

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

ITA No. 538 of 2007

Decided on: July 2, 2007

**Commissioner of Income Tax**

Delhi-IV, New Delhi ...Appellant  
Through Mrs. Prem Lata Bansal, Advocate

Versus

**Goyal M G Gases Pvt. Ltd.**

53, Friends Colony (East)  
New Delhi ...Respondent  
Through Nemo

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE V.B. GUPTA

MADAN B. LOKUR, J. (Oral)

The Revenue is aggrieved by an order dated 21st July, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'D', New Delhi in ITA No.811 (Del) of 2002 relevant for the assessment year 1998-99.

2. The Revenue has raised three substantial questions of law. The first substantial question of law reads as follows:-  
“Whether the ITAT was correct in law in allowing depreciation of Rs.1,21,26,481/- to the assessee at the rate of 100% on tankers?”

3. It is submitted by learned counsel for the Revenue that a similar question of law had arisen in the case of this assessee in ITA No.1052/2006 and the decision of this Court was not in favour of the Revenue. It is submitted that the Revenue has preferred an SLP before the Supreme Court. Following the decision in ITA No.1052/2006, we are of the opinion that no substantial question of law arises for our consideration.

4. The second substantial question of law raised by the Revenue relates to the deletion of an addition of Rs.4,24,43,689/- made on account of bad debts. The assessee had given a bill discounting facility to M/s Kedia Castle Dellon Industries Ltd. (for short Kedia). The said company was unable to repay the debts with the result that the assessee sent winding up notices to it and thereafter filed a winding up petition in the Calcutta High Court. Kedia was declared a sick company by the Board for Industrial and Financial Reconstruction (BIFR). Under these circumstances, the case of the assessee was

that the amount given to Kedia was not recoverable and was written off in its books of accounts.

The Assessing Officer treated the winding up petition filed by the assessee in the Calcutta High Court as a suit for recovery of dues. This is obviously incorrect. The winding up petition was filed by the assessee because the amounts were not recoverable from the said company. Moreover, the said company had also been declared a sick company by the BIFR and, therefore, the assessee was entitled to contend that the amounts were bad debts and were not recoverable.

5. Learned counsel for the Revenue contended that the BIFR had restrained Kedia from disposing of its fixed or current assets without the consent of the BIFR. Learned counsel for the Revenue is unable to tell us what were the assets of Kedia and there is nothing on record to show its assets and whether the assessee was at all in a position to recover its debts from those assets. Both the Commissioner of Income Tax (Appeals) [CIT (A)] and the Tribunal were of the view that the Assessing Officer had erred in not treating the amount as a bad debt, given the circumstances of the case as also the fact that the assessee had written off the amount as irrecoverable in its accounts for the relevant previous year in accordance with the provisions of Section 36 (1)(vii) of the Income Tax Act, 1961.

6. We do not find any error in the view taken by the CIT (A) as well as by the Tribunal and are of the opinion that no substantial question of law arises for our consideration. There is no doubt that given the facts of the case, there was no hope left with the assessee of recovering the amount from Kedia and it is this which prompted the assessee to seek winding up of Kedia by an appropriate order to be passed by the Calcutta High Court. Kedia had been declared a sick company by the BIFR and there is nothing to indicate what assets, if any, were with Kedia from which the assessee could, if at all, recover its debts.

7. The third substantial question of law raised by the Revenue is with regard to the deletion of an addition of interest computed by the Assessing Officer on an advance given by the assessee to seven parties. According to the Assessing Officer, since the assessee was following the mercantile system of accounting, interest had accrued to the assessee as its income.

8. The contention of the assessee was that in the subsequent year, the assessee had written off the loans given to the seven parties as bad debts and the Assessing Officer had also accepted the writing off of the principal amount. Learned counsel for the Revenue submitted that both the CIT (A) as well as the Tribunal were in error in taking note of subsequent events and should have strictly gone by the principles of the mercantile system of accounting and on that basis it should have been held that the Assessing Officer was correct in taking the interest on those advances as income having accrued to the assessee.

9. The Tribunal relied upon the decision of the Supreme Court in Godhra

Electricity Co. Ltd. v. Commissioner of Income-tax, [1997] 225 ITR 746. We have gone through this decision. The Supreme Court quoted a passage from an earlier decision rendered in Commissioner of Income-tax v. Shoorji Vallabhdas and Co., [1962] 46 ITR 144 where it had been stated as follows:-  
“Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a hypothetical income, which does not materialise.”

10. The principle that the Supreme Court applied was that even if the accounts are maintained in the mercantile system, what has to be seen is whether income can be said to have really accrued to the assessee. In support of this principle, reliance was placed upon Commissioner of Income-tax v. Birla Gwalior (P) Ltd., [1973] 89 ITR 255 which approved the view taken by the Bombay High Court in H.M. Kashiparekh and Co. Ltd. v. Commissioner of Income-tax, [1960] 39 ITR 706, Morvi Industries Ltd. v. Commissioner of Income-tax, [1971] 82 ITR 835 as well as Poona Electric Supply Co. Ltd. v. Commissioner of Income-tax, [1965] 57 ITR 521. In the penultimate paragraph of the judgment, the Supreme Court held as follows:-

“The question whether there was real accrual of income to the assessee-company in respect of the enhanced charges for supply of electricity has to be considered by taking the probability or improbability of realisation in a realistic manner. If the matter is considered in this light, it is not possible to hold that there was real accrual of income to the assessee-company in respect of the enhanced charges for supply of electricity which were added by the Income-tax Officer while passing the assessment orders in respect of the assessment years under consideration.”

11. Applying the law laid down by the Supreme Court, what has to be seen in the present case is whether there was any real accrual of interest to the assessee. Both the CIT (A) as well as the Tribunal came to the conclusion that there was no real accrual of interest. It has been noted that the interest had not even been recorded by the assessee in its books of accounts. The assessee had also issued a notice to the parties under Section 138 of the Negotiable Instruments Act for dishonour of cheques issued by all (except one of the debtors) followed by initiation of appropriate proceedings. The debts were written off as bad debts and were also allowed by the Assessing Officer in subsequent years. These facts lead to the inescapable conclusion that realisation of even the principal amount was in jeopardy and, therefore, there cannot be said to be any real accrual of income by way of interest. We find no fault in this view taken by the Tribunal and are of the opinion that no substantial question of law arises for our consideration.

12. The appeal is dismissed.

Madan B. Lokur, J  
July 2, 2007 V.B. Gupta, J