Section 28 (iv) of the IT Act, the benefit which is received has to be in some other form rather than in the shape

of money. In the present case, it is a matter of record that the amount of Rs.57,74,064/- is having received as cash receipt due to the waiver of loan. Therefore, the very first condition of Section 28.

(iv) of the IT Act which says any benefit or perquisite arising from the business shall be in the form of benefit or perquisite other than in the shape of money, is not satisfied in the present case. Hence, in our view, in no circumstances, it can be said that the amount of Rs.57,74,064/- can be taxed under the provisions of Section 28 (iv) of the IT Act.

14) Another important issue which arises is the applicability of the Section 41(1) of the IT Act. The said provision is re-produced 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 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; x x x

15) On a perusal of the said provision, it is evident that it is a sine qua non that there should be an allowance or deduction claimed by the assessee in any assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. Then, subsequently, during any previous year, if the creditor remits or waives any such liability, then the assessee is liable to pay tax under

Section 41 of the IT Act. The objective behind this Section is simple. It is made to ensure that the assessee does not get away with a double benefit once by way of deduction and another by not being taxed on the benefit received by him in the later year with reference to deduction allowed earlier in case of remission of such liability. It is undisputed fact that the Respondent had been paying interest at 6% per annum to the KJC as per the contract but the assessee never claimed deduction for payment of interest under Section 36(1) (iii) of the IT Act. In the case at hand, learned CIT (A) relied upon Section 41(1) of the IT Act and held that the Respondent had received amortization benefit. Amortization is an accounting term that refers to the process of allocating the cost of an asset over a period of time, hence, it is nothing else than depreciation. Depreciation is a reduction in the value of an asset over time, in particular, to wear and tear. Therefore, the deduction claimed by the Respondent in previous assessment years was due to the depreciation of the machine and not on the interest paid by it.

16) Moreover, the purchase effected from the Kaiser Jeep Corporation is in respect of plant, machinery and tooling equipments which are capital assets of the Respondent. It is important to note that the said purchase amount had not been debited to the trading account or to the profit or loss account in any of the assessment years. Here, we deem it proper to mention that there is difference between 'trading liability' and 'other liability'. Section 41(1) of the IT Act particularly deals with the remission of trading liability. Whereas in the instant case, waiver of loan amounts to cessation of liability other than trading liability. Hence, we find no force in the argument of the Revenue that the case of the Respondent would fall under Section 41(1) of the IT Act.

17) To sum up, we not incline to interfere with the judgement and order passed by the High Court in view of the following reasons:

(a) Section 28(iv) of the IT Act does not apply on the present case since the receipts of Rs.57,74,064/- are in the nature of cash or money.

(b) Section 41(1) of the IT Act does not apply since waiver of loan does not amount to cessation of trading liability. It is a matter of record that the Respondent has not claimed any deduction under Section 36 (1) (iii) of the IT Act qua the payment of interest in any previous year.

18) In view of above discussion, we are of the considered view that these appeals are devoid of merits and deserve to be dismissed. Accordingly, the appeals are dismissed. All the other connected appeals are disposed off accordingly, leaving parties to bear their own cost."

Both the learned counsel for the parties jointly admitted that the question involved in the present appeal is squarely covered by the aforesaid judgment in the case of The Commissioner Vs. Mahindra and Mahindra Ltd. thrgh. M.D. (supra) and in view thereof, the question deserves to be answered in favour of the assessee and against the revenue and the appeal deserves to be dismissed.

In view of the aforesaid, the question of law as noted above, is answered in favour of the assessee and against the revenue. The appeal is dismissed.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

