

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यके समक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.1984/Mds/2015

निर्धारण वर्ष /Assessment year : 2011-2012

The Deputy Commissioner of
Income Tax,
Corporate Circle 1,
Coimbatore

Vs. BILT Industrial Packaging Co. Ltd,
Thekkampatty, Vivekanandapuram,
Mettupalayam 641 113.

(अपीलार्थी/Appellant)

[PAN AABCB 2854K]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. Vivekanandan, IRS, CIT..

प्रत्यर्थी की ओर से /Respondent by

: Shri. Suresh Balani, C.A.

सुनवाई की तारीख/Date of Hearing

: 09-06-2016

घोषणा की तारीख /Date of Pronouncement

: 17-06-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the Revenue is directed against order of the Commissioner of Income-tax (Appeals)-1, Coimbatore in appeal No. 438A/13-14, dated 15.06.2015 for the assessment year 2011-2012 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The Revenue has raised the following grounds:-

" 2.The Id.CIT(A)-I, has erred in allowing the assessee's appeal

on the addition of Rs.9,40,60,914/- holding that this amount pertains to investment made by the assessee's group companies viz., M/s. Ballapur Industries Limited and M/s.BILT Paper Holdings Ltd., and it does not amount to cessation of liability u/s.41(1) of the LT. Act,1961.

3. The Id.CIT(A)-I, failed to consider the Hon'ble Supreme Court's decision in the case of CIT vs. T.V. Sundaram Iyengar & Sons Ltd., cited in [1996] 88 taxman 429 (SC) wherein it was held that an amount received in the course of a trading transaction, even though it is not taxable in the year of receipt as being of capital character, amount changes its character when the amount becomes the assessee's own money because of limitation or by any other statutory or contractual right and such amount should be treated as income of the assessee.

4. The Id.CIT(A)-I, failed to note that although the amount received originally was capital in nature, since the amount remained unclaimed with the assessee from the year 2004-05 onwards, it becomes time barred and the Assessing Officer has rightly invoked the provisions of section 41 (1) of the IT. Act,1961.

5. For these and other grounds that may be adduced at the time of hearing, the order of the Id. CIT(A), may be cancelled and that of Assessing Officer be restored”.

3. At the time of hearing, the Id. Departmental Representative argued that the Commissioner of Income Tax (Appeals) erred in partly allowing the assessee appeal mentioning the amount of ₹9,40,60,914/- cannot be made as an addition on cessation of liability u/sec. 41(1) of the Act as the investments made by the group companies and prayed for setting aside the order of Commissioner of Income Tax (Appeals) and restore the Assessing Officer order.

4. Contra, the Id. Authorised Representative brought to the knowledge of the Bench that the assessee's appeal in *ITA No.1934/Mds/2015, dated 26.05.2016 for the assessment year 2011-*

12 was disposed off by remitting the disputed issue to the file of the Id. Assessing Officer and filed a copy of the Tribunal order. When the Bench, questioned the Id. Authorised Representative why the clubbing petition was not filed, there was no conceiving answer received.

5. We, considering the apparent facts and material on record, since we have remitted the assessee's appeal to the file of the Id. Assessing Officer, we considered it appropriate to remit the Revenue appeal to the file of the Id. Assessing Officer for fresh consideration.

6. In the result, the appeal of the Revenue in ITA No. 1984/Mds/2015 is allowed for statistical purpose.

Order pronounced on Friday, the 17th day of June, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 17.06.2016

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