



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

+ **ITA No. 431/2009**

July 15, 2009

COMMISSIONER OF INCOME TAX DELHI-IV

...Appellant

Through: Mr. P.C.Yadav and
Mr. N.P.Sahni, Advocates.

VERSUS

M/S EICHER LTD.

....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE A. K. SIKRI

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the 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?

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A.K. SIKRI, J.

1. The present appeal of the Revenue under Section 260(A) of the Income Tax Act impugns the order dated 30.5.2008 of the Income Tax Appellate Tribunal (ITAT). The ITAT allowed the appeal of the assessee against the order of CIT(A) which authority upheld the order



of the Assessing Officer(AO) whereby the AO made an addition to the return filed by holding the assessee liable with respect to accrued income not actually received on the ground that the assessee was maintaining books of accounts on mercantile basis.

2. The order of Income Tax Appellate Tribunal is a very detailed one running into over 51 paragraphs. The ITAT has in substance held that no tax is payable unless the interest income is a real income and not merely accrued income more so when the principal amount is written off as bad debts in the subsequent years. The ITAT relied upon, inter alia, the judgment of the Supreme Court in the case of **Godhra Electricity Co. Ltd. Vs. CIT (1997) 225 ITR 746 (SC)** and judgment of this court in **CIT Vs. Goyal M.G.Gases (P) Ltd.** (ITA No. 538/2007 dated July 2, 2007).

3. The facts of the case are that the Assessing Officer made an addition of Rs.68,25,000/- being the interest accrued on Inter Corporate Deposits given by the assessee to M/s Lottee Holdings (P) Ltd. The Assessing Officer observed that assessee did not declare any interest accrued and that the assessee followed mercantile system of



accounting. The assessee on being asked, explained that the loan had become irrecoverable and so no interest can be said to have really accrued thereupon. This was because according to the assessee, the loan which was given to M/s Lottee vide agreement dated 17.3.1993 was duly credited in the books of accounts on year to year basis upto 31.3.1999, which was duly assessed to tax, though interest was actually received only for the first two years and no interest was received thereafter till 31.3.1999, and, the Board of Directors of the assessee company took a decision not to account for the interest income in the books. The further facts which emerged on record are that the total outstanding amount of Rs.617 lacs including principal amount of Rs.350 lacs and interest amount of RS 267 lacs was ultimately settled at Rs.480 lacs (principal Rs.350 lacs and interest Rs.130 lacs) vide one time settlement agreement dated 15.12.2003 of the assessee with M/s Lottee and which one time settlement amount was to be paid by 31.1.2004. By a Deed of Assignment dated 30.12.2003, the assessee company had assigned the settled debt of Rs.480 lacs to be recovered from Lottee to M/s Eicher Goodearth Ltd for a consideration of Rs. 470 lacs.



4. On the above facts, the Tribunal therefore, found that it was clear that the outstanding interest amounting to Rs.267 lacs had already been offered to tax up to 31.3.1999, and which amount of interest has been settled at only at Rs. 130 lacs i.e only Rs 130 lacs were received by the assessee company though tax had been paid on an amount of Rs 267 lacs. This thus proved that the assessee's principal amount as well as the interest accrued up to 31.3.1999 was doubtful of recovery. In **Godhra Electricity Co. Ltd.** The Supreme Court has held as under:-

“Income-tax is a levy on income, No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz. the accrual of the income or its receipt; but the substance of the matter is the income. *If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a hypothetical income, which does not materialize.*”

“The question whether there was real accrual of income to the assessee company in respect of the enhanced charges for supply of electricity has to be considered by taking the probability or



improbability of *realization in a realistic manner*. If the matter is considered in this light, it is not possible to hold that there was real accrual of income to the assessee company in respect of the enhanced charges for supply of electricity which were added by the income-tax Officer while passing the assessment orders in respect of the assessment years under consideration. The Appellate Assistance Commissioner was right in deleting the said addition made by the Income-tax Officer and the Tribunal had rightly held that the claim at the increased rates as made by the assessee-company on the basis of which *necessary entries were made represented only hypothetical income* and the impugned amounts as brought to tax by the Income-tax Officer did not represent the income *which had really accrued to the assessee company during the relevant previous years*. The High Court, in our opinion, was in error in upsetting the said views of the Tribunal.”
(Emphasis added)

5. The relevant observations of this court in ***Goyal M.G.Gases (P) Ltd.*** are as under:



“Applying the law laid down by the Supreme Court, what has to be seen in the present case is *whether there was any real accrual of interest to the assessee*. Both the CIT(A) as well as the Tribunal came to the conclusion that there was real accrual of interest. It has been noted that the interest had not even been recorded by the assessee in its books of accounts. The assessee had also issued a notice to the parties under Section 138 of the Negotiable Instruments Act for dishonour of cheques issued by all (except one of the debtors) followed by initiation of appropriate proceedings. The debts were written off as bad debts and were also allowed by the Assessing Officer in subsequent years. *These facts lead to the inescapable conclusion that realization of even the principal amount was in jeopardy and, therefore, there cannot be said to be any real accrual of income by way of interest*. We find no fault in this view taken by the Tribunal and are of the opinion that no substantial question of law arises for our consideration.”(Emphasis added).

6. On the basis of the ratio of the aforesaid decision and the facts which emerged on record, in our opinion the Tribunal rightly held that actual income in fact never accrued to the assessee and the assessee in fact had already paid tax on interest, income actually received by it



may in fact on much more. The Tribunal, therefore rightly deleted the addition of accrued interest as income of the assessee.

7. Before us, the counsel for the Revenue has strongly contended that the debtor company of the assessee was in a strong financial position and had many assets and consequently, the decision of the assessee company not to initiate any legal proceedings was clearly doubtful. We do not agree. For business expediency and a practical approach a commercial decision was arrived at by the assessee to settle at an amount of Rs.480 lacs and which is nothing unusual because many factors come into play such as time of litigation, costs of litigation, need of the funds by the assessee company and so on and so on. We find that the Tribunal was right in observing as under:

“We do not find any reason why the sound principles based upon realisability of the amount due on the objective criterion of a sticky account should not be accepted even if accounts are maintained under the mercantile system, which recognizes revenue not on the abstract theory of right of



recovery but on the actual prospect of such recovery as so observed and recognized in the above referred cases of Hon'ble Supreme Court, which have been followed by the jurisdictional High Court of Delhi in the case of CIT vs. Goyal M.G.Gas (supra).”

8. No substantial question of law arises for consideration. The appeal is accordingly dismissed.

A.K. SIKRI, J

VALMIKI J.MEHTA, J

July 15, 2009

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