IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

BEFORE SHRI R. C. SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकरअपीलसं./ I.T.A. No. 3100/Mum/2011
(**निर्धारणवर्ष** / Assessment Year: 2006-07)

Khandwala Securities Ltd. Ground Floor, VikasBldg, Green Street Fort, Mumbai-400023.	**बनाम**/ Vs.	ITO- 4(3)(2) AayakarBhavan, M.K. Road, Mumbai-400020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No.		AAACK2214P
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri V. M. Chavda, AR
प्रत्यर्थीकीओरसे/**Respondentby**	:	Shri V. Justin, DR

सुनवाईकीतारीख/ **Date of Hearing**	:	27/07/2018
घोषणाकीतारीख / **Date of Pronouncement**	:	03/08/2018

आदेश / O R D E R

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the assessee is against the order of Ld. Commissioner of Income Tax (Appeals)-10, Mumbai, dated 17.03.11 for AY 2006-07 on the grounds mentioned herein below:-

I*. 1. The Commissioner of Income Tax (Appeal) - 10 [CIT (A)] erred in confirming the disallowance of interest.*

2. The appellants prays that the disallowance of interest be deleted.

II*. 1. The CIT(A) erred in confirming the disallowance of write back of debenture loan of Rs. 85,00,000/- as income of the appellant and subjecting it to tax.*

2. The appellant prays that the addition of Rs. 85,00,000/- be deleted.

III. *1. The CIT (A) erred in confirming the disallowance of prior period expenses of Rs. 8,07,920/-.*

2. The appellant prays that the disallowance be deleted.

IV. *1. The CIT(A) erred in confirming the disallowance of Rs. 2,45,750/- as capital expenditure.*

2. The appellant prays that the expenditure of Rs. 2,45,750/- be allowed as revenue expenditure.

Without prejudice the appellant prays that depreciation on computer accessories be allowed at 60% instead of 15% allowed by the Assessing Officer.

The appellant craves leave to add, amend and/or alter the above grounds of appeals.

2. As per the facts of the present case, assessee company is engaged in the business of merchant banking, advisory service, PMS and share broking. The return of income for the year under consideration was filed on 17.11.06 declaring total income at Rs. NIL and the same was processed u/s 143(1). Subsequently, the case was selected for scrutiny and after serving statutory notice and seeking reply, order of assessment u/s 143(3) was passed by AO on 10.12.08, thereby making addition /disallowance.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties partly allowed the appeal of the assessee.

Now before us, the assessee has preferred the appeal by raising the above grounds.

Ground No. 1.

3. This ground raised by the assesseerelates to challenging the order of Ld. CIT(A)in confirming the disallowance of interest.

4. We have heard counsels for both the parties at length and we have also perused the material placed on record, judgments cited by both the parties as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the assessee in its order. The operative portion of the order of Ld. CIT(A) is contained in sub-para no. 1.3 to 1.3.1 of its order and the same is reproduced below:-

> *1.3. I have considered the facts and perused the material on record, I find that the funds of Rs. 1.80*

Crore were advanced out of amount transferred from client account no. 2001 of the appellant, wherein funds were received as trading collection The appellant has sufficient own funds of Rs. 33.34 Crore as on 15-3-2000 from which ICD of Rs. 1.80 Crore was cleared on 15-3-2000. The financial statement as on 31-3-2000 of the appellant showed that the appellant has its own funds of Rs. 111.67 Crore as against the borrowings of Rs. 12.70 Crore. It is important to note that the appellant had profit of Rs. 99.10 Crore during the assessment year 2000-01 as against the interest free ICD of Rs. 1.80 Crore given during this year . Thus there is no nexus that the borrowed funds have been used for interest free ICD of Rs. 1,80 Crore given to SRPPL. I agree with the AR, that income-tax is charged on income earned and not on income not earned. Since, the recovery of the principal amount is itself was doubtful, therefore, charging of interest on said amount could not be justifiable action. Therefore no disallowance could be mode under section 36 (1) (iii) of the Act in respect of amount as loans given to SRPPL. This view is also supported from decision in the case of CJ V Tin Box & Co.260 ITR 637(Del) wherein it was held that capital of the firm and interest free unsecured loans exceeded the amounts advanced to sister concern and hence no disallowance on part of

interest on borrowed capital be made. If is further seen that the amount was advanced as commercial expediency as the appellant wanted to maintain good business relationship with SRPPL. This is evident from the facts that the SRPPL being an asset company for which the appellant has acted as Lead Manager and Underwriters and earned business income of Rs. 3 Crore from the said business deals, therefore, the advance was made to maintain good business relation, Therefore, no l)wance could be made under section 36 (1) (iii) as held in the case of S. A. d'C1T (188 TR 11 (SC) that the interest free advance has been made for the coral expediency then no disallowance could be made under section 36 (1) (iii) of the Act. The AR also relied in the case of Reliance Utilities and Power Ltd. [2009] 313 ITR 340 (Born) wherein it was held that if there were funds available both interest-free and overdraft and /or loan taken, then a presumption would arise that investment would be out of interest-free funds generated or available with the company, if the interest- free funds were sufficient to meet the investment. In this case this presumption was established, considering the finding of the fact both by Commissioner (Appeals) and the Tribunal it was held that the interest was deductible under section 36 (1) (iii) of the Act. The appellant has Rs. 11 1.67 Crore

own funds as against the borrowing of Rs, 12.70 Crore. Therefore, the appellant has sufficient own funds from which ICD advance of Rs. 1.80 Crore was given. The other case laws as relied by the AR also support their view. Hence, no interest on interest free advance is disallowable under section 36 (1) (iii) of the Act.

1.3.1. However in the case of M/s. Vimpson Investment Pvt. Ltd. the ICD of Rs. 350 Crore was given for short period as interest bearing advance on which interest for two years on accrual basis was also charged. However, the appellant has stopped charging interest on these ICDs. It is also pertinent to note that no reply was received by the AO when he seen notice u/s 1, 33(6) taxable income M/s. Vimpson Investment Pvt. Ltd and notice returned un-served with remark "left' which means that the party was not genuine. It is further seen that there is no nexus that amount was given out of interest bearing funds. It is also not understood as to how the legal notice was served when the party itself was not alleged to be traceable. Further the ICD was given on interest which moans that borrowed funds were utilised for advance of loan, The appellant is not able to show that advance was given out of its own funds when ore mixed one and common funds are maintained. There appears no business expediency to r

give loan to MIS. Vimpson Investment Pvt. Limited, hence, the decision in S. A. Builder v CII (188 ITR 1) (SC) is not applicable . Reliance is placed in the case of CIT v Ahhishek Industries Ltd. 286 ITR I (P&H) wherein it was held that if the assesseewould not have given the advance to the party, it could have reduced borrowing to that extant. Therefore, it is imperative to disallow the interest expense in proportion of interest payment attributable to advance. Further in the case of CIT Vrs. Baby & Co 254 ITR 248(Ker) if was held that the .AO was justified in disallowing interest in proportion to the interest free advance.

1.3.2. In view of above facts, the disallowance of proportionate interest relating to loss ofRs. 3.50 crore given M/s. Vimpson Investment Pvt Ltd is upheld and disallowance of notional proportionate interest on loan of Rs. 1.80 crore given as ICD to SRPPL is deleted. Therefore this ground of appeal is partly allowed.

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and judgments referred and submissions made by both the parties, we notice that assessee has claimed that it has advanced Interest free inter Corporate Deposit (ICD) of Rs. 1.80 crore to M/s Shree

Rama Polysynth Pvt Ltd. (SRPPL) in 2000 out of its own funds lying in the bank out of its accumulated reserve fund. We further notice that this amount was advanced from Canara Bank with whom the assessee neither enjoyed credit facility nor any deposit was made from where the amount had been advanced to SRPPL. Apart from above, the assessee had also advanced ICD of Rs. 3.50 crore to M/s Vimpson Investment Pvt. Ltd on 19.12.2000 on interest @ 16.25. p.a. We further notice that the AO thereafter disallowed the interest in respect of both the above advances by reaching to the conclusion that no efforts were made by assessee to recover the said amount and there was no commercial expediency.

We further notice that on appeal, Ld. CIT(A) had taken into consideration that assessee had sufficient own funds of Rs. 33.34 Crore as on 15-3-2000 from which ICD of Rs. 1.80 Crore was cleared on 15-3-2000. The financial statement as on 31-3-2000 of the assessee also reflected that the assessee had its own funds of Rs. 111.67 Crore as against the borrowings of Rs. 12.70 Crore and it was also noticed by Ld. CIT(A) that assessee had profit of Rs. 99.10 Crore during the assessment year 2000-01 as

against the interest free ICD of Rs. 1.80 Crore given during this year . And thus, Ld. CIT(A) noticed that there is no nexus that the borrowed funds had been used for interest free ICD of Rs. 1,80 Crore given to SRPPL.

It was further noticed by Ld. CIT(A) that the amount was advanced as commercial expediency as the assessee wanted to maintain good business relationship with company and hence while reaching to the conclusion, it was categorically held that assessee had Rs. 111.67 Crores of own funds as against the borrowing of Rs, 12.70 Crore and therefore, the assessee had 'sufficient own funds' from which ICD advance of Rs. 1.80 Crore was given and hence, it was concluded that no interest on interest free advance is disallowable under section 36 (1) (iii) of the Act and deleted the same.

We further notice that however, in the case of M/s. Vimpson Investment Pvt. Ltd., Ld. CIT(A) had held that there was no nexus that amount was given out of interest bearing funds and presumed that since the ICD was given on interest which means that borrowed funds were utilized for advance of loan and

came to the conclusion that there was no business expediency to give loan to M/S. Vimpson Investment Pvt. Limited.

After having meticulously gone through the facts of the present case, we find that Ld. CIT(A) cannot adopt two different principles for the same set of situations, since Ld. CIT(A) had already come to the conclusion that assessee had Rs. 111.67 crores own funds and more particularly, the factual positon was very clear before Ld. CIT(A). Therefore, in such circumstances, Ld. CIT(A) could not have presumed that since the ICD was given on interest, that fact itself do not automatically leads to the conclusion that borrowed funds were utilized for advance of loan. When once the Ld. CIT(A) has taken a specific view by appreciating that the assessee had 'sufficient own funds' then in that eventuality, the Ld. CIT(A) could not have taken a different view merely on the ground that ICD was given on interest. Therefore, in such circumstances, we are of the considered view that Ld. CIT(A) was wrong in taking contrary view. Hence, we delete the disallowance of proportionate interest relating to loan of Rs. 3.50 crores given to M/s Vimpson Investment Pvt. Ltd and **allow** this ground of appeal raised by the assessee.

Ground No. II

5. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the disallowance of write back of debenture loan of Rs. 85,00,000/- as income of the appellant and subjecting it to tax.

6. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the assessee in its order. The operative portion of the order of Ld. CIT(A) is contained in sub-para no. 3.3 &3.3.1 to 3.3.7 of its order and the same is reproduced below:-

> *3.3. I have considered the facts and perused the material on record. The appellant is engaged in the share brokerage, and merchant banking operations and borrowed loan by way of issue 200 NCD from VPL for the purpose of business during financial year 97-98*

on which it has paid interest also. Since, the appellant cod not repay the loon; it offered Rs, 15 lakhs as OTS for waiver of principal amount of Rs, 85 lakhs as well as interest of Rs. 83.88 lakhs. It is seen that the appellant has shown interest waived off as income hits PL account but not offer the principal amount written off as income for taxation, though the principal amount of the waiver of Rs. 85 lakhs was credited to Profit and Loss Account. The AO was of the view that by waiver off of the amount of debenture loan, the assessee has become richer and as per general principle of accounting standard any amount received by the assessee is income chargeable to tax under section 2 (24), 28 (iv). 41 (1) and 56 of the Act. The term income is defined under section 2 (24) to mean that all receipts of a revenue nature, unless specifically exempted income and are chargeable to tax, the loon taken is not normal the kind of receipt which is income, but when it put in to business then it becomes trading in nature and when that loan is written off by the creditor, some benefit is accrued to the assessee Therefore such benefit becomes chargeable to tax. The section 41 (1) read with section 59 of the Act provides that even the remission of the debt/liability as income of the order in remission or such waiver amounts to profits or gains of business or profession is liable to be taxed under

section 28 of the Act. In the case of CIT v TV SundaramIyengar Saris Ltd (1996) 222 ITR 344 (SC), the Honourable Supreme Court laid clown that the waiver of loan, on the subsequent event has the effect of changing the nature and character of loan, the capital receipt converts into trading receipts and therefore unclaimed deposits become assessees income during the course of trading transaction and therefore held to be taxable is also equally applicable to the waiver of debentures loans, The Honourable Supreme Court in the case of T V Sundoramlyengar& Sons Limited has held as under:

> *"The true accountancy view would, I Think, demand that these sums should be treated as paid into a suspense account, and should so appear in the balance sheet. The suspense should not be brought into the annual trading account as a receipt at the time They are received. Only time will show what their ultimate fate and character will be. After three years That fate is such. as to one class of surplus, that insofar o The suspense account,it has not been reduced by payments to clients, that port of it which is remaining becomes by operation of law a receipt of The Company, and ought to be transferred from the suspense account and appear in the profit and loss account*

> *for that year as a receipt and profit. That is what it in fact is. In That year the assessee become the richerby the amount which automatically becomes theirs and that asset arises out of on ordinary trade transaction. It seems to me to be the commonsense way of dealing with These matters*

Applying the aforesaid principle, it was held that the assessee because of the trading operation had become richer by the amount transferred to its profit and loss account. The Court further observed as under:

> *"In other words, the principle appears to be that if on amount is received in course of trading transaction, even Though it is not taxable in The year of receipt as being of revenue character, the amount changes its character when the amount becomes the assessees own money because of limitation or by any other statutory or contractual right. When such a thing happens, commonsense demands that The amount should be treated as income of The assessee.*

Thus applying this principle to case before which the Court held the same to be trading receipt in the following manner:

"In the present case, the money was received by the assessee in course of carrying on his business. Although it was treated as deposit and was of capital nature at the point of time it was received, by efflux of time the money has become the assessee's own money. What remains after adjustment of the deposits has not been claimed by the customers. The claims of the customers have become barred by limitation. The assessee itself has treated the money as its own money and taken the amount to its profit and loss account. There is no explanation from the assessee why the surplus money was taken to itS profit and loss account even it if was somebody else's money. In fact, as Atkinson, J. pointed out that what the assessee did was the common-sense way of dealing with the amounts."

3.3.1. The ratio of the decision of T.V. Sundarornlyengar and Sons Ltd.(222 ITR 344) (SC) is that the that the quality and nature of a receipt for income tax purposes is fixed once and for alt, when the receipt is received and that subsequent operation can change its nature, is not absolute and that in given cases by reason of subsequent events, the amounts which initially were not received as trading receipts may be regarded as business income. In the light of

above the appellant's case is examined. it is seen that the assessee has acquired the debentures loan for the purpose of trade in trading and investment in shares, giving loan on interest and keeping the shares as stock in trade /investment purpose. It may be seen from Profit and Loss Account of the appellant that the appellant has income from corporate advisory services, capitol market operations, brokerage, income from interest on loans and advances etc. Further there is nothing on record to show that the loan taken by the appellant was utilized for the purpose of acquiring capital asset. On the contrary, the material available on record including notes on accounts indicates that the appellant has obtained loan for its business activity and trading operations. It is admitted by the appellant himself as discussed in ground no. 1 above that the borrowed funds were utilised for the purpose of business. Therefore, the amount borrowed as debentures loan was must have been utilized for the purpose of business hence the amount written off on account of debentures loan shall be deemed to be appellants income chargeable to tax in the light of decision of Hon'ble Supreme Court in the case of TV Sundaramlyengar (supra)as discussedabove. The Hon'ble Bombay High Court in the case of Solid Containers Ltd v DCII (2009) 308 lIP 417 (BOM) also

followed and applied the some principle as laid down by the honourable Supreme Court in the case of TV SundaramIyengar and Sons Ltd (1996) 222 ITR 344 (SC). Hence, the said decision is also applicable in the case of the appellant.

3.3.2. In the case of Solid Containers Ltd v DCIT (2009) 308 ITR 417 (BOM) it was held that the waiver of loan taken for business purpose, the amount retained in the business and as such the amount that initially didn't have the character of income becomes liable lo tax. The head notes of that decision reads as follows:

> *Section 28(iv) of the Income-tax Act, 1961- Business income Value of any benefit orperquisite arising from business or exercise of profession Assessee had taken a loan from 'F' during previous year for business purposes which was written back in relevant assessment year as ci result of consent terms arrived at between 'F' and assessee Assessee claimed that said loan was a capital receipt arid, therefore, did not come under section 41 (1) - Assessing Officer rejected assessee 's contention and held that credit balance written back was income of assessee in view of fact that it was directly arising out of business*

activity of assessee and, thus, was liable to tax under section 28 - Commissioner (Appeals) as well as Tribunal, following decision of Supreme Court in CIT v. T.V. Sundarnmlyengar& Sons Ltd. (1996) 88 Taxman 429, upheld order of Assessing Officer Whether order of Tribunal was in accordance with settled position of law and, therefore, it was to be upheld - Held, yes.

3.3.3. it is seen that the debentures loan taken by the appellant was for the purpose of business and not on capital account, as it could be seen that the appellant company is an investment company cum merchant banking and mainly in the business of purchase and sale of shares and brokerage and also involve in giving loan and advances on interest and lCD on Interest, therefore the decision in the case of Mahindra & Mahindra Lid. v DCII 261 IIR 305(Bom)relied by the assessee would not be applicable in this case as in that case, the loan was taken to purchase plant and machinery, dies, tools etc. being capital asset. It was on that fact the waiver of principal amount of loan was held to be not covered by this section 28 (iv) of the Act whereas in this case loan was taken for the purpose of business hence waiver of loan amount becomes chargeable to tax under section 28(iv) and 41(1) of the Act

334. Further in a recent decision in the case of Hindustan Foods Ltd V DCIT (2009) 178 taxman 247 (BOM) dated 13. 2. 2009 of which relevant extract is reproduced as under:

Section 2050 of the Companies Act has come into force with effect from 31-10-1998. The Tribunal had given finding of fact by holding that the amount in question all throughout continued to remain with the assessee and it failed to deposit The some into the Investor Education and Protection Fund, as required under section 2050 of the 1956 Act. It had also been found by the Tribunal that the assessee had not paid any interest after 7995. It was not in dispute that the repayment of the redeemable debentures, which were issued in the year 1988, was due in 1993 and after 1995, the money was lying with The assessee as unclaimed, which was not even subsequently transferred to the investor Education and Protection Fund. Considering the aforesaid aspect of the matter, the Tribunal was justified in holding that the amount in question had rightly been treated as trade receipt by the Assessing Officer. Since the amount in question had already been utilized by the assessee for the purpose of its business from time-to-time and by board resolution, it hod transferred the amount to the general reserve fund account and considering the judgment of the Supreme

Court in the case of CIT v. T.V. Sundaramiyengar& Sons Ltd. [1996] 222 ITR44J88JJjxrijg 429, the amount utilized for the purpose of business of the assessee was required to be treated as its business income. [Para 91

Considering the aforesaid aspect of the matter and considering the fact that the assessee had already utilized the money from time-to-time for its business purpose it could not say that the debt in question had not become time-barred and, therefore, The said unclaimed amount should not have been treated as its income by way of trade receipt. The Tribunal had given cogent reasons for coming to the conclusion That the amount in question was required to be considered as income of the assessee, The Tribunal hold also rightly held that in the subsequent assessment years, if some amount was paid to the debenture-holders, the Assessing Officer should deduct such amount in the relevant assessment years. The Tribunal had, accordingly, while setting aside the orders of the Assessing Officer as well as the appellate authority, had given such benefit to The assessee in the relevant assessment years. [Para 10]

3.3.5. in view of above it is clear that the honourable High Court has held that the amount of unclaimed

debentures which were not transferred to Investors Educational and Protection Fund under section 2050 of the Companies Act, and credited to General Reserve account by the assessee company are taxable as income of the assessee company. In the instant case the facts are identical to this case, it is further seen that in the instant case the assessee itself has credited the debenture loan to Profit and Loss Account and not to General Reserve Account meaning thereby that the assessee itself has treated the waiver of debenture loan as income chargeable to tax. Therefore, the assessee cannot take plea that waiver of debenture loan is not its income chargeable to tax and therefore entries made in books of accounts arevery much decisive. The assessee could not able to explain as to why if has credited the amount to Profit and Loss Account.

3.3.6. Further reliance is placed on the recent decision of Honourable Delhi High Court in the case Logitronics Pvt. Ltd. v CT [ITA No. 1623 of 2010 with ITA No, 503 of 2010) dated February 18, 2011 wherein if was held as under: Whether the waiver of a loon is taxable as income or not depends on the purpose for which the loan was taken. If the loan was taken for acquiring a capital asset, the waiver thereof would not amount to any income exigible to tax u/s 28(iv) or 41(1). On the other hand, if the loan was taken for a

trading purpose and was treated as such from the very beginning in the books of account, its waiver would result In income more so when it was transferred to the P&L A/c in view of T V Sundoramlyengar& Sons Limited (1996) 222 ITR 344 (SC).

3.3.7. In the light of above facts and relying on various judicial pronouncement it is therefore held that the AO has rightly brought to tax the waiver of the debentures loan amount to Rs. 85 lakhs to tax under the section 28(iv)/ 41(1)! 56 of the Income Tax Act 1960. Therefore the action of the AO is upheld and the ground of appeal is dismissed.

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities, judgments referred and submissions made by both the parties, we find that assessee is engaged in share brokerage and merchant banking operation and borrowed loan by way of issue 200 NCD from VPL for the purpose of business during financial year 1997-98 on which it has paid interest. We further notice that Ld. CIT(A) while appreciating the facts of the present case has rightly relied upon the principles laid down by the Hon’ble

Supreme Court in the case of **CIT v T.V SundaramIyengar Saris Ltd (1996) 222 ITR 344 (SC)**, wherein it was held as under:-

> *"The true accountancy view would, I Think, demand that these sums should be treated as paid into a suspense account, and should so appear in the balance sheet. The suspense should not be brought into the annual trading account as a receipt at the time They are received. Only time will show what their ultimate fate and character will be. After three years That fate is such. as to one class of surplus, that insofar o The suspense account,it has not been reduced by payments to clients, that port of it which is remaining becomes by operation of law a receipt of The Company, and ought to be transferred from the suspense account and appear in the profit and loss account for that year as a receipt and profit. That is what it in fact is. In That year the assessee become the richerby the amount which automatically becomes theirs and that asset arises out of on ordinary trade transaction. It seems to me to be the commonsense way of dealing with These matters*

We further notice that Ld. CIT(A) has also rightly relied upon the judgment in the case of **Solid Containers Ltd v DCIT**

(2009) 308 ITR 417 (BOM), wherein it was held that the waiver of loan taken for business purpose, the amount retained in the business and as such the amount that initially didn't have the character of income becomes liable lo tax. The head notes of that decision reads as follows:

> *Section 28(iv) of the Income-tax Act, 1961- Business income Value of any benefit or perquisite arising from business or exercise of profession Assessee had taken a loan from 'F' during previous year for business purposes which was written back in relevant assessment year as ci result of consent terms arrived at between 'F' and assessee Assessee claimed that said loan was a capital receipt arid, therefore, did not come under section 41 (1) - Assessing Officer rejected assessee 's contention and held that credit balance written back was income of assessee in view of fact that it was directly arising out of business activity of assessee and, thus, was liable to tax under section 28 - Commissioner (Appeals) as well as Tribunal, following decision of Supreme Court in CIT v. T.V. Sundarnmlyengar& Sons Ltd. (1996) 88 Taxman 429, upheld order of Assessing Officer Whether order of Tribunal was in*

accordance with settled position of law and, therefore, it was to be upheld.

We noticed that the assessee is engaged in the shares brokerage, and merchant banking operations and borrowed loan by way of issue 200 NCD from VPL for the purpose of business during financial year 97-98 on which it has paid interest also. Since, the assessee could not repay the loan, it offered Rs. 15 Lakhs as OTS for waiver of principal amount of Rs. 85 lakhs as well as interest of Rs. 83.88 lakhs. It is seen that the assessee has shown interest waived off as income hits Pl account but not offer the principal amount written off as income for taxation, though the principal amount of the waiver of Rs. 85 lakhs was credited to profit and loss account. The AO was of the view that by waiver off of the amount of debenture loan, the assessee has become richer and as general principle of accounting standard any amount received by the assesse is income chargeable to tax u/s 2(24), 28(iv), 41(1) and 56 of the Act.

From the records, there is nothing to show that the loan taken by the assessee was utilized for the purpose of acquiring capital asset. On the contrary, the material available on record

including notes on accounts indicates that the assessee has obtained loan for its business activity and trading operations. It is admitted by the assessee himself that the borrowed funds were utilized for the purpose of business.

Even it is clear that the Hon'ble High Court in the case of Solid Containers Ltd. Vrs. DCIT (2009) 308 ITR 417 (Bom) and in the case of Hindustan Food Ltd Vrs. DCIT (2009) 178 taxmann 247(Bom) had also clearly held that the amount of unclaimed debentures, which were not transferred to investors educational and protection fund u/s 205 C of the Companies Act and credited to general reserve account by the assessee company are taxable as income of the assessee company. In the instant case also, the facts are identical to these cases. It was further observed that in the instant case, the assessee itself has credited the debenture loan to profit and loss account and not to the general reserve account which shows that assessee itself has treated the waiver of debenture loan as income chargeable to tax.

In view of above, we find that Ld. CIT(A) has rightly concluded this ground by following the above mentioned judicial pronouncements and upheldthe action of AO.

Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by LdCIT(A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld.CIT(A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, this ground raised by the assessee stands **dismissed**.

Ground No. III

7. This ground has not been pressed by Ld. AR, therefore this ground becomes infructuous.

Ground No. IV

8. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the disallowance of Rs. 2,45,750/- as capital expenditure.

9. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the assessee in its order. The operative portion of the order of Ld. CIT(A) is contained in para no. 5.0 (5.1 to 5.3) of its order and the same is reproduced below:-

> *5.0. Ground No. V: Expenditure of Rs. 2,15,830 treating as capital expenditure.*
>
> *5.1. The assessee has incurred expenditure amounting to Rs, 2,45,750 on account of AC platform, electrical items, work, purchase of tea machine, Exide batteries, laptop RAM, CPU trolley etc. The AO observed that the section 43 says that that all expenses on capitol asset before put to use are to be capitalized. Accordingly the expenses of Rs. 2,45,750 were capitalized on which depreciation @15% was also allowed resulting in net disallowance of Rs. 2,15,838 i.e. 2,45,750-29912.*

5.2. The AR stated that these expenses are on account of repairs and maintenance therefore should not have been capitalized. The AR relied in the case of Income-fax Officer v SamirariMajumdar 280 ITR74 (Kol) wherein it was that Xerox machine and Printers are to be classified as computer.

5.3. 1 find that the expenses related to purchase of new asset being batteries, Trolley, tea machine, hence, which are capital asset. Accordingly this ground is dismissed.

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities, judgments referred and submissions made by both the parties, we find that AO treated Rs. 2,45,750/- as capitalized by holding that as per section 43, all expenses on capital asset before put to use are to be capitalized. After considering the facts, we are of the view that the assessee had furnished the details of addition of fixed assets in which at Sr. No. 29, assessee has shown purchase of exide battery of 65,000/- and Sr. No. 56 of UPS purchase of UPS Battery of Rs. 5332 and claimed the depreciation at the rate of 60%. It was held by the AO that since the battery and UPS are

asset coming under the block of electrical item and depreciation is allowable only @ 15%.

Before us, Ld. AR relied upon the judgment of Madras High Court in the case of **CIT Vrs. Southern Roadways Ltd. T.C.(A) Nos. 700 to 704 of 2007**, wherein it was held that expenditure incurred on UPS system and printer, etc were not a capital expenditure but a revenue expenditure. Therefore, keeping in view the above principles in the case of **CIT Vrs. Southern Roadways Ltd (supra)**, we hold that UPS and battery are integral part of computers and thus are entitled for the same depreciation. Resultantly, this ground raised by the assessee is **allowed** with no order as to cost.

10. In the net result, the appeal filed by the assessee stands **partly allowed** with no order as to cost.

Order pronounced in the open court on 3rd August, 2018.

Sd/- Sd/-

(R.C. Sharma) (Sandeep Gosain)

लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member

मुंबई Mumbai;दिनांकDated : 03.08.2018

Sr.RS.Dhananjay

<u>आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार
(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**