

Trackpart of India Ltd. Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Allahabad

Decided On : Sep-21-1982

Reported in : (1983)3ITD489(All.)

Judge : I Nigam, U Shah

Appellant : Trackpart of India Ltd.

Respondent : inspecting Assistant

Judgement :

1. to 4. [These Paras are not reproduced here as they involve minor issues.] 5. The next grievance relates only to the assessment year 1974-75 and is against inclusion in the assessee's total income of an amount of Rs. 1,05,227. There was a firm by the name of Trackparts of India which was carrying on business of manufacture of track components of Crawler Tractors, etc., at Kanpur. It had placed an order with Jonker-Du Croo N.V. of Amsterdam sometime in 1968 for the import of, among other items, links. However, on receipt of the shipment, it was found that the consignment was damaged, was in loose condition and there were a number of shortages as found by the surveyors. A claim was, therefore, lodged by the firm by a letter dated 8-11-1968 with Jonker-Du Croo N.V., that is, the supplier of the equipments, to investigate at their end and find out from the shippers about the shortages and also register their claim for shortages. The business of this firm was taken over by the assessee company by agreement dated 31-5-1969 whereby for a consideration of Rs. 15 lakh to be paid by allotment of 15,000 fully paid up equity shares of Rs. 100 each in the capital of the company,

the assessee-company took over not only the goodwill, the immovable properties, the plant and machinery, etc., but also the book debts and other actionable claims due to the firm in connection with the business and the full benefit of all securities for such debts. During the previous year relevant to the assessment year under appeal before us, that is, sometimes in the middle of 1972, the assessee-company received from Jonker-Du Croo N.V., Amsterdam, partly in the shape of value of goods in replacement and partly in cash a total amount of Rs. 1,05,510, out of which after deducting Rs. 283 paid on bank commission, the remaining amount of Rs. 1,05,227 was shown as credit to the profit and loss account. It was claimed before the ITO that this amount did not arise out of any business carried on by the assessee-company but out of the business carried on by the erstwhile firm and, therefore, this amount is not liable to tax. The ITO, however, held that since the claim now received was in respect of purchases made by the erstwhile firm for which the deduction has been allowed to the erstwhile firm in the relevant year and the assessee-company had taken over the business of that firm and was doing the same business, the claim was incidental to the same business, the amount was received in view, of the clauses of the agreement by which the business was taken over and, therefore, this amount was taxable in the hands of the assessee-company. The ITO, therefore, did not allow the claim of deduction of this amount while working out the income from the business of the assessee, the starting point of which was the net profit as per profit and loss account.

6. When the matter went up in appeal, the Commissioner (Appeals), while upholding the assessee's contention that the provisions of the Section 41(1) of the Income-tax Act, 1961 ('the Act') will not be applicable here since the assessee-company was a different assessee from the erstwhile firm in whose case the deduction was allowed, held that this was a receipt arising out of the assessee's business and, in fact, it was only on account of the assessee-company pursuing the matter that the assessee-company was able to recover Rs. 1,05,227. The Commissioner (Appeals), therefore, held that this amount was clearly liable to tax as a revenue receipt from the business and the action of the ITO in not allowing the assessee's claim of exemption of this amount was correct.

The assessee has, therefore, come up in the present appeal before us relating only to the assessment year 1974-75.

7. The assessee's learned counsel Shri Agarwal, relying on the authority of the Hon'ble Supreme Court in the case of CIT v. Hukumchand Mohanlal [1971] 82 ITR 624 and of the Hon'ble Allahabad High Court in the case of Moti Lal & Sons v. CIT [1975] 101 ITR 177, submitted to us that for the applicability of Sub-section (1) of Section 41 it is necessary that the assessee who received an amount by way of remission or recompense for loss, expenditure or trading liability must be the same assessee to whom the deduction of that amount was allowed earlier and if that was not so, the provisions of Section 41(1) will have no application. Elaborating on his argument, Shri Agrawal pointed out that the assessee, who had incurred expenditure on import of links, etc., from the firm Jonker-Du Croo, Amsterdam and to whom deduction in this connection was allowed, was the erstwhile firm of Trackparts of India which was a registered firm and a distinct and separate entity from the assessee-company. He, therefore vehemently argued before us that as also conceded by the Commissione (Appeals) in his order, the provision of Section 41(1)(i) will not be appli cable. He further pointed out that all the book debts, including actionabl claims due to the erstwhile firm together with other assets, were purchase by the assessee-company from the erstwhile firm for a consideration o Rs. 15 lakhs and, therefore, any realisation out of what was purchased by the assessee-company from the erstwhile firm could not be the assessee' income. In this connection, reference was made by him to a ruling of the Supreme Court in the case of CIT v. India Discount Co. Ltd. [1970] 75 ITR 191 where their Lordships laid down that a dealer in shares, who receivec dividends on shares purchased by him with arrear dividends was not liable to tax on the arrear dividends received on the shares purchased. He therefore, argued before us that on the same parity of reasoning the amount of Rs. 1,05,227 received here by the assessee-company on accoun of the actionable claim, which along with other assets, was purchased by the assessee-company from the erstwhile firm, could not be treated as the assessee's income.

8. On the other hand, the learned departmental representative Shri Srivastava took us through the provisions of Section 170 in support of his contention that

even though the provisions of Sub-section (3) of Section 17C were applicable only to the previous year in which the succession took place on the same parity of reasoning, what was received by the successor to the business in respect of what was due to the predecessor was liable to assessment and tax. He also relied on the order of the ITO and the AAC in this connection.

9. We have carefully considered the rival submissions. It cannot be disputed that the firm Trackparts of India was a separate and distinct entity from the assessee-company Trackparts of India Ltd. under consideration before us. We have the authority of the Supreme Court in the case of *Hukum Chand* (supra) and the Allahabad High Court in the case of *Moti Lal* (supra) that unless the assessee, in whose case the deduction was allowed in an earlier year, is the same who received the amount in respect of the loss, expenditure or trading liability allowed earlier, the provisions of Section 41(1) cannot be invoked. We have, therefore, no hesitation in coming to the conclusion that the provisions of Sub-section (1) of Section 41 of the Act cannot be invoked here as rightly held by the Commissioner (Appeals). The issue, therefore, that remains is whether this amount can be assessed as a revenue receipt from the assessee. In the case of *India Discount Co.*

Ltd. (supra) which was a dealer in shares and which purchased shares with arrear dividends the Supreme Court held that since the assessee, had contracted not only to purchase the shares but also the arrears of the dividend, this clearly implied that the price paid was not only for the shares but also for the amount which was going to be realised in the form of arrear dividends and, therefore, the arrear dividends received could not be assessed as income. In the present case also, the assessee-company by agreement dated 31-5-1969 purchased from the registered firm Track-parts of India the business together with goodwill, movable properties, plant and machinery, etc. and all book debts or actionable claims due to the registered firm for consideration of Rs. 15 lakhs. It means that at the time of the purchase of the business from the erstwhile firm Trackparts of India, the assessee had paid not only for the immovable and movable properties and the book debts but also for what was going to be realised on the claim made by the erstwhile firm with the firm *Jonker-Du Croo N.V.*, Amsterdam. The amount

received in this connection, therefore, in view of the ruling of the Supreme Court in the case of India Discount (supra) could not be treated as income. The assessee's claim of exemption of this amount of Rs. 1,05,227 was, therefore, admissible and should be allowed.

10. The appeal for the assessment year 1974-75 is partly allowed while the appeal for the assessment year 1975-76 is dismissed.

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