



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

+ **(ITA No.243 of 2009)**

% Date of order: 18th November,2010

COMMISSIONER OF INCOME TAX

. . . APPELLANT

Through : Ms. Prem Lata Bansal, Advocate,

VERSUS

HARPAL SINGH CHADHA

. . .RESPONDENT

Through: Mr.S.K. Khanna, Advocate

CORAM :-

**HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SURESH KAIT**

1. Whether Reporters of Local newspapers 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?

A.K. SIKRI, J. (ORAL)

1. This appeal pertains to the assessment year 2001-02. While making the assessment, the Assessing Officer made various additions in his assessment order dated 31st March, 2004. However, in the present, we are concerned with the two additions which are dealt with as under:-

- (1) The Assessing Officer had noticed that an amount of ₹ 1,46,01,227/- had been shown by the assessee outstanding against 24 creditors in the Balance Sheet of the proprietary concern of the assessee namely M/s



Pioneer International. He also noticed that the balances were outstanding for more than three years. In the past three years, no correspondence was made by the assessee or by the said purported sundry creditors. The assessee could not furnish their addresses thereof. On this basis, the Assessing Officer concluded that there was no intention on the part of the assessee to pay the amount as this had become time-barred. He accordingly added the aforesaid amount to the income of the assessee under Section 41 of the Act. The CIT (A) deleted this addition. The ITAT has upheld the order of the CIT (A). The Tribunal has stated that the liabilities were old and there was no transaction in the accounts for the last three years and, therefore, these liabilities had become barred by limitation. However, opined the Tribunal, that this would not mean that liability ceased to exist in the eyes of law and merely because the debt was time barred it would not lead to a conclusion that there was remission or cessation of the liabilities leading to some benefits in respect of the liability. On this basis, the ITAT held that the provisions contained in Explanation 1, Section 41 of the Act would not be applicable to the facts of the present case.

We are of the opinion that though the conclusion of the Tribunal is correct but the reason in support thereof is not entirely correct. It



is an admitted case that the liability was shown in the books accounts/Balance sheet of the assessee even in the year under question. Once the liability of bad debt to the creditors is acknowledged in the books of accounts made by the assessee himself, it had not become time barred. Such an acknowledgment in the books of accounts would be a sufficient acknowledgment as per Section 18 of the Limitation Act and, therefore, this acknowledgement would extend the period of limitation by a further period of three years from the date of the acknowledgment. Thus, it cannot be said that the liability had become time barred. Moreover, it also cannot be said that the assessee had no intention to pay the amount when the assessee had itself acknowledged this liability in his books of accounts. Therefore, explanation 1 of Section 41 could not be invoked and the addition made. Thus we upheld the order of the Tribunal, but on different grounds.

- (2) The second addition which was made by the Assessing Officer was in the sum of ₹ 18,97,526/- which was introduced in the capital account of the assessee during the accounting year. According to the Assessing Officer, the assessee could not give any satisfactory explanation and, therefore, it was added in the income of the assessee. The CIT (A) sustained the addition to the extent of ₹ 9 lacs and deleted the balance addition of ₹ 9,97,526. While coming to this conclusion, the CIT (A) went into the



capital account of the appellant and also examined t
withdrawals of various dates and deposits therein. It was
found that withdrawals were made from the bank account
maintained by the assessee company in the Punjab
National Bank. The statement of account was also
produced. On that basis, the CIT (A) was satisfied that
the assessee was able to explain the source of additions
of capital account to the extent of ₹ 9,97,526/-. The
addition of ₹ 9 lacs was sustained and the explanation of
the assessee that it was loan taken from one Mrs. Om Vati
was not accepted. The CIT after examining the accounts
observed as under:-

“I have gone through the capital accounts furnished by the appellant which was also furnished before the AO. All the additions to the capital account have been transfer entries from their account at Punjab National Bank being about ₹ 16 lakhs and the balance ₹ 3.62 lakhs is transferred from Bank of India account. Withdrawals from the capital account to Punjab National Bank account is approximately ₹ 13.50 lakhs. According the appellant they have taken a loan of ₹ 9 lakhs from Mrs. Om Vati Gupta by cheque. They have filed copies of cheques and pay in slips. However, no confirmation from Mrs. Om Vati Gupta has been filed. Hence this contention of the appellant that ₹ 9 lakhs has been received from Mrs. Om Vati Gupta cannot be accepted. Hence out of total addition of ₹ 18,97,526/- made in the capital account, the assessee's explanation regarding ₹ 9,97,526/- is acceptable considering the fact that there are contra entries of withdrawals and additions from the capital account alongwith net addition to the capital account of ₹ 5,37,526/- are explained as withdrawals and additions from the Punjab National Bank and Bank of India account copies of



which were filed before the AO also. However, the entry of ₹ 9 lakh which is alleged to be a loan from Mrs. Om Vati Gupta stands unexplained in absence of any explanation or proof apart from the bank pay in slips. Out of addition of ₹ 18,97,526/- addition to the extent of ₹ 9 lakh is sustained and the balance of ₹ 9,97,526/- stands deleted”.

2. The ITAT has confirmed the aforesaid finding of fact. We are of the opinion that no question of law arise. This appeal is according dismissed.

**(A.K. SIKRI)
JUDGE**

**(SURESH KAIT)
JUDGE**

NOVEMBER 18, 2010
SKB