

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य, एवं श्री डी. करुणाकरा राव , लेखा सदस्य, के समक्ष।
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.1484/PUN/2016

निर्धारण वर्ष / Assessment Year : 2007-08

Poona Bottling Company Pvt. Ltd.
410/1, 411/2, Bombay-Pune Road,
Dapodi, Pune-411 012
PAN : AABCP0317K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-10, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nitesh Joshi & Shri P.P. Bhandari
Revenue by : Shri Sanjeev Ghei

सुनवाई की तारीख / Date of Hearing : 22.10.2018
घोषणा की तारीख / Date of Pronouncement : 21.01.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This is the appeal filed by Assessee against the order of CIT(A)-9, Pune, dated 06.04.2016 for the A.Y. 2007-08. The issue raised in the appeal relates to the applicability of the provisions of section 41(1) of the Act to the advances taken against the Bottles and the Cases in the Bottling business and write off in earlier years.

2. Briefly stated relevant facts include that the assessee filed return of income declaring total income at Nil. During assessment proceedings u/s.143 (3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), the Assessing Officer computed assessee's total income as under:

" A) Business income as per return
Add :

Nil

1) Disallowance of expenses		
a) Security Charges	Rs.4,25,968/-	
b) Pre-operative expenses	Rs.5,05,000/-	Rs.9,30,968/-
2) Profit chargeable to tax		
a) Advances/deposits against written off bottles and cases		Rs.3,26,05,241/-
		<hr/>
Current year's business income	Rs.3,35,36,209/-	
Less : Set-off business loss	<u>Rs.3,35,36,209/-</u>	
Business Income	Nil	
B) Income from House property	<u>Rs.11,27,122/-</u>	
Total income	Rs.11,27,122/-"	

Thus, the AO quantified the total income at Rs.11,27,122/- after set off of losses against the Nil income returned by the assessee. In the assessment, AO disallowed Rs.9,30,968/- on account of certain expenses. In addition, the AO made addition of Rs.3,26,05,241/- on account of advances/deposits written off on account of the Bottles and the Cases. Assessee's business involves supply of cold drinks/Bottles and the Cases. Assessee collects advances/deposits from the shopkeepers against the supply of cold drink Bottles and the Cases. However, as per the provisions, the AO allowed set off of these additional incomes against the brought forward business losses of earlier years.

3. Aggrieved with the assessment order, the assessee filed an appeal before the CIT(A) against said order of the AO. The CIT(A) granted relief on account of the said addition of Rs.9,30,968/-. However, the CIT(A) not only **confirmed** the addition on account of advance /deposits secured from customers but also **enhanced** the assessment to the tune of Rs.2,29,63,506/-. In his order, the CIT(A) observed that the total amount advances/deposits, received from the customers on account of supply of the Bottles & the Cases to them, is Rs.5,55,68,474/- and not Rs.3,26,05,241/- as held by the AO in the assessment. Eventually, the

CIT(A) added the addition of gross advance of Rs.5,55,68,478/- by way of enhancement of the assessment. In this regard, the CIT(A) clearly invoked the provisions of section 41(1) of the Act. In the process, AO/CIT(A) are of the opinion that the deposits/advances fall in the scope of 'trade debts'. In the impugned order, the CIT(A) extracted the written submission made by assessee vide submissions dated 11.12.2015 and 29.02.2016 before confirming /enhancing the assessment. Eventually, the CIT(A) partly allowed the appeal by assessee.

4. Aggrieved with the said decision of the CIT(A), the assessee filed the present appeal with the grounds extracted here as under:

Grounds of appeal

“1. The Commissioner of Income Tax (Appeals) was wrong in confirming the addition of Rs.3,26,05,241/-, made by the Assessing Officer by holding that the deposits received from customers are no more payable and treating the same as income u/s.41 of ITA 1961.

2. The Commissioner of Income tax appeals was wrong in enhancing the income of the appellant by Rs.2,29,63,233/- holding that the balance of deposits are no more payable and treating the same as income u/s.41 of the ITA 1961.

3. The appellant craves leave to add, alter, amend or delete the above ground of Appeal, withdraw the appeal if so required.”

5. We shall deal with the relevant facts in this paragraph. Other relevant facts relating to the issue, include that the assessee is engaged in the business of bottling-cum-manufacturing of soft drink. The brands of the cold drinks include Thums up, Limca, Goldspot, Maaza etc., under the license from Hindustan Coca Cola Beverages Pvt. Ltd. (HCCBPL). The business of the assessee continued till 21.02.2000. The said business was transferred to HCCBPL Coca Cola in the year 2000. The assessee's business involves buying of the Bottles & the Cases needed for the business of bottling of said Cool drinks. Assessee sells the cold drinks to the consumers through the outlets. At the time of supply of cold drink

Bottles and the Cases to the said outlets-cum-customers, the assessee receives the repayable advances/deposits towards the security against the Bottles & the Cases. Thus, the books of account of the assessee contains the Bottles & the Cases account and these Bottles & the Cases are shown as "stock-in-trade" (Trading Assets) in the books of account upto 31-03-1996. Subsequently, for some reasons, the said stock-in-trade (Bottles & the Cases) is reflected in the books as Fixed Asset w.e.f. 01.04.1996. Hence, considering the capital/fixed assets, the assessee claimed depreciation on these fixed assets as per the provisions of section 32 of the Income Tax Act from the A.Y. 1996-97. As per the business norms, as stated earlier, the assessee receives the deposits/advances from the outlets of cool drinks and refunds the same as and when the Bottles and the Cases are returned to the assessee at the end of the business with that customer. As per the books, the amount of the said advances/deposits as on 31-03-1996 works out to Rs.3,26,05,241/-. The assessee received similar deposits after 01-04-1996 and they were considered part of the "Block of Assets" of the Bottles and the Cases. The deposit received on or after 01.04.1996 till the transfer of business in the year 2000 is of Rs.2,29,63,506/-. Thus, the total deposits work out to Rs.5,55,68,474/-. It is an undisputed fact that the assessee claimed depreciation u/s.32 of the Act till the A.Y. 2003-04 in respect of all the Bottles & Cases relating to these advances/deposits of Rs.5,55,68,474/-. Considering the transfer of business in the year 2000, the value of bottles as written off in the books of account for the A.Y. 2006-07 is of Rs.8,07,55,075/-. As per the assessee, the value and the treatment of Bottles & Cases shown as "stock- in-trade" in the books of account as well as under Income Tax is tabulated as under:

“Treatment of Bottles and cases shown as stock in trade

	<i>In books of accounts</i>	<i>Under Income Tax</i>
<i>Upto 31/3/2005</i>	<i>Balance Rs.8,07,55,075 carried over from earlier year</i>	<i>Depreciation claimed on WDV till A.Y.2003-04</i>
<i>In financial year 2005-06 (A.Y.2006-07)</i>	<i>Value of bottles pertaining to stock of Rs.8,07,55,075 written off</i>	<i>Write off added back for arriving at taxable income in A.Y.2006-07</i>
<i>A.Y. 2007-08</i>	<i>Opening Balance Nil, no entry with respect to write off in A.Y.2007-08</i>	<i>Depreciation claimed Nil</i>

5.1 In the assessment, on finding that the assessee wrote off the Bottles & Cases account to the tune of Rs.8,07,55,075/- in the books of the assessee for A.Y. 2006-07, the benefit availed by the assessee, AO invoked the provisions of section 41(1) of the Act in the A.Y. 2007-08, the year under consideration. On these facts, the AO held that deposits/advances to the tune of Rs.3,26,05,241/- is alone to be disallowed. This amount refer to the advances/deposits shown repayable by the assessee as per the books as on 31-03-1996. AO did not disturb the advance/deposits of Rs.3,26,05,241/- received after 01-04-1996. It may be due to the reason that the said deposits relate to the Bottles & Cases, which are shown as depreciable fixed assets right from the beginning of receipt of advances in the books of account of the assessee. The operational para No.5 from the order of the AO is extracted as follows :

“5...

While writing off its current assets of bottles and cases of Rs.8,70,55,075/-, the assessee should have written off only the differential amount of Rs.5,44,49,834/- (Rs.8,70,55,075 – Rs.3,26,05,241). However, the assessee has failed to take into account the effect of security deposits of Rs.3,26,05,241 collected by it against these written off bottles and cases. Also, these deposits of Rs.3,26,05,241/- are lying with the assessee since 31/3/1996 and earlier period. Thus, these deposits amounting to Rs.3,26,05,241/- are no more payable to the parties and hence, are liable to tax u/s.41 of the Act. Hence, this amount of Rs.3,26,05,241/- is added to the total income of the assessee u/s.41 of the I.T. Act.”

Thus, the AO brought to the tax the benefit worth Rs.3,26,05,241/- by invoking the provisions of section 41(1) of the Act. In the process, AO treated the same on the trade deposits despite the fact the related assets are depreciable assets that falls in the capital field.

6. **Before the CIT(A) :** It is an undisputed fact that the assessee wrote off the entire block of Bottles & Cases in the earlier A.Y. 2006-07. AO proceeded to invoke the provisions of section 41(1) in respect of the relatable advances in the A.Y. 2007-08, the year under consideration. As discussed in Para 5 of the 1st appellate order, CIT(A) observed that the AO rightly invoked the provisions of section 41(1) of the Act. Further, the CIT(A) did not disturb the book entry of write off of Rs.8,07,55,075/- in the A.Y. 2006-07. Thus, the assessee availed the benefit in A.Y. 2006-07 and the benefit is taxed in A.Y. 2007-08. However, the CIT(A) objected to the decision of the AO in restricting the disallowance of current liabilities of advances received prior to 31-03-1996. CIT(A) is of the view that entire advances of Rs.5,55,68,474/- need to be disallowed u/s.41 of the Act.

6.1 Before the CIT(A), regarding applicability of provisions of section 41(1) of the Act, the assessee submitted that the addition made u/s.41(1) of the Act is not sustainable. He argued stating that there is (a) no cessation of liabilities & (b) the liabilities are capital nature in the year under consideration. The write off is done in the preceding assessment year and addition is made in the year under consideration. The assessee submitted that the addition, if any, had to be made in the year (A.Y. 2006-07) of claiming of any benefit of write off and not in the current A.Y. 2007-08. Eventually, ignoring the said submissions of the assessee, the CIT(A) enhanced the assessment and added the entire sum of advances of Rs.5,55,68,474/- against Rs.3,26,05,241/- originally added by the AO. Relevant para is extracted as under:

“I have carefully considered the facts of the case as well as the reply of the appellant. The dispute revolves around applicability of section 41 with respect to deposits taken by the assessee company over the years from various customers. The assessee company is basically perusing the theory that the money received as advance/ deposit against bottles and cases is a not a trade liability and hence provisions of section 41 of the Act are not applicable from the submissions made and as per discussions with the AR. it transpires that there is no direct linkage of particular set of bottles and cases vis-a vis deposit taken, so also the deposit rate is not linked with the cost of bottles and cases and deposit rates were lower than actual cost of bottles and cases. The purpose of taking deposit is to ensure return of bottles and cases, in normal course the customer will return the empty bottles and take back the deposit. The AR, was asked as to what was the treatment given if the customer damaged the bottles and was not able to return the bottles. It was explained that in such a scenario the deposit would be confiscated and treated as other income and value of damaged bottles was debited to profit and loss account. The non returnable bottle deposit and damaged bottles and cases were given effect to through Profit and loss account by the company itself. The AR was also asked whether it was possible to get confirmations from all the depositors to confirm the continuance of liability. The AR reiterated that the liability to pay deposits is continuing one and that the deposits are returned on receipt of bottles and cases and that getting confirmation is difficult as company is out of business and does not have the infrastructure to collect confirmation from numerous parties.

From the above, it is transpires that as the appellant company has written off bottles and cases worth Rs.8,70,55,075/-, logically the company should have written off the related deposits. The company has outstanding deposits amounting to Rs.5,55,68,474/-as against the breakage expense of Rs.8,70,55,075/- the value of damaged bottles relates to bottles with third parties. The appellant has showed its inability to bring confirmation of bottles/deposits on record and also physical existence of the said bottles after such a long duration seems to be remote possibility, considering this aspect the whole amount of deposit of Rs.5,55,68,474/- (is treated as non refundable and hence added back as income u/s 41 to the total income of the appellant for A.Y. 2007-08. Thus, the Income of the appellant on this issue is enhanced by Rs.2,29,63,506/- (Rs.5,55,68,474/- less-Rs.3,26,05,241/- already added back). However, carried forward loss to the extent available may be allowed to adjusted against the enhanced addition after' verification. Thus, the addition on account of cessation of liability u/s. 41 of I.T. Act may be taken as Rs.5,55,68,474/- as against taken by the AO at Rs.3,26,05,241/-. Thus, this ground of appeal is not only dismissed, the addition on this ground is enhanced.”

From the above, it is evident that the CIT(A) enhanced the assessment by Rs.2,29,63,506/-. In the process, CIT(A) failed to address to the arguments relating to the current assessment year for invoking the provisions of section 41(1) of the Act. CIT(A) also failed to attend to the arguments relating to the core arguments such as “trade liability”, the claim of year of benefit and year of addition, qua the advances/security deposits of the customers.

7. On the other hand, Ld. DR submitted that the provisions of section 41(1) of the Act is rightly invoked in the year under consideration as the assessee availed the benefit of write off. Otherwise, ld. DR relied heavily on the orders of the AO and the CIT(A).

We shall now take up the adjudication of the grounds in the subsequent paragraphs.

BEFORE THE TRIBUNAL

8. Before us, narrating the above facts of the case/issue, Ld. Counsel for the assessee argued that the provisions of section 41(1) of the Act are not applicable to the facts of the present case. Explaining the provisions of section 41(1) of the Act relating to '*profits chargeable to tax*', Ld. Counsel submitted that the '*obtaining of any amount in respect of such loss/expenditure/same benefit in respect of such trading liability by way of remission or cessation thereof*', is the requirement of the law for invoking the said provisions. Mentioning that the assessee never obtained any amount in respect of any loss or expenditure in the year under consideration, Ld. Counsel, however, submitted that assessee wrote off an amount of Rs.8,70,55,075/- on account of Bottles & Cases in the earlier A.Y. 2006-07 and the same constitutes an allowable claim of the assessee in that assessment year. This amount refers to the value of Bottles & Cases lying with the customers. Assessee wrote off these amounts as the Bottles & Cases are not returned by the customers. These assets might have been damaged too at their end. Customers never returned them to the assessee. As such, the assessee could not file confirmation from the customers too before the AO. Nevertheless, the liabilities are not written off in the books of the assessee.

8.1 Referring to the connected liabilities, (i.e. the advances), Ld. Counsel submitted that these liabilities of Rs.5,55,68,474/-, i.e. being security deposits of Bottles & Cases are not only connected to the capital assets but also constitutes non-remissible in the year under consideration. These amounts need to be paid to the customers as and when the Bottles & Cases are returned to the assessee. These Bottles & Cases, being fixed assets, are outside the scope of the Trading Liabilities. He further submitted that the Bottles & Cases constitutes depreciable fixed asset since 01-04-1996 on which depreciation was claimed and allowed by the AO till the A.Y. 2003-04. Therefore, the advance/deposits received on account of said bottles and cases i.e. fixed depreciable asset, cannot be termed as "Trade Liabilities" within the meaning of sub section (1) of section 41 of the Act. The capital liabilities are outside the scope of these provisions. In these circumstances, as per Ld. Counsel for the assessee submitted that no incriminating evidence/documents was in possession of the AO to demonstrate that said advances/deposits are no longer payable to the customers by the assessee. The said liabilities of advances/deposits are not written off in the books. From this point of view, Ld. Counsel submitted that it is not a case of cessation of liability within the meaning of the provisions of section 41(1) of the Act. Assessee has to pay the liabilities as and when the Bottles & the Cases are returned.

8.2 Further, on the relevant year of invoking the provisions of section 41(1) of the Act, Ld. Counsel for the assessee submitted that obtaining of the benefit by way of such write off of the said value of Rs.8,70,55,075/- took place in the books of account in A.Y. 2006-07, and therefore, the invoking of the provision of section 41(1) in the year under consideration in respect of the related advances/deposits is completely unsustainable. The

year of write off and the year of invoking the provisions of section 41(1) of the Act need to be the same. Such invoking of the said provision, when the cessation of liabilities did not take place in books, is unsustainable. In this regard, Ld. Counsel for the assessee brought our attention to the conclusions of various judgments/orders which reads as under:

1) ITO Vs. Marcopolo Products (P.) Ltd., 159 ITD 266:

*“Even where amount remained unclaimed by sundry creditors for a considerable period of time and liability was carried forward for many years **without remission or cessation** till date, said amount could not be added to income.”*

2) Pr. CIT Vs. Matruprasad C. Pandey, 377 ITR 363

*“Held, that the sundry creditors mentioned in the balance sheet of the assessee **were shown as sundry creditors** for several years before the relevant assessment year and at no point of time earlier had the Assessing Officer doubted the creditworthiness or identity of the creditors. There was **no remission or cessation of the liability** during the previous year relevant to the assessment year under consideration. The deletion of the addition was justified.”*

3) CIT Vs. Alvares & Thomas, 394 ITR 647

*“Merely because creditor could not traced on date when verification was made, is not a ground to conclude that there was cessation of liability in terms of section 41(1) because **cessation of liability has to be cessation in law**, of debt to be paid by assessee to creditor.”*

4) CIT Vs. Shri Vardhman Overseas Ltd.

*“Held, dismissing the appeal, that the assessee had not unilaterally written back the accounts of the sundry creditors in its profit and loss account. The liability was shown in the balance sheet as on March 31, 2002. The assessee being a limited company, this amounted to acknowledging the debt in favour of the creditors for purposes of section 18 of the Limitation Act, 1963. The assessee’s liability to the creditors, thus, subsisted and did not cease nor was it remitted by the creditors. The **liability was enforceable** in a court of law. The amount was not assessable under section 41(1)”.*

5) Commissioner Vs. Mahindra and Mahindra Ltd.

*(ii) That for the applicability of section 41(1) of the Act, it is a sine qua non that there should be an allowance or deduction claimed by the assessee in **any assessment for any year** in respect of loss, expenditure or trading liability incurred by the assessee, Then, subsequently, during any previous year, if the creditor remits or waives any such liability, the assessee is liable to pay tax under section 41 of the Act. The assessee had been paying interest at 6 per cent. per annum to K in terms of the contract but never claimed deduction for payment of interest under section 36(1)(iii) a/the Act. The deduction claimed by the assessee in previous assessment years was due to the depreciation of the machine and not on the interest paid by it. Moreover, the purchase effected from K was in respect of plant, machinery and tooling equipment which were capital assets of the assessee. The **purchase amount had not been debited to the trading account** or to*

*the profit and loss account 'in any of the assessment years. There is a difference between a **trading liabilities and other liability**. Section 41(1) of the Act particularly deals with the remission of trading liability whereas in the instant case, **waiver of loan amounted** to cessation of a **liability other than a trading liability**. Hence, the case of the assessee would not fall under section 41(1) of the Act.*

8.3 Further, referring to the provisions of section 41(1) of the Act relating to '**profits chargeable to tax**', ld. Counsel submitted that the year of obtaining of some benefit in respect of such trading liability in a previous year of taxation of value of such benefit accrued to the assessee under the head '**profits and gains of business or profession**' should be the same. He read out the relevant provisions of sub-section (1) to section 41 of the Act. Thus, the Ld. Counsel submitted that invoking the provisions of section 41(1) of the Act is not valid in A.Y. 2007-08 as the benefit accrued to the assessee in the earlier A.Y. 2006-07.

9. Per Contra, according to the Ld. DR for the Revenue, the advances/deposits received prior to 01-04-1996 were not connected to the Fixed Assets and no depreciation was claimed on the Bottles & Cases (FA) prior to the said date. Hence, the developments in the subsequent period should not make the trade liabilities as other liabilities. Further, Ld. DR argued that there cannot be two classification of Bottles/Cases when the block of assets of Bottles and the Cases is one and the same class. Of course, Ld. DR argued on the fact that the assessee considered the relevant Bottles & Cases as stock-in-trade prior to 1996 and all of them were treated as the Fixed Assets since 1996 onwards. Of course, the claim of depreciation was allowed by the AOs on the Bottles & Cases. Ld. DR for the Revenue heavily placed reliance on the orders of AO/CIT(A).

DECISION OF THE TRIBUNAL

10. We have heard both the parties and perused the orders of the Revenue. We have also considered the provisions of section 41(1) of the

Act. We find there is no dispute on the basic facts that includes : (1) collecting the advances/security deposits from the customers against the cold drink Bottles and the relevant Bottle Cases as part of the Bottling business of the assessee. Assessee claimed depreciation u/s.32 of the Act on this block of assets over the years and AO did not disturb the claim of depreciation. These deposits are undisputedly not written off in the books and hence the liabilities stand payable to the customers as and when the assets are returned by the customers; (2) The assessee grouped the said deposits into two types (a) the deposited collected upto March, 1996; and (b) the deposits collected during 1996to 2006-07; (3) The assessee wrote off these block of Bottles and Cases and derived the benefit to that extent in the A.Y. 2006-07 and not written off the liabilities. However, the AO invoked the provisions of section 41(1) of the Act in the year under consideration for taxing the said benefit to the extent of liabilities remained payable in the books of account; (4) The customers did not return the Bottles and Cases and the amounts might have to be returned as and when the customers returns the same; (5) The assessee claimed depreciation since the A.Y. 1996-97 after capitalizing of the Bottles and Cases and claimed depreciation u/s.32 of the Act. In the year of write off, the block of Bottles and Cases, legally the depreciable business assets and are of capital nature.

10.1 Considering the above undisputed facts, we have examined the provisions of section 41(1) of the Act and find the benefits of write off derived by the assessee in A.Y. 2006-07 is connected to the other liabilities and not the trading liability. In the facts of the present case, we find the assessee did not write off the liabilities in the books of account and, therefore, the liabilities cannot be held ceased till such write off is done in

the books of account of the assessee. From this point of view, we are of the opinion that the revenue’s view on the issue of cessation of liabilities is unsustainable.

10.2 Further, regarding the year of invoking of the provisions of section 41(1) of the Act, we find the benefit arose to the assessee in the A.Y. 2006-07 and there is no dispute about it. In this regard, we proceed to extract the relevant provisions of the said section 41(1) of the Act and the same reads as under :-

“Profits chargeable to tax.

41. (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.

*Explanation 1.—For the purposes of this sub-section, the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof" shall include the remission or cessation of any liability **by a unilateral act** by the first-mentioned person under clause (a) or the successor in business under clause (b) of that sub-section by way of writing off such liability in his accounts.*

.....
.....”

10.3 From the above, where a deduction in respect of trading liability is incurred by the assessee and subsequently during any previous year assessee obtained some benefit in respect of such trading liability by way of remission or cessation thereof, the value of such benefit shall be deemed as chargeable to income-tax as income of that previous year. The existence of business in that year of taxation is not a requirement of law. From the above provisions, it is clear that the year of obtaining some benefit in respect of such trading liability is deemed to be the taxable income for the said year. Therefore, by honouring the said law and the discussion given in paras above, we are of the opinion that the A.Y. 2007-08 is not valid year in invoking the provisions of section 41(1) of the Act for taxing the value of the benefit. On this ground also, the revenue loses.

10.4 From all the angles of the (1) non-trade liabilities nature; (2) absence of act of write off, i.e., cessation of liabilities; and (3) requirement of meeting the un-uniform year of invoking the provisions of section 41(1) and year of reaping of benefits in respect of said liabilities, we are of the opinion that the order of CIT(A) is required to be reversed on this issue. Thus, the grounds relating to cessation of liabilities (Ground No.1) and enhancement made by the CIT(A) (Ground No.2) are allowed.

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

Order pronounced on 21st day of January, 2019.

Sd/-
(सुषमा चावला / Sushma Chowla)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(डी.करुणाकरा राव/D. Karunakara Rao)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 21st January, 2019.
SB/Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-9, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.