

4. 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 in the circumstances of the case, the CIT(A) is correct in deleting the addition of Rs. 8,52,58,224/- made towards the waiver of interest by banks under 'one time settlement' for computing book profit u/s 115JV of the IT Act, stating that the assessee has fulfilled the conditions laid down under clause (vii) of Explanation (1) to section 115JB of the IT Act?

2) Whether on the facts and in the 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?

3) Whether on the facts and in the circumstances of the case, the CIT(A) ought to have seen that the waiver of principle amount would constitute income falling under section 28(iv) of the Income Tax Act being the benefit arising from the business.”

5. As regards ground No. 1, it is observed that assessee is a sick company incurring losses from its inception i.e. the financial year 1998-99. It was referred to BIFR and was declared as a sick Industrial Company w.e.f. 10.10.2003 (Asst. Year 2004-05) which finalised the one time settlement scheme (OTS) and in pursuance of the same during the financial year 2010-11 relevant for the Asst. Year 2011-12 M/s. IDBI and M/s. Andhra Bank have waived-off a total interest of Rs. 8,52,58,224/- and the same was credited to the profit & loss account. During this year only the net worth of the assessee became positive and consequently the BIFR vide its order dated 26.08.2010 removed the assessee from the purview of Sec. 3(1)(0) of Sick Industrial Companies Act, 1985 w.e.f. 26.08.2010.

5.1. The assessee filed its original return of income on 30.09.2011 without deducting the above waived interest

amount of Rs. 8,52,58,224/- for computing book profit under provisions u/s 115JB of the I.T. Act and arrived at a book profit of Rs. 2,67,57,530/-after adjusting the brought forward depreciation loss of Rs. 5.19 crores (being lower than b/fd. Business loss) Later, the assessee has realized that its case falls under Clause (vii)" of Explanation (1) of Sec.115JB. Accordingly, it has filed revised return of income on 25-03-2013 by deducting the above interest waived of Rs. 8,52,58,224/- for arriving at the book profit u/s.115JB of the Act. On the other hand, while completing the scrutiny assessment, the AO has rejected the assessee's above computation.

5.2 The CIT(A) deleted the addition made by the AO by observing that assessee's case falls under clause (vii) of Explanation (1) to section 115JB of the Act. And since the assessee has fulfilled the conditions laid down in the said clause, the claim made by the assessee for deduction of waived interest of Rs. 8,52,58,224/- for computation of book profit u/s 115JB is allowed.

6. Ld. DR relied on the order of AO while Id. AR of the assessee besides relying on the order of CIT(A), relied on the following cases:

1. NCL Industries Ltd. Vs. JCIT, 88 ITD 150 [2004]
2. Vista Pharmaceuticals Ltd., ITA No. 840/Hyd/2011, dated 17/02/2012.

7. Considered the rival submissions and perused the material on record. In the case of NCL industries Ltd. (supra) the coordinate bench of Hyderabad has held that Sec.41(I) which is brought into statute to supersede the principle that under general law, remission of trade liability is income, can't be brought in for the purpose of calculation of book profit u/s.

115JB of the I.T. Act, 1961. In the case of Vista pharmaceuticals (supra), the coordinate bench has held that when this impugned interest is not actually allowed as deduction in earlier years while computing the book profit in those years, the same can't be brought to tax in this asst. year while computing book profit U/s. 115JB of the Act.

7.1 In the case of assessee, the Id. AR has brought to our notice that the assessee has not charged the interest waived by the bank as interest in the earlier years and interest was never allowed as deduction while computing book profit in the earlier years and hence the said decisions are squarely applies to the case of the assessee. Further, the assessee's case falls under clause (vii) of explanation (1) to section 115JB. Therefore, we do not find any infirmity in deleting the addition made on this count. This ground of appeal of the revenue is dismissed.

8. As regards ground Nos. 2 & 3 regarding the waiver of principal amount of OD of Rs. 1,98,00,000/- and working capital of Rs. 30,00,000/-, apart from the figure of Rs. 8,52,58,224/- credited to the profit & loss account. The AO observed that since the waived amounts of OD and working capital are revenue in nature, the total of these two figures being Rs. 2.18 crores also has to be credited to the P&L account for the purposes of normal provisions of income-tax. He, therefore, made the addition of Rs. 2.18 crores.

8.1 The CIT(A) deleted the addition by observing that the AO is not justified in making the addition as the waived amount of Rs. 2.18 crores represents working capital term loan and hence, the same cannot be credited to P&L A/c.

9. Ld. DR relied on the order of AO and also placed reliance on the decision of Madras High Court in the case of CIT Vs. M/s Ramaniyam Homes P. Ltd., Tax Case (Appeal) No. 278 of 2014, judgement dated 22/04/2016.

10. On the other hand, Id. AR of the assessee submitted that these amounts cannot be classified as revenue and consequently be added to the profit & loss a/c as the same is clearly on capital account and hence is clearly against the fundamental accounting principles and is also against the provisions of Companies Act, 1956. In support of his submissions, he relied on the following cases:

i) Asst. Commissioner of Income-Tax, company Circle V(I) Vs. SPEL semiconductors ltd (2013) 35 Taxmann.com 304 (Chennai tribunal).

ii) Iskrameco Regent Ltd Vs CIT (2011) 331 ITR 317/196 Taxmann 103/ (2010) 8 taxmann.com 119 (Madras).

iii) Commissioner of Income-tax Vs. Tosha International Ltd. (2009) 176 Taxman 187 (Delhi).

iv) Commissioner of Income-tax, Chennai Vs. Innovol Medical India Ltd. (2013) 38 taxmann.com 434 (Madras).

v) Coastal Corporation Ltd. Vs Jt. CIT (2008) 118 TTJ 563 (Visakhapatnam) .

vi) Smart Talk (P) Ltd Vs ITO, Ward 8(3)(2), Mumbai (2009) 119 ITO 13 (Mumbai).

11. Considered the rival submissions and perused the material on record. With regard to ground No. 1, we notice that assessee is a sick industrial company, with effect from 10/10/2003. The scheme of revival includes the one time settlement. This clearly shows that the case of assessee falls within the clause (vii) of Explanation '1' to section 115JB of the Act. The whole scheme of reorganisation is approved by

the Panel set up for this purpose, it clearly fulfils the conditions laid down in clause (vii) of explanation 1 of the section 115JB of the Act. Further, we are inclined to agree with the findings of the Id. CIT(A). Accordingly, ground raised by the revenue is dismissed.

12. With regard to ground Nos. 2 & 3, we notice that assessee received waiver of working capital term loan to the extent of Rs. 2.18 crores under the One Time Settlement under the scheme of revival under BIFR. The assessee treated the same as capital reserve and not offered the same as income in Profit & Loss A/c. The AO treated the same as income u/s 28(iv) of the Act as the same was generated from the business. Id. CIT(A) allowed the ground raised by the assessee by observing that the waiver represents working capital loan and hence the same cannot be credited to P&L Account. The revenue is in appeal before us. Id. DR relied on the decision of Hon'ble Madras High Court in the case of CIT Vs. Ramaniyam Homes Pvt. Ltd. (supra). In the above decision, the Hon'ble Court has distinguished the cases of

- a) T.V. Sundaram Iyengar & Sons, 222 ITR 344
- b) Iskrameco Regent Ltd. (supra)
- c) Rollatainers Ltd., 339 ITR 54
- d) Mahindra & Mahindra Ltd., 261 ITR 501

12.1 The above decision is distinguishable on facts as the present case involves scheme of revival under BIFR. The one time settlement offered to the assessee based on the scheme against the erosion of capital. The compensation received by the assessee will reduce the erosion of capital and it did not increase the net worth of the capital in real sense. Since it is in the nature of compensation towards capital erosion, it can only be treated as 'capital receipt'. Moreover, it can never be routed through the P&L account as the liability waiver is

towards working capital term loan. It is important to note that the working capital, no doubt, used in trading activities but this term loan is never part of Profit & Loss account. The business uses the cash flow but the cost of using the above capital is applied to P&L A/c. The funds, which are applied in the business are always treated as capital in nature.

12.2 In the present case, the waiver of working capital term loan has reduced the erosion of capital under the scheme, it will remain as capital transaction and it can never be treated as revenue. The Id. DR relied on the case of Ramaniyam Homes (supra) is distinguishable and cannot be applied in the present case.

12.3 We notice that the Hon'ble Delhi High Court Decision in the case of Tosha International Ltd. (supra) is similar to the facts of the present case. The ratio laid down by the Hon'ble Court is reproduced below:

"3. The revenue went in appeal before the Tribunal against the order of the Commissioner of Income-tax (Appeals) with regard to the deletion of the said sum of Rs 10.47 crores. We note that the Tribunal has examined the case in detail and particularly from the standpoint of the provisions of section 41(1) of the said Act. The Tribunal has observed as under:-

"As per our considered view, for attracting the provisions of section 41(1), the first requisite condition to be satisfied is that the assessee should have got deduction or benefit of allowance in respect of loss, expenditure or trading liability incurred by it and subsequently during any previous year, the assessee should have received any amount in respect of such loss, expenditure or trading liability by way of remission or cessation thereof. The remission would become income only if the assessee has claimed deduction in respect of expenditure or trading liability. In Mahindra & Mahindra Ltd. v. CIT [2003]261 ITR 501, Hon'ble High Court of Bombay held that no allowance or deduction having been allowed in respect of loan taken by assessee for purchase of capital assets, section 41(1) was not

attracted to remission of principal amount of loan. In the instant case, the assessee has not got any deduction on account of acquisition of capital assets as the same has been reflected in the balance sheet and not in the P and L account, and also the remission of the principal amount of loan so obtained from the bank and financial institution had not been claimed as expenditure or trading liability in any of the earlier previous year. So far as waiver of interest is concerned, the assessee-company itself has treated the same either as income or has not claimed the same as expenditure in the computation of income filed before the lower authorities."

4. We see no reason to interfere with the conclusions of the Tribunal as the same have been rendered on a correct appreciation law. The principles enunciated in Mahindra & Mahindra Ltd. v. CIT [2003]261 ITR 5011 (Born.) are fully applicable and we see no reason to take a different view."

12.4 In view of the above discussion, we do not find any infirmity in the order of CIT(A) in deleting the addition of Rs. 2,18,00,000/- made by the AO towards waiver of capital treating as revenue in nature and the ground raised on this issue is dismissed.

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

Pronounced in the open court on 29th November, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 29th November, 2018
kv

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