Bombay High Court M/S. Solid Containers Ltd vs The Deputy Commissioner Of ... on 29 August, 2008 Bench: A.P. Deshpande 1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.487 OF 2005

M/s. Solid Containers Ltd.
Tiececon House, Dr. E. Moses Road,

Mumbai-400 011. .. Appellant

versus

1. The Deputy Commissioner of Income-Tax,
Spl. Range-I, Mumbai, having his office

at Aayakar Bhavan, M.K. Road,
Mumbai-400 020.

2. The Commissioner of Income-Tax-I,
having his office at
Aayakar Bhavan,

M.K. Road, Mumbai-400 020. .. Respondents

Mr. A.R. Singh for the appellant.
Mr. Vimal Gupta for the respondents.

CORAM : SWATANTER KUMAR, C.J. &
A.P. DESHPANDE, J.

DATED OF RESERVING THE JUDGMENT : 5TH AUGUST, 2008
DATE OF PRONOUNCING THE JUDGMENT : 29TH AUGUST, 2008

JUDGMENT (Per Swatanter Kumar, C.J.)

This appeal is directed against the order passed by the Income Tax Appellate Tribunal, Mumbai Bench dated 31st December, 2001 wherein the Tribunal has rejected the contention raised by the Assessee that the loan was a capital receipt and has not been claimed as deduction from the taxable income as expenses and, therefore, did not represent income under section 41(1) and, thus, sustained the addition of Rs.6,86,071. The Assessing Officer had made the addition on the ground that the credit balance returned back is the income of the Assessee in view of the fact that it is again directly arising out of the business activity and the same was liable to be taxed under section 28 of the Act. The learned counsel appearing for the appellant argued that the impugned order suffers from error of law as well as of appreciation of facts. While relying upon the judgment of this court in the case of Mahindra & Mahindra v. Commissioner of Income tax, 2003 ITR 261, page 501, it was contended that in relation to the transaction in question, section 28(iv) was not attracted and even provisions of section 41(1) of the Act could not be applied to treat the same as business income of the Assessee liable to tax. 2. In order to examine whether any substantial question of law arises in the present appeal or not, reference to basic facts may be necessary. The Assessee-appellant had taken a loan of Rs.6,86,071/- during the previous year for business purposes which was returned back, as a result of consent terms arrived at between M/s. P.S. Jain Motors on the one hand and the Assessee on the other. The Assessee claimed that the said loan was the capital receipt and has not been claimed as deduction from the taxable income as expenses and therefore, did not come under section 41(1). As already noticed, this contention was rejected by the Assessing Officer on the ground that credit balance returned back is the income of the Assessee in view of the fact

that it is again directly arising out of the business activity of the Assess and was liable to tax under section 28 of the Act. The order was appealed against. Commissioner partially allowed the appeal. Aggrieved from the order of the Income Tax Commissioner (Appeals), further appeal was preferred before the Income Tax Appellate Tribunal which again allowed the appeal on other counts but on the above issue and while relying upon the judgment of the Supreme Court in the case of Commissioner of Income Tax, Madurai v. T.V. Sundaram Iyengar and Sons Ltd., (1996) 6 SCC 294, sustained the view taken by the Commissioner. The Tribunal held as under: "8. We have carefully considered the submissions made by the rival parties. The assessee company had taken certain loan from M/s. P.S. Jain Motors. This amount was payable to them with interest of Rs.2,83,819/-. The party filed a suit for recovery and thereafter the assessee company filed counter-claims and the matter was settled out of the court whereby the assessee company was not to pay any amount. The assessee company credited to the profit and loss account the interest amount and offered the same for taxation. With regard to the addition of Rs.6,86,071/-, the assessee company directly credited the amount to the reserves account considering the same as capital receipt. It was claimed by the learned counsel that the amount was not a deemed profit under section 41(1) of the Act. According to the learned counsel, this amount cannot be charged even under the provisions of section 28 of the Act as the amount earned is neither a revenue receipt nor intended for revenue account. In this connection, we would like to refer to the decision of the Honourable Supreme Court in the case of CIT vs. T.V. Sundaram Iyengar and Sons Ltd. (1996), 222 ITR 344 wherein the Honourable Supreme Court has laid down that"If the amount is received in the course of trading transactions, even though it is not taxable in the year of receipt as being of capital character, the amount changes its character when the amount becomes the assessee' s own money because of limitation or by any other statutory or contractual right. Where the assessee received deposits in the course of trading transactions, the amount of such credit balances which were barred by limitations and which were written back by the assessee to the profit and loss account were to be assessed as the assessee' s income". In view of the above decisions of the Apex Court and also keeping in view the provisions of Section 28(iv) of the Act, we find full justification for making the addition of Rs.6,86,071/-. Accordingly, the findings of the learned CIT (A) are upheld." It is worthwhile to refer to observation of Apex Court in T.V. Sundaram (supra). 22. The principle laid down by Atkinson, J. applies in full force to the facts of this case. If a common sense view of the matter is taken,l the assessee, because of the trading operation, had become richer by the amount which it transferred to its profit and loss account. The moneys had arisen out of ordinary trading transactions. Although the amounts received originally were not of income nature, the amounts remained with the assessee for a long period unclaimed by the trade parties. By lapse of time, the claim of the deposit became time- barred and the amount attained a totally different quality. It became a definite trade surplus. Atkinson, J. pointed out that in Tattersall case no trading asset was created. Mere change of method of bookkeeping had taken place. But, where a new asset came into

being automatically by operation of law, common sense demanded that the amount should be entered in the profit and loss account for the year and be treated as taxable income. In other words, the principle appears to be that if an amount is received in course of a trading transaction, even though it is not taxable in the year of receipt as being of revenue character, the amount changes its character when the amount becomes the assessee' s own money because of limitation or by any other statutory or contractual right. When such a thing happens, common sense demands that the amount should be treated as income of the assessee. 23. In the present case, the money was received by the assessee in course of carrying on his business. Although it was treated as deposit and was of capital nature, at the point of time it was received, by efflux of time the money has become the assessee' s own money. What remains after adjustment of the deposits has not been claimed by the customers. The claims of the customers have become barred by limitation. The assessee itself has treated the money as its own money and taken the amount to its profit and loss account. There is no explanation from the assessee why the surplus money was taken to its profit and loss account even if it was somebody else' s money. In fact, as Atkinson, J. pointed out that what the assessee did was the common sense way of dealing with the amounts." 3. The present appellant can hardly drive any advantage from the case of Mahindra & Mahindra Ltd. (supra). As in that case, a clear finding was recorded that the Assessee continued to pay interest at the rate of 6% for a period of 10 years and the agreement for purchase of toolings was entered into much prior to the approval of loan arrangement given by the reserve Bank of India. Therefore, the loan agreement, in its entirety, was not obliterated by such waiver. Secondly, the purchase consideration related to capital assets. The toolings were in the nature of dies and the Assessee was a manufacturer of heavy vehicles. The import was that of plant and machinery and the waiver could not constitute business. The facts of the present case are entirely different in as much as it was a loan taken for trading activity and ultimately, upon waiver the amount was retained in business by the Assessee. Thus, the principle stated by the Supreme Court in the case of T.V. Sundaram Ayengar & Sons Ltd. (supra) would be squarely applicable to the facts of the present case. The amount which initially did not fall within the scope of the provisions rendering it liable to tax subsequently have become the Assessee' s income being part of the trading of the Assessee. Similar view was also taken by a Bench of Madras High Court in the case of Commissioner of Income tax v. Aries Advertising Pvt. Ltd., 2002 (255) ITR 510. The court took the view that the Assessee because of trading operation became richer by the amount which had been transferred and/or retained in the Profit and Loss Account of the Assessee. 4. In view of the above settled position of law and the facts of the present case, we are of the considered view that no question of law much less substantial question of law arises for consideration in the present appeal. Appeal dismissed in limine. CHIEF JUSTICE A.P. DESHPANDE, J.