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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **ITA 953/2019**  
**PR. COMMISSIONER OF INCOME TAX-2, DELHI**

..... Appellant

Through: Mr. Shlok Chandra, Sr.SC with  
Ms. Priya Sarkar and Ms.  
Madhavi Shukla, Jr.SCs along  
with Mr. Ujjawal Jain, Adv.

versus

**M/S BHISHANSAROOP RAM** ..... Respondent

Through: Mr.Ved Jain, Mr. Nischay  
Kantoor and Ms. Soniya  
Dodeja, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR  
KAURAV**

**ORDER**

**28.03.2024**

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1. The appellant – Principal Commissioner of Income Tax [“PCIT”] impugns the judgment rendered by the Income Tax Appellate Tribunal [“ITAT”] dated 28 March 2019 and has proposed the following questions of law for our consideration:

“A. Whether on facts and in the circumstances of the case and also prevailing law, the Hon'ble ITAT is justified in dismissing the appeal of the Revenue and confirming the decision of the Ld. CIT(A) on the issues of loss incurred in plastic division ignoring the fact that the Assessee has no actual business in the nature of purchase, manufacturing/ processing as there is no stock of finished goods at the end of each month available in the monthly summary.

B. Whether on facts and in the circumstances of the case and also prevailing law, the Hon'ble ITAT is justified in dismissing the appeal of the Revenue and confirming the decision of the Ld. CIT(A) on the issues of trade discount allowed ignoring the fact that as per normal accounting policy, once the goods are delivered, the sale should have been accounted for the year and in case the amount could not be recovered from the buyer, the same should



have been accounted for as "bad debts" and not as "discount".

C. Whether on facts and in the circumstances of the case and also prevailing law, the Hon'ble ITAT is justified in dismissing the appeal of the Revenue and confirming the decision of the Ld. CIT(A) on the issues of shortage of closing stock ignoring the fact that any shortage which has not been accounted in the books, cannot be allowed merely because it is normal and the tax auditor has disclosed the alleged shortfall.

D. Whether the impugned order passed by the Hon'ble ITAT is perverse both in facts and law.”

2. On a reading of the decision ultimately rendered by the ITAT, we find that insofar as the proposed questions A and C are concerned, they clearly appear to be concluded by findings of fact which could not have been characterized as being perverse before us.

3. That leaves us to principally examine the issues which pertain to question B. From a reading of the order of the Assessing Officer [“AO”] dated 30 March 2013, we find that the aforesaid question arises in the backdrop of the following facts.

4. In Assessment Year [“AY”] 2010-11, the respondent-assessee is stated to have entered into a sale transaction for sale of Basmati Rice with M/s Pearl Beach General Trading LLC and M/s Mohsen Line General Trading LLC, Dubai. The buyer however and in the said AY itself returned a certain quantity of the rice so exported on quality considerations.

5. A dispute appears to have consequently arisen between the assessee and the Dubai based importer and which ultimately culminated in settlement terms being struck on 20 April 2010. In terms of that settlement agreement, the parties appear to have agreed that part payment is to be released and that a payment of USD 16,22,000 is to be foregone by the respondent-assessee.



6. According to Mr. Chandra, learned counsel appearing for the appellant, since the respondent-assessee followed the mercantile system of accounting, the contracts were liable to be accounted for on an accrual basis and are thus required to be taken into consideration in the same year itself. It was his submission that a subsequent agreement which came to be entered into between the parties would not detract from the obligation of the respondent-assessee to have accounted for the aforesaid transactions in AY 2010-11 itself.

7. It was the additional submission of Mr. Chandra that the aspect of a part of the consideration becoming irrecoverable was neither conceived of nor known on the date when the income from the export contracts came to accrue. In view of the above, it was his submission that the write-off, if at all, could have been claimed only in the subsequent AY.

8. The correctness of the aforesaid contention is assailed by the respondents, with it being contended on their behalf that the levy of tax is primarily concerned with real income and income which has the capability of being characterized as having aspects of certainty attached to it. Our attention in this regard was drawn to the following principles which were highlighted in a judgment rendered by this Court in **Housing and Urban Development Corporation Ltd. v. Additional CIT**[2020 SCC OnLine Del 1772] and relevant parts whereof are extracted hereinbelow:

"29. The Supreme Court has held that accounting process is to ensure the real income from the transactions in the form of revenue receipts is accounted for the purpose of Income-tax. The application of accounting standard is to show fair and real income which is liable to tax under the Act. The accounting standards of the Institute of Chartered Accountants of India lays down that when uncertainties exist regarding determination of the amount in its collectability, the revenue shall not be treated as accrued and



shall not be recognized until collection. It would be apposite to extract the relevant portion of the AS-9, issued by the Institute of Chartered Accountants of India with regard to the effect of uncertainties on revenue recognition. The same reads as under:

"9.1 Recognition of revenue requires that revenue is measurable and that at the time of sale or the rendering of the service it would not be unreasonable to expect ultimate collection.

9.2 Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, e.g., for escalation of price, export incentives, interest etc., revenue recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognise revenue only when it is reasonably certain that the ultimate collection will be made. Where there is no uncertainty as to ultimate collection, revenue is recognised at the time of sale or rendering of service even though payments are made by installments.

9.3 When the uncertainty relating to collectability arises subsequent to the time of sale or the rendering of the service, it is more appropriate to make a separate provision to reflect the uncertainty rather than to adjust the amount of revenue originally recorded.

9.4 An essential criterion for the recognition of revenue is that the consideration receivable for the sale of goods, the rendering of services or from the use by others of enterprise resources is reasonably determinable. When such consideration is not determinable within reasonable limits, the recognition of revenue is postponed.

9.5 When recognition of revenue is postponed due to the effect of uncertainties, it is considered as revenue of the period in which it is properly recognised." (emphasis supplied)

**30.** Let us now advert to the facts of the case, before we express our views. The appellant's income on account of the fees did not accrue with certainty on the date of signing of the loan agreement. The income fell due only when the loan was disbursed, as the fee was to be collected at that stage. It cannot be said that on the date of signing, the income accrued in conformity with the mercantile system and AS-9 adopted by the appellant. The contention of the appellant is in line with the settled position of law as laid down by the Supreme Court and other High Courts as well as the AS- 9.



There was no reasonable certainty of the realization of the amount of Rs. 1.28 crores, and that since it follows the mercantile system of accounting, the same can be treated as an income only if it had convincingly accrued. The amount here is not determinable and there is no certainty about the same, since it remains uncertain whether the borrower - who has signed the loan agreement, would, eventually, avail of the loan, or not. Merely because the appellant may have signed the agreement with the borrower, that, by itself, does not lead to the "certainty" of income accruing to the appellant, so as to bring it within the ambit of "income". Here, the addition has resulted on account of change in accounting policy by recognizing the realised revenue, instead of the assumed revenue on the date of signing of loan agreement. The tax authorities fell in error by laying emphasis on the impressibility of change in accounting in the context of section 145 of the Act. The conspectus of the case law cited by both parties is that, even for an income to be recognized under mercantile law, it is necessary that income should have accrued with certainty. It is trite law that there can be no liability to pay Income-tax on hypothetical income. The regular method of accounting determines only the mode of computing the taxable income and the particular stage at which the tax liability arises. If there is no income, then merely because the assessee had followed the mercantile system of accounting and has in his books of account reflected certain receipt or credits or debits in a particular way, it cannot be said that income has accrued. The position of law on "accrual of income" is well settled. Income accrues only when there is a right to receive such income, regardless of the fact if it is actually received or not. To decide this crucial question, one would have to examine, whether, there is a legal right vested in favour of the assessee to claim the same. This is the crux of the matter and the tax authorities seem to have lost sight of the same. The tax authorities should have proceeded to determine and ascertain as to whether, the income has in reality accrued to the assessee, or not, notwithstanding the change in accounting policy. If the income had indeed accrued, the addition would have been permissible. However, to determine this, in our opinion, the treatment given in the assessee's books of account would not be necessary, but would be dependent on the answer to the question as to whether the income has indeed accrued, having regard to the test as discussed hereinabove. The question whether real income has materialized or not, has to be scrutinized, having regard to the commercial and business certainties and realities of the situation in which the assessee is positioned, and not with reference to the system of accounting. The answer to such decision would then relate to the chargeable accounting year in which such profits actually arose and the assessee would be liable to tax accordingly. Applying this yardstick, we do not find that any income accrued at the point of mere execution of the agreement



and, thus, the income did not accrue in the relevant assessment year. The financial impact has since been factored in the subsequent year."

9. Of equal significance is the decision of the Supreme Court in **Commissioner of Income Tax v. Excel Industries Ltd.** [2013 SCC OnLine SC 929]. Laying emphasis on income tax being levied on real income as opposed to hypothetical income, the Supreme Court explained when income could be said to have accrued in the following terms:

"17. It follows from these decisions that income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that for the purposes of taxability that the income is not hypothetical and it has really accrued to the assessee.

18. Insofar as the present case is concerned, even if it is assumed that the assessee was entitled to the benefits under the advance licences as well as under the duty entitlement passbook, there was no corresponding liability on the Customs Authorities to pass on the benefit of duty-free imports to the assessee until the goods are actually imported and made available for clearance. The benefits represent, at best, a hypothetical income which may or may not materialise and its money value is therefore not the income of the assessee.

19. In *Godhra Electricity Co. Ltd. v. CIT* [Godhra Electricity Co. Ltd. v. CIT, (1997) 4 SCC 530 : (1997) 225 ITR 746] this Court reiterated the view taken in *ShoorjiVallabhdas* [CIT v. ShoorjiVallabhdas and Co., (1962) 46 ITR 144 (SC)] and *Morvi Industries* [Morvi Industries Ltd. v. CIT, (1972) 4 SCC 451 : 1974 SCC (Tax) 140 : (1971) 82 ITR 835].

20. *Godhra Electricity* [Godhra Electricity Co. Ltd. v. CIT, (1997) 4 SCC 530 : (1997) 225 ITR 746] is rather instructive. In that case, it was noted that the High Court held that the assessee would be obliged to pay tax when the profit became actually due and that income could not be said to have accrued when it is based on a mere claim not backed by any legal or contractual right to receive the amount at a subsequent date. The High Court however held on the facts of the case that the assessee had a legal right to recover the consumption charge in dispute at the enhanced rate from the



consumers. This Court did not accept the view taken by the High Court on facts. Reference was made in this context to *CIT v. Birla Gwalior (P) Ltd.* [(1974) 3 SCC 196 : 1973 SCC (Tax) 519 : (1973) 89 ITR 266], wherein it was held, after referring to *Morvi Industries [Morvi Industries Ltd. v. CIT, (1972) 4 SCC 451 : 1974 SCC (Tax) 140 : (1971) 82 ITR 835]* that real accrual of income and not a hypothetical accrual of income ought to be taken into consideration. For a similar conclusion, reference was made to *Poona Electric Supply Co. Ltd. v. CIT* [(1965) 57 ITR 521 (SC)] wherein it was held that income tax is a tax on real income.

**21.** Finally in *Godhra Electricity case [Godhra Electricity Co. Ltd. v. CIT, (1997) 4 SCC 530 : (1997) 225 ITR 746]* a reference was made to *State Bank of Travancore v. CIT* [(1986) 2 SCC 11 : 1986 SCC (Tax) 289 : (1986) 158 ITR 102] wherein the majority view was that accrual of income must be real, taking into account the actuality of the situation; whether the accrual had taken place or not must, in appropriate cases, be judged on the principles of real income theory. The majority opinion went on to say: (*State Bank of Travancore case* [(1986) 2 SCC 11 : 1986 SCC (Tax) 289 : (1986) 158 ITR 102], SCC p. 66, para 67)

“67. ... What has really accrued to the assessee has to be found out and what has accrued must be considered from the point of view of real income taking the probability or improbability of realisation in a realistic manner and dovetailing of these factors together but once the accrual takes place, on the conduct of the parties subsequent to the year of closing an income which has accrued cannot be made ‘no income’.”

**22.** This Court then considered the facts of the case and came to the conclusion (in *Godhra Electricity case [Godhra Electricity Co. Ltd. v. CIT, (1997) 4 SCC 530 : (1997) 225 ITR 746]* ) that no real income had accrued to the assessee in respect of the enhanced charges for a variety of reasons. One of the reasons so considered was a letter addressed by the Under-Secretary to the Government of Gujarat, to the assessee whereby the assessee was “advised” to maintain status quo in respect of enhanced charges for at least six months. This Court took the view that though the letter had no legal binding effect but “one has to look at things from a practical point of view”. (See *R.B. Jodha Mal Kuthiala v. CIT* [(1971) 3 SCC 369 : (1971) 82 ITR 570] .) This Court took the view that the probability or improbability of realisation has to be considered in a realistic manner and it was held that there was no real accrual of income to the assessee in respect of the disputed enhanced charges for supply of electricity. The decision of the High Court was, accordingly, set aside.



**23.** Applying the three tests laid down by various decisions of this Court, namely:

(i) whether the income accrued to the assessee is real or hypothetical;

(ii) whether there is a corresponding liability of the other party to pass on the benefits of duty-free import to the assessee even without any imports having been made; and

(iii) the probability or improbability of realisation of the benefits by the assessee considered from a realistic and practical point of view (the assessee may not have made imports),

it is quite clear that in fact no real income but only hypothetical income had accrued to the assessee and Section 28(iv) of the Act would be inapplicable to the facts and circumstances of the case. Essentially, the assessing officer is required to be pragmatic and not pedantic.

**24. Secondly**, as noted by the Tribunal, a consistent view has been taken in favour of the assessee on the questions raised, starting with Assessment Year 1992-1993, that the benefits under the advance licences or under the duty entitlement passbook do not represent the real income of the assessee. Consequently, there is no reason for us to take a different view unless there are very convincing reasons, none of which have been pointed out by the learned counsel for the Revenue.

**25. In *Radhasoami Satsang v. CIT* [(1992) 1 SCC 659 : (1992) 193 ITR 321]** this Court did not think it appropriate to allow the reconsideration of an issue for a subsequent assessment year if the same “fundamental aspect” permeates in different assessment years. In arriving at this conclusion, this Court referred to an interesting passage from *Hoystead v. Taxation Commr.* [1926 AC 155 : 1925 All ER Rep 56 (PC)], wherein it was said: (*Radhasoami Satsang case* [(1992) 1 SCC 659 : (1992) 193 ITR 321], SCC pp. 665-66, para 14)

“14. ... Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle. Thirdly, the same principle, namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the



plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken.’ (*Hoystead case* [1926 AC 155 : 1925 All ER Rep 56 (PC)] , AC pp. 165-66)”

26. Reference was also made to *Parashuram Pottery Works Co. Ltd. v. ITO* [(1977) 1 SCC 408 : 1977 SCC (Tax) 179 : (1977) 106 ITR 1] and then it was held: (*Radhasoami Satsang case* [(1992) 1 SCC 659 : (1992) 193 ITR 321] , SCC p. 666, paras 16-17)

“16. We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

17. On these reasonings in the absence of any material change justifying the revenue to take a different view of the matter—and if there was no change it was in support of the assessee—we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income Tax in the earlier proceedings, a different and contradictory stand should have been taken.”

27. It appears from the record that in several assessment years, the Revenue accepted the order of the Tribunal in favour of the assessee and did not pursue the matter any further but in respect of some assessment years the matter was taken up in appeal before the Bombay High Court but without any success. That being so, the Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather than spend the taxpayers' money in pursuing litigation for the sake of it.”

10. We note that undisputedly, the settlement agreement came to be executed after the drawing up of the balance sheet. It was the aforementioned agreement which had acknowledged the substance of the contract having disintegrated in part and as a consequence of which the assessee had lost the right to receive the full transaction value.

11. To deal with contingencies which occur after the balance sheet



date, we take into consideration the following relevant provisions which are made in Accounting Standard (AS) 4 and Accounting Standard (AS) 9. The relevant extracts of Accounting Standard 4 are set out hereinbelow:

**“Accounting Standard (AS) 4\***

**Contingencies and Events Occurring After the Balance Sheet Date**

(This Accounting Standard includes paragraphs set in bold italic type and plain type, which have equal authority. Paragraphs in bold italic type indicate the main principles. This Accounting Standard should be read in the context of the General Instructions contained in part A of the Annexure to the Notification.)

**Introduction**

1. This Standard deals with the treatment in financial statements of

- (a) contingencies, and
- (b) events occurring after the balance sheet date.

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**8. Events Occurring after the Balance Sheet Date**

8.1 Events which occur between the balance sheet date and the date on which the financial statements are approved, may indicate the need for adjustments to assets and liabilities as at the balance sheet date or may require disclosure.

8.2 Adjustments to assets and liabilities are required for events occurring after the balance sheet date that provide additional information materially affecting the determination of the amounts relating to conditions existing at the balance sheet date. For example, an adjustment may be made for a loss on a trade receivable account which is confirmed by the insolvency of a customer which occurs after the balance sheet date.

8.3 Adjustments to assets and liabilities are not appropriate for events occurring after the balance sheet date, if such events do not relate to conditions existing at the balance sheet date. An example is the decline in market value of investments between the balance



sheet date and the date on which the financial statements are approved. Ordinary fluctuations in market values do not normally relate to the condition of the investments at the balance sheet date, but reflect circumstances which have occurred in the following period.

8.4 Events occurring after the balance sheet date which do not affect the figures stated in the financial statements would not normally require disclosure in the financial statements although they may be of such significance that they may require a disclosure in the report of the approving authority to enable users of financial statements to make proper evaluations and decisions.

8.5 There are events which, although they take place after the balance sheet date, are sometimes reflected in the financial statements because of statutory requirements or because of their special nature. For example, if dividends are declared after the balance sheet date but before the financial statements are approved for issue, the dividends are not recognised as a liability at the balance sheet date because no obligation exists at that time unless a statute requires otherwise. Such dividends are disclosed in the notes.

8.6 Events occurring after the balance sheet date may indicate that the enterprise ceases to be a going concern. A deterioration in operating results and financial position, or unusual changes affecting the existence or substratum of the enterprise after the balance sheet date (e.g., destruction of a major production plant by a fire after the balance sheet date) may indicate a need to consider whether it is proper to use the fundamental accounting assumption of going concern in the preparation of the financial statements.

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### **Main Principles**

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### ***Events Occurring after the Balance Sheet Date***

**13. Assets and liabilities should be adjusted for events occurring after the balance sheet date that provide additional evidence to assist the estimation of amounts relating to conditions existing at the balance sheet date or that indicate that the fundamental**



**accounting assumption of going concern (i.e., the continuance of existence or substratum of the enterprise) is not appropriate.**

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***15. Disclosure should be made in the report of the approving authority of those events occurring after the balance sheet date that represent material changes and commitments affecting the financial position of the enterprise.***

12. The relevant portions of Accounting Standard 9 are set out hereinbelow:

### **“Accounting Standard (AS) 9**

#### **Revenue Recognition**

*(This Accounting Standard includes paragraphs set in bold italic type and plain type, which have equal authority. Paragraphs in bold italic type indicate the main principles. This Accounting Standard should be read in the context of the General Instructions contained in part A of the Annexure to the Notification.)*

#### **Introduction**

1. This Standard deals with the bases for recognition of revenue in the statement of profit and loss of an enterprise. The Standard is concerned with the recognition of revenue arising in the course of the ordinary activities of the enterprise from

- the sale of goods,
- the rendering of services, and
- the use by others of enterprise resources yielding interest, royalties and dividends.

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### **9. Effect of Uncertainties on Revenue Recognition**

9.1 Recognition of revenue requires that revenue is measurable and that at the time of sale or the rendering of the service it would not be unreasonable to expect ultimate collection.



9.2 Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, e.g., for escalation of price, export incentives, interest etc., revenue recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognise revenue only when it is reasonably certain that the ultimate collection will be made. Where there is no uncertainty as to ultimate collection, revenue is recognised at the time of sale or rendering of service even though payments are made by instalments.

9.3 When the uncertainty relating to collectability arises subsequent to the time of sale or the rendering of the service, it is more appropriate to make a separate provision to reflect the uncertainty rather than to adjust the amount of revenue originally recorded.

9.4 An essential criterion for the recognition of revenue is that the consideration receivable for the sale of goods, the rendering of services or from the use by others of enterprise resources is reasonably determinable. When such consideration is not determinable within reasonable limits, the recognition of revenue is postponed.

9.5 When recognition of revenue is postponed due to the effect of uncertainties, it is considered as revenue of the period in which it is properly recognised. Main Principles.”

13. Bearing the aforesaid in mind, we find that the ITAT has committed no manifest error in holding in favour of the assessee. Consequently, we see no reason to interfere with the ITAT’s impugned judgment dated 28 March 2019.

14. The appeal fails and shall stand dismissed on the aforesaid terms.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**MARCH 28, 2024/p**