

**आयकर अपीलीय अधिकरण “जे” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI SANDEEP GOSAIN, JM**

आयकर अपील सं./I.T.A. No. 6816/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2007-08)

M/s. Sonam Trading Private Limited 401, Elegant, 8 <sup>th</sup> & 12 <sup>th</sup> Cross Lane, Khar (W), Mumbai-400 052	<b>बनाम/</b> Vs.	ITO-8(2)(3), Aaykar Bhavan, Room N. 618, 6 <sup>th</sup> Floor, M. K. Road, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCS 6120 K		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Subodh Ratna Parkhi
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Aarju Garodia
सुनवाई की तारीख / <b>Date of Hearing</b>	:	05.06.2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	02.07.2018

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) – 14, Mumbai dated 23.09.2016, pertaining to assessment year 2007-08.

2. The grounds of appeal read as under:

1. The Hon. CIT (A) erred in upholding the re-opening of assessment u/s 147 of the IT Act 1961, by issue of notice u/s 148 on 26.03.2014, inspite of absence of valid reason that income chargeable to tax in the hands of the appellant had escaped assessment.

2. The Hon. CIT (A) erred in confirming the addition of Rs.1,01,91,451/- made u/s 28(iv) of the IT Act 1961, on account of one time settlement with Standard Chartered Bank

- i. holding the appellant to have benefited to the extent of Rs.1,01,91,451/-, which was factually in-correct.
- ii. not appreciating that the appellant had not obtained any benefit in the onetime settlement and in fact had incurred loss of Rs. 2,44,611/- in the transaction and
- iii. ignoring that the interest charged by the bank in its own records was never debited in the books of the appellant company and therefore on income arose in the hands of the appellant when Standard Chartered bank credited and debited such interest in its own records.

3. At the outset in this case, the learned counsel of the assessee submitted that on merits the issue is squarely covered in favour of the assessee by the latest decision of the Hon'ble Apex Court in the case of *CIT vs Mahiandra and Mahaindra Ltd* reported in 93 taxman.com 32. Furthermore, the learned counsel of the assessee gives a breakup of the amount involved as under:

Sr. no.	Particulars	Amount due as per Standard Chartered bank	Amount due as per books of the appellant company
(i)	Principal amount	84,88,411.35	30,55,389.00
(ii)	Interest	50,03,040.23	NIL
	Total Rs.	1,34,91,451.58	30,55,389.00
(iii)	Less : Paid on one time settlement on 01. 11. 2006	33,00,000.00	33,00,000.00
(iv)	Difference	1,01,91,451.00	(2,44,611.00)

4. Per Contra learned departmental representative relied upon the order's of authorities below.

5. Brief facts of the case are that the assessment was reopened upon receipt of information that the assessee company had undergone the one-time settlement with the Standard Chartered bank by waiving Rs.1,08,21,955 on 28/11/2006. The assessee

responded that as per the assessee company books only Rs.30,55,389/- was outstanding which was settled by the one-time payment of Rs.33,00,000/- and accordingly the same was written off as per the settlement scheme. However the authorities below went by the agreement of settlement, according to which there was waiver of Rs.1,01,91,451/-. The same was held to be taxable under section 28 (iv) of the Act.

6. Now we find that the Hon'ble Apex Court in the case of *Mahiandra and Mahaindra Ltd* (supra) has expounded as under:

**13.** On a plain reading of Section 28 (iv) of the IT Act, *prima facie*, it appears that for the applicability of the said provision, the income which can be taxed shall arise from the business or profession. Also, in order to invoke the provision of Section 28 (iv) of the IT Act, the benefit which is received has to be in some other form rather than in the shape of money. In the present case, it is a matter of record that the amount of Rs. 57,74,064/- is having received as cash receipt due to the waiver of loan. Therefore, the very first condition of Section 28 (iv) of the IT Act which says any benefit or perquisite arising from the business shall be in the form of benefit or perquisite other than in the shape of money, is not satisfied in the present case. Hence, in our view, in no circumstances, it can be said that the amount of Rs 57,74,064/- can be taxed under the provisions of Section 28 (iv) of the IT Act.

7. From the above decision of the Hon'ble Apex Court it is evident that the waiver of loan cannot be taxed under section 28 (iv), which has been done by the Revenue in this case. Since the issue is covered in favour of the assessee by the decision of above said Hon'ble Apex Court decision, we set aside the order's of the authorities below and decide the issue in favour of assessee.

8. Since the addition is not sustainable as above, we are not going into other aspects submitted by the Id. Counsel of the assessee that in fact assessee has incurred loss of Rs.2,44,611/- in the transaction, so there is no question of assessee making any gain.

9. Since the issue has been decided in favour of the assessee on merits, the adjudication on validity of reopening is not only of academic interest, and the same is not being engaged into.

10. In the result, the appeal by the assessee stands allowed

*Order pronounced in the open court on 02.07.2018*

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated :02.07.2018

व.नि.स./Roshani, Sr. PS

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**