IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD

BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 669/Hyd/2016
Assessment Year: 2007-08

Income-tax Officer, Ward – 2(4), Hyderabad.	vs.	Tini Pharma Ltd., Hyderabad. PAN – AAACT 7976K
(Appellant)		(Respondent)

Revenue by : Smt. N. Swapna
Assessee by : Shri PVSS Prasad

Date of hearing 10/05/2018
Date of pronouncement 23/05/2018

O R D E R

PER S. RIFAUR RAHMAN, A.M.:

This appeal filed by the Revenue is directed against the order dated 29/01/2016 of CIT(A) – 2, Hyderabad for AY 2007-08.

2. Briefly the facts of the case are, assessee company, engaged in the business of manufacture and sale of Bulk drugs and pharmaceutical formulations, filed its return of income for the AY 2007-08 on 28/10/2007 declaring loss of Rs. 1,54,71,478/-. The AO completed the assessment u/s 143(3) rws 147 of the Income-tax Act, 1961 (in short 'the Act') by treating the waiver of the loan amount of Rs. 4,78,30,167/- as business income and added the same to the loss returned.

2.1 The assessee's case was reopened u/s 147 to verify the taxability of cessation of liability consequent to one time settlement

with the bank and also the claim of loss. In response to the notice u/s 148, the assessee filed return on 25/10/2011. In responses to the notices u/s 143(2) and 142(1) of the Act, assessee's AR furnished the information called for.

2.2 From the information provided, the AO noticed that the loan of Rs. 1,21,15,341/- and Rs. 7,67,14,826/- was outstanding towards packing credit and working capital respectively. The assessee during the FY relevant to AY under consideration, negotiated one time settlement with Catholic Syrian Bank as per which assessee agreed to pay Rs. 4,10,00,000 in full settlement of loans. This amount constitutes Rs. 1,41,84,263 towards principal and Rs. 2,68,15,737/- towards interest. The AO observed that as per assessee's books the outstanding payable to Catholic Syrian Bank is Rs. 8,88,30,167/- and on account of one time settlement for Rs. 4,10,00,000/- the assessee company closed the balance amount of Rs. 4,78,30,167/- by transferring the same to capital reserve. The assessee argued that the loans obtained and outstanding were on capital account and do not represent any trading receipt.

2.3 The AO rejected the submission of the assessee on the ground that one time settlement with the bank brought about cessation of liability and hence it is a trading income. For this, he relied on the decision of the Hon'ble Delhi High Court in the case of Rollatainers Ltd. VS. CIT, ITA No. 127 of 2011. Accordingly, the loan waiver benefit of Rs. 4,78,30,167/- including interest was brought tax u/s 41(1) by the AO.

3. Aggrieved with the above order, the assessee preferred an appeal before the CIT(A).

4. The CIT(A) directed the AO to delete the loan waiver benefit by holding that the loan waiver is only on capital account and hence

cannot be brought to tax as trading receipt and the AO is not correct in treating the said amount as income u/s 41(1) as the assessee had not claimed the expenditure of the amount for any of the earlier years, therefore, the provisions of section 41(1) are not applicable.

5. Aggrieved by the order of CIT(A), the revenue is in appeal before us raising the following grounds of appeal:

> *1) Whether on the facts and circumstances of the case, the CIT(A) was right in holding that the amount representing the principal loan amount waived by the bank under the one time settlement scheme which the assessee received during the course of its business is not exigible to tax.*
>
> *2) Whether on the facts and in the circumstance of the case, the CIT (A) ought to have seen that the waiver of principal amount would constitute income falling under section 28(iv) of the Income tax Act being the benefit arising for the business?*
>
> *3) without prejudice to the above, whether on the facts and in the circumstances of the case, the CIT (A) is justified in holding that the loan amount is only on capital account and hence cannot be brought to tax as trading receipt in light of the fact that the assessee utilized the loan amount to acquire fixed assets and claiming depreciation thereon is not a benefit or perquisite taxable u/s 28(iv) of the Act."*

6. The ld. DR submitted that the CIT(A) is not justified in holding that the loan amount is only capital account and hence cannot be brought to tax as trading receipt. He relied on the decision of the Hon'ble Madras High Court in the case of CIT Vs. Ramaniyam Homes (P) Ltd., 68 Taxmann.com 289 (Madras).

7. The ld. AR, on the other hand, submitted that for applicability of section 41, there should be an allowance or deduction claimed by the assessee in any assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. Then, subsequently, during any previous year, if the creditor remits or waives any such liability, then only the assessee will be liable to pay

tax under Section 41 of the IT Act. Further, he submitted that the objective behind this Section is to ensure that the assessee does not get away with a double benefit once by way of deduction and another by not being taxed on the benefit received by him in the later year with reference to deduction allowed earlier in case of remission of such liability. He also submitted that it is an undisputed fact and important to note that the said interest amount had not been debited to the profit or loss account in any of the assessment years as there is difference between 'trading liability' and 'other liability'. However Section 41(1) of the IT Act particularly deals with the remission of trading liability. Whereas in the instant case, waiver of loan amounts to cessation of liability other than trading liability. Referring to the above submissions, the AR submitted that the assessee would not fall u/s 41(1) of the Act.

7.1 Referring to the grounds of appeal filed by the revenue wherein it was mentioned that waiver of principal amount would constitute income falling u/s 28(iv) of the Act, the AR referring to the provisions of section 28(iv), submitted that it is a matter of record that the amount of Rs. 4,78,30,167/- is having received as cash receipt due to the waiver of loan, therefore, the very first condition in the section itself is not satisfied for applicability of section 28(iv) of the Act. For this proposition, he relied on the decision of Hon'ble Supreme Court in the case of CIT Vs. Mahindra and Mahindra Ltd. [2018] 93 Taxmann.com 32 and CIT Vs. Graham Firth Steel Products Ltd., 85 Taxmann.com 110 (Bombay). Further, he relied on the following cases:

1. DCIT Vs. Kalyanapur Cement Ltd., [2017] 83 Taxmann.com 344
2. CIT Vs. Xylon Holdings (P.) Ltd., 26 [2012] 26 Taxmann.com 333

8. Considered the rival submissions and perused the material on record as well as the decisions cited. The assessee company got waiver of the loan amount of Rs. 4,78,30,167/- from the Catholic

Syrian bank, which was transferred to capital reserve in its books of account. The AO treated the said amount as trading receipt and brought it to tax u/s 41(1) of the Act. The CIT(A) directed the AO to delete the same as it is not income chargeable to tax which is capital in nature. In this connection, we refer to the following decisions, on which reliance placed by the assessee, wherein, similar issue was dealt by the Hon'ble Courts:

8.1 In the case of CIT Vs. Graham Firth Steel Products (I) Ltd., [2017] 85 taxmann.com 110 (Bombay), the Hon'ble Bombay High Court has held as under:

> *"29. The Division Bench in Mahindra & Mahindra held that the assessee has not received any benefit or perquisite in kind which could be valued and in any event such benefit should be in the nature of income. The Division Bench noted that the loan was advanced to the assessee Mahindra and Mahindra, the assessee paid interest at 6% per annum for ten years being the period of contract, and it never got deductions for payment of interest under Section 36(1)(iii) or under Section 37 of the Act. The Division Bench held that there was a waiver of the principal amount and not the interest. In that case also the Assessing Officer held that when there was a waiver of the loan, the credits became part of business income and that prior to such waiver, they represented liability. Here also these are the findings and overlooking the aspect of payment of interest which has not been waived and in regard to which no relief was claimed. The loan agreement, in its entirety, was not obliterated in the present case as well. Therefore, we are of the opinion that in the present case Section 28(iv) was not attracted."*

8.2 In the case of CIT Vs Santogen Silk Mills Ltd [2015]57 taxmann.com 208 (Bombay), the Hon'ble Bombay High Court has held as under:

> *"11. It is this order of the First Appellate Authority which was challenged by the revenue in appeal before the tribunal. The argument of both sides have been referred in details in paragraph 6 of the tribunal's order and it has held that on perusal of the loan agreement insofar as loan from ADCB Bank is concerned (subject matter and part of this appeal) that was for purchasing machinery and availed by the assessee. As far as loan from ADCB is concerned, it was conceded that the same was against hypothecation of stock and not a term loan.*

We are not concerned with that part of the order of the tribunal, however, it is material to note that the tribunal disallowed the claim made by the assessee and held that as far as ADCB is concerned, the waiver of the principal amount would have to be construed as taxable income. However, as far as ICICI bank is concerned, it waived the principal amount of Rs. 3.06 crores that was not for carrying on any business activity but to acquire the capital assets. This Court has consistently taken a view that the loan amount written off would not come within the purview of section 28(iv) of the Income Tax Act. The view taken by this Court in the case of Mahindra & Mahindra Ltd. v. CIT [2003] 261 1TR 501/128 Taxman 394 and Solid Containers Ltd. v. Dy. CIT [2009] 308 ITR 417/178 Taxman 192 (Bam.) would enable the tribunal and equally us to conclude that the loan written off would not be taxable under Section 28(iv) of the Act. That issue specifically came up for consideration in the matter of Mahindra .and Mahindra and it was held that the said provision would apply only when a benefit or perquisite is received in kind and has no application where benefit is received in cash or money. Following this decision in the case of CIT v. Xylon Holdings (P.) Ltd. [2012J 211 Taxman 108/26 taxmann.com 333 (Bam.) this Court held that the waiver would not come within the purview of Section 28(iv) of the Income Tax Act. Having perused this decision and in the peculiar facts and circumstances of the present case we are of the view that the tribunal has rightly upheld the order of the Commissioner. It has concluded that the factual and legal position enables it to hold that the direction of the First Appellate Authority cannot be said to be perverse. The view taken by him as termed by the tribunal is rational and judicious. More so, when the assessee company is a BIFR unit and it is in the process of revival, therefore, the banks waived loan as well as interest component due from the assessee. Equally, the loan sanctioned by ADCB and subsequently waived off has also been offered to tax. It is only in the ICICI bank's case that the tribunal took the above view and which we do not find as perverse or vitiated by a error of law apparent on the face of record. As a result of the above discussion, the appeal fails and is dismissed. There will be no order as to costs."

8.3 In the case of CIT Vs. Santogen Silk Mills ltd., [2015] 57 Taxmann.com 208 (Bombay), the Hon'ble High Court of Bombay has held as under:

11. It is this order of the First Appellate Authority which was challenged by the revenue in appeal before the tribunal. The argument of both sides have been referred in details in paragraph 6 of the tribunal's order and it has held that on perusal of the loan agreement insofar as loan from ICICI Bank

is concerned (subject matter and part of this appeal) that was for purchasing machinery and availed by the assessee. As far as loan from ADCB is concerned, it was conceded that the same was against hypothecation of stock and not a term loan. Weare not concerned with that part of the order of the tribunal, however, it is material to note that the tribunal disallowed the claim made by the assessee and held that as far as ADCB is concerned, the waiver of the principal amount would have to be construed as taxable income. However, as far as ICICI bank is concerned, it waived the principal amount of Rs. 3.06 crores that was not for carrying on any business activity but to acquire the capital assets. This Court has consistently taken a view that the loan amount written off would not come within the purview of section 28(iv) of the Income Tax Act. The view taken by this Court in the case of Mahindra & Mahindra Ltd. v. CIT [2003] 261 ITR 5011128 Taxman 394 and Solid Containers Ltd. v. Dy. CIT [2009] 308 ITR 417/178 Taxman 192 (Born.) would enable the tribunal and equally us to conclude that the loan written off would not be taxable under Section 28(iv) of the Act. That issue specifically came up for consideration in the matter of Mahindra and Mahindra and it was held that the said provision would apply only when a benefit or perquisite is received in kind and has no application where benefit is received in cash or money. Following this decision in the case of CIT v. Xylon Holdings (P.) Ltd. [2012] 211 Taxman 108/26 taxmann.com 333 (Born.) this Court held that the waiver would not come within the purview of Section 28(iv) of the Income Tax Act. Having perused this decision and in the peculiar facts and circumstances of the present case we are of the view that the tribunal has rightly upheld the order of the Commissioner. It has concluded that the factual and legal position enables it to hold that the direction of the First Appellate Authority cannot be said to be perverse. The view taken by him as termed by the tribunal is rational and judicious. More so, when the assessee company is a BIFR unit and it is in the process of revival, therefore, the banks waived loan as well as interest component due from the assessee. Equally, the loan sanctioned by ADCB and subsequently waived off has also been offered to tax. It is only in the ICICI bank's case that the tribunal took the above view and which we do not find as perverse or vitiated by a error of law apparent on the face of record. As a result of the above discussion, the appeal fails and is dismissed. There will be no order as to costs."

8.4 In the case of CIT Vs. Xylon Holdings (P) Ltd., [2012] 26 Taxmann.com 333 (Bom.), the Bombay High Court has held as under:

"8. We have considered the submissions. The issue arising in this case stand covered by the decision of this Court in the matter of Mahindra & Mahindra Ltd. (supra). The decision of this court in the matter of Solid Containers Ltd. (supra) is on completely different facts and inapplicable to this case. In the matter of Solid Containers Ltd. (supra) the assessee therein had taken a loan for business purpose. In view of the consent terms arrived at, the amount of loan taken was waived by the lender. The case of the assessee therein was that the loan was a capital receipt and has not been claimed as deduction from the taxable income in the earlier years and would not come within the purview of Section 41 (1) of the Act. However, this Court by placing reliance upon the decision of the Apex Court in the matter of CIT v. T. V Sundaram Iyengar & Sons Ltd. [1996] 222 ITR 344 / 88 Taxman 429 held that the loan was received by the assessee for carrying on its business and therefore, not a loan taken for the purchase of capital assets. Consequently, the decision of this Court in the matter of Mahindra & Mahindra Ltd. (supra) was distinguished as in the said case the loan was taken for the purchase of capital assets and not for trading activities as in the case of Solid Containers Ltd. (supra). In view of the above, the decision of this Court in-the matter of Solid Containers Ltd. (supra) will have no application to the facts of the present case and the matter stands covered by the decision of this Court in the matter of Mahindra & Mahindra Ltd. (supra). The alternative submission that the amount of loan written off would be taxable under Section 28(iv) of the Act also came up for consideration before this Court in the matter of Mahindra & Mahindra Ltd. (supra) and it was held therein that Section 28(iv) of the Act would apply only when a benefit or perquisite is received in kind and has no application where benefit is received in cash or money."

8.5 Following the ratios laid down in the aforesaid cases, we uphold the order of the CIT(A) in directing the AO to delete the addition of Rs. 4,78,30,167/- made by the AO on account of waiver of the loan amount treating it as capital in nature and dismiss the grounds raised by the revenue.

9. In the result, appeal of the revenue is dismissed.

Pronounced in the open Court on 23rd May, 2018.

Sd/-	Sd/-
(P. MADHAVI DEVI)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad, Dated: 23rd May, 2018

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5) The Departmental Representative, I.T.A.T., Hyderabad.
6) Guard File