THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 15.01.2010

\+ **ITA 14/2010**

COMMISSIONER OF INCOME TAX … Appellant

- versus –

SADEN VIKAS INDIA LTD ... Respondent

Advocates who appeared in this case:
For the Appellant : Mr Subhash Bansal
For the Respondent : None

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

1. Whether 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 Digest?

BADAR DURREZ AHMED, J (ORAL)

CM 198/2010

The delay in re-filing the appeal is condoned.

This application stands disposed of.

ITA 14/2010

1. The revenue is aggrieved by the Income Tax Appellate Tribunal's order dated 14.11.2008 passed in ITA 4233/Del/2005 in respect of the assessment year 2002-2003. The Commissioner of Income Tax (Appeals) as well as the Income Tax Appellate Tribunal deleted the addition

41(1) of the Income Tax Act, 1961 (hereinafter referred to as the 'said Act') on account of alleged cessation of liability.

2. It appears that the assessee had received an order from Premier Automobiles Limited (PAL) for supply of components for Fiat Automobiles manufactured by the latter. PAL advanced a sum of Rs 50 lacs to the assessee towards capital cost to be incurred by the assessee for development/ procurement of tools, jigs, dies, fixtures and moulds required for manufacture of products by the assessee to be supplied by them to PAL. Immediately after the said order was placed and the said sum of money was advanced by PAL, a strike took place in the plant of PAL at Kurla, as a result of which PAL had to suspend production and all transactions. Consequently, PAL requested the assessee to subscribe the amount of Rs 50 lacs advanced by the former to the latter in debentures of PAL's sister concern, namely, PAL Enterprises Private Limited (hereinafter referred to as 'Enterprises'). Consequent to the said request by PAL, the assessee invested the said sum of Rs 50 lacs in 12% optionally convertible debentures of Enterprises. However, both PAL and Enterprises ran into difficulties and the assessee never received any interest from Enterprises and even the prospect of recovery of the maturity value of the debentures became uncertain. In this context, the Board of Directors of the assessee company considered the question of writing off the said amount of Rs 50 lacs and it was decided that the said amount be written off both in the debit and credit side of the balance sheet. The assessee's stand throughout has

3. The Assessing Officer, however, did not agree with the explanation given by the assessee and made the addition of Rs 50 lacs, invoking the provisions of Section 41(1) of the said Act. The Commissioner of Income Tax (Appeals) decided in favour of the assessee and deleted the addition. It was held that as no income ever accrued nor any benefit was obtained by the assessee in the said transaction, no income in the form of cessation of liabilities arose in the present case. The Commissioner of Income Tax (Appeals) also returned a finding that there was no indication or material on the basis of which the assessee could be said to have derived any income or benefit from the sum of Rs 50 lacs received from PAL. It was concluded that there was no finding by the Assessing Officer that the assessee was allowed any deduction or allowance in respect of the said sum of Rs 50 lacs in the past assessment years so as to tax it under the provisions of Section 41(1) of the said Act and, therefore, it was concluded that the assessee was entitled to write off the said amount.

4. The said view was accepted by the Income Tax Appellate Tribunal also. We have examined the impugned order and we find that the Tribunal has set out the facts in detail and also examined the relevant terms in respect of the advance of Rs 50 lacs which are mentioned in the letter dated 22.05.1996. The said terms have been set out in the impugned order itself. The Tribunal noted that from the said terms it was clear that the assessee had received the sum of Rs 50 lacs only on the capital account for

capital assets for manufacture of air conditioning systems for cars to be produced by PAL. It was also noted by the Tribunal that it was an undisputed fact that the amount of Rs 50 lacs written off was not allowed as deduction nor does it represent trading liability which had gone to the computation of income for earlier years. Therefore, writing off the said amount would not attract provisions of Section 41(1) of the said Act. After referring to several decisions of the Supreme Court and other High Courts, the Tribunal concluded as under:-

> "10. From the judicial pronouncements discussed above it is clear that provisions of section 41(1) can be pressed into operation only in the cases where any expenditure or loss has been allowed in any of the assessment year and assessee derives any benefit in the relevant assessment year or assessee had incurred any trading liability which has entered into computation of income in earlier years and assessee obtains some benefit in the relevant assessment year. In the instant case the amount received by the assessee at the instructions of PAL was invested in debentures of Pal enterprises Ltd., a sister concern of M/s PAL. In fact the assessee was left with no amount with him. On paper he was debtor of PAL to the extent of Rs 50 lacs and creditor to PAL Enterprises Ltd to the same extent. By writing back the amount standing in the books of account the assessee had not obtained any benefit in the year under consideration. The amount of Rs 50 lacs was not entered in computation in any of the earlier years nor was any claim of expenditure or loss was made in earlier years therefore provisions of Section 41(1) are not applicable. The decision of Hon'ble Supreme court in the case of CIT v/s T. V. Sundram Iyenger & Sons Ltd. (supra) is also not applicable to the facts of case before us. Both the amounts on debit and credit side have been written back/ off resulting in no benefit to the assessee. The assessee had not become richer by any amount so as to apply the ratio of the decision of Hon'ble Supreme Court in the case of CIT v/s T. V. Sundram Iyenger & Sons Ltd. (supra). Accordingly, in our considered view ld. CIT (A) was justified in deleting the addition."

5. We are of the view that the Tribunal has arrived at a correct conclusion and has correctly appreciated the provisions of Section 41(1) of the said Act. No error can be discerned from either the order of the Commissioner of Income Tax (Appeals) or that of the Income Tax Appellate Tribunal. In any event, no substantial question of law arises for our consideration.

The appeal is dismissed.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

JANUARY 15, 2010
SR