

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 135, 147 & 148/JP/2018
निर्धारण वर्ष/Assessment Years : 2014-15, 11-12 & 13-14.

The DCIT, Circle-6, Jaipur.	बनाम Vs.	M/s. Modern Denim Ltd., A-4, Vijay Path, Tilak Nagar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AABCM 0861 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Smt. Rolly Agarwal (CIT)
निर्धारिती की ओर से / Assessee by : Shri Madhukar Garg (CA)

सुनवाई की तारीख / Date of Hearing : 02.05.2018.
घोषणा की तारीख / Date of Pronouncement : 03/05/2018.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

These three appeals by the revenue are directed against three different orders dated 22.11.2017 and 10.11.2017 of Id. CIT (A)-2, Jaipur for the assessment years 2014-15, 11-12 & 13-14 respectively. The revenue has raised common grounds in these appeals except the quantum of addition which was deleted by the Id. CIT (A). The grounds raised for the assessment year 2011-12 are reproduced as under :-

- i) Whether on the facts and in the circumstances of the case and in law the Id. CIT (A) is justified in deleting the addition of Rs. 28,49,75,000/- made by the A.O. on account of remission of liability u/s 41(1) of the Income Tax Act, 1961 ?
- ii) Whether on the facts of the present case remission of principal amount of loan obtained from financial institution and banks

does not constitute a benefit or perquisite arising from business and does not fall within the ambit of section 28(iv) of the Act ?

- iii) The appellant craves its rights to add, amend or alter any of the grounds on or before the hearing."

2. We have heard Id. D/R as well as the Id. A/R and considered the relevant material on record. The AO while completing the assessment under section 143(3) of the Act for all these three assessment years, noted that the assessee has shown remission of principal amount not taxable as the same are capital liability and due to the settlement of loan with the banks and financial institutions as per the recommendations and settlement scheme. Thus the AO did not accept the claim of the assessee and made the addition of the respective amounts by treating the same as income of the assessee under section 41(1) or under section 28(iv) of the IT Act. On appeal, the Id. CIT (A) has deleted the addition by following the decisions of this Tribunal in assessee's own case for the earlier assessment years 2009-10, 10-11 and 11-12. The concluding part of the Id. CIT (Appeals)'s decision in para 2.3 is as under :-

" 2.3. I have perused the facts of the case, the assessment order and the submissions of the appellant. Similar issue has been decided by CIT(A)-5, Jaipur in the case of Modern Threads (India) Ltd. for A.Y. 201112, Appeal No. 510/13-14, wherein it was held as follows :-

"The issue as to whether remission amount of loan liability can be considered and taxed as income u/s 41(1) has been considered by Hon'ble ITAT, Jaipur Bench in the assessee's own case for A. Y.2009-10 in ITA no. 622/Jp/2014 vide order dated 22-01-2016, wherein it has been held as follows:

"We have heard the rival contentions of both the parties and perused the material available on the record. The assessee company

is manufacturing of woolen yarn and other wool items and taken loan from bank and financial institutions. The assessee company had become sick company and before BIFR the banks/financial institutions had settled its outstanding loan whereby the principal loan amount of Rs. 29,40,94,000/- was written back. The loan was taken long time back for installing plant and machinery and same was on account of capital account. The case laws referred by the Id CIT(A) i.e. decision of Hon'ble Supreme Court in the case of CIT Vs. Sundaram Iyengar (T. V.) and Sons Ltd. (supra) is not squarely application as wherein the assessee got the benefit of depreciation and on the other hand remission of the principal, which is covered U/s 28(iv) of the Act. As per Section 28 (iv) the value of any benefit or prerequisite whether converted into money or not arising from business or the exercise of the profession can be taxed. Even the Hon'ble Supreme Court in the case of Nectar Beverages Pvt. Ltd. Vs. DCIT (supra) has held that depreciation is neither a loss nor an expenditure nor a trading liability, therefore, settlement of principal amount by the bank/financial institution cannot be assessed U/s 41(1) of the Act. The other case laws referred by the AR particularly the decision in the case of Mahindra & Mahindra Ltd. Vs. CIT (supra) and CIT Vs. Tosha International Ltd. (supra) and others are squarely applicable. Therefore, we delete the addition confirmed by the Id CIT(A). The assessee's appeal on this ground is allowed"

2.4. *Respectfully following the judgement of Hon'ble ITAT, Jaipur Bench, the addition of Rs. 1,34,70,187/- on account of remission of liability u/s 41(1) is hereby deleted."*

The same issue has also been decided for the assessment year 2010-11 & 2011-12 by Hon'ble ITAT, Jaipur vide order dated 07.10.2016 729 & 730/JP/2016 in the case of M/s Modern Threads (India) Limited, Jaipur. Further, in the assessee's own case, the Hon'ble Rajasthan High Court vide its order D.B. Income Tax Appeal No. 145/2010, 144/2010, 146/2010 and 148/2010 has held as follows :-

"7. In view of the above, even otherwise the loan which was taken was capital investment and always treated in the capital account as liability and if it is so, it will naturally go as wiping out the capital liability.

8. In that view of the matter, the contention taken by the appellant is required to be accepted. The view taken by the CIT(A) is required to be restored and that of the tribunal is required to be reversed.

9. In view of the above, the issue is answered in favour of the assessee and against the department."

Thus it is clear that the issue for these three years is identical as it was decided by this Tribunal in assessee's own case for the earlier assessment years. Though the loan transactions were different and taken from different financial institutions, however, the assessee has obtained these loans for acquiring the fixed assets/capital assets and on waiver of the principal amount of the loan under one time settlement scheme with the financial institutions, the remission of the principal amount of loan cannot be treated as income of the assessee. The Hon'ble Jurisdictional High Court in assessee's own case vide decision dated 26.04.2017 in DB IT Appeal No. 145, 144, 146 and 148 has confirmed the decision of this Tribunal in favour of the assessee. Accordingly, by following the earlier orders of this Tribunal as well as the decision of the Hon'ble Jurisdictional High Court, we do not find any error or illegality in the impugned orders of the Id. CIT (A). The same are upheld.

3. In the result, the appeals of the Revenue are dismissed.

Order is pronounced in the open court on 03/05/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल राँव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 03/05/2018.

Das/

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. The Appellant- The DCIT Circle-6, Jaipur.
2. The Respondent –M/s. Modern Denim Ltd., Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 135, 147 & 148/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar

