(2013) 05 DEL CK 0398

Delhi High Court

Case No: Income Tax A. No. 52 of 2013

Commissioner of Income Tax	APPELLANT
Vs	
Shivali Construction Pvt. Ltd.	RESPONDENT

Date of Decision: May 1, 2013

Acts Referred:

- Income Tax Act, 1961 - Section 41, 41(1)

Citation: (2013) 355 ITR 218

Hon'ble Judges: Vibhu Bakhru, J; Badar Durrez Ahmed, J

Bench: Division Bench

Advocate: Sanjeev Rajpal, for the Appellant; Piyush Kaushik, for the Respondent

Judgement

1. This appeal by the Revenue is against the order dated April 20, 2012, passed by the income tax Appellate Tribunal, New Delhi, in I.T.A. No. 217/Del/2011 relating to the assessment year 2007-08. The only issue which is raised by the Revenue is with regard to the deletion of the sum of Rs. 48,03,481 which had been added by the Assessing Officer u/s 41(1) of the income tax Act, 1961. The Assessing Officer had made the said addition by observing as under:

It is seen that the assessee has not been carrying out any business activity for the last many years. Still it is showing unsecured loans to the rune of Rs. 48,03,481 as payable. Since the loans are long outstanding and there does not appear to be any obligation on the assessee to repay these loans, it clearly implies that there is cessation of liability to pay those loans. The treatment of such liabilities has been discussed by our esteemed courts as under.

It is established principle that when an amount is received even as a capital receipt, the amount character when the amount becomes the assessee''s own money being unclaimed because of limitation or otherwise and in such cases common sense demands that the amount should be treated as income of the assessee (MORLEY (INSPECTOR OF TAXES) Vs. TATTERSALL.,).

The same principle has also been approved by the hon''ble Supreme Court by holding that though the deposits received during the course of business were of the capital nature but when the deposits are not claimed or the claim of the depositor is barred by limitation, such money is to be treated as income of the assessee (Commissioner of Income Tax, Madurai Vs. T.V. Sundaram Iyengar and Sons Ltd.,).

By applying the ratio of the above cases, I treat the unclaimed unsecured loans of Rs. 48,03,481 as income of the assessee.

The Commissioner of income tax (Appeals) deleted the said addition by virtue of an order dated October 27, 2010. This was confirmed by the Tribunal by virtue of the impugned order dated April 20, 2012. The Tribunal noted that section 41 of the said Act would operate only if the following conditions were satisfied:

(i) the assessee has incurred a trading liability;

(ii) this trading liability has been allowed deduction in an earlier year, and

(iii) later on, such liability has either been remitted or has ceased to exist.

2. The Tribunal also observed that in the present case, the liability was of a capital nature and it had not yet been written off to the profit and loss account. Consequently, the Tribunal concluded that the findings of the Assessing Officer were misplaced inasmuch as the said amount could not be treated as income of the assessee unless and until it had been written off to the credit of the profit and loss account, wholly or partly, and, therefore, it could not have been treated as a cessation of a liability as contemplated u/s 41(1) of the said Act.

3. The Tribunal also placed reliance on its decision in the case of the assessee''s sister concern (Renu Construction) in I.T.A. No. 22G7Del/2011, dated March 25, 2011. We had inquired from the learned counsel for the parties as to what happened to that case. We are informed by the learned counsel for the appellant-Revenue that no appeal was preferred by the Department against the said decision of the Tribunal dated March 25, 2011, in I.T.A. No. 220/Del/2011. On this ground alone, the present appeal is liable to be dismissed.

4. However, we also find that the Tribunal and the Commissioner of income tax (Appeals) had adopted the correct approach and had interpreted the provisions of section 41(1) in the correct manner. The very first condition for invoking section 41(1) is that an allowance or deduction ought to have been made in the assessment for any year in respect of any loss, expenditure or trading liability incurred by the assessee. In the present case, it is an admitted position that no allowance or deduction had been made in the assessment of the respondent-assessee in any earlier year. Consequently, there is no question of invoking section 41(1) of the said Act and the Tribunal as well as the Commissioner of income tax (Appeals) were correct in deleting the addition made by the Assessing Officer. There is no merit in this appeal as no substantial question of law arises for our consideration. The

appeal is dismissed.