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TCA No.944 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2025

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

TCA No.944 of 2009

Commissioner of Income Tax,
Chennai

: Appellant

versus

M/s.Anand Transport
No.1, 9th Street,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004

: Respondent

Prayer: Appeal filed against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, dated 23.01.2009 in I.T.A.No.677/mds/2007.

For Appellant : Mr.T.Ravi Kumar,
Senior Standing Counsel

For Respondent : Mr.A.S.Sriraman



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JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The assessee had filed return of income for AY 2003-04, returning total income of Rs.6,89,33,044/-. Return was processed under Section 143(1) of the Income Tax Act, 1961 ('the Act'), and notice under Section 143(2) of the Act was issued to the assessee on 22.11.2004. Multiple notices under Section 142(1) of the Act were issued with questionnaires, and replies were filed.

2. An assessment order came to be passed, by which the provisions relating to claims / liabilities up to accounting year 2000-01 for Rs.15.04 crores was disallowed. An appeal was preferred by the assessee and the appeal came to be allowed by the Commissioner of Income Tax (Appeals) [CIT (A)]. The Revenue challenged the order by filing an appeal before the Income Tax Appellate Tribunal (ITAT) and ITAT by order dated 23.01.2009, dismissed the Revenue's appeal. It is this order that is impugned in the appeal before us.



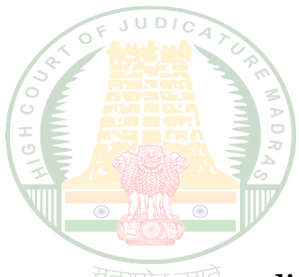
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3. On 13.10.2009, when the appeal came to be admitted, the following substantial question of law was framed :

“Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the provision pending in the account books for the accounting year 2000-01 relating to claim by SICAL on the assessee cannot be treated as income by cessation of liability under Section 41(1) on the ground that the suit by assessee against SICAL was pending?”

4. As noted above, the Assessing Officer, in the course of the assessment proceedings, found that the books of account of assessee reflected an accumulated outstanding amount of Rs.26,56,16,236/-, out of which a sum of Rs.15.04 crores represented provisions made in relation to claims/liabilities pertaining to FY 2000-01 and earlier years. The Assessing Officer noticed that based on claims raised and disallowances / recoveries made in the bills by one SICAL, assessee had made provisions for the relatable liabilities. The provisions were continued by the assessee in its books of accounts because the issues were yet to be sorted out / settled. SICAL was also claimed to have not paid some dues to the assessee,



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pending settlement of all their claims.

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5. Admittedly, during the assessment proceedings, it was brought to the notice of the Assessing Officer that the assessee had filed a civil suit for recovery of its dues from SICAL in November, 2003 before the Hon'ble Madras High Court, which suit was pending adjudication. The assessee had submitted that till the disposal of the suit, and till such time a finality is attained in relation to all the claims/ dues raised by SICAL, it was not possible for the assessee to take any decision in the matter regarding the provisions made in the accounts, as the matter was *sub-judice*.

6. In response to these submissions of assessee, the Assessing Officer chose to term the provision as 'a contingent one'. The Assessing Officer, as submitted by Mr.Ravi Kumar before us today, opined that as per the mercantile system of accounting, assessee should have taken all the bills raised on SICAL but not realised during the year and earlier years, to debtor's account, and the year in which a part thereof becomes bad, the same should have been written-off in the book as bad debts. According to Mr.Ravi Kumar, since neither the liability has actually crystallized nor has



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accrued due to the ongoing legal dispute, and the assessee not having written-off the same in the books of accounts, assessee was no longer required to meet this liability, for which provision has been created. Since three years had already elapsed from the making of such provision in the books of accounts, the Assessing Officer concluded that cessation of trading liability has taken place and accordingly, proceeded to tax the sum of Rs.15.04 crores under Section 41(1) of the Act.

7. Mr. Sriraman submitted that the stand taken by the assessing officer was erroneous as much as the Assessing Officer, during the assessment proceedings failed to take cognizance of the details of suit filed by assessee in the High Court of Madras against SICAL for recovery of dues which were not paid mainly because SICAL sought to offset their claims/ dues payable by assessee.

8. Assessee had provided for the liability arising out of those claims for which deduction has been allowed in the assessment year 2001-02. Mr.Sriraman submitted that when the case was still pending disposal, no finality could be reached in regard to the claims of SICAL. Mr.Sriraman



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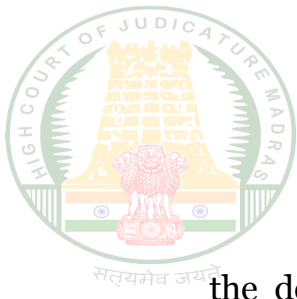
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submitted that the provisions of Section 41(1) of the Act were not at all attracted because assessee had not obtained in any manner, whatsoever, any amount in respect of trading liability, by way of remission or cessation thereof.

9. We would agree with assessee as well as CIT (A) and ITAT that when the suits filed were sub judice and the matter was yet to be adjudicated by the Hon'ble High Court, it cannot be inferred that the liability on the part of the assessee in respect of payments to be made to SICAL has ceased/or been remitted by SICAL. Therefore, the provision of Section 41(1) of the Act cannot be invoked.

10. As held by the Apex Court in ***CIT vs. Sugauli Sugar Works P Ltd***¹, the principle that expiry of the period of limitation prescribed by the Limitation Act could not extinguish the debt but it would only prevent the creditor from enforcing the debt has been well settled. If that principle is applied, it is clear that mere entry in the books of account of the debtor made unilaterally without any act on the part of the creditor will not enable

¹ 236 ITR 518



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the debtor to say that the liability has come to an end. It will also not confer any benefit on the debtor as contemplated by Section 41(1) of the Act.

11. Therefore, the question of law is answered in favour of the assessee and against the Revenue.

12. The appeal stands dismissed. There will be no order as to costs.

(K.R.SHRIRAM, CJ.)

(SUNDER MOHAN, J.)

03.07.2025

Index : Yes
Neutral Citation : Yes
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To

1.The Commissioner of Income Tax,
Chennai

2.The Income Tax Appellate Tribunal,
Madras “A” Bench



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