

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

+ **ITA No.964/2009, 967/2009, 1003/2009, 1013/2009, 1014/2009 & 1015/2009**

% **Reserved on : November 24, 2011.**
Date of Decision January 30, 2012.

COMMISSIONER OF INCOME TAX (CENTRAL)-I ..Appellant
Through Mr.Sanjeev Sabharwal, Advocate.

VERSUS

MOHAN MEAKIN LIMITEDRespondent
Through Mr. C.S.Aggarwal, Sr.Advocate with
Mr.Prakash Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

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

R.V. EASWAR, J.:

These are six appeals filed by the revenue under Section 260A of the Income Tax Act (Act, for short). We have taken up ITA 964/2009 as the lead matter. In this appeal, the following substantial question of law was admitted on 22nd October, 2009:-

“Whether ITAT was correct in law in deleting the addition made by the Assessing Officer on account of unclaimed credit balances written off by the assessee in its books of accounts for the year under consideration, invoking the provisions of Section 41(1) of the Income Tax Act.”

2. The facts giving rise to the present appeal may be briefly noticed. The assessee is a public limited company engaged in the manufacture of IMFL, beer, mineral water, juices, breakfast food, glass bottles etc. For the assessment year 1995-96, a return was filed on 30th November, 1995 declaring income of Rs.3,00,33,390/-. In the course of the assessment proceedings under Section 143(3) of the Act, the Assessing Officer made several additions and disallowances to the returned income. Included in them was an amount of Rs.17,39,263/-. This amount represented the aggregate of several items written back by the assessee in the books of accounts for the relevant previous year and as per para 15.2 of the assessment order they are as follows:-

“15.2. As discussed above the amounts written back include the following amounts:

(i) Miscellaneous Income

a. Salary & wages	59,088
b. Relating to parties	10,72,329
c. Security forfeited	---
d. Unencashed cheques	1,97,758
e. Excess dividend paid In earlier year written back	14,916

i) Excess provision for doubtful debts		
And advances written back		17,133
ii) Unclaimed bonus written back		
Disallowed in the earlier assessment year	14,133	
iii) Tax on immovable property for the		
Year 1990-90		3,730
iv) Excess provision for excise duty payable		
Relating to assessment years 1986-87		
To 1989-90 written back		2,95,200
v) Excess provision of sales-tax in the		
Assessment year 1990-91 written back	-	<u>63,757</u>
		<u>7,39,263/-</u> ”

3. In the return of income the aforesaid amount was claimed to be not taxable under the Act. The Assessing Officer called upon the assessee to explain how the aforesaid items were not taxable. In response to the query, the assessee submitted a written reply dated 18th December, 1998. Briefly stated, the assessee took up the plea that the aforesaid items did not represent any expenditure or loss or liability allowed in any of the earlier years as a deduction, that the amount of Rs.10,72,329/- represented small credit balances in the account of the customers and suppliers out of advance received from them for supplies to be made subsequently which they did not collect or which could not be fully adjusted against the supplies made to them, that the essential requisites for invoking Section

41(1) of the Act were absent, that Section 28(iv) was also not applicable and that in these circumstances the aggregate amount of Rs.17,39,263/- cannot be brought to tax.

4. The Assessing Officer first dealt with the amount of Rs. 10,72,329/. He noted that the amounts have been written back in the assessee's books of account after the period of limitation for recovery of the same had expired. According to him the amount represented a trading receipt which was initially adjusted by the assessee in its books of accounts and thus fell to be added as the assessee's income. As regards the rest of the items aggregating to Rs.6,36,693/- the assessee's plea that the provisions of Section 41(1) or Section 28(iv) were not applicable, was rejected by the Assessing Officer by observing in paragraph 15.6 of the assessment order as follows:-

“15.6 I have carefully considered the assessee's reply and do not agree with it. Details of these expenses clearly show that these expenses are allowable expenses under the Income-tax Act and the same have been claimed and allowed to the assessee in earlier years. In my considered view these expenses are fully covered with the provisions of section 41(1) of the Income-tax Act, and writing back of these amounts in the profit & Loss Account definitely establishes that there has been a cessation of liability on the part of the assessee. The assessee has written back the amount only after the expiry of the period of limitation available under the limitation Act. When the so called creditors have no legal remedy or enforceable right on the assessee to make any recovery then it

is legitimate cessation of liability and writing back of these amounts in the profit & Loss Account makes it taxable.”

Thus the aggregate amount of Rs.17,39,263/- was brought to assessment. In support of the addition, the Assessing Officer referred to and relied upon the judgment of the Supreme Court in *CIT vs. T.V.Sundaram Iyengar & Sons Ltd. (1996) 222 ITR 344.*

5. The assessee appealed to the CIT(A) against the aforesaid addition. It would appear that before the CIT(A) the following breakup of the addition was given:-

1. Salaries, wages and bonus	59088/-
2. Supplier's credit balances	639005/-
3. Customer's credit balances	433324/-
4. Uncashed cheques	197758/-
5. Cash advance	<u>1219/-</u>
	1330394/-
6. Excess dividend paid in earlier years written back	<u>14916/-</u>
Total	<u>1345310/-</u>

It may be noticed from the aforesaid breakup that there is no difference in the figure of salaries, wages and bonus and the figure of uncashed cheques between what was given before the Assessing Officer and what was filed before the CIT(A). The figure of Rs.10,72,329/- given before the Assessing Officer as amounts “relating to parties” has been divided into two amounts of Rs.6,39,005/- representing suppliers' credit balances and Rs.4,33,324/- representing customers' credit balances. The excess

dividend of Rs.14,916/- paid in the earlier year and written back in the books of accounts in the year under appeal was deleted by the CIT(A) since the amount had not been earlier allowed as a deduction by way of an expenditure/liability.

6. The CIT(A) then considered the aggregate of item Nos.3 & 5 (Rs.4,33,324/- + 1,219/-). He applied the judgment of the Supreme Court cited (supra) and held that since the assessee itself had written back the amount as its income, the same was rightly added by the Assessing Officer.

7. As regard item Nos.1, 2 & 4 aggregating to Rs.8,95,851/-, he held that the same was also assessable as the assessee's income under Section 41(1) of the Act on the basis of the aforesaid judgment of the Supreme Court. He also observed that that the assessee has obviously written back these liabilities as they have remained unclaimed for a long time and their recovery had become barred by limitation. Since these were also transferred to the profit and loss account, he held that they were rightly taxed under Section 41(1).

8. The CIT(A) separately dealt with the excess provision of Rs.17,133/- made for doubtful debts which was written back in the accounts in the year under consideration. He noted that the provision had not been allowed in any of the earlier assessment years as a deduction and, therefore, held that Section 41(1) was not applicable in the year in

which the provision was written back. He accordingly deleted the addition.

9. The following items of addition were separately dealt with by the CIT(A) in paragraph 13 of his order under the head “provisions for tax, duty etc. written back”:-

1. Tax on immovable property for the year 1990-91 Written back:	Rs. 3,730/-
2. Unclaimed bonus for earlier years written back:	Rs. 14,133/-
3. Excess provision for excise duty for Assessment years 1986-87 to 1989-90 written back:	Rs. 2,95,200/-
4. Excess provision for sales tax For assessment year 1990-91 written back:	<u>Rs. 63,757/-</u>
TOTAL	<u>Rs. 3,76,820/-</u>

10. It was submitted before the CIT(A) that none of the aforesaid items of expenditure had been claimed as a deduction in the earlier years in which the provision for the payments had been created because of Section 43B of the Act and, therefore, the writing back of the provisions in the books of account for the year under appeal on the ground that those provisions were no longer required, does not attract Section 41(1). This contention of the assessee was accepted by the CIT(A) with regard to the first, third and fourth items aggregating to Rs. 3,62,687/- and the addition to this extent was deleted. However, in respect of the unclaimed bonus of

Rs.14,133/-, the CIT(A) held that it must have been claimed and allowed as a deduction in the earlier year, presumably because Section 43B did not apply to provision created for bonus. He accordingly upheld the addition under Section 41(1).

11. Thus the CIT(A) decided the correctness of the various additions in the following manner:-

Addition	Amount	Deleted	Confirmed
Salaries, wages and bonus written back	Rs.59,088/-	--	yes
Suppliers credit balances	Rs.6,39,005/-	--	yes
Customers credit balances	Rs.4,33,324/-	--	yes
Uncashed cheques	Rs.1,97,758/-	--	yes
Excess dividend	Rs.14,916/-	yes	--
Excess provision for doubtful debts	Rs.17,133/-	yes	--
Unclaimed bonus written back	Rs.14,133/-	--	yes
Tax on immovable property	Rs.3,730/-	yes	--
Excess provision for excise duty	Rs.2,95,200/-	yes	--

Excess provision for sales tax	Rs.63,757/-	yes	--
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12. Both the assessee as well as the revenue preferred appeals before the Tribunal for the assessment years 1990-91 to 2003-04 (7 years). There were thus 14 cross appeals before the Tribunal which were all disposed of by a common order dated 27th March, 2009. In the appeal before us, we are concerned only with the assessment years 1990-91, 1991-92, 1993-94, 1994-95, 1995-96 and 1996-97. So far as the additions that are disputed in the present appeals are concerned, the decision of the Tribunal for these years is contained in paragraph 12 of the aforesaid order, which is the impugned order. The Tribunal disposed of the issues in the following brief paragraph:-

“12.The next dispute relates to unclaimed credit balances written back in the account of the customers and suppliers (A.Y. 1990-91 to 1996-97); salaries, wages & bonus (A.Y. 1990-91 to 93-94); unencashed cheques (A.Y. 1990-91 to 93-94); and securities forfeited (A.Y. 1990-91 & 92-93). All these issues arose in earlier years also wherein the Tribunal has restored the matter back to the file of AO and the AO in set aside proceedings has deleted the disallowances made in this regard. In the light of this, such unilateral right of the unclaimed credit balances in the account of customers and suppliers; in the account of salaries, wages and uncashed cheques and securities forfeited, cannot be brought to tax u/s 41(1) of the Act. In fact in relation to the last two items, there has

been no claim for deduction for invoking the provisions of sec. 41(1) of the Act.”

13. It would have facilitated the disposal of the present appeals if the Tribunal had discussed the facts relating to the additions in some detail and had given separate findings in respect of each of them with appropriate reasons. It is, however, seen that the Tribunal disposed of the dispute relating to unclaimed credit balances etc. in a summary manner by observing that in the proceedings remanded by the Tribunal to the Assessing Officer, in respect of the earlier years, the Assessing Officer has himself deleted the additions/disallowances and in the light of this development, the unilateral write back of the unclaimed credit balances etc. cannot be brought to tax under Section 41(1) of the Act. It has also been observed that in respect of the addition relating to uncashed cheques and securities forfeited, there had been no claim for deduction for the provisions of Section 41(1) to be invoked. The Tribunal having been constituted by the Income Tax Act as the ultimate fact-finding authority, we would have expected it to pass reasoned orders, setting out the relevant facts, figures and contentions in a manner in which parties to the dispute can readily appreciate the reasoning and the conclusions. There should be clarity and the factual matrix lucidly stated. It has not been made explicit in the order of the Tribunal as to what were the directions in the order stated to have been passed by the Tribunal in respect of the earlier years and what was the basis or facts upon which the Assessing Officer for those years deleted the disallowance/additions made. Despite

this handicap, we have proceeded to dispose of the present appeals since the orders of the Assessing Officer and the CIT(A) in respect of the disputed issues are fairly elaborate.

14. We first take up for consideration the salaries, wages and bonus of Rs.59,088/- written back in the assessee's account. In paragraph 11 of the order of the CIT(A), a finding has been recorded that the amount was admittedly earlier claimed and allowed as deduction. The contention, however, was that there was no cessation or remission of the liability and, therefore, by merely writing back the credit balances in the books of accounts, which is an unilateral action of the assessee, the liability cannot be said to have ceased. We are concerned with the assessment year 1995-96. Explanation 1 to Section 41(1) was added by the Finance (No.2) Act, 1996 with effect from 1st April, 1997. After the insertion of this Explanation, it is not open to the assessee to claim non-taxability on the ground that the writing off of the liability in his accounts cannot be treated as cessation of liability. The Explanation provides that the unilateral act of the assessee by way of writing off such liability in its accounts would be considered as remission or cessation of the liability. In circular No.762 dated 18th February, 1998 which is reported in (1998) 230 ITR (St.)12, the CBDT has explained the reason behind insertion the above Explanation. In paragraph 28.3 of the circular it has further been stated that the amendment will take effect from 1st April, 1997 and will, accordingly, apply in relation to assessment year 1997-98 and subsequent years. The

Explanation, therefore, does not have any retrospective effect. It does not, therefore, apply to the assessment year 1995-96. For this reason, we hold that the mere writing back of the loan in relation to unclaimed salaries, wages and bonus cannot amount to cessation of the liability. This aspect of the matter has been considered by us elaborately in the case of ***Commissioner of Income Tax-III v. Shri Bardhman Overseas Ltd., ITA No.774/2009*** decided on 23rd December, 2011. For the reasons stated in that judgment, we hold that the addition is not in accordance with law.

15. So far as the suppliers' credit balances of Rs.6,39,005/- and the customers' credit balances of Rs, 4,33,324/- are concerned, the same reasoning is applicable for the year under consideration. Accordingly, those two additions made by the Assessing Officer are also not in accordance with law.

16. In the case of the uncashed cheques amount to Rs.1,97,758/-, the finding of the Tribunal is that that there was no claim for deduction in any of the earlier years and, therefore, the amount cannot be added under Section 41(1) of the Act. It is not in dispute, as it cannot be, that the amount of uncashed cheques was not allowed as deduction in any of the earlier assessment years. As per the assessee this represents the cheques received and remaining on hand on the last day of the accounting period. Tribunal has accepted this stand. The Assessing Officer and the CIT(A) have not stated why the stand of the assessee was not acceptable. Revenue has also not stated and averred that the assessment order now

passed, this aspect was not considered and examined. In these circumstances, Section 41(1) can hardly have any application. We accordingly, uphold the decision of the Tribunal deleting the addition.

17. As regard the excess dividend of Rs.14,916/-, the same reasoning holds good because dividend paid by a company to its share holders is not an allowable deduction under the Income Tax Act as it represents an appropriation of the profits after they have been earned. If the dividend is not allowable as a deduction, the excess written back cannot also be assessed as income under Section 41(1). While holding that the dividend cannot be assessed under Section 41(1), we must also observe that there is no mention in paragraph 12 of the order of the Tribunal about excess dividend being written back and assessed on that basis. As already mentioned by us, the specific figures and the facts have not been stated by the Tribunal. Be that as it may, we proceed on the basis that the amount of excess dividend written back is included in the aggregate figure of unclaimed credit balances written back and have proceeded to render our decision on that basis. We are referring to this aspect only to highlight the kind of difficulties the High Court can face while hearing an appeal under Section 260A of the Act from the order of the Tribunal, if the order of the Tribunal does not contain the relevant facts, figures and the precise controversy arising in different assessment years.

18. As regards the excess provision for doubtful debts amounting to Rs.17,133/- which has been written back, the finding of the CIT(A) that

the provision was never allowed as a deduction in the earlier years. Since the finding that the provision was not allowed in the earlier year as a deduction is not under challenge, the amount cannot be added under Section 41(1) when it is written back in the accounts. The decision of the Tribunal is upheld.

19. Subject to the above observation, we answer the substantial question of law in the affirmative, against the revenue and in favour of the assessee.

20. The other appeals relate to the assessment years 1990-91, 1991-92, 1993-94, 1994-95 and 1996-97. The following table sets out the additions/disallowances in dispute in the appeals:-

ITA NO.	RELEVANT A.Y	ITEMS IN ISSUE	UNDER THE HEAD	AMOUNT(s) in Rs.
1014/2009	1990-91	1. Salary, wages and Bonus	Unclaimed Balances Written Back	70,976
		2. Customer's credit balances		3,93,958
		3. Supplier's credit balances		5,68,768
		4. Un-cashed cheques		20,849
				10,54,551
967/2009	1991-92	1. Salary, wages and Bonus	Unclaimed Balances Written Back	98,189
		2. Customer's credit balances		6,50,550
		3. Supplier's credit		

		balances 4. Un-cashed cheques		1,50,997 28,395
				9,28,131
1015/2009	1993-94	1. Salary, wages and Bonus 2. Customer's & Supplier's credit balances 3. Un-cashed cheques	Unclaimed Balances Written Back	72,636 3,54,508 21,712
				4,48,856
1003/2009	1994-95	1. Salary, wages and Bonus 2. Customer's & Supplier's credit balances 3. Un-cashed cheques	Unclaimed Balances Written Back	47,931 3,83,306 46,514
				4,77,751
1013/2009	1996-97	1. Customer's & Supplier's credit balances 2. Un-cashed cheques	Unclaimed Balances Written Back	— 95,418 72,677
				1,68,095

21. Since the substantial question of law framed by this Court is a common question for all the appeals and since it refers only to “unclaimed credit balances written off by the assessee in its books of accounts”, we

are confining our decision in all the appeals to the additions made under the following heads, namely; (a) unclaimed salaries, wages and bonus; (b) credit balances unclaimed by the suppliers; (c) credit balances unclaimed by the customers and (d) uncashed cheques. As decided by us in the appeal for the assessment year 1995-96 in ITA No.964/2009, these additions are held to be rightly deleted by the Tribunal. It may be added that for all these assessment years also, the Explanation-1 to Section 41(1) is not applicable as they are all prior to the assessment year 1997-98 from which year only the said Explanation is applicable. Accordingly, the substantial question of law framed for these assessment years, which is the same as for the assessment year 1995-96, is answered in the affirmative, against the revenue and in favour of the assessee. There shall be no order as to costs.

(R.V. EASWAR)
JUDGE

(SANJIV KHANNA)
JUDGE

January 30, 2012
Bisht