

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 19587 OF 2017
(Arising out of SLP (C) No. 30896 of 2015)

COMMISSIONER OF INCOME TAX-6, MUMBAI

Appellant

VERSUS

M/S. BALKRISHNA INDUSTRIES LTD.

Respondent

WITH

CIVIL APPEAL NO. 19616 OF 2017
(Arising out of SLP(C) No. 1803 of 2016)

CIVIL APPEAL NO. 19590 OF 2017
(Arising out of SLP(C) No. 21345 of 2015)

CIVIL APPEAL NO. 19639 OF 2017
(Arising out of SLP(C) No. 17847 of 2015)

CIVIL APPEAL NO. 19589 OF 2017
(Arising out of SLP(C) No. 30888 of 2015)

CIVIL APPEAL NO. 19637 OF 2017
(Arising out of SLP(C) No. 17848 of 2015)

CIVIL APPEAL NO. 19588 OF 2017
(Arising out of SLP(C) No. 30903 of 2015)

CIVIL APPEAL NO. 19609 OF 2017
(Arising out of SLP(C) No. 16833 of 2016)

CIVIL APPEAL NO. 19600 OF 2017
(Arising out of SLP(C) No. 28991 of 2015)

CIVIL APPEAL NO. 19594 OF 2017
(Arising out of SLP(C) No. 30890 of 2015)

CIVIL APPEAL NO. 19592 OF 2017
(Arising out of SLP(C) No. 17882 of 2015)

CIVIL APPEAL NO. 19591 OF 2017
(Arising out of SLP(C) No. 17731 of 2015)

C.A. NO. 19587/ 2017 etc.
(@ SLP (C) No. 30896/ 2015 etc.)

CIVIL APPEAL NO. 19599 OF 2017
(Arising out of SLP(C) No. 28328 of 2015)

CIVIL APPEAL NO.8784 OF 2015

CIVIL APPEAL NO. 19593 OF 2017
(Arising out of SLP(C) No. 20595 of 2015)

CIVIL APPEAL NO. 19596 OF 2017
(Arising out of SLP(C) No. 24656 of 2015)

CIVIL APPEAL NO. 19595 OF 2017
(Arising out of SLP(C) No. 22747 of 2015)

CIVIL APPEAL NO. 19607 OF 2017
(Arising out of SLP(C) No. 5270 of 2016)

CIVIL APPEAL NO. 19610 OF 2017
(Arising out of SLP(C) No. 23630 of 2016)

CIVIL APPEAL NO. 19598 OF 2017
(Arising out of SLP(C) No. 25987 of 2015)

CIVIL APPEAL NO. 19638 OF 2017
(Arising out of SLP(C) No. 23666 of 2015)

CIVIL APPEAL NO. 19597 OF 2017
(Arising out of SLP(C) No. 25030 of 2015)

CIVIL APPEAL NO. 13829 OF 2015

CIVIL APPEAL NO. 19601 OF 2017
(Arising out of SLP(C) No. 31153 of 2015)

CIVIL APPEAL NO. 19623 OF 2017
(Arising out of SLP(C) No. 1804 of 2016)

CIVIL APPEAL NO. 19608 OF 2017
(Arising out of SLP(C) No. 522 of 2016)

CIVIL APPEAL NO. 19615 OF 2017
(Arising out of SLP(C) No. 1802 of 2016)

CIVIL APPEAL NO. 19617 OF 2017
(Arising out of SLP(C) No. 2573 of 2016)

CIVIL APPEAL NO. 19614 OF 2017
(Arising out of SLP(C) No. 1801 of 2016)

CIVIL APPEAL NO. 19611 OF 2017
(Arising out of SLP(C) No. 20486 of 2017)

C.A. NO. 19587/ 2017 etc.
(@ SLP (C) No. 30896/ 2015 etc.)

CIVIL APPEAL NO. 19612 OF 2017
(Arising out of SLP(C) No. 24259 of 2017)

O R D E R

With the consent of the parties, we have heard the arguments in the matters finally.

Leave granted.

The Department has filed these appeals against the judgments of the Bombay High Court passed in various cases whereby the High Court has concurred with the view taken by the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal') and held that the amount in question could not be treated as income under Section 41(1) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). The main judgment is dated 05.12.2014 which was rendered in a batch of appeals with leading case known as '*The Commissioner of Income Tax-8 v. M/s. Sulzer India Limited*'. It is this judgment which has been followed in other cases. Therefore, for the sake of convenience, we shall refer to the facts as noted in M/s. Sulzer India Ltd.'s case.

The Assessee M/s. Sulzer India Ltd. filed return of income for the assessment year 2003-04 on 27th November, 2013, declaring total income at Rs.10,59,76,986/-, claiming deduction under section 80HHC of the I.T. Act in the sum of Rs.82,48,864/-.

During the assessment proceedings, the Assessing Officer observed that the Assessee had credited amount of Rs.4,14,87,985/- to the capital reserve contending that the said amount was a remission of loan liability. The Assessee stated that under the Industrial Backward Area Scheme of the Government of Maharashtra, it was entitled to defer the Sales Tax liability for a period of 7 years under the Deferral Scheme of 1983 and for a period of 6 years under the Deferral Scheme of 1988. In response to a Notification issued by the Government of Maharashtra regarding premature repayment of deferral Sales Tax at Net Present Value (NPV), the Assessee made a repayment of Rs.3,37,13,393/- against the total liability of Rs.7,52,01,378/-. The Assessee remitted the balance amount of Rs.4,14,87,985/- and credited the said amount to its capital reserve account. The Assessing Officer asked the Assessee to show cause as to why the said amount should not be taxed in the hands of the Assessee as a revenue receipt. Relying on Circulars of the Central Board of Direct Taxes being Nos. 496 and 674, the Assessee claimed that the deferral Sales Tax under the Deferral Scheme was required to be treated as actually paid for the purposes of section 43B of the I.T. Act. Further, the conversion of Sales Tax liability into loans would be taken as discharge of the liability of Sales Tax and, therefore, the deferral amount was in the form of a loan and not a trading receipt. On this basis, the Assessee

contended that the remission of a loan cannot be treated as a revenue receipt and taxed as its income. The Assessing Officer rejected this claim and by holding that the Board's Circular is in the context of section 43B of the Income Tax Act and therefore not relevant for the present issue.

Against the aforesaid Assessment Order passed by the Assessing Officer, M/s. Sulzer India Ltd. (hereinafter referred to as 'assessee') preferred the appeal before the Commissioner of Income Tax (Appeals) who dismissed the same by sustaining the assessment. This was challenged by the assessee before the Tribunal. In view of the difference of opinion of the two coordinate Benches on this issue, a special Bench was constituted. The special Bench decided the case in favour of the assessee and allowed the appeal. As mentioned above, it is this judgment, which has been upheld by the High Court as well and in these circumstances, the Revenue is in appeal before us.

A glimpse of the facts taken note of, shows that the assessee herein had collected the sales tax in the sum of Rs.7,52,01,378/-. As per the Scheme floated by the Government of Maharashtra, for those assessees who set up their industries in the backward area, the sales tax liability was deferred for a period of 7 years and, thereafter, it can be paid over a period of 7 years under the Deferral Scheme of 1983 and over a period of 6 years under the Deferral Scheme of 1988. However, under the

Scheme of 1988, the Government of Maharashtra promoted premature or payment of deferral sales tax at Net Present Value (NPV).

In the meantime, section 38 of the Sales Tax Act was amended which provides that where the NPV of deferred tax as may be prescribed was paid, the deferred tax was deemed to have been paid. Taking advantage of this Scheme, the assessee made repayment of Rs.3,37,13,393/- against the total liability of Rs.7,52,01,378/-. In this manner, the assessee could save a sum of Rs.4,14,87,985/-. The issue is as to whether this amount, which the assessee could save, is to be treated as 'income' by applying the provisions of Section 41 of the Act. The Assessing Officer treated it as the revenue receipt and thereby income. Contention of the assessee is that it is a capital receipt, which is accepted by the High Court.

In a very detailed and exhaustive judgment rendered by the High Court, it has discussed the view taken by the Assessing Officer, which was confirmed by the Commissioner of Income Tax (Appeals). Thereafter, the High Court noted in detail the manner in which the Tribunal has dealt with the issue. A perusal of the judgment would show that the High Court took into consideration the provisions of Section 41 of the Act and the conditions which are required to be satisfied for bringing a particular receipt as "income"

within the ambit thereof and found that those conditions are not satisfied in the present case. The High Court also repelled the contention of the Revenue that the assessee obtained the benefit of reduction of sales tax liability under Section 43B of the Act as per the CBDT Circular No. 496 dated 25th September, 1987. The relevant portion of the discussion in this behalf reads as under:

"It is not possible to agree with Mr. Gupta. Because, premature payment of Sales Tax already collected but its remittance to the Government, as Mr. Gupta envisages, is not covered by this provision else the subsections and particularly section 43B(1) would have been worded accordingly. Therefore Section 43B has no application. Insofar as applicability of section 41(1)(a), there also the applicability is to be considered in the light of the liability. It is a loss, expenditure or trading liability. In this case, the scheme under which the Sales Tax liability was deferred enables the Assessee to remit the Sales Tax collected from the customers or consumers to the Government not immediately but as agreed after 7 to 12 years. If the amount is not to be immediately paid to the Government upon collection but can be remitted later on in terms of the Scheme, then, we are of the opinion that the exercise undertaken by the Government of Maharashtra in terms of the amendment made to the Bombay Sales Tax Act and noted above, may relieve the Assessee of his obligation, but that is not by way of obtaining remission. The worth of the amount which has to be remitted after 7 to 12 years has been determined prematurely. That has been done by find out its NPV. If that is the value of the money that the State Government would be entitled to receive after the end of 7 to 12 years, then, we do not see how ingredients of sub section (1) of section 41 can be said to be fulfilled. The obligation to remit to the Government the Sales Tax amount already recovered and collected from the customers is in no way wiped out or diluted. The obligation remains. All that has happened is an option is given to the Assessee to approach the SICOM and request it to consider the application of the Assessee of premature payment and discharge of the liability by finding out its NPV. If that was a

permissible exercise and in terms of the settled law, then, we do not see how the Assessee can be said to have been benefited and as claimed by the Revenue. The argument of Mr. Gupta is not that the Assessee having paid Rs.3.37 crores has obtained for himself anything in terms of section 41(1), but the Assessee is deemed to have received the sum of Rs.4.14 crores, which is the difference between the original amount to be remitted with the payment made. Mr. Gupta terms this as deemed payment and by the State to the Assessee. We are unable to agree with him. The Tribunal has found that the first requirement of section 41(1) is that the allowance or deduction is made in respect of the loss, expenditure or a trading liability incurred by the Assessee and the other requirement is the Assessee has subsequently obtained any amount in respect of such loss and expenditure or obtained a benefit in respect of such trading liability by way of a remission or cessation thereof. As rightly noted by the Tribunal, the Sales Tax collected by the Assessee during the relevant year amounting to Rs.7,52,01,378/- was treated by the State Government as loan liability payable after 12 years in 6 annual/equal installments. Subsequently and pursuant to the amendment made to the 4th proviso to section 38 of the Bombay Sales Tax Act, 1959, the Assessee accepted the offer of SICOM, the implementing agency of the State Government, paid an amount of Rs.3,37,13,393/- to SICOM, which, according to the Assessee, represented the NPV of the future sum as determined and prescribed by the SICOM. In other words, what the Assessee was required to pay after 12 years in 6 equal installments was paid by the Assessee prematurely in terms of the NPV of the same. That the State may have received a higher sum after the period of 12 years and in installments. However, the statutory arrangement and vide section 38, 4th proviso does not amount to remission or cessation of the Assessee's liability assuming the same to be a trading one. Rather that obtains a payment to the State prematurely and in terms of the correct value of the debt due to it. There is no evidence to show that there has been any remission or cessation of the liability by the State Government. We agree with the Tribunal that one of the requirements of section 41(1)(a) has not been fulfilled in the facts of the present case."

After hearing the counsel for the parties at length,

C.A. NO. 19587/ 2017 etc.
(@ SLP (C) No. 30896/ 2015 etc.)

we are of the view that the aforesaid approach of the High Court is without any blemish, inasmuch as all the requirements of Section 41(1) of the Act could not be fulfilled in this case.

We, therefore, do not find any merit in these appeals which are accordingly, dismissed.

....., J.
[A.K. SIKRI]

....., J.
[ASHOK BHUSHAN]

New Delhi;
November 21, 2017.

ITEM NO.1

COURT NO.6

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 30896/2015

(Arising out of impugned final judgment and order dated 10-12-2014
in ITA No. 1214/2012 passed by the High Court of Judicature at
Bombay)

COMMISSIONER OF INCOME TAX-6, MUMBAI

Petitioner(s)

VERSUS

M/S BALKRISHNA INDUSTRIES LTD.

Respondent(s)

WITH

SLP (C) No. 1803/2016 (IX)
SLP (C) No. 21345/2015 (IX)
SLP (C) No. 17847/2015 (IV-A)
SLP (C) No. 30888/2015 (IX)
SLP (C) No. 17848/2015 (IV-A)
SLP (C) No. 30903/2015 (IX)
SLP (C) No. 16833/2016 (IX)
SLP (C) No. 28991/2015 (IX)
SLP (C) No. 30890/2015 (IX)
SLP (C) No. 17882/2015 (IX)
SLP (C) No. 17731/2015 (IX)
SLP (C) No. 28328/2015 (IX)
C.A. No. 8784/2015 (III)
SLP (C) No. 20595/2015 (IX)
SLP (C) No. 24656/2015 (IX)
SLP (C) No. 22747/2015 (IX)
SLP (C) No. 5270/2016 (IX)
SLP (C) No. 23630/2016 (IX)
SLP (C) No. 25987/2015 (IX)
SLP (C) No. 23666/2015 (IV-A)
SLP (C) No. 25030/2015 (IX)
C.A. No. 13829/2015 (III)
SLP (C) No. 31153/2015 (IX)
SLP (C) No. 1804/2016 (IX)
SLP (C) No. 522/2016 (IX)
SLP (C) No. 1802/2016 (IX)
SLP (C) No. 2573/2016 (IX)
SLP (C) No. 1801/2016 (IX)
SLP (C) No. 20486/2017 (IX)

(With IA No.50453/2017-CONDONATION OF DELAY IN FILING and IA
No.50459/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP (C) No. 24259/2017 (IX)

(With IA No.80518/2017-CONDONATION OF DELAY IN FILING)

Date : 21-11-2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s)

Mr. Arijit Prasad, Adv.
Mr. S. A. Haseeb, ADV.
Mr. Swarupama Chaturvedi, Adv.
Mrs. Anil Katiyar, AOR

For Respondent(s)

Mr. Rohit Rathi, Adv.
Mr. Sameer Shrivastava, AOR

Mr. R. V. Easwar, Sr. Adv.
Mr. Niraj Sheth, Adv.
Mr. Rustom B. Hathikhanawala, AOR
Mr. Tanveer Zaki, Adv.

Mr. Kunal Chatterji, AOR
Ms. Matrayee Banerjee, Adv.
Mr. Saurav Gupta, Adv.

Mr. Percy J. Pardiwalla, Sr. Adv.
Mr. Niraj Sheth, Adv.
Mr. Kunal Cheema, AOR

Mr. Satyen Sethi, Adv.
Ms. Geetanjali Mohan, AOR

Mr. Rashmikumar Manilal Vithlani, AOR

Mr. Chinmoy Khaladkar, Adv.
Mr. B. K. Pal, AOR

Ms. Monika Ghai, Adv.
Ms. Shyamalima Borah, Adv.
Mr. Ambhoj Kumar Sinha, AOR

Mr. Ajay Vohra, Sr. Adv.
Ms. Kavita Jha, AOR
Mr. Bhuwan Dhoopar, Adv.
Ms. Devika Jain, Adv.

Mr. Ashish Wad, Adv.
Mr. Jayashree Wad, Adv.
Ms. Paromita Majumdar, Adv.

C.A. NO. 19587/ 2017 etc.
(@ SLP (C) No. 30896/ 2015 etc.)

Ms. Sukriti Jaggi, Adv.
M/S. J S Wad and Co, AOR

Ms. Anagha S. Desai, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are dismissed in terms of the signed order.

(NIDHI AHUJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

[Signed order is placed on the file.]