impugned order. It is further ordered that the respondents in all these appeals shall file review petitions as envisaged by sub-section (2) of section 11-A within a month from the date of this judgment and the competent authority shall pass a fresh order on merits after affording reasonable opportunity to the allottees in accordance with law. In the circumstances of the case the parties are left to bear their own costs.

H.S.B.

Before D. S. Tewatia & Surinder Singh. JJ.

THE COMMISSIONER OF INCOME TAX, PATIALA,—*Applicant.*

versus

THE HARYANA CO-OPERATIVE SUGAR MILLS LTD., ROHTAK,—*Respondent.*

Income Tax Reference No. 46 *of* 1977

July 19, 1984.

Income-tax Act (XLIII of 1961).—Section 41(1)—Unclaimed cane price shown by assessee as his own income—Exemption claimed on the ground that such sum was not a trading receipt as there was no cessation of liability to pay amount to claimants—Such unclaimed price—Whether can be assessed to Income-tax Act as the income of the assessee—Onus to show that the amount is not the income of the assessee—Whether lies on the assessee.

Held, that the assessee having treated a given amount as his own income, then the said amount has to be treated as the income of the assessee and to be brought to tax by virtue of the provisions of section 41(1) of the Income-tax Act, 1961, if two conditions are satisfied; (i) that the amount had been allowed as deduction in some earlier year and (ii) that during the assessment year in question, the assessee has received the benefit representing a given amount by way of cessation or remission of the liability in regard ot the said amount. In a case where the assessee has given the treated amount as income and mentioned it in the profit and loss account as such then *prima facie* the assessing authority would be entitled to hold that the second condition in question stood satisfied and if the assessee despite the above fact asserted that though the amount stood credited in the profit and loss account, the assessee was not entitled

to do so or he was not entitled to forfeit then the onus was on the assessee to establish that in law such amount could not be treated as part of his income. As such, the amount mentioned as income of the assessee has to be held to be the income of such assessee and the Tribunal is entitled to treat the said amount to be the income of the assessee for the given assessment year.

(Paras 6, 7 & 16).

Application under Section 256(1) of the Income-tax Act, 1961 made by the Income-tax Appellate Tribunal (Delhi Bench) referring to this Hon'ble High Court for opinion of the following question of law arising out of its order dated 15th February, 1975 passed in R.A. No. 268 (Del) of 1976-77 (in I.T.A. No. 1083 (Chand.) of 1972-73) for the Assessment year of 1969-70 :—

> *"Whether on the facts and in the circumstances of the case, the Tribunal rightly confirmed the order of the Appellate Assistant Commissioner deleting the sum of Rs. 37,994 added by the Income-tax Officer under section 41(1) of the Income-tax Act, 1961 from the assessment for the year 1969-70 ?"*

Ashok Bhan, Senior Advocate, (A. K. Mittal, Advocate with him) *for the Appellant.*

D. K. Gupta, Advocate, *for the Respondent.*

JUDGMENT

D. S. Tewatia, J.

(1) The Tribunal referred the following question of law for the opinion of this Court :—

> "Whether on the facts and in the circumstances of the case, the Tribunal rightly confirmed the order of the Appellate Assistant Commissioner deleting the sum of Rs. 37,994 added by the Income-tax Officer under section 41(1) of the Income-tax Act, 1961 from the assessment for the year 1969-70 ?".

(2) The given amount was treated as income of the assessee by the assessing authority. On an appeal the Appellate Assistant Commissioner of Income-tax held that the said amount was not the income of the assessee which order was sustained by the Tribunal.

(3) From the order of the Assessing authority it appears that the said amount was entered in the profit and loss account and against the said amount the following entry existed :

. Amount forfeited and cane price payable ... 37,994

When the assessing authority asked to explain the nature of the said forfeitures, the assessee instead of offering any explanation, *vide* his reply dated 28th October, 1971 claimed exemption and sought to amend the written statement in regard to the given item.

(4) The assessee in respect of the given amount of Rs. 37,994 took up the stand that the same represented unclaimed cane price which could not be treated as a trading receipt as there was no cessation of liability in that regard and therefore, the amount could not be brought to tax by invoking the provisions of Section 41(1) of the Income-tax Act (hereinafter referred to as the Act).

(5) So the short question that falls for consideration is as to whether the provisions of section 41(1) of the Act could be invoked to bring the said amount to tax. Before dealing with the judicial precedents on the point, it may be observed that it would depend on facts and circumstances of the given case as to whether the said provision is attracted or not. In the present case, apart from the fact that the assessee credited the given income to his profit and loss account, he also therein indicated as to why he has done so when he mentioned in the entry that this amount is forfeited.

(6) The assessee having treated a given amount as his own income as also makes it clear as to why he treated the given amount as his income i.e. by forfeiting it, then the said amount has to be treated as the income of the assessee and to be brought to tax by virtue of the provisions of section 41(1) of the Act, if two conditions had been satisfied; (i) that the amount had been allowed as deduction in some earlier year and (ii) that during the assessment year in question, the assessee had received the benefit representing a given amount by way of cessation or remission of the liability in regard to the said amount.

(7) As to the first condition, there is no dispute. It is only regarding the second condition that the parties are not on the same wave length. In a case where the assessee had treated the given

amount as his own income in his profit and loss account and had also mentioned that the said amount became his own income as a result of forfeiting the same itself, then *prima facie* the assessing authority would be entitled to hold that second condition in question stood also satisfied and if the assessee despite the above fact asserted that though he credited the amount to his profit and loss account, he was not entitled to do so or he was not entitled to forfeit, then the onus was upon him to establish that in law he was not entitled to treat the said amount as part of his income or that he was not entitled to forfeit the same and therefore his liability did not cease.

(8) As the assessing authority mentioned that instead of bringing any material on record, the assessee proceeded to claim exemption regarding the said amount and desired to amend the return. So far as the facts which led him to forfeit the amount are concerned, they are within the personal knowledge of the assessee which he had not disclosed. If he had disclosed, them, then it could be seen whether in law he was right in forfeiting the said amount and treating the same as his own income.

(9) Allahabad High Court in *Indian Motor Transport Co.* v. *C.I.T.* (1), took the view and rightly so that if the assessee himself treated the given amount to be his own income by entering the same in the profits and loss account, then what better proof there is for holding that it was the income of the assessee in terms of section 41(1) of the Act because the moment the assessee treated the given amount as his own income, then it must be assumed that he did so as his liability in regard to the said amount in his view had ceased unless he established that in law the view that he formed was incorrect. In that judgment their Lordships explained the earlier judgment of their Court in *Bhagwat Prasad and Co.* v. *C.I.T.*, (2). That was a case in which the creditors' remedy had become time barred and the assessing authority treated the said amount to be the income of the assessee. In that judgment, it was held that from the mere fact that the debt had become time barred, it could not be said that the liability of the assessee in law had ceased.

(10) The learned counsel for the respondent submitted that the unilateral act of a debtor to end his liability *qua* his creditor would

(1) (1978) 114 I.T.R. 677.
(2) (1975) 99 I.T.R. 111 (All.)

not amount to cessation of his liability and in support of his submission he cited *Kohinoor Mills Co. Ltd.* v. *Commissioner of Income-Tax, Bombay City,* (3), *J. K. Chemicals Ltd.* v. *Commissioner of Income-Tax, Bombay City II* (4), *Bhagwat Prasad and Co.* v. *Commissioner of Income-Tax, Lucknow,* (5) *Gannon Dunkerly and Co. Ltd.* v. *Commissioner of Income-Tax, Bombay,* (6) *Commissioner of Income-Tax, Bombay City-VI* v. *Sadabhakti Prakashan Printing Press (P) Ltd.* (7) and *Commissioner of Income-Tax, West Bengal-IV* v. *Sugauli Sugar Works P. Ltd.* (8).

(11) The ratio of neither of the aforesaid judgments is attracted to the facts of the present case.

(12) The facts in *J. K. Chemicals Ltd's. case* (supra) were that unpaid wages of the employees amounting to Rs. 5,929 were transferred to the profits and loss account for the given accounting year. The assessing authority merely on that account treated the same as the income of the assessee. The assessee took up the stand that his liability did not cease in view of the provisions of the Industrial Disputes Act, as under section 33C(2) thereof no bar of limitation came in the way of the employees. Provisions of the Bombay Labour Welfare Funds Act, 1953, were also referred to, sub-section (10) of section 2 whereof defined 'unpaid accumulations' as 'all payments due to the employees but not made to them within the period of three years from the date on which they became due whether before or after commencement of this Act including the wages and gratuity legally payable.....' Section 3 of the said Act requires the State Government to constitute a fund called the Bombay Labour Welfare Fund and further provided that notwithstanding anything contained in any other law for the time being in force or in any contract or instrument, all unpaid accumulations shall be paid to the said board. The effect of the above provisions was that whether the assessee had entered unpaid accumulations in the profit and loss account or not, he had to transfer the said amount to the board by virtue of the provisions of section 3 of the said Act.

(3) (1963) 49 I.T.R. 578.
(4) (1966) 62 I.T.R. 34.
(5) (1975) 99 I.T.R. 111.
(6) (1976) 102 I.T.R. 428.
(7) (1980) 125 I.T.R. 326.
(8) (1983) 140 I.T.R. 286.

(13) Such being the position the Bombay High Court took the correct view that there had not been any cessation of liability of the assessee in regard to the given amount even though he had entered the same in the profit and loss account.

(14) In rest of the decisions, what came to be considered by the given Courts was the stand of the Revenue that time-barred debt, on which allowance had been once claimed, became the income of the assessee. The Courts took the view that there was no cessation of liability in terms of section 41(1) of the Act of the assessee-debtor *qua* his creditor and, therefore, even though the assessee by his unilateral act had entered such amounts in his profit and loss account, such amounts in law would not be treated as the income of the assessee.

(15) So far as the present case is concerned, the Revenue had not treated the given amount as the income of the assessee on account of the fact that the liability of the assessee to pay the same had ceased as a result of the remedy of the canegrowers to recover the said amount being barred by limitation. The assessee had not advanced the plea that he had entered the said amount in his profit and loss account and had forfeited the said income as the right of his creditors to recover that amount from him had been barred by limitation and, therefore, he forfeited that amount and treating it as his income entered the same in his profit and loss account.

(16) The assessee had not come out with the reasons which impelled him to forfeit the amount and show the same in his profit and loss account. Obviously, the reasons for which he did so must be such that he treated his liability to pay that amount to his creditors being no longer existent and, therefore, he entered the said amount in his profit and loss account. If the assessee had come forward with any reasons, then the assessing authority would have examined those reasons to see as to whether the assessee had correctly or incorrectly assumed the said amount to be his income in the eye of law. Since *prima facie* the assessee himself had treated a given amount to be his income, the Revenue was rightly entitled to treat the said amount to be the income of the assessee for the given assessment year.

(17) For the reasons aforementioned, the reference is answered in the negative i.e. in favour of the Revenue and against the assessee. There is, however, no order as to costs.

H.S.B.