

Commissioner of Income-tax, Amritsar *v.* Balabux Birla and Co.,  
(M. M. Punchhi, J.)

Before S. P. Goyal and M. M. Punchhi, JJ.

COMMISSIONER OF INCOME-TAX, AMRITSAR,—Petitioner.

*versus*

BALABUX BIRLA AND CO.,—Respondent.

Income Tax Case No. 110 of 1977.

May 9, 1985.

*Income Tax Act (XLII of 1961)—Section 41(1)—Sales tax realised by the assessee during a number of assessment years—Such tax debited to separate account and not shown in the profit and loss account—Sales tax also paid to the government from this account—Assessee subsequently transferring the unpaid amount of sales tax to the profit and loss account—Such amount—Whether liable to assessment of income tax during the assessment year in which the amount stood transferred—Section 41(1) of the Act—Whether attracted to such a case.*

*Held*, that section 41(1) of the Income Tax Act, 1961, is applicable to a case where an allowance or deduction has been made in the assessment of any preceding year other than the previous year during which the assessee obtains an amount or the value of the benefit accrues to him. It is in the latter year that the amount obtained or value of the benefit accrued to him is to be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of allowance has been made in existence from that year or not. The mere fact that the assessee followed the mercantile system in the method of accountancy in contrast to the cash-credit system would not, distract the applicability of section 41(1) of the Act, especially when the amount was transferred by the assessee to its profit and loss account in the previous year and had by fiction to be deemed to be profit and gain of business or profession and accordingly chargeable to income-tax as the income of that previous year. As such the provisions of Section 41(1) of the Act are attracted to the case.

(Paras 3 and 5).

*Petition No. 256(2) of the Income-tax Act, 1961—Assessment year 1970-71 praying that the question of law does arise and this Hon'ble High Court be pleaded to direct the Tribunal to refer to the Hon'ble High Court be pleased to direct the Tribunal to refer the aforesaid order of the Tribunal:—*

*“Whether on the facts and in the circumstances of the case the Tribunal is right in law in holding that the sum of*

*Rs. 90,279/- can not be assessed to income-tax during the assessment year 1970-71 under section 41(1) of the Income-Tax, Act, 1961?"*

Ashok Bhan, Senior Advocate with Ajay Mittal, Advocate, for the Petitioner.

Bhagirath Dass, Senior Advocate with Romesh Kumar, Advocate, for the Respondent.

### JUDGMENT

M. M. Punchhi, J.—

(1) The Commissioner of Income-tax, Amritsar, through this petition for mandamus, seeks a direction to the Income-tax Appellate Tribunal, Amritsar Bench, to refer the following question of law to this Court for opinion:—

“Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the sum of Rs. 90,279/- cannot be assessed to Income-tax during the assessment year 1970-71 under section 41(1) of the Income-tax Act, 1961.”

(2) The assessee-firm carried on business in purchase and supply of cotton to various cotton mills. It charged sales-tax at the rate of 2 per cent from its customers while making sales. The amount so collected was shown separately in the bill and credited in the books of accounts under a separate account, styled “General Sales-tax Account”. The amount of sales-tax paid to the Government was debited to this account and the unpaid amount was retained in the books of accounts and was not shown in the profit and loss account of the respective years. During the assessment year 1970-71, however, the assessee transferred the unpaid amount of sales-tax amounting to Rs. 90,279 to its profit and loss account. The Income-tax Officer included the said amount of Rs. 90,279/-, towards its income. The addition was upheld by the Appellate Assistant Commissioner. The Income-tax Tribunal, however, on further appeal held that the amount of sales-tax realised by the assessee initially was in the nature of a trading receipt and hence was liable to be taxed during the respective years. As is plain from the order of the Tribunal, the sum in question was spread out in four different years.

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(3) Then the question arose whether the sum so transferred to the profit and loss account was liable to tax during the assessment year in question or whether it was liable to be taxed during the years in which the sales-tax was initially realised by the assessee. The Tribunal opined:—

- (i) The character and receipt of taxability has to be determined at the initial stage, i.e., at the time when the receipt was realised by the assessee in its books of accounts.
- (ii) The sum realised by the assessee was clearly a part of trading receipt in those years.
- (iii) The method of accountancy followed by the assessee was mercantile and thus trading receipts were liable to tax during the years in which they were so received.

On recording these opinions, the Tribunal deleted the impugned addition of Rs. 90,279/- towards income of the assessee. Support for the view was also sought from section 41(1) of the Act holding that it was not attracted to the case and the amount could not be subjected to tax during the assessment year in question. The Tribunal rejected the reference application of the revenue observing that its view that provisions of section 41(1) of the Act were not attracted to the case was given on the appraisal of the evidence on record and did not give rise to any question of law.

(4) We are, however, of a different view. Section 41(1) of the Act is in the following terms:—

“41(1) Where an allowance or deduction has been made in the assessment by the assessee, and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or sum benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not.”

(5) The provision is applicable to a case where an allowance or deduction has been made in the assessment of any preceding year

other than the previous year during which the assessee obtains an amount or the value of the benefit accrues to him. It is in the latter year that the amount obtained or value of the benefit accrued to him is to be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of allowance has been made is in existence from that year or not. It is the conceded case of the assessee that in the preceding years during which the sums as sales-tax were recovered from the parties transacting business with it, allowance or deduction has been claimed for those sums in those years. On the assessee's own case, section 41(1) of the Act was thus attractable. The mere fact that the assessee followed the mercantile system in the method of accountancy in contrast to the cash-credit system would not, it seems, distract the applicability of section 41(1) of the Act, especially when the amount was transferred by the assessee to its profit and loss account in the previous year and had by fiction to be deemed to be profit and gain of business or profession and accordingly chargeable to income-tax as the income of that previous year. Thus on the finding recorded by the Tribunal whether or not section 41(1) of the Act was attracted was obviously a question of law and the Tribunal fell in error in not referring the question to this Court for opinion.

(6) For the forgoing reason, this petition is allowed. The Tribunal is directed to make a statement of the case and refer above-noted question of law for opinion to this Court. No costs.

H.S.B.

*Before I. S. Tiwana, J.*

SHER CHAND,—*Petitioner.*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1648 of 1985.

May 17, 1985.

*Punjab Co-operative Societies Act (XXV of 1961)—Sections 15A and 26A—Co-option of members of the managing committee of Co-operative Societies—Registrar directing committees of all the Co-operative Societies to co-opt two persons from amongst the categories of persons mentioned in Section 26-A(2)—Such a direction—Whether could apply to a Central Society as well—Primary society consisting of individuals—Central Society having primary society consisting of individuals as its members—Representative of a member*