

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.352/Mds/2017

निर्धारण वर्ष / Assessment Year : 2004-05

M/s Kothari International Trading  
Ltd.,

Kothari Buildings,  
No.115, M.G. Road,  
Chennai - 600 034.

v. The Assistant Commissioner of  
Income Tax,  
Corporate Circle 4(2),  
Chennai - 600 034.

PAN : AABCK 3566 B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.353/Mds/2017

निर्धारण वर्ष / Assessment Year : 2004-05

M/s Kothari Biotech Ltd.,  
Kothari Buildings,  
No.115, M.G. Road,  
Chennai - 600 034.

v. The Assistant Commissioner of  
Income Tax,  
Corporate Circle 4(2),  
Chennai - 600 034.

PAN : AAACK 2329 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Sh. R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 03.08.2017

घोषणा की तारीख/Date of Pronouncement : 06.09.2017

**आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

Both the appeals of the two independent assesseees are directed against the respective orders of the Commissioner of Income Tax (Appeals)-8, Chennai, dated 24.11.2016 and pertain to assessment year 2004-05. Since common issues arise for consideration in both the appeals, we heard the appeals together and disposing of the same by this common order.

2. There was a delay of 2 days in filing these appeals by the assesseees. The assesseees have filed petitions for condonation of delay. We have heard the Ld.counsel and the Ld. D.R. We find that there was sufficient cause for not filing these appeals before the stipulated time. Therefore, we condone the delay and admit the appeals.

3. The first issue arises for consideration is assessment of waiver of principle amount of loans.

4. Sh. R. Vijayaraghavan, the Ld.counsel for the assesseees, submitted that the CIT(Appeals) by placing reliance on the judgment of Madras High Court in CIT v. Ramaniyam Homes P. Ltd. (2016)

384 v. 530, found that the waiver of loan amount would constitute income under Section 28(iv) of the Income-tax Act, 1961 (in short 'the Act') being the benefit arising in the course of business. The Madras High Court in another case in Iskraemeco Regent Ltd. v. CIT (2011) 331 ITR 317 found that the waiver of loan cannot be considered to be income either under Section 28(iv) or under Section 41(1) of the Act. Therefore, according to the Ld. counsel, this judgment of Madras High Court was not properly appreciated by the CIT(Appeals).

5. Referring to the assessment orders, the Ld.counsel for the assessee submitted that the assessee has credited the loan written back in the Profit & Loss account. Subsequently, the loss was also added to the business. According to the Ld. counsel, the assessee claimed before the Assessing Officer that the waiver of loan by the bank does not constitute income and it is a capital receipt, therefore, it is not taxable in the hands of the assessee. The Ld.counsel further submitted that all the receipts in connection with business are not trading receipts. Therefore, according to the Ld. counsel, the CIT(Appeals) ought to have followed the judgment of Madras High Court in Iskraemeco Regent Ltd. (supra).

6. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assessees borrowed loan and the loan was waived by the lender. The assessees claimed that it is a capital receipt in the hands of the assessee. According to the Ld. D.R., it was claimed before the Assessing Officer that it is neither income under Section 28(iv) of the Act nor can it be assessed under Section 41(1) of the Act. The Assessing Officer, however, found that the waiver of loan taken by the assessees is a benefit arising out of the business, hence, it is assessable as income. Placing reliance on the judgment of Madras High Court in Ramaniyam Homes P. Ltd. (supra), the Ld. D.R. pointed out that the Division Bench of the Madras High Court, after referring to its earlier judgment in Iskraemeco Regent Ltd. (supra), found that when a portion of the loan is waived, the total amount of loan shown on the liabilities side of the balance-sheet is reduced and the amount shown as capital reserves, is increased to the extent of waiver. Accordingly, the Division Bench found that the earlier Division Bench in Iskraemeco Regent Ltd. (supra) had not taken note of the facts. In view of subsequent judgment of Madras

High Court, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

7. We have considered the rival submissions on either side and perused the relevant material available on record. Both the assesseees borrowed loan from ICICI Bank. The ICICI Bank waived the loan. The assesseees claim that the waiver of loan cannot be construed to be income under Section 28(iv) of the Act and it is also not an income under Section 41(1) of the Act. The CIT(Appeals), however, found that the waiver of loan amount would constitute income under Section 28(iv) of the Act.

8. We have also carefully gone through the judgment of Madras High Court in Iskraemeco Regent Ltd. (supra). The Madras High Court found that the loan was borrowed for purchase of a capital asset, hence, the waiver of loan is not an income assessable to tax. The High Court further found that it cannot be treated as income either under Section 28(iv) of the Act or under Section 41(1) of the Act. The High Court further found that since the loan borrowed was used for purchase of capital asset, it is a capital receipt.

9. The Madras High Court subsequently had another occasion to consider an identical issue in Ramaniyam Homes P. Ltd. (supra). After referring to its earlier judgment in Iskraemeco Regent Ltd. (supra), the High Court has observed as follows at paras 42 & 43 of its order:-

“42. But, section 36(1)(iii) makes a distinction. The amount of interest paid in respect of capital borrowed for the purpose of business or profession is allowed as deduction under section 36(1)(iii), in computing the income referred to in section 28. But, the proviso thereunder states that any amount of interest paid in respect of capital borrowed for acquisition of an asset for extension of existing business or profession, whether capitalised in the books of account or not for any period beginning from the date on which the capital was borrowed for the acquisition of the asset, till the date on which such asset was put to use, shall not be allowed as deduction.

43. Therefore, it is clear that the moment the asset is put to use, then the interest paid in respect of the capital borrowed for acquiring the asset, could be allowed as deduction. When the loan amount borrowed for acquiring an asset gets wiped off by repayment, two entries are made in the books of account, one in the profit and loss account where payments are entered and another in the balance-sheet where the amount of unrepaid loan is reflected on the side of the liability. But, when a portion of the loan is reduced, not by repayment, but by the lender writing it off (either under a one time settlement scheme or otherwise), only one entry gets into the books, as a natural entry. A double entry system of accounting will not permit of one entry. Therefore, when a portion of the loan is waived, the total amount of loan shown on the liabilities side of the balance-sheet is reduced and the amount shown as capital reserves, is increased to the extent of waiver.

Alternatively, the amount representing the waived portion of the loan is shown as a capital receipt in the profit and loss account itself. These aspects have not been taken note of in Iskraemeco Regent Ltd.”

10. In view of the above observation made by the subsequent Division Bench of the Madras High Court, this Tribunal is of the considered opinion that the loan amount waived by ICICI Bank has to be necessarily considered as revenue receipt, hence, it is taxable. Therefore, this Tribunal do not find any reason to interfere with the orders of the lower authority and accordingly the same are confirmed.

11. The assessee in I.T.A. No.353/Mds/2017 has taken another ground with regard to disallowance of pre-operative expenses.

12. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the Assessing Officer disallowed ₹1,81,54,653/- towards pre-operative expenses. According to the Ld. counsel, the assessee was having two divisions – one is Culture Centre and another is Essential Oil Division. The assessee incurred revenue expenditure like interest, losses due to exchange rate fluctuation, which was debited to pre-operative expenses. Since the unit began to operate during the assessment year under consideration,

according to the Ld. counsel, the assessee charged the pre-operative expenses to the Profit & Loss account and claimed the same as deduction. However, the Assessing Officer rejected the claim of the assessee on the ground that the assessee has claimed the pre-operative expenses only to reduce the book profit which was increased on account of written back of interest on loan. According to the Ld. counsel, since the assessee started its operation, the expenses claimed by the assessee has to be allowed.

13. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assessee claims the pre-operative expenses only to reduce the book profit during the year under consideration, therefore, the CIT(Appeals) has rightly confirmed the disallowance.

14. We have considered the rival submissions on either side and perused the relevant material available on record. The CIT(Appeals) found that the assessee showed the pre-operative expenses to the extent of ₹2,36,27,733/- in the balance sheet as on 31.03.2003. However, what was written off is only ₹1,81,54,653/- as per the Profit & Loss account for the financial year 2003-04. The CIT(Appeals) further found that the commercial business operation

was not commenced. The CIT(Appeals) has found that the business operation of the assessee was suspended since September, 1999 and no activity was undertaken thereafter. There is no material available on record to suggest that the assessee has commenced the business operation. Hence, the business operation was not commenced and hence, the expenditure like interest, losses due to exchange rate fluctuation cannot be allowed. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

15. The assessee has also taken one more ground with regard to disallowance of depreciation to the extent of ₹20,89,639/-.

16. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, very fairly submitted that the disallowance of ₹20,89,639/- towards depreciation was deleted by the CIT(Appeals) and no further appeal was filed by the Revenue, therefore, this issue does not arise out of the order of the CIT(Appeals) in the assessee's appeal.

17. In the result, both the appeals of the assessee are dismissed.

Order pronounced on 6<sup>th</sup> September, 2017 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 6<sup>th</sup> September, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellants
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-8, Chennai
4. Principal CIT, Chennai- 4, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.