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

% Judgment delivered on: 18th January, 2010

\+ **ITA 829/2008**

COMMISSIONER OF INCOME TAX ..... Appellant

versus

GOYAL M G GASES LTD. ..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms P.L. Bansal with Ms Anshul Sharma.
For the Respondent : Mr C.S. Aggarwal, Sr. Advocate with Mr Prakash Kumar

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest? .

SIDDHARTH MRIDUL, J (ORAL)

1. This appeal by the Revenue is directed against the order dated 14th December, 2007 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 1729/Del/2007 in respect of the assessment year 2002-03.

2. The assessee had filed its return declaring income at nil on 31st October, 2002. Since the income as per the normal provisions of the Income

Tax Act (hereinafter referred to as 'the Act') was computed at a loss of Rs.1,46,90,960/-, the Assessing Officer computed book profit under Section 115JB of the Act at Rs.64,30,227/-

3. On examination of the assessment records, the Commissioner of Income Tax (CIT) noticed that in the assessment order passed by the Assessing Officer under Section 143(3) an amount of Rs.100 lacs received by the assessee-company from Messer Griesheim Gmbh was not included in the total income as per the provisions of Section 41(1) of the Act. Accordingly, the CIT came to the conclusion that the order passed by the Assessing Officer was erroneous, insofar as, it was prejudicial to the interest of the Revenue. The CIT issued notice under Section 263 of the Act to the assessee. The assessee contended that the said amount of Rs.100 lacs was credited to the profit and loss account, and consequently to the book profit, which was adjusted by the Assessing Officer in the assessment order and, therefore, assessment order cannot be said to be erroneous. It was further contended on behalf of the assessee that the provisions of Section 41(1) of the Act were not attracted in the present case. The CIT disagreed with the assessee and consequently set aside the assessment order and thereafter remitted the same to the Assessing Officer for fresh assessment.

4. The assessee went in appeal before the ITAT against the order of the CIT. It is seen that the ITAT examined the case at length and specifically from the standpoint of the provisions of Section 41(1) of the Act and observed as under:-

> "**5.** We have considered rival submissions. In the original Assessment Order which is now sought to be revised under section 263, there is no discussion about write back of liability. Though the assessee in the notes on accounts appended to the balance sheet has made proper disclosure about write back of the loan liability and the circumstances in which the amount was adjusted. However, the fact remains that what is adjusted is part of the term loan received from Citi Bank which was guaranteed and paid by the Creditor, namely, Messer Griesheim Gmbh. The assessment is framed by adopting the book profit under section 115JB as basis for computing the tax liability. In the assessment so framed, the amount of Rs.100 lacs is already included as credit to the P&L A/c. Since the amount of write back of the loan liability already forms part of book profit on which tax is levied, the Assessment Order cannot be branded as erroneous in so far as it is prejudicial to the interest of revenue. There is no dispute about the fact that the sum of Rs.100 lacs forms part of book profit computed under section 115JB. Thus, the Assessment Order is not amenable to revision under Section 263 of the Act.
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> **6.** It is to be noted that the loan liability was never claimed or allowed as deduction by way of loss, expenditure or trading liability. Thus, the amount cannot be included as profit chargeable to tax under section 41(1) of the Act. Section 41(1) will apply only when the cessation of liability is in respect of such liability which is allowed as deduction in any of the preceding Assessment years. Thus, section 41(1) has no application in the present case."

5. In ***Mahindra and Mahindra Ltd.*** vs. ***Commissioner of Income Tax***, ***261 ITR 501***, the High Court of Judicature at Bombay had held that no allowance or deduction having been allowed in respect of loan taken by assessee for purchase of capital assets, Section 41(1) was not attracted to remission of principal amount of loan.

6. In the present case, the assessee did not claim nor was allowed any deduction or benefit of allowance by way of allowable expenditure and trading liability, and the same being credited to the profit and loss account

had been subjected to tax as part of book profit under Section 115JB of the Act. We are, therefore, of the opinion that the conclusions of the Tribunal are based on a correct appreciation of law and, therefore, do not warrant any interference by this Court.

7. Consequently, no substantial question of law arises for our consideration. The appeal is dismissed.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

JANUARY 18, 2010
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