

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “जी” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

BEFORE S/SHRI B.R.BASKARAN (AM) AND VIVEK VARMA, (JM)
सर्वश्री बी.आर.बास्करन, लेखा सदस्य एवं विवेक वर्मा, न्यायिक सदस्य के समक्ष

आयकर अपील सं./I.T.A. No.1763/Mum/2012
(निर्धारण वर्ष / Assessment Year : 2003-04)

M/s Genre Exports Private Limited, 11, Orient Insurance Bldg, 31, Dr.V.B.Gandhi Marg, Mumbai-400023	बनाम/ Vs.	Income Tax Officer 2(1)(4), Aayakar Bhavan, M K Road, Mumbai-400020
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACG5395H

अपीलार्थी ओर से /Appellant by :	Dr.K Shivram
प्रत्यर्थी की ओर से/Respondent by:	Shri Pavan Kumar Birla

सुनवाई की तारीख / Date of Hearing : 10.2.2015
घोषणा की तारीख /Date of Pronouncement :18.2.2015

आदेश / ORDER

Per B.R.BASKARAN, Accountant Member:

The appeal filed by the assessee is directed against the order dated 15.12.2011 passed by Ld CIT(A)-4, Mumbai confirming the assessment of Rs.1.00 crore made by the AO u/s 41(1) of the Income Tax Act, 1961 (the Act.

2. We have heard the parties and perused the record. The facts that are relevant are that the assessee had taken an advance of Rs.1.00 crore from M/s United Breweries Ltd for supplying a product named “hop extract” over a period of time. However, the assessee failed to supply the

hop extract and also failed to repay the advance. The AO made inquiries from M/s United Breweries Ltd and found that the said company has written off the advance paid by it to the assessee as irrecoverable. Accordingly the AO, by placing reliance on the decision of Hon'ble Supreme Court rendered in the case of CIT Vs. T.V. Sundaram Iyengar and sons (222 ITR 344), assessed the above said advance of Rs.1.00 crore as income of the assessee by way of remission of liability by invoking the provisions of sec. 41(1) of the Act. The Id. CIT(A) also confirmed the same and hence the assessee has filed this appeal before us.

3. During the course of hearing before us, the Id. AR contended that the assessee is still showing the amount of Rs.1.00 crore as its liability and hence it cannot be said that there was cessation of liability. The Id. AR further submitted that the provisions of sec. 41(1) shall apply one if any allowance or deduction is claimed in respect of Rs.1.00 crores. However, the assessee has not claimed any allowance or deduction in respect of the amount of Rs.1.00 crore and hence the tax authorities have erred in law in applying the provisions of sec. 41(1) of the Act.

4. On the contrary, the Id. DR strongly defended the orders of Id. CIT(A).

5. It is an undisputed fact that the assessee has received the amount of Rs.1.00 crore for supply of materials to M/s United Breweries Limited. Though the Ld A.R contended that it was a Capital receipt, yet it is seen

that the amount received by the assessee, being for supply of materials, would constitute a trading receipt only, since the same would get adjusted against the supply of materials to M/s United Breweries Ltd. We notice that the tax authorities has followed the decision rendered by the Hon'ble Supreme Court in the case of CIT V/s T V Sundaram Iyengar and Sons Ltd (supra). The principle laid down by the Hon'ble Supreme Court in the above said case are extracted below :

“ . The principle laid down by Atkinson, J., applies in full force to the facts of this case. If a commonsense view of the matter is taken, the assessee, because of the trading operation, had become richer by the amount which it transferred to its profit and loss account. The moneys had arisen out of ordinary trading transactions. Although the amounts received originally was not of income nature, the amounts remained with the assessee for a long period unclaimed by the trade parties. By lapse of time, the claim of the deposit became time barred and the amount attained a totally different quality. It became a definite trade surplus, Atkinson, J. pointed out that in Tattersall's case (1939) 7 ITR 316 (CA) no trading asset was created. Mere change of method of book-keeping had taken place. But, where a new asset came into being automatically by operation of law, common sense demanded that the amount should be entered in the profit and loss account for the year and be treated as taxable income. **In other words, the principle appears to be that if an amount is received in course of trading transaction, even though it is not taxable in the year of receipt as being of revenue character, the amount changes its character when the amount becomes the assessee's own money because of limitation or by any other statutory or contractual right. When such a thing happens, commonsense demands that the amount should be treated as income of the assessee.**”

Thus, it can be seen that the Hon'ble Supreme Court has held that if the amount received in the course of trading transaction even though it is not taxable in the year of receipt as being revenue character, the amount

changes is character when it become assessee's own money because of limitation or by any other statutory of contractual right. It is further held that when such thing happens, commonsense demands that the amount should be treated as income of the assessee.

6. Before us, the Ld A.R tried to distinguish the decision of Hon'ble Supreme Court rendered in the case of T.V. Sundaram Iyengar and sons (supra) by submitting that the assessee therein had credited its Profit and Loss account with the unclaimed liabilities and the assessee herein did not do so, but continue to show the amount of Rs.1.00 crore as liability only. In our view, the entries passed in the books of account is only one of the criteria to determine the nature of Trading liability, i.e., whether the character of the same has undergone a change or not and the same cannot be considered to be the sole criteria or the ratio of the decision of Hon'ble Supreme Court.

7. In the instant case, the assessee has furnished a copy of the "Journal voucher" dated 31.3.2003 bearing No.KF/JV/244 prepared by M/s United Breweries Ltd (Holding) Limited, Bangalore at page no. 34 of the paper book. A perusal of the said documents would show that M/s United Breweries (Holdings) Limited had initially created a provision for writing off the advance amount of Rs.1.00 crore given to the assessee in an earlier year. However, as on 31.3.2003, M/s United Breweries (Holdings) Limited has ultimately written off the amount of Rs.1.00 crore as bad debts,

meaning thereby the impugned amount of Rs. one crore has been waived off by M/s United Breweries Limited. Thus, by virtue of writing off of the advance by the payer, the assessee has become richer by that amount, meaning thereby, the character of the trading liability has undergone a change and it has become income in the hands of the assessee. Hence, we are of the view that the tax authorities are justified in assessing the amount of Rs.1.00 crore by applying the principle laid down by the Hon'ble Supreme Court in the case of T V Sundaram Iyengar and Sons Ltd (supra).

8. Even though the AO has made a reference to the provisions of section 41(1) of the Act, in our view, it may not be relevant for bringing the amount of Rs.1.00 crore as income of the assessee, since under general principles, i.e., by applying the principle laid down in the case of T V Sundaram Iyengar and Sons Ltd (supra), the same has become the income of the assessee. Accordingly, we uphold the order passed by the Id. CIT(A) on this issue.

9. In the result, the appeal of the assessee is dismissed.

The above order was pronounced in the open court on 18th Feb,2015.

घोषणा खुले न्यायालय में दिनांक: 18th Feb,2015 को की गई ।

sd

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(विवेक वर्मा / VIVEK VARMA)
न्यायिक सदस्य / JUDICIAL MEMBER

(बी.आर.बास्करन / B.R. BASKARAN)
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai: 18th Feb,2015.

व.नि.स./ SRL , Sr. PS

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)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

true copy

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai