

आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE

श्री अनिल चतुर्वेदी, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI ANIL CHATURVEDI, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 404/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

Hoganas India Pvt. Ltd.,
Ganga Commerce,
4, North Main Road,
Koregaon Park, Pune-411001

PAN : AAACH5156K

.....अपीलार्थी / Appellant

बनाम/Vs.

Deputy Commissioner of Income Tax,
Circle – 11, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Naresh Kumar

सुनवाई की तारीख / Date of Hearing : 30-01-2017

घोषणा की तारीख / Date of Pronouncement : 01-02-2017

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the assessment order dated 30-01-2015 passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for the assessment year 2010-11.

The only issue raised by the assessee in appeal is against the addition of ₹1,66,76,021/- on account of profit on pre-payment of deferred sales tax loan liability which was claimed by the assessee as capital receipt. The Assessing Officer rejected the claim of assessee and made addition on the premise that waiver of sales tax liability tantamounts to cessation of liability and hence, taxable u/s. 41(1) of the Act.

2. The brief facts of the case as emanating from records are: The assessee is engaged in manufacturing, distribution and sale of iron and ferrous powders. The Assessing Officer vide draft assessment order dated 11-03-2014 inter alia made addition of ₹1,66,76,021/- u/s. 41(1) of the Act on account of cessation of sales tax liability.

Aggrieved by the draft assessment order, the assessee filed objections before the Dispute Resolution Panel (DRP). The DRP rejected the contentions of the assessee with respect to addition made u/s. 41(1) of the Act. The Assessing Officer, thereafter, vide impugned assessment order made addition of ₹1,66,76,021/- u/s. 41(1) of the Act in the income returned by the assessee.

3. Shri Nikhil Pathak appearing on behalf of the assessee submitted that the State Government had granted incentive to the assessee in the form of deferment of sales tax liability collected during the year. The assessee was allowed to collect the sales tax but as an incentive actual deposit of sales tax to the State ex-chequer was allowed to defer. Subsequently, the State Government announced scheme whereby the future liability of payment of deferred amount of sales tax was allowed

to be prepay at a discount price calculated at net present value. The difference between the total sales tax liability and the net present value paid was ₹1,66,76,021/- which was claimed by assessee as capital receipt not chargeable to tax. The ld. AR submitted that the issue in hand is squarely covered by the decision of Special Bench of the Tribunal in the case of Sulzer India Ltd. Vs. Joint CIT reported as 6 ITR (Trib) 604 (Mumbai)(SB) which has been upheld by the Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Sulzer India Ltd. reported as 369 ITR 717 (Bom). The ld. AR further submitted that the Pune Bench of the Tribunal in the case of Asstt. Commissioner of Income Tax Vs. Poona Shims Pvt. Ltd. in ITA No. 1722/PN/2012 for the assessment year 2004-05 decided on 16-09-2013 by following the decision of Special Bench of the Tribunal in the case of Sulzer India Ltd. Vs. Joint CIT (supra) has dismissed the appeal of the Department. The ld. AR pointed that during the proceedings before the DRP the assessee had placed reliance on the decision of Special Bench of the Tribunal in the case of Sulzer India Ltd. Vs. Joint CIT (supra). However, the DRP without considering the same upheld the addition.

4. On the other hand Shri Naresh Kumar representing the Department fairly admitted that the issue raised in the present appeal by the assessee is covered by the decision of Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax Vs. Sulzer India Ltd. (supra).

5. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. The only issue in appeal is whether the difference between the actual sales

tax liability and the liability discharged by the assessee in terms of scheme floated by the State Government is 'capital receipt' or 'revenue receipt'?

6. We find that this issue has been dealt with by the Special Bench of the Tribunal in the case of Sulzer India Ltd. Vs. Joint CIT (supra). In the said case the assessee for assessment year 2003-04 credited an amount of ₹4,14,87,985/- to the capital reserve contending that the amount is remission of loan liability under the deferred scheme. The assessee made premature payment of deferred sales tax at the net present value of ₹3,37,13,393/- against the total liability of ₹7,52,01,378/-. The Assessing Officer made addition of ₹4,14,87,985/- being remission of loan liability for premature payment of the amount at net present value by invoking section 41(1) of the Act. The Commissioner of Income Tax (Appeals) upheld the same. The matter travelled to the Tribunal. The question before Special Bench was :

"Whether, on the facts and in the circumstances of the case and in law, the sum of Rs.4,14,87,985 being the difference between the payment of the net present value of Rs.3,37,13,393 against the future liability of Rs.7,52,01,378 has rightly been charged to tax under section 41(1) of the Income-tax Act, 1961 ?"

The Special Bench held, *"that the deferred sales tax liability of ₹4,14,87,985/- being the difference between the payment of the net present value of ₹3,37,13,393/- against the future liability of ₹7,52,01,378/- credited by the assessee under the capital reserve account in its books of account is a capital receipt and cannot be termed as remission/cessation of liability and consequently, no benefit has arisen to the assessee in terms of section 41(1)(a) of the Income-tax Act."*

The Department carried the matter in appeal before the Hon'ble High Court. The substantial question of law for adjudication before the Hon'ble High Court was :

"(a) Whether, on the facts and in the circumstances of the case and in law, the Tribunal is justified in not upholding the finding of the Income-tax authorities below that the deferred sales tax liability is chargeable to tax as business income of the assessee under section 41(1) on remission thereof and instead treating the same as exempt from tax as capital receipt being remission of loan liability?"

"(b) Whether, in the facts and in the circumstances of the case and in law, the Tribunal is justified in deleting the addition on account of remission/cessation of sales tax liability relying on the Central Board of Direct Taxes Circular No. 496, dated September 25, 1987, and Circular No. 674, dated December 29, 1993, which are not applicable to the instant issue?"

The Hon'ble High Court concurring with the view of Special Bench answered the question in favour of the assessee. The relevant extract of the judgment of Hon'ble High Court reads as under :

"40. It is not possible to agree with Mr. Gupta. Because the premature payment of sales tax already collected but its remittance to the Government, as Mr. Gupta envisages, is not covered by this provision else the sub-sections and particularly section 43B(1) would have been worded accordingly. Therefore, section 43B has no application. In so far as the applicability of section 41(1)(a), there also the applicability is to be considered in the light of the liability. It is a loss, expenditure or trading liability. In this case, the scheme under which the sales tax liability was deferred enables the assessee to remit the sales tax collected from the customers or consumers to the Government not immediately but as agreed after 7 to 12 years. If the amount is not to be immediately paid to the Government upon collection but can be remitted later on in terms of the scheme, then we are of the opinion that the exercise undertaken by the Government of Maharashtra in terms of the amendment made to the Bombay Sales tax Act and noted above, may relieve the assessee of his obligation but that is not by way of obtaining remission. The worth of the amount which has to be remitted after 7 to 12 years has been

determined prematurely. That has been done by finding out its net present value. If that is the value of the money that the State Government would be entitled to receive after the end of 7 to 12 years, then we do not see how ingredients of sub-section (1) of section 41 can be said to be fulfilled. The obligation to remit to the Government the sales tax amount already recovered and collected from the customers is in no way wiped out or diluted. The obligation remains. All that has happened is an option is given to the assessee to approach the SICOM and request it to consider the application of the assessee of premature payment and discharge of the liability by finding out its net present value. If that was a permissible exercise and in terms of the settled law, then, we do not see how the assessee can be said to have been benefited and as claimed by the Revenue. The argument of Mr. Gupta 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. Mr. Gupta terms this as deemed payment and by the State to the assessee. We are unable to agree with him. 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 amounting to Rs. 7,52,01,378 was treated by the State Government as loan liability payable after 12 years in 6 annual/equal installments. Subsequently and pursuant to the amendment made to the fourth proviso to section 38 of the Bombay Sales tax Act, 1959, the assessee accepted the offer of the SICOM, the implementing agency of the State Government, paid an amount of Rs.3,37,13,393 to the SICOM, which, according to the assessee, represented the net present value 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 installments was paid by the assessee prematurely in terms of the net present value of the same. That the State may have received a higher sum after the period of 12 years and in installments. However, the statutory arrangement and, vide section 38, fourth 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. We agree with the Tribunal that one of the requirements of section 41(1)(a) has not been fulfilled in the facts of the present case.”

7. Thus, in view of decision of Hon’ble Jurisdictional High Court we hold that ₹1,66,76,021/- is capital receipt and is not taxable u/s. 41(1) of the Act.

8. In the result, the appeal of the assessee is allowed.

Order pronounced on Wednesday, the 01st day of February, 2017.

Sd/- (अनिल चतुर्वेदी / Anil Chaturvedi) लेखा सदस्य / ACCOUNTANT MEMBER	Sd/- (विकास अवस्थी / Vikas Awasthy) न्यायिक सदस्य / JUDICIAL MEMBER
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पुणे / Pune; दिनांक / Dated : 01st February, 2017
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आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Dispute Resolution Panel, Pune
4. The Director of Income Tax (TP), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

सहायक पंजीकार / Assistant Registrar,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune