

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

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1788/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Assistant Commissioner of Income Tax,
Circle – 9, Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Lear Automotive India Pvt. Ltd.,
E-25, 26 & 27, Bhosari MIDC,
Bhosari, Pune – 411026

PAN : AAACL1978K

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ali Asgar
Revenue by : Shri N. Ashok Babu

सुनवाई की तारीख / Date of Hearing : 18-07-2019

घोषणा की तारीख / Date of Pronouncement : 01-08-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-6, Pune dated 28-04-2017 for the assessment year 2012-13.

2. The Revenue has assailed the order of Commissioner of Income Tax (Appeals) by raising following grounds :

- “1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in treating the income of Rs.29,78,35,632/- being gain on prepayment of sales tax deferral loan as capital receipts.
2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not accepting the income liable to be charged to tax as deemed profits and gains of firm u/s. 41(1) of the Act.
3. The appellant craves leave to add, amend or alter any of the above ground of appeal.”

3. Shri Ali Asgar appearing on behalf of the assessee submitted that the assessee is engaged in manufacturing/assembly of automotive seating systems and interior parts. The assessee was covered by the Government of Maharashtra Package Scheme of Incentives, 1993. Under the said scheme the assessee was entitled to Sales Tax incentive by way of deferment of payment of Sales Tax collected during period commencing from April 1, 2002 to March 31, 2013. In lieu of deferred Sales Tax payments, the assessee was entitled to interest free, unsecured loans of the equivalent amount from State Industrial and Investment Corporation of Maharashtra Ltd. (SICOM) payable in 9 yearly installments beginning from 30-04-2013. The assessee company opted to prepay the entire deferred Sales Tax liability in January, 2012 at the net present value (NPV). Thus, the assessee paid Rs.33.24 crores being the net present value of the deferred Sales Tax loan of Rs.63.03 crores. In profit and loss account the assessee declared the gain of Rs.29.79 (Rs.63.03/- - Rs.33.24/-) crores as other income. In assessment proceedings the Assessing Officer held the difference between the deferred Sales Tax liability and the actual amount paid as remission of liability u/s. 41(1) of the Act. Thus, the Assessing Officer made addition of Rs.29,78,35,632/- u/s. 41(1) and section 28(iv) of the Act.

The ld. AR submitted that this issue of prepayment of deferred Sales Tax liability at NPV was considered by the Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Sulzer India Ltd. reported as 369 ITR 717. The Hon'ble High Court held that the difference between deferred Sales Tax liability and the pre-mature amount paid by the assessee could not be termed as remission or cessation u/s. 41(1) of the Act. The difference credited to reserve account was held as capital receipt. The ld. AR further pointed that the decision rendered in the case of Commissioner of Income Tax Vs. Sulzer India Ltd. (supra) was affirmed by Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Balkrishna Industries Ltd. reported as 300 CTR 209.

4. On the other had Shri N. Ashok Babu representing the Department vehemently defended the assessment order.

5. Both sides heard. Orders of authorities below perused. The solitary issue raised in the appeal by the Revenue against the order of Commissioner of Income Tax (Appeals) is holding the difference of Rs.29,78,35,632/- on prepayment on Sales Tax deferred liability as capital receipt. The facts narrated by the ld. AR are not disputed by the Revenue. We find that the issue whether the gain of pre-mature payment of deferred Sales Tax at net present value against total Sales Tax liability is capital in nature or revenue receipt/remission or cessation of liability u/s. 41(1) has been laid to rest by Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Sulzer India Ltd. (supra). The substantial question of law that was before the Hon'ble High Court in the aforesaid case was :

“(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in not upholding the finding of the Income Tax Authorities below that the deferred sales tax liability is chargeable to tax as

business income of the assessee u/s. 41(1) on remission thereof and instead treating the same as exempt from tax as capital receipt being remission of loan liability?”

The Hon'ble High Court after considering the issue threadbare and examining catena of judgments upheld the decision of Tribunal in holding that the difference between the payment of NPV of Sales Tax Liability against future liability cannot be termed as remission/cessation of liability u/s. 41(1)(a) of the Act. The Hon'ble High Court concluded :

“52) We are of the opinion that the Revenue's argument really misses the point. The Incentive to establish a unit or factory in a industrially backward or hilly area is the core of the Sales Tax Deferral Scheme. Some time has to be given to the unit to establish itself before it starts giving corresponding benefit to the state. That opportunity is granted by deferring the remittance of the Sales Tax collected by the unit like the Assessee. In that regard, we have perused the compilation of admitted documents placed on record by Shri. Dastur. From a perusal thereof, it is apparent that the Government Resolution dated 4th May, 1983 evolves a package of incentives to disperse the industries from Bombay–Thane–Pune belt and to attract them to underdeveloped and developing areas of the State of Maharashtra. This package evolves several measures to achieve this object. Then, there is a New Package Scheme of incentives, 1988. Both Schemes have clauses and paras containing Sales Tax deferral incentives. To carry this object further and also to achieve the purpose of early remittance of deferred Sales Tax collected by the units availing of the Schemes, the statutory option was incorporated in section 38 by substituting the 4th proviso to subsection 4 of section 38 of the Bombay Sales Tax Act, 1959. That is informed by the Trade Circular dated 12th December, 2002 issued by the Commissioner of Sales Tax, Maharashtra. A combined reading of the Schemes and this Circular reveals the legislative intent as noted above. In such circumstances, a proper understanding of all this by the Tribunal cannot be termed as perverse. The view taken by it is imminently possible. Once this conclusion is reached, the other Judgments cited by the Revenue are obviously distinguishable and on facts.

53) As a result of the above discussion, we find that the questions of law formulated by us and termed as substantial will have to be answered in favour of the Assessee and against the Revenue. Those are answered accordingly.”

6. The judgment rendered in the case of Commissioner of Income Tax Vs. Sulzer India Ltd. (supra) was affirmed by the Hon'ble Apex Court in the

case of Commissioner of Income Tax Vs. Balkrishna Industries Ltd. (supra).

7. Thus, in view of the settled law, we do not find any merit in the appeal of Revenue. The impugned order is upheld and the appeal of Revenue is dismissed.

8. In the result, the appeal of Revenue is dismissed.

Order pronounced on Thursday, the 01st day of August, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01st August, 2019
RK

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

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

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune