



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

% Judgment delivered on: 12.04.2010  
+ **ITA 418/2010**

**COMMISSIONER OF INCOME TAX** ... Appellant

- versus -

**AUTO KASHYAP INDIA PVT. LTD.** ... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr Sanjeev Sabharwal  
For the Respondent : None

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE V.K. JAIN**

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

**V.K. JAIN, J.**

1. This appeal is directed against the judgment of Income Tax Appellate Tribunal dated 19<sup>th</sup> February 2009 in ITA No. 1739/Del/06 for the A.Y. 1999-2000 whereby it allowed the appeal filed by the assessee/respondent and set-aside the orders passed by the Assessing Officer and Commissioner of Income Tax (Appeals).

2. The facts as borne out from the order of CIT(Appeals) are that Sh. Parmanand Kashyap, father of Sh. Rajinder Kashyap, one of the Directors of assessee company, used to purchase spare parts from different parties, on credit, in his own name, since the creditors were personally known to him. A sum of Rs.11,81,045/- was payable to Sh. Parmanand for the purchase made by him for the assessee company. The aforesaid



Assessing Company under the sub-head “other supplier”, of main-head “sundry creditors”. Since the purchases were being handled by Sh. Parmanand, it was decided by the company to make the matter simple by transferring the aforesaid credit balance to Sh. Parmanand and, therefore, nomenclature of the aforesaid outstanding balance of Rs.11,81,045/- in the account of Sh. Parmanand was changed from “other suppliers” to “Sh. Parmanand” in the audited financial statement of the appellant company for the years 1997-98 and 1998-99.

3. The Assessing Officer was of the view that transfer of the account of sundry creditors by way of a book entry in the name of Sh. Parmanand constituted cessation of liability, which is taxable under Section 41 of the Income Tax Act. In the appeal filed by the assessee, the CIT(Appeals) noted that the assessee had furnished neither confirmation from Sh. Parmanand nor the names and addresses of the parties from whom credit balance was shifted to the accounts of Sh. Parmanand. It was also noted that even Journal Book, indicating the transfer liability had not been furnished. The assessee claimed that journal book had been seized during a raid conducted at its premises and the other record had been destroyed in a fire. Since Sh. Parmanand had died on 14<sup>th</sup> August 1998, CIT was of the view that after his death, the liability had ceased to exist. He however did not say that mere transfer by way of book entry amounted to cessation of liability of the assessee.

4. The ITAT noted that this liability was acknowledged as



amount due to Sh. Parmanand ultimately had been paid after his death, in the form of issue of share capital in favour of his son and legal heir Shri Rajinder Kashyap in the subsequent year. Noticing that the disputed debt acknowledged was outstanding in the records, including audited accounts, perused by it, the Tribunal concluded that there was no cessation of any liability and in fact the assessee had actually discharged the liability at a future date, thereby questioning the very claim of cessation made by the department.

5. Section 41 of Income-Tax Act, to the extent it is relevant, provides that 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 and subsequently during any previous year the assessee has obtained whether in cash or in any other manner, 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 the assessee from the value of the benefit accrued to him shall be deemed to be profits and gains of profession or business, and accordingly chargeable to Income Tax, as the income of that previous year.

6. It is, therefore, a pre-requisite condition before taking recourse to the Section 41 of the Act that that assessee must have either obtained the amount in respect of the loss, expenditure or trading liability incurred earlier by it or it should have received any benefit in respect of such trading liability by way of remission or cessation thereof. The objective is to tax the amount



benefit availed earlier by him by way of claiming loss, expenditure or liability in respect of that amount.

7. Remission is a positive conduct on the part of the creditor. In the present case, admittedly there has been no remission of the liability of the assessee. Therefore, the only question which arises in this case is whether there was any cessation of liability as has been claimed by the Revenue. The cessation of the liability may accrue either by operation of law, i.e., on the liability becoming unenforceable in law by the creditor, provided the debtor unequivocally declares his intention not to own the liability even if demanded by the creditor. It may also accrue by way of a judicial pronouncement, absolving the assessee from the liability. It may accrue if there is a contract between the parties whereby the liability gets extinguished or it may come to an end by discharge of the debt. Some benefit however must accrue to the assessee by virtue of remission or cessation of the liability, as the case may be.

8. Mere change of nomenclature in the books of account without anything more brings no benefit to the assessee and its liability to pay to the creditor does not get extinguished, merely by change of nomenclature or by change of the sub-head under which the liability is shown in the account books of the assessee. What is relevant is that the liability of the assessee to pay the amount of Rs.11,81,045/- to its creditor(s) did not come to an end merely on account of the aforesaid change in the sub-head under which the liability was shown in the account books. Transfer of liability from one sub-



amount. There is no cessation of liability in such a case and the company still remains liable to its assessee. It cannot be said that the creditors of the assessee would not have been able to recover the aforesaid amount from it merely on account of a change made in the sub-head under which the liability was shown in the account books of the assessee company. The company was liable to pay for the purchases made on its behalf and for its benefit and it continued to remain liable even after aforesaid change in the account books. No benefit accrued to the assessee by changing the nomenclature and, therefore, the outstanding credit balance cannot be deemed to be profit and gains of the business of the assessee company within the meaning of Section 41 of the Act.

9. As noted by the Tribunal, the liability was actually discharged by the assessee company in the A.Y. 1999-2000 by issuing share capital to Sh. Rajinder Kashyap, legal heir of late Sh. Parmanand. Ordinarily the assessee company would have received money from him while issuing shares to Sh. Rajinder Kashyap. Since the amount due from the assessee to late Sh. Parmanand had fallen to his share in the settlement amongst the legal heirs of late Sh. Parmanand, the assessee company adjusted the aforesaid liability instead of taking money from Sh. Rajinder Kashyap for the shares issued to him.

10. Explanation I to Section 41 has no applicability to the facts of this case since there has been no writing off of liability and only the sub-head under which the liability was shown in the account books of the



to make payment of this liability and actually discharged it at a later date by issuing shares to the legal heirs of late Sh. Parmanand against it. In fact, the conduct of the assessee in adjusting this amount towards share money is a strong indicator that the liability had not ceased merely on account of its transfer from one sub-head to another.

11. In any case, the question whether there was cessation of liability within the meaning of Section 41 or not is a question of fact which the Tribunal has concluded in favour of the assessee. In *Commissioner of Income-Tax vs. Autopins (India)* 192 ITR 161, the Tribunal returned a finding that certain payments made by the assessee to its workmen were incurred for the purpose of business expediency and were not of the type contemplated by the Payment of Bonus Act and, therefore, Section 36(1)(ii) was not attracted and the liability had not ceased to exist. It was held by this Court that the question whether the liability continued to exist or not was a question of fact and, therefore, Section 41 would be inapplicable and no question of law arose in the case. In the present case also, since the Tribunal has returned a finding of fact to the effect that there was no cessation of liability, no substantial question of law arises for our consideration in this case.

12. The appeal is accordingly dismissed.

**(V.K. JAIN)**  
**JUDGE**

**(BADAR DURREZ AHMED)**