

## **Ceasing of liability of shipping agent to pay port storage rent back to customer - Sec. 41(1) additions justified**

**Summary – The High Court of Madras in a recent case of Chakiat Agencies (P.) Ltd., (the Assessee) held that addition under section 41(1) was justified in case where ceasing of liability of shipping agent to pay port storage rent back to customer was established**

### **Facts**

- The assessee was a shipping agent. The assessee had shown an amount of Rs.2.89 crores in its books of account as receipts collected by the assessee from its customers towards ground rent payable to the Port Trust as storage charges for the containers of the customers of the assessee. However, the amounts were not paid by the assessee to the Port Trust. The reason for non payment was that the Steamer Agents Association of which the assessee was a member, had filed a Writ Petition before the High Court challenging the increase in charges. It was stated that the amount was shown in the books of the assessee as a disputed liability and it could not be treated as income of assessee.
- The Assessing Officer rejected the contentions of the assessee and held that the assessee had collected the amounts from its customers and consequently, they were to be taxed as income during the relevant assessment year. Thus, he made additions invoking section 41(1).
- On appeal, the Commissioner (Appeals) deleted the addition made by the Assessing Officer and held that once a claim was pending determination before judicial authorities, the same could not be added to the income of the assessee till the dispute was finally settled.
- On further appeal, the Tribunal also concurred with the findings of the Commissioner (Appeals).
- On revenue's appeal to the High Court:

### **Held**

- The HC stated that the significant phrase in section 41(1) is 'remission or cessation' of trading liability which has been claimed as an allowance or deduction by the assessee, if such liability is paid back by the creditor or had ceased to exist, then in that year of payment or cessation, the said trading liability can be brought to tax as profit chargeable to tax.
- The assessee had relied on the fact that since the writ appeal had been pending before the Division Bench of this Court the liability had not been determined.
- The HC however found that the Tariff Authority for Major Ports (TAMP) had passed final orders on 15-1-2016 revising the container storage charges at Chennai Port Trust. Hence the contention of the assessee relating to pendency of the Writ Appeal or that TAMP had not finally determined the storage charges does not hold good.
- The assessee was obligated to pay the amounts to Port Trust immediately when TAMP had passed final orders fixing the storage charges and since they have not paid the same, the amount in their hands has to be treated as 'income' taxable under section 41(1).