

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL 'B' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.787/Mds/2016
निर्धारण वर्ष /Assessment year : 2011-2012

K. Sankara Rao,
No.21, North Mada Street,
Villivakkam,
Chennai 600 049.

Vs. The Assistant Commissioner of
Income Tax,
Circle XII,
Chennai 600 006.

[**PAN AACPR 1610H**]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. A.S. Sriraman, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri.B.Sagadevan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 27-10-2017
घोषणा की तारीख /Date of
Pronouncement : 31-10-2017

आदेश / ORDER

Assessee in this appeal assails an addition of Rs.12,02,153/- made u/s. 41(1) of the Income Tax Act, 1961 (in short "the Act") which was confirmed by the Id. Commissioner of Income Tax (Appeals)-5, Chennai.

2. Assessee has filed an application seeking adjournment. However, I find that adjournments were granted a number of times earlier based on the request of assessee's counsel. Now I do not find

any good reason shown in the petition seeking adjournment for allowing further time. Accordingly, petition for adjournment stands rejected.

3. Facts apropos are that assessee, proprietor of a concern, engaged in the business of manufacturing of Betalnut powder & Supari had filed his return of income for the impugned assessment year declaring an income of Rs.26,84,536/-. Assessee had also filed Audited Balance sheet, Profit and Loss account and audit report in form No.3CB and 3CD. In the Balance sheet assessee had shown a sum of Rs.12,02,153/- as opening sundry creditor balance in the name of "M/s. Ravikumar and Company". As per the Id. Assessing Officer, M/s. Ravikumar and Company was a proprietorship concern earlier run by assessee's father which was now run by the assessee. Ld. Assessing Officer noted that assessee's father had expired twelve years back and hence such trading liability was no longer required to be paid by the assessee. Assessee was required to explain why Sec.41(1) of the Income Tax Act, 1961 (in short "the Act") should not be applied on such amount. Reply of the assessee was that there were a number of legal heirs to the business of the assessee's father and liability to his father did not abate because of his death. However, Id. Assessing Officer was not impressed. According to him, assessee was not obliged to pay Rs.12,02,153/- due to M/s.Ravikumar and Company

since its proprietor who was assessee's father had expired long back. He applied Sec.41(1) of the Act and made an addition of Rs.12,02,153/-.

4. Aggrieved, assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that Id. Assessing Officer erroneously took a presumption of cessation of liability. According to him amount payable to the estate of his father did not abate due to influx of time. However, Id.CIT(A) was not impressed. According to him, at one point of time assessee had stated that assets and liability of the business of his father were not taken over by him on former's death, whereas at another point of time, assessee stated that he had taken over the proprietorship of his father lock stock and barrel. He thus confirmed the addition made by the Id. Assessing Officer.

5. Now before me, the Id. Authorised Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that Section 41(1) of the Act had no application on the facts of the case.

6. Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

7. I have considered the rival contentions and perused the orders of the authorities below. Section 41(1) of the Act is reproduced hereunder:-

'1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,--

(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

(b) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year''.

First requirement to bring a sum to tax u/s.41(1) of the Act is that assessee concerned should have made a claim for an allowance or deduction in respect of loss or trading liability in any earlier assessment year. Since M/s. Ravikumar and Company, appeared as a trade creditor in assessee's accounts this requirement, prime facie is

satisfied. However, what I find is that assessee had no right, to write back the amounts due to his father on the death of his father. Death of a creditor will not abate the debt due to him. Legal heirs of the creditor steps in the shoe of the creditor and can claim the debts due to him. Efflux of time will not result in such debt becoming income in the hands of the debtor. It may be true that creditor cannot file a suit for recovery. However, the debt remains due from the assessee to the legal heirs of the creditor and assessee's relationship with the creditor does not change this legal consequence. That apart assessee had not made any unilateral write back of the sums. In my opinion, such sum could not be considered as income u/s.41(1) of the Act since there was no cessation of liability. The addition stands deleted.

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

Order pronounced on Tuesday, the 31st day of October, 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:31st October, 2017

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF