

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“C” BENCH, AHMEDABAD**

**BEFORE JUSTICE SHRI P. P. BHATT, PRESIDENT**  
**& SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2471/Ahd/2014  
(निर्धारण वर्ष / Assessment Year : 2011-12)

<b>The Income Tax Officer</b> Ward- 4(2), Ahmedabad Room No. 105, 1 <sup>st</sup> Floor, Navjivan Building, B/h. Gujarat Vidhyapith, Ashram Road, Ahmedabad – 380009	<b>बनाम/</b> Vs.	<b>Karnavati</b> <b>Infrastructure Pvt.</b> <b>Ltd.</b> D-501, Status, Opposite T.V. Tower, Drive In Road, Gurukul, Ahmedabad - 380054
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACK4583D</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Lalit P. Jain, Sr.D.R.
प्रत्यर्थी की ओर से /Respondent by :	Shri Sakar Sharma, A.R.

सुनवाई की तारीख / Date of Hearing	10/01/2019
घोषणा की तारीख /Date of Pronouncement	09/04/2019

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-VIII, Ahmedabad ('CIT(A)' in short), dated 18.06.2014 arising in the assessment order dated 28.02.2014 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2011-2012.

2. The grounds of appeal raised by the Revenue read as under:

- “1. *The Ld.CIT(A) has erred in law and on facts to direct the AO to delete the addition of Rs.1,04,00,000/-, holding the amount in question to be capital receipt despite the assessee’s own admission that the amount in question was used for day-to-day affairs and as circulating capital which in event of waiver, was taxable as business Income u/s 28(iv) of the Act.*
2. *The CIT(A) has erred in law and on facts to ignore that assessee has failed to prove that the liability had ‘not ceased to exist’ although the same had already been barred by limitation of time.”*

3. Briefly stated, the assessee is a Private Limited Company engaged in the business of civil work contracts. The assessee filed return of income declaring total income of Rs.32,98,100/- for AY 2011-12 in question. The case was subjected to scrutiny assessment while framing the assessment, the income of the assessee was enhanced by making addition of Rs.1,04,00,000/- by invoking Section 28(iv) of the Act towards amount standing in the books of the assessee in the nature of unsecured loans from promoter group. The AO made addition on the ground that there exists a case of remission of liability to pay unsecured loans outstanding for long period since 01.04.2007. The AO accordingly added the aforesaid amount to the total income of the assessee under s.28(iv) of the Act holding the same to be the value of benefit or perquisite arose to the assessee from its business.

4. Aggrieved, the assessee preferred appeal before the CIT(A).

5. The CIT(A) took note of the facts and circumstances of the case in length and found that the creditors have not waived their liabilities in favour of the assessee. The loan was taken by the assessee for the purposes of meeting capital requirements of the business and the same were brought in certain proposition. The repayment of unsecured loan is linked to the corresponding bank FDR and finalization of liquidation proceedings of the Bank where FD are placed. The CIT(A)

concluded that the liabilities have neither been waived nor ceased and therefore no addition can be made by using the provision of Section 28(iv) of the Act in the absence of accrual of any benefit *per se*. It was further noticed that loans were taken by the assessee for capital purposes and therefore the benefit accruing therefrom, if any, cannot be taxed as revenue receipt. The CIT(A) accordingly reversed the action of the AO and granted relief to the assessee. The relevant operative para of the order of the CIT(A) is reproduced for complete understanding of the process of reasoning adopted for granting relief:

“2.3 Decision:

*I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. The AQ has made an addition of Rs. 1.04 crores as there were some old unpaid liabilities appearing in the balance sheet of the appellant. The AO was of the opinion that the appellant could not prove the credit balance reflected in the balance sheet as on 31/03/2011 which was carried forward from 01/04/2007 and the amount shown as unsecured loans was accordingly treated as deemed income under section 28(iv) of the Act. The appellant on the other hand has submitted that the liabilities have not ceased. It has been submitted by the appellant that the loan taken by it was capital in nature and the nature of money received has not been changed, it has referred to the circumstances in which the loan was taken and has also explained subsequent adjustment in the books of accounts due to collapse of The Visnagar Nagrik Sahakari bank Ltd. The liabilities have not been waived by the creditors. It has therefore, been submitted by the appellant that the addition made by the AO should be directed to be deleted.*

*On a careful consideration of the en-re facts of the case, it is noted that the appellant has pointed out the circumstances related to these unsecured loans in the audited accounts by Note No B.4. It would be convenient, for the sake of clarify, to reproduce the same note in order to understand the correct facts of the case: -*

*“ The company was initially formed as joint venture company wherein four business groups contributed share capital in equal ratio and also brought in non interest bearing funds in equal proportions for the purpose of making FOR with The Visnagar Nagarik Sahakari Bank Ltd. as margin money deposit in order to get bank guarantees and to get solvency certificates required to be furnished to various authorities at the time of making tenders and also as part of tender documents, if tender is accepted. Subsequently, The Visnagar Nagarik Sahakari Bank Ltd. was directed to be liquidated by the Reserve Bank of India by order dtd. 11/07/2003, At that point of time an amount of Rs. 50,00,000/- (Rupees Fifty Lacs only) was transferred from the value of FDR to share investment account by the bank and to this extent FDR value*

*was reduced and new FDR was issued to the company. Therefore, Board of Directors in order to protect the interests of the company decided in consultation with the promoters to retain & freeze such credits of promoters (equivalent to the amount of FDR) till realization of margin money FOR made with Visnagar Nagarik Sahakari Bank Ltd. (now under liquidation). The promoters also agreed to get back funds provided by them in proportion to the money realised from the said Bank FOR. Pending realization of said FOR, money brought in by initial promoter groups is classified as 'unsecured loans' in the accounts, Further, due to availability of promoter's fund, no provision against non realization of Bank FOR is required. If no funds are realised against the said FDR, credits lying in promoters accounts would be adjusted against the said bank FDR and short fall, if any, would be charged to the Profit & Loss Account as deficit."*

*The above facts, indicated in the note to the audited accounts, are undisputed. It is therefore, clear from these facts that the creditors have not waived the liabilities. The loan was taken by the appellant for the purpose of meeting the capital requirements of the business and the same were brought in by the four promoters of the company in equal share. The appellant made a fixed deposit with the Visanagar Nagrik Sahakari Bank Ltd for obtaining a bank guarantee limit. The bank subsequently collapsed and went into liquidation. The liquidation proceedings of the bank have a still not been completed and therefore, the repayment of the unsecured loans which is linked to the bank FDR and finalisation of the liquidation proceedings of the bank are still appearing as outstanding in the balance sheet of the company. Therefore, it is clear from facts that the liabilities have not ceased.*

*The above facts also show that the loans were taken for capital purpose and even if it is assumed that the liabilities have been waived or ceased no addition on that account can be made by using the provisions of section 28(iv) of the Act. It is an undisputed fact that loan taken by Appellant was for capital purposes. When loan was not taken for meeting trading liability, remission of such loan cannot be taxed as revenue receipt in the hands of Appellant Company. The character of loan at the time of borrowing as well as at present has not changed. It remained capital in*

*In the present case, as discussed herein above, loan was taken capital purpose. The decisions referred supra are squarely applicable on facts of Appellant's case. There is no fact on record which indicates that the loan has been taken for trading purposes. Accordingly, even the deemed remission of these liabilities cannot be treated as income. The addition made by the AO is therefore, directed to be deleted.*

*The ground of appeal is accordingly, **allowed.**"*

6. Aggrieved by the relief granted by the CIT(A), the Revenue has preferred appeal before the Tribunal.

7. The learned DR for the Revenue relied upon the order of the AO.
8. The learned AR for the assessee, on the other hand, referred to the 'notes to the Accounts' wherein the facts and circumstances for outstanding credit has been disclosed. The learned AR submitted that the CIT(A) has rightly decided the issue in favour of the assessee after taking cognizance of the circumstances existing for outstanding of the loan amount. The learned AR reasoned that the assessee is not benefitted at all by such outstanding amount from the promoter which has been kept by the assessee in its custody with a measure to indemnify loss arising from FDR placed with Sahkari bank owing to liquidation proceedings of the Bank. The learned AR therefore stated that no justification can be gauged in invoking Section 28(iv) o the Act in view of the non-recovery of deposits of the assessee.
9. We have carefully considered the rival submissions. The applicability of section 28(iv) of the Act is in question on outstanding credits payable amounting to Rs.1,04,00,000/- as shown by the assessee in its balance sheet which is carried forwarded since 01.04.2007. It is the case of the Revenue that the outstanding money was received by the assessee from the promoters in the course of carrying on his business and by the efflux of time, the money which remained outstanding has turned into its own money and thus the benefit accrued to the assessee owing to its non-payment for long time. The AO accordingly was of the view that the outstanding liability has ceased to exist by way of remission thereof and consequently, the assessee is liable to tax on such benefit by way of remission under s.28(iv) of the Act. A perusal of the order of the CIT(A) and the facts placed on record clearly show that the impugned liability towards loans obtained from promoters have not been recognized in the balance sheet as ceased. Further, loans were

introduced by the promoters from their account which was clearly capital in nature and the nature of money received from the promoters have not undergone any change while liability remains unpaid owing to difficulty in recovery of corresponding investments made with a Sahkari bank which is under liquidation. The assessee in the circumstances cannot be said to have derived any benefit *per se* from withholding of such loan as a mark of commercial prudence to hedge possible losses from liquidation of depositee bank. The CIT(A) in our considered view had rightly viewed the facts from commercial perspective and applied the position of law correctly. We thus see no reason to interfere with the order of the CIT(A). Consequently, we decline to interfere.

10. In the result, appeal of the Revenue is dismissed.

**This Order pronounced in Open Court on 09/04/2019**

Sd/-  
(JUSTICE P. P. BHATT)  
PRESIDENT

Ahmedabad: Dated /04/2019

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

True Copy

*S. K. SINHA*

**आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-**

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।