

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.2319 OF 2009

The Commissioner of Income Tax ..Appellant.

V/s.

M/s.Sarladisha Investment Ltd. ..Respondent.

Ms. Suchitra Kamble for appellant.

Mr. K. Gopal with Jitendra Singh for respondent.

**CORAM : DR. D.Y.CHANDRACHUD
AND J.P.DEVADHAR, JJ.**

DATED : 5TH JANUARY, 2010

P.C. :-

1. In the above appeal by the revenue against the judgment of the Income Tax Appellate Tribunal dated 19th March, 2009, the following questions of law have been framed:-

- a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in holding that the addition of Rs.7,18,35,000/- made u/s. 41(1) of the Income Tax Act, 1961 should be deleted without considering the decision of Supreme Court in the case of T.V. Sundaram Iyengar and sons Ltd. 222 ITR 334 ?
- b) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in holding that the period of three years under the Limitation Act is not relevant in deciding as to whether there is a remission or cessation u/s. 41(1) of the Act ?

2. Briefly stated, the facts are that an MOU was entered into by the assessee on 28/10/1999 with a company by the name of M/s. Atcom

Technologies Ltd. by which the assessee agreed to sell 23,24,500 shares of M/s.NHN Corporation Ltd. In consideration of the sale of shares, the assessee received a sum of Rs.7.18 crores. The shares have not been transferred in the name of the transferee on account of restrictions imposed by SEBI. Since the shares could not be transferred, the amount has been shown as an outstanding liability, both in the accounts of the assessee as well as the transferor. The assessment officer made the aforesaid addition of Rs.7.18 crores under section 41(1) of the Income Tax Act, 1961. The Commissioner of Income Tax(A) deleted the addition.

3. The Tribunal has recorded a finding of fact that both the parties to the transaction acknowledged the debt payable or receivable, as the case may be. In the accounts of the assessee as well as the transferee, the liability to pay the amount and to receive the amount has been duly reflected. Section 41(1) deals with a situation where there is a remission or cessation in respect inter alia of a trading liability. There is a finding of fact that the liability continues to be acknowledged by both the parties to the transaction. The Tribunal was not wrong, in our opinion, in coming to the conclusion that there is no remission or cessation of a trading liability. No substantial question of law arises in the appeal. The appeal is accordingly dismissed with no order as to costs.

(J.P.DEVADHAR, J.)

(DR. D.Y.CHANDRACHUD, J.)