

**(1991) 100 CTR 303**

**Rajasthan High Court**

**Case No:** DB IT Ref. Appl No. 18 of 1990

COMMISSIONER OF  
INCOME TAX

APPELLANT

Vs

JAIPUR OIL  
PRODUCTS (P) LTD.

RESPONDENT

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**Date of Decision:** Jan. 8, 1991

**Acts Referred:**

- Income Tax Act, 1961 - Section 142, 143, 256, 41

**Citation:** (1991) 100 CTR 303

**Hon'ble Judges:** M. B. Sharma, J

**Bench:** Division Bench

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### **Judgement**

M. B. SHARMA, J. :

This is an application under s. 256 of the Income Tax Act, 1961 (for short the Act) with a prayer that the ITAT may be asked to state the case and refer the question of law framed in para 5 of the petition to this Court for opinion. The question which has been framed and which is sought to be referred is as under :

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that in the case of the assessee company who is maintaining its books of accounts on mercantile system, the sum of Rs. 26,08,065 which was written back and credited to the profit & loss account, could not be taxed in its hands under s. 41 of the IT Act, 1961 ?"

2. The dispute relates to the year of assessment 1981-82. Return showing loss of Rs. 61,58,505 was filed by Jaipur Oil Products (P) Ltd., the assessee, non-petitioner herein. In response to a notice under s. 142 and 143 of the Act, account books were submitted which were examined. In its accounts books, the assessee had written books were submitted which were examined. In its accounts books the assessee had written back the

credit of Rs. 26,08,065 in the account of M/s. Patel Holdings from whom it purchased palm oil from Malaysia and an amount of Rs. 13,882 on other accounts such as Prashant Agencies, Reliable Extraction, etc. So far a amount of Rs. 13,882 is concerned, it was offered for taxation and dispute is only in respect of Rs. 26,08,065. After writing the aforesaid amount, the assessee claimed that the same is not taxable since the decision to writ it back was unilateral and the case is pending in the Bombay High Court. The case of the assessee before the assessing authority was that no tax liability accrued in respect of the aforesaid amount because the liability in respect of aforesaid amount has not yet been determined and is pending decision in the Bombay High Court. The assessing authority in the assessment order did not accept this contention of the assessee and ordered that the amount shall be added to the total income of the assessee. The assessee filed an appeal before the CIT(A) and the Commissioner in its order dt. 4th March, 1985 dealt with this controversy in para 12 onwards. The Commissioner came to the conclusion that the writing off of the aforesaid amount of liability is an unilateral act of the assessee and as such there is no cessation of liability as contemplated by s. 41 of the Act as the creditor M/s. Patel Holdings have not given up their claim, and litigation is still pending before the Rajasthan High Court as well as Bombay High Court before the Company Judge. The Revenue preferred an appeal before the Tribunal and the Tribunal under its order dt. 23rd November, 1987 in agreement with the CIT(A) dismissed the appeal. An application was filed before the Tribunal under s. 256 of the Act to state the case and to make a reference to the aforesaid question to this Court and the Tribunal under its order dt. 17th April, 1989 refused to make the reference and the application before it by the Revenue was rejected.

3. We have heard Mr. Singhal, learned counsel for Revenue and have gone through the order of the Tribunal and other authorities. There can be no dispute that a dispute is still going on in between the parties Patel Holding and the assessee and a suit for the recovery of the aforesaid amount has also been filed against the assessee which is pending in the Bombay High Court.

4. We are, therefore, of the opinion that no question of law arises in the facts and circumstances of the case and we decline to call for the statement of facts and the application is, therefore, rejected. Any how, in future if the suit is decided in favour of the assessee, the Revenue will be free to include the aforesaid amount as income of the assessee.