

THE CHIEF COMMISSIONER OF INCOME TAX, COCHIN

v.

M/S. KESARIA TEA CO. LTD.

MARCH 19, 2002

[S. RAJENDRA BABU, K.G. BALAKRISHNAN AND
P. VENKATARAMA REDDI, JJ.]

Income Tax Act, 1961—Section 41(1)—Applicability—Purchase tax liability—Remission or cessation—Benefit of—Assessee made provision in books of accounts towards purchase tax—Availed benefit of deduction from business income in earlier assessment years—Assessee reversed the same by writing back in its accounts a sum for a relevant assessment year—Assessing Officer treated sum representing provision towards purchase tax during earlier assessment year as income for relevant assessment year—Whether purchase tax liability ceases and thus, S.41(1) can be invoked to enable Revenue to take back what it has allowed earlier as business expenditure and to include such amount as income of relevant assessment year—Held, no since mere unilateral act on the part of assessee writing back amount does not have the effect of extinguishing statutory liability and Section 41(1) can be invoked only if liability of assessee is assessed without the possibility of reviving it.

The question which arose for consideration in the present appeal was whether the purchase tax liability of assessee ceased finally during the relevant assessment year so that resort could be had to Section 41(1) of the Income Tax Act enabling the Revenue to take back what has been allowed earlier as business expenditure and to include such amount in the income of relevant assessment year.

Dismissing the appeal, the Court.

HELD : 1. In order to apply Section 41(1) of the Income Tax Act, 1961 in the context of the facts in the instant case, the following points are to be taken into account : (1) in the course of assessment for an earlier year, allowance or deduction has been made in respect of trading liability incurred by the assessee; (2) subsequently, a benefit is obtained in respect of such trading liability by way of remission or cessation thereof during the year in which such event occurred; (3) in that situation the value of benefit accruing

A to the assessee is deemed to be the profit and gains of business which otherwise would not be his income; and (4) such value of benefit is made chargeable to income tax as the income of the previous year wherein such benefit was obtained. [574-E-F]

B 2. The High Court, agreeing with the Tribunal that an unilateral action on the part of the assessee in writing-back the amounts could not have the effect of extinguishing the statutory liability has rightly held that resort to Section 41(1) could arise only if the liability of the assessee can be said to have ceased finally without the possibility of reviving it. On the facts found by the Tribunal, the Tribunal as well as the High Court were well justified in coming to the conclusion that the purchase tax liability of the assessee had not ceased finally during the year in question. [574-B-G]

Commissioner of Income Tax v. T.V. Sundaram Iyengar and Sons Ltd., 222 ITR 344, distinguished.

D *CIT v. Suguli Sugar Works (P) Ltd.*, 236 ITR 518, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1581 of 2001.

E From the Judgment and Order dated 19.11.99 of the Kerala High Court in I.T.R. No. 16 of 1997.

R.P. Bhatt, Rajiv Tyagi and B.V. Balam Das for the Appellant.

Ms. Asha Gopalan Nair for the Respondent.

F The Judgment of the Court was delivered by

G **P. VENKATARAMA REDDI, J.** The opinion recorded by the Kerala High Court in ITR No. 16 of 1997 has given rise to this appeal filed by the Chief Commissioner of Income-tax. The dispute relates to the assessment year 1985-86. At the instance of the Revenue the following question was referred under Section 256(1) of the Income-tax Act for the opinion of the High Court:

H “Whether on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding that Rs. 3,02,758 cannot be brought to tax and in deleting the addition of Rs. 3,02,758 sustained by CIT (Appeals)?”

The High Court accepted the view of the Tribunal which partly allowed the appeal of the assessee and answered the question in favour of the assessee. A

The facts in brief are: The respondent-assessee is engaged in the business of tea, spices etc. During the assessment year 1985-86 (previous year ending on 31.3.1985) the assessee 'wrote-back' in its accounts a sum of Rs. 14,65,997 representing the provision made during earlier years (1978-1981) towards its purchase tax liability. It appears that the liability to pay purchase tax on certain goods was in dispute and, therefore, the provision was made. Further, it appears that the assessee, in support of its claim for purchase tax relief, inter alia, relied on the decision of the Kerala High Court in *Neroth Oil Mills'* case. The SLP filed by the Kerala State against the decision of the High Court in the said case was rejected by this Court in November, 1984. Apparently, for that reason, the assessee thought it fit to reverse the provision made earlier towards purchase tax and therefore made the entries in the books of account during the year ending on 31.3.1985. The assessing officer added the sum of Rs. 14,65,997 which represents the provision made towards purchase tax during the assessment years 1978-79, 1979-80 and 1980-81, treating the same as the income of the previous year ending on 31.3.1985. In the first appeal, the CIT (Appeals) held that there was no justification to include the sums which were already included in the course of reassessments made for the years 1979-80 and 1980-81. However, he upheld the addition of Rs. 3,02,758 pertaining to the assessment year 1978-79. The Appellate Commissioner held that the liability of the assessee finally ceased during the year 1985-86 in view of the rejection of SLP in *Neroth Oil Mills'* case in November 1984. Certain observations were also made as regards the includibility of the sums pertaining to assessment years 1980-81 and 1981-82 in respect of which reassessments were made. However, in this appeal, we need not go into the details thereof. B C D E F

On further appeal by the assessee, the Tribunal set aside the addition of Rs. 3,02,758 which was upheld by the Appellate Commissioner. The Tribunal did not agree with the view taken by the first Appellate Authority that there was no cessation of liability within the meaning of Section 41(1) of the Income-tax Act during the relevant year on account of dismissal of SLP in another case. The Tribunal observed that for claiming exemption from purchase tax on the ground that transaction was in the course of export, two conditions were required to be fulfilled: (1) things purchased and exported are one and the same and (2) the purchases were against firm orders for export. *Neroth Oil Mills'* case was concerned only with the first aspect and H

A not the second aspect. Therefore, the Tribunal observed that the judgment in *Neroth Oil Mills'* case, even if it had attained finality does not put an end to the disputed issue involved in the respondent-assessee's case. The Tribunal further noticed that as late as 1993, the sales tax department was pursuing the issue relating to purchase tax liability of the assessee from the assessment year 1974-75 onwards and the cases were still pending decision before the

B Sales Tax Authorities. The Tribunal pointed out that the unilateral action on the part of the assessee in writing-back the amounts could not have the effect of extinguishing the statutory liability. On reference, the High Court approved the view taken by the Tribunal and held that Section 41(1) cannot be invoked in the instant case. Hence, this appeal by revenue by Special leave.

C It may be noted that the provision was made in the books of account towards purchase tax which was under dispute and the benefit of deduction from business income was availed of in the past years in relation thereto. The same was sought to be reversed by the assessee during the year ending on 31.3.1985 for whatever reason it be. The question is whether the circumstances contemplated by Section 41(1) exists so as to enable the Revenue to take back what has been allowed earlier as business expenditure and to include such amount in the income of the relevant assessment year i.e. 1985-86. In order to apply Section 41(1) in the context of the facts obtaining in the

D present case, the following points are to be kept in view : (1) In the course of assessment for an earlier year, allowance or deduction has been made in respect of trading liability incurred by the assessee; (2) Subsequently, a benefit is obtained in respect of such trading liability by way of remission or cessation thereof during the year in which such event occurred; (3) in that situation the value of benefit accruing to the assessee is deemed to be the profit and gains of business which otherwise would not be his income; and (4) such value of

E benefit is made chargeable to income tax as the income of the previous year wherein such benefit was obtained. The High Court, agreeing with the Tribunal, rightly held that the resort to Section 41(1) could arise only if the liability of the assessee can be said to have ceased finally without the possibility of

F reviving it. On the facts found by the Tribunal, the Tribunal as well as the High Court were well justified in coming to the conclusion that the purchase tax liability of the assessee had not ceased finally during the year in question. Despite the finality attained by the judgment in *Neroth Oil Mills'* case, the other issues having bearing on the exigibility of purchase tax still remained and the dispute between the assessee and the sales-tax department was still going on. There is no material on record to rebut these factual observations

G made by the Tribunal. Nor can it be said that the reasons given by the

H

Tribunal are irrelevant.

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The learned senior counsel appearing for the Income Tax Department has contended that the assessee itself took steps to write-off the liability on account of purchase tax by making necessary adjustments in the books, which itself is indicative of the fact that the liability ceased for all practical purposes and therefore, the addition of amount of Rs. 3,20,758 deeming the same as income of the year 1985-86 under Section 41 (1) is well justified of the Act. But, what the assessee has done is not conclusive. As observed by the Tribunal, an unilateral action on the part of the assessee by way of writing-off the liability in its accounts does not necessarily mean that the liability ceased in the eye of law. In fact, this is the view taken by this Court in *CIT v. Suguli Sugar Works (P) Ltd.*, [236 ITR 518]. We, therefore, find no substance in the contention advanced on behalf of the appellant. Incidentally, we may mention that the controversy relates to the period anterior to the introduction of Explanation 1 to Section 41(1).

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The decision of this Court in *Commissioner of Income Tax v. T.V. Sundaram Iyengar and Sons Ltd.*, [222 ITR 344] has been cited by the learned counsel for the appellant. We find no relevance of this decision to the determination of the question involved in the present case. The factual matrix and the provision of law considered therein is entirely different.

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For the reasons aforesaid, we affirm the opinion expressed by the High Court and dismiss the appeal filed by the Revenue. There shall be no order as to costs.

E

N.J.

Appeal dismissed.