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

Decided on: May 19, 2015.

\+ ITA 268/2008
\+ ITA 269/2008
\+ ITA 270/2008

THE LIQUIDATOR POLYMERLAND INDIA P.LTD.
..... Appellant

Through Mr. S. Ganesh Sr. Adv. with Mr. Syed Naqvi, Mrs. Namrata Kapoor Sharma and Mr. P P Kanwer, Advs.

versus

THE DEPUTY COMMISSIONER OF INCOME TAX
..... Respondent

Through Mr. N P Sahni, sr. standing counsel with Mr. Nitin Gulati, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The following questions of law arise for consideration :

"(i) Whether the Tribunal misdirected itself in law in holding that the interest of ₹70,26,492/- had accrued to the assessee and hence was assessable to tax in the hands of the Appellant?

(ii) Whether the finding and conclusion of the Tribunal regarding deemed accrual of interest is perverse?"

2. The brief facts are that the assessee – appellant is a joint venture

company currently facing liquidation in proceedings by Allahabad High Court. In the meantime, amounts continued to be disbursed to suppliers for the routine course of its business. However, on account of deteriorating financial conditions, the suppliers of the goods in this instance TIPCO Ltd., could not keep up its commitments. It had also failed to repay the amounts advanced by the assessee. In these circumstances, when the unpaid advances amounted, the assessee entered into a composition/settlement with the said supplier on 1.7.1997 whereby the advances were converted into a loan. In a sense this is acknowledgment of debt by the said supplier (TIPCO), who also undertook to pay, besides pre-amounts, interest in agreed rate. However, TIPCO Ltd. breached its commitments under the said agreement. In these circumstances for AY 1997-98, the assessee reversed its entries of outstanding amounts. After initially suffering adverse order, the CIT(Appeals) on being approached accepted the assessee's plea that income on the amounts due had not accrued for those years. However, the Revenue for the succeeding years 1999-2000, 2000-01 and 2001-02 held that the income was deemed to have accrued in the absence of the write off. The assessee which had met with initial success before the CIT(Appeals), was aggrieved by the impugned order of the ITAT regarding accrual of income. It is contended by Mr. Ganesh, learned senior counsel firstly that in view of the entirety of the circumstances of the case, though the entries in the books noted as outstanding dues were based on advances paid to the supplier, in fact, over a course of time, there was no prospect of their realisation. Contending that such entries do not amount to income liable to taxation under the Income Tax Act, 1961 learned senior counsel relied upon the judgments of the Supreme Court in *CIT V. Shoorji Vallabhdas & Co.* (1962)

46 ITR 144 and *Godhra Electricity Co. Ltd. V. CIT* (1997) 225 ITR 746. It is emphasised that though the income tax enactment takes into account two points of time at which taxation liability is directed, i.e. accrual of income or its receipts, nevertheless the substance of the matter is income and if income does not result there cannot be tax. Learned senior counsel also relied upon the Supreme Court decision in *Radhasoami Satsang V. Commissioner of Income-tax* (1992) 193 ITR 321. In the said judgment the Court had held that even though the doctrine of *res judicata* is inapplicable to income tax proceedings. Nevertheless if the Revenue treats the particular subject matter for a period of time, and returns findings in favour of the assessee in the absence of the changed circumstance of facts, it would be estopped from taking a contrary position. It was lastly argued that some time in January, 2002 the assessee entered into further agreement with its debtor (i.e. TIPCO) in terms of which the entire dues payable by the latter were written off.

3. Learned counsel for the Revenue resisted the appellants and submitted that the subsequent development could not have been validly re-urged as ground for relief in the present case. It was emphasised that since in the books the assessee never reversed the entry during the relevant points in time, learned counsel highlighted that logically the revenue was justified in brining to tax such amounts on the basis that they had accrued.

4. The judgment *Shoorji Vallabhdas & Co.* (supra) has been recently follows in *CIT V. Excel Industries Ltd.* 358 ITR 295 where it was reiterated that income tax is levied on real income and not hypothetical income. Therefore, entries inspired by realistic prospects of their realisation cannot per se constitute the basis of a valid levy. This view finds support in the Division Bench ruling of this Court in *CIT V. Goyal M G Gases* (2008) 303

ITR 159. Furthermore, this Court is of the opinion that having once accepted the assessee's explanation, with respect to the income not in fact accruing and therefore not liable to be taxed for the previous period 1998-99, the Revenue could not have in the absence of any compelling reason, treated an identical subject matter for succeeding years as it did. In view of the foregoing discussions the impugned order of the ITAT is set aside. The appeal consequently succeed and allowed.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

MAY 19, 2015
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