

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

INCOME TAX APPEAL NO.1511 OF 2009
WITH
INCOME TAX APPEAL NO.1512 OF 2009

M/s. SI Group India Ltd. ..Appellant.
Vs.
The Asst. Commissioner of
Income Tax Range 3(3) ..Respondent.

WRIT PETITION NO.2368 OF 2009
WITH
WRIT PETITION NO.2369 OF 2009

M/s. SI Group India Ltd. ..Petitioner.
Vs.
The Income Tax Appellate Tribunal,
Mumbai and others ..Respondents.

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Mr. Soli E. Dastur, Senior Advocate with Mr. Niraj Sheth and Mr. Sanjiv M. Shah for the Appellant in both Appeals.

Mr. Soli E. Dastur, Senior Advocate with Mr. Niraj Sheth and Mr. Atul K. Jasani for the Petitioner in both the Petitions.

Mr. Vimal Gupta for the Respondents.

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

10 June 2010.

ORAL JUDGMENT (Per Dr. D.Y.CHANDRACHUD, J.) :

1. This judgment will govern two appeals instituted by the assessee under Section 260-A of the Income Tax Act, 1961 and two petitions under Article 226 of the Constitution. Although several questions are raised in the appeals, for the purposes of these proceedings it would be sufficient to deal with the following question of law on which the appeals are admitted :

“Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in completely disregarding the contention of the Appellant that there was no remission or cessation of the sales tax liability on account of payment of the present value thereof being made to SICOM since the sales tax authorities had not given credit of the said payment against the sales tax liability;”

2. The Petitioner has an industrial unit in the district of Raigad which is a notified backward area. The Government of Maharashtra issued a package scheme of incentives in 1993 by which a scheme for the deferral of sales tax dues was announced. The Petitioner had during the period 1 May 1999 and 31 March 2000

collected an amount of Rs.1,79,68,846/- towards sales tax. Under the scheme the amount was payable in five annual installments commencing from April 2010 and the liability was treated as an unsecured loan in the books of account of the assessee. The State Industrial and Investment Corporation Of Maharashtra Limited (SICOM) offered to the assessee an option for the settlement of the deferred sales tax liability by an immediate one time payment. The assessee paid an amount of Rs.50,44,280/- to SICOM which according to the assessee represented the net present value as determined by SICOM. Payment was made by the assessee to SICOM on 26 June 2000. The difference between the deferred sales tax and its present value amounting to Rs.1.29 Crores was treated as a capital receipt and was credited in the books of the assessee to the capital reserve account.

3. The Assistant Commissioner of Income Tax, Range 3(3), in the assessment order for Assessment Year 2000-01 brought the aforesaid difference of Rs.1.29 Crores to tax under Section 41(1) of

the Income Tax Act 1961. The appeal filed by the assessee before the Commissioner (Appeals) for 2000-01 as well as the appeal for 2001-02 came to be dismissed by the appellate authority. The Tribunal dismissed the appeals filed by the assessee for these two Assessment Years by a common order dated 6 January 2009. The assessee then moved the Tribunal in a miscellaneous application under Section 254 which was dismissed on 10 September 2009.

4. Accordingly the assessee has filed two appeals before this Court under Section 260-A to challenge the principal order of the Tribunal dismissing the appeals for Assessment Years 2000-01 and 2001-02. The Petitions under Article 226 questioned the correctness of the order passed by the Tribunal dismissing the applications under Section 254. During the course of the proceedings, we have heard submissions on behalf of counsel appearing on behalf of the assessee and counsel appearing on behalf of the Revenue on the merits of the appeals filed before this Court under Section 260-A and which as noted earlier have been admitted. In the view which we are inclined

to take on the appeals, the Petitions under Article 226, challenging the order of the Tribunal under Section 254 would be rendered redundant.

5. On behalf of the assessee, learned senior counsel submitted that the principal requirement for the applicability of Section 41 is that the assessee must obtain a benefit in respect of a trading liability by way of a remission or cessation thereof. The two submissions which have been urged on behalf of the assessee are that (i) there was no cessation of the liability of the assessee in the present case in respect of the payment of the sale tax dues; and (ii) assuming that there was a cessation, no benefit was obtained by the assessee. The submission which has been urged on behalf of the assessee is that as a matter of fact the issue pertaining to the sales tax liability was decided by the Sales Tax Tribunal by its judgment dated 8 February 2008 and the Tribunal specifically upheld the order passed by the lower authorities declining to give credit to the assessee of the payment which was made to SICOM. The matter, the court is

informed, is pending in reference and consequently at this stage, so long as the order of the Tribunal continues to hold the field, it cannot be inferred that there was a remission or cessation of liability. Insofar as the second submission is concerned, the argument before the Court is that the assessee in paying the net present value of the deferred liability to pay the sales tax dues of Rs.1.29 Crores has not obtained any benefit as such within the meaning of Section 41(1) since the payment of Rs.50.44 lacs represents only the present value of the liability to make a deferred payment of Rs.1.79 Crores in future.

6. On the other hand, it was urged on behalf of the Revenue that the order of the Sales Tax Tribunal upon which reliance has been placed by the assessee would in fact indicate that the payments which were made by the assessee were regarded as having a nexus towards payments of the sales tax dues and liberty was granted to the assessee upon obtaining a valid document under the package scheme of incentives to be considered for the relevant period towards payment

of the deferred amount.

7. Section 41(1)(a) of the Act provides as follows :

“41.(1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first mentioned person) and subsequently during any previous year -

(a) the first mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not;”

8. In order that the provisions of sub section (1) should be attracted the first requirement is that an allowance or deduction must have been made in the assessment for any year in respect of a loss, expenditure or trading liability incurred by the assessee. The liability of the assessee to pay sales tax is undisputedly a trading liability in

respect of which an allowance or deduction had been made under Section 43B. However, under clause (a) of sub section (1) it is inter alia required that the assessee ought to have obtained “some benefit in respect of such trading liability by way of remission or cessation thereof”. This postulates that there must be a remission or cessation of the trading liability and that consequently a benefit must enure to the assessee. In the present case, the dispute between the assessee and the Revenue is as to whether there was a remission or cessation of the liability on account of sales tax.

9. The assessee had collected an amount of Rs.1.79 Crores towards sales tax dues during the period 1 May 1999 and 31 March 2000. Under the package scheme of incentives announced by the Government of Maharashtra in 1993 the sales tax dues had to be paid in five installments commencing from April 2010. SICOM as the implementing agency quantified, according to the assessee, the net present value of the deferred liability of the assessee at Rs.50.44 lacs which was paid by the assessee to SICOM. However, the sales tax

officer while passing the assessment order on 18 March 2004 did not consider the amount paid to SICOM as repayment of the deferred liability of the assessee to the extent of Rs.1.79 Crores under the Bombay Sales Tax Act, 1959 and Central Sales Tax Act, 1956. The appeals filed by the assessee before the Deputy Commissioner of Sales Tax were dismissed upon which the assessee filed a second appeal before the Maharashtra Sales Tax Tribunal. The Tribunal, by its judgment dated 8 February 2008 upheld the order of the lower authorities of not giving credit of the payment made by the assessee to SICOM. In these proceedings, neither the validity of the order passed by the Sales Tax Tribunal nor for that matter the correctness of the reasons that weighed with the Tribunal can be called into question. The Tribunal observed that though the assessee had made a premature payment of the deferred tax in accordance with the scheme issued by the Department of Industries of the State Government under the package scheme of incentives of 1993, the payment of the net present value was to be made in the challan prescribed under the Sales Tax Act which constituted the lawful mode

of making payment and the payment which was made to SICOM would nonetheless have to follow the procedure prescribed under the Act. The Tribunal was of the view that the decision of the assessing authority and of the Deputy Commissioner of Sales Tax not to give credit to the payment made to SICOM would have to be upheld, but left it open to the assessee to procure a valid document under the scheme which would be “considered for relevant period for relevant deferred amount”.

10. The net result of the order of the Sales Tax Tribunal dated 8 February 2008 is to uphold the decision of the assessing authority declining to grant credit of the payment made by the assessee to SICOM towards discharge of the deferred sales tax liability. As a matter of fact, on 22 July 2008 a notice of demand was issued under Section 38 of the Bombay Sales Tax Act of 1959 to the assessee by the Deputy Commissioner of Sales Tax, Navi Mumbai in the total amount of Rs.1,33,13,555/-. Having regard both to the order passed by the Sales Tax Tribunal on 8 February 2008 and the notice of demand

issued on 22 July 2008, it is not possible for the Court to accept the contention that there was a remission or cessation of liability. Since the record before the Court does not disclose that there was a remission or cessation of liability, one of the requirements spelt out for the applicability of Section 41(1)(a) has not been fulfilled in the facts of the present case.

11. In the view that we have taken it is not necessary for the Court to address itself to the wider issue as to whether the assessee, in paying the net present value of the deferred sales tax liability should be regarded as having obtained any benefit within the meaning of Clause (a) of sub section (1) of Section 41. The aforesaid issue is kept open to be adjudicated upon at the appropriate stage in appropriate proceedings.

12. The Tribunal, in our view, was in error in proceeding on the basis that there was a remission or cessation of liability. The attention of the Tribunal was drawn to the order passed by the Sales

Tax Tribunal. The fact that the order of the Sales Tax Tribunal was placed for consideration before the Income Tax Appellate Tribunal emerges from the order of the Tribunal itself. Consistent with the order passed by the Sales Tax Tribunal which continues to hold the field, the ITAT could not have come to the conclusion that there had occurred a remission or cessation of liability during the Assessment Years in question.

13. For the aforesaid reasons, the appeals filed by the assessee are allowed and the question of law as framed is answered in favour of the assessee and against the Revenue. In the view which we have taken it is not necessary for the Court to enquire into the correctness of the order passed by the Tribunal on the application under Section 254. Both the petitions shall accordingly stand disposed of.

In the circumstances of the case, there shall be no order as to costs.

(Dr. D.Y.Chandrachud, J.)

(J.P. Devadhar, J.)