

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D': NEW DELHI  
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.4541/Del of 2015  
Assessment Year: 2006-07**

**ACIT,Circle -15(2),  
New Delhi.**

**vs**

**M/s Logitronics P. Ltd.,  
1745, Hardayal Street,  
Cheera Khana, Nai Sarak,  
Delhi.**

**PAN: AAACL0281H**

**(Appellant)**

**(Respondent)**

**Assessee by: None**

**Department by: Smt. Naina Soin Kapil**

**Date of Hearing: 19.08.2019**

**Date of Pronouncement: 18.10.2019**

**ORDER**

**PER NARASIMHA K. CHARY, JM**

Challenging the order dated 21/4/2015 passed by the learned Commissioner of Income Tax (Appeals)-V, New Delhi ("Ld. CIT(A)"), in Appeal No.0306/2014-15 in the case of M/s Logitronics (P) Ltd ("the assessee"), Revenue preferred this appeal.

2. Brief facts of the case are that the assessee has been engaged in the business of manufacturing of electronic products, namely, computers, clocks, push button telephone diallers, calculators, computer monitors and computer keyboards since 1978 as a small-scale industry and closed the said business/factory on 12/5/1999. Assessee entered

into a loan transaction for funds/non-fund basic credit facility through cash/EPC credit accounts for admitting the working capital requirements with the state bank of India on 14/3/1991 and had an outstanding of Rs.2,850,91,849.77 as on 31/3/1991 and had share capital of Rs.11,93,000/- and surplus in P&L Account of Rs.48,50,235.48 and that they had enjoyed the easy access to the bank finance for meeting their working capital needs. Assessee claims to have become victim of liberalisation/devaluation of rupee and started incurring losses and ultimately closed the business on 12.5.2019 and thereafter became highly irregular in respect of the loan facilities, resulting in the SBI stopped applying the interest on the said loan facilities from 1/7/1994 onwards as per prudential norms of accounting laid down in accordance with the statutory instructions issued by the RBI.

3. At the request of the assessee, the bank agreed to rehabilitate and the irregularity in the cash credit account as on 30/6/1994 was converted into a composite term loan (funded interest) of Rs.119 Lacs and the balance irregular portion was converted into a working capital loan (clean) of Rs.78 lakhs at the time of implementation of the rehabilitation scheme involving restructuring of the past debts and renewal of the existing limits. While restructuring of working capital term loan (clean) of Rs.78 lakhs, the assessee was given time to repay the said loan in 7 equal quarterly instalments of Rs. 10 Lacs each and 8<sup>th</sup> instalment of Rs. 8 Lacs, with the commencement of the 1<sup>st</sup> instalment on 25/7/1998 whereas the last instalment was due on 25/4/2004; that for composite term loan (funded interest) of Rs. 119 Lacs, the assessee was given time to repay the loan in 11 equal quarterly instalments of Rs. 10 Lacs each and 12th

instalment of Rs.9 Lacs, with the 1<sup>st</sup> instalment commencing on 25/7/1995 and last instalment falling due on 25/01/98. Assessee had the sanctioned credit facilities from SBI on 25/01/1995 and O/s of as on 31/3/1995 were Rs. 3,24,78,780/- in cash credit accounts and Rs.1,19,00,000/-in Composite Term Loan (funded interest), and Rs.78 lakhs in working capital term loan (clean) totalling to Rs.5,21,78,780/- and had share capital of Rs.30,02,720/- and had deficit in P&L Account of Rs.1,76,56,145/-. Further, despite the implementation of the rehabilitation package, the assessee continued to remain irregular in bank accounts till one-time settlement with bank had more or less static balance outstanding since 31/3/1996 to 31/3/2005 and O/s as on 31/3/2005 were Rs.2,79,42,213/- in cash credit account and Rs.1,19,00,000/- in Composite Term Loan (funded interest) and Rs.78,00,000/- in working capital term loan (clean) totalling to Rs.4,76,42,213/- and had as on 31/3/1997 share capital of Rs.30,02,720/- and they had deficit in P&L Account of Rs.3,59,48,798/-. There were recovery proceedings under DRT(Procedure) Rules, 1993 against the assessee for recovery of dues. Finally, the bank had written off O/s. Balance of Rs.4,76,96,312/- of the assessee vide compromise offer of the assessee for Rs. 1.85 crores, waving a sum of Rs.2,91,42,213/-.

4. Learned Assessing Officer held that balance amount of Rs.2,91,42,213/- is a Revenue receipt and liable to be taxable during the year under consideration and accordingly made an addition to that effect. In appeal, Ld. CIT(A) deleted the same by order dated 23/10/2009. The Tribunal, however, by order dated 30/4/2010 set aside the order of CIT(A) and remanded the issue back to the file of the

assessing officer for fresh adjudication with a direction to the assessee to furnish all details and particulars of loan and the purpose for which the loan was taken from the bank was utilised. Such directions were confirmed by the Hon'ble High Court in ITA No.1623/2010 and 503 of 2010 by order dated 18/02/2011.

5. Pursuant to the directions given by the Tribunal, record reveals that the assessee was asked to vide letter dated 21/12/2011 submitted the details of working capital facilities and submitted that the facilities were secured by hypothecation of stock of raw materials, stock in process, finished goods etc.

6. Learned Assessing Officer, however, by order dated 27/12/2011 noted that the assessee had not furnished any detail regarding the utilisation of the loan for specific purpose and made an addition of Rs.2,91,42,213/- holding it to be Revenue receipt and brought it to tax.

7. In the appeal preferred by the assessee, Ld. CIT(A) noted that the assessee had given a reply to the learned Assessing Officer on 21/12/2011 by furnishing a copy of the petition OA No 543/2000 dated 13/11/2000 under section 19(3) of Recovery of Debts due to Banks and Financial Institution Act, 1993 read with Rules 12 and 13 of DRT (Procedures) Rules, 1993, Controlling Officers letter No. CNW/IR/1870, dated 10/3/1997, copy of statement of account of bank filed on record writing off the outstanding balance of Rs.4,76,96,312/- vide CNW/RARB/SS/1913, dated 28/3/2002, details of lapsed/set off/carry forward business loss/carry forward depreciation loss as per ROI with copies of available intimation under section 143(1)(a) of the

Act/computation chart/acknowledgement of ROI/assessment order in respect of Assessment Years 1992-93 to 1997-98, statements of assets and liabilities as on 31/3/1992, 31/3/1995, 31/3/1997, 31/3/2005 and 31/3/2000 with relevant bank statements for the years. Ld. CIT(A) further noted that the attention of the learned Assessing Officer was drawn to the approval of compromise offer vide bank letter number ADV/605 dated 9/2/2005 for Rs.1.85 crores and the order of the DRT-1 Delhi passed on 28/9/2005 in OAM No. 543/2000. Ld. CIT(A) clearly noted that the learned Assessing Officer passed the order dated 27/12/2011 on filing of the said material but under pressure of time.

8. Be that as it may, Ld. CIT(A) considered the submissions made before him in extenso in the light of the orders of the Tribunal and the Hon'ble High Court where under the directions were given to the learned Assessing Officer to work out the proportionate amount of loan waived by the bank with reference to the purpose for which the loan amount was utilised by providing a reasonable opportunity to the assessee. It is emanating from the order of the Id. CIT(A) that the waiver of Rs.2,91,42,213/- was further following outstanding principal amounts:

Cash credit (Hyp. & Bookplates)	Rs.94,42,213/-
Composite term loan (funded interest)	Rs.1,19,00,000/-
Working capital term loan(clean)	Rs.78,00,000/-

On a consideration of the material, Ld. CIT(A) noted that composite term loan (funded interest) of Rs.1,19,00,000/- as on 30/6/1994 utilised to the extent of Rs.1,02,06,071/- for irregular portion of interest expenditure in business loss incurred up to 30/6/1994 for which no benefit liable to tax in terms of provisions under section 41(1)(a) read it

with section 41(5) of the Act arose to the assessee due to lapsing under section 72 (3) of business loss of Rs.3,47,19,941/- incurred during the Assessment Year 1992-93 to 1997-98 for set off from income subsequent to assessment year 2006-07 under appeal, as the assessee had claimed allowance or deduction of Rs.16,93,929/- for interest expenditure from income in assessment year 1995-96 under section 41 (1) only. In respect of the cash credit (hypothecation and book gets), it was contended that a sum of Rs.94,42,213/- as on 31/3/1997 was utilised to the extent of Rs.67,66,901/- for irregular portion of other expenses in business loss incurred up to 31/3/1997 for which no benefit liable to tax in terms of provisions under section 41 (1)(a) read with section 41 (5) of the Act arose to the assessee due to lapse under section 72 (3) of business losses of Rs.3,47,19,941/- incurred during the Assessment year 1992-93 to 1997-98 for set off from income to subsequent assessment year 2006-07 under appeal, as the assessee had claimed allowance or deduction of Rs.26,75,312/- for other expenses from income under section 41(1) only. Ld. CIT(A) further noted that in respect of working capital term loan of Rs. 78 lakhs as on 30/6/1994, the contention of the assessee was that it was utilised for irregular portion of other expenses in business loss incurred up to 30/6/1994 for which no benefit liable to tax in terms of provisions under section 41(1)(a) read with section 41(5) of the Act arose to the assessee due to lapse under section 72(3) of the Act of business losses of Rs.3,47,19,941/- incurred during the Assessment year 1992-93 to 1997-98 for a set of from the income subsequent to Assessment year 2006-07 under appeal.

9. Finally, Ld. CIT(A) after considering the decisions of the Hon'ble jurisdictional High Court in the case of Rollatiners vs. CIT, Mahindra and Mahindra Ltd vs. CIT and other Tribunal judgements held that in section 41(1) the legislation had used the word "loss", if the assessee claimed the expenditure but ultimately there is a "loss" and such loss cannot be set off under section 72 of the Act, in such a situation section 41 (1) of the Act cannot be invoked. On this premise, Ld. CIT(A) directed the assessing officer to delete to the extent of Rs.1,02,06,071/- in respect of the composite term loan of Rs.1,19,00,000/-, Rs. 78 lakhs of the working capital term loan in respect of which no benefit liable to tax in terms of provisions under section 41(1)(a) of the Act read with section 41(5) of the Act arose to the assessee and Rs.67,66,901/- in respect of the cash credit (Hyp. & Booklets) to the tune of Rs 94,42,213/- after the claim the allowance or deduction of the assessee to the tune of Rs.26,75,312/- for other expenses was considered. Ld. CIT(A) also directed the deletion of Rs. 50,000 on account of error in amount of addition made by the learned Assessing Officer.

10. None appeared on behalf of the assessee today`. We have considered the material on record and submissions made by the Ld. DR. It is the submission of the Ld. DR that the Ld. CIT(A) had not appreciated the finding of facts brought on record by the learned Assessing Officer vide paragraph numbers 3.1 at page No. 3 of the order and the fact that the assessee failed to produce the relevant details of purpose of utilisation of loans as directed by the Tribunal. It is further submitted that the Ld. CIT(A) committed wrong while deciding the appeal and granted relief on account of section 41(1) of the Act that in case of situation of

loss, it cannot be set off under section 72 and section 41(1) of the Act cannot be invoked. According to her, Ld. CIT(A) conveniently ignored not only the factual findings of the AO but also the directions of the Tribunal and the Hon'ble High Court that the addition cannot be made by invoking section 41(1) of the Act. Ld. DR further submitted that once the applicability of section 41 (1) of the Act was decided and adjudicated by both the appellate authorities with categorical findings, it was incumbent upon the assessee to furnish the details in the absence of which the Ld. CIT(A) committed a grave error while granting relief. She placed reliance on certain decisions in the cases of Solid Contenders Ltd vs. DCIT (2009) 178 taxman 192 (Bombay), CIT vs. TV Sundaram Iyengar (1996) 88 taxman 429 (SC), CIT vs., Ramaniyan Homes Private Limited (2016) 68 taxmann.com 289 (Madras) and CIT vs. Karam Chand Thapar 222 ITR 112 (SC).

11. On a careful consideration of the matter, we are of the considered opinion that the argument to the effect that the assessee did not furnish the requisite details pursuant to the directions given by the Tribunal does not hold water because the order of the Ld. CIT(A) clearly shows that the show cause notice dated 7/7/2011 issued by the learned Assessing Officer subsequent to the directions issued by the Tribunal, the assessee submitted the details by way of letter dated 21/12/2011 by enclosing soberly documents which are enumerated supra. Such documents were brought to the notice of the learned Assessing Officer and it is the observation of the Ld. CIT(A) that subsequent to the submission of these details by way of letter dated 21/12/2011, learned Assessing Officer passed the order dated 27/12/2011, but under the pressure of time

barring on 31/12/2011. Perhaps, this could be the reason why the impugned assessment order does not reflect so many details as noted by the Ld. CIT(A) in his order in extenso.

12. Further it could be seen that the details furnished by the assessee were noted by the Ld. CIT(A) whereunder the break up figures is for the amount of Rs.2,91,42,213/- waived by the bank are mentioned. Out of these 3 amounts, namely, Rs.94, 42,213/- under the head "cash credit (Hyp. & Booklets)", Rs.1,19,00,000/- under the head "Composite Term Loan (funded interest)" and Rs. 78 lakhs under the head "working capital term loan (clean)" , it was submitted that a sum of Rs.1,02,06,071/-, Rs.78 lakhs and Rs.67,66,901/- did not include any benefit liable to tax in terms of provisions under section 41(1) (a) of the Act read with section 41(5) of the Act to the assessee due to lapse under section 72(3) of the Act of business losses of Rs.3,47,19,941/- incurred during the assessment year 1992-93 to 1997-98 for the set off from income to subsequent assessment year 2006-07 under appeal. Since the assessee claimed allowance to the tune of Rs.16,93,929/- for interest expenditure from income in assessment year 1995-96 and a sum of Rs.26,75,312/- for other expenses under section 41 (1) of the Act only.

13. Record further reveals that Ld. CIT(A) had called for the remand report and also the objections of the assessee to the remand report and considered them in the light of the material available on record. It is only after considering the contentions and material in its entirety, Ld. CIT(A) reached a conclusion that relief could be granted in respect of Rs.1,02,06,071/- in respect of the composite term loan (funded interest), Rs.78 lakhs working capital term loan, Rs.67,66,901/- in respect of cash

credit (Hyp. & Booklets) holding that in section 41(1) of the Act the legislation has used the word “loss”, if the assessee claimed the expenditure but ultimately there is a “loss” and such loss cannot be set off under section 72 of the Act, in such a situation section 41(1) of the Act cannot be invoked. We do not find any illegality or irregularity in the conclusion reached by the Ld. CIT(A) and at the same time we also do not find any violation committed by the assessee in respect of the directions issued by the Tribunal because Ld. CIT(A) considered the material that was produced before the Assessing Officer through letter dated 21/12/2011 by way of reply to the show cause notice dated 7/7/2011.

14. Further recently in Commissioner vs. Mahindra and Mahindra Ltd (2018) 93 taxman.com 32 (SC), Hon’ble Apex Court held that,-

“...we deem it proper to mention that there is difference between 'trading liability' and 'other liability'. Section 41 (1) of the IT Act particularly deals with the remission of trading liability. Whereas in the instant case, waiver of loan amounts to cessation of liability other than trading liability. Hence, we find no force in the argument of the Revenue that the case of the Respondent would fall under Section 41 (1) of the IT Act.

17. To sum up, we are not inclined to interfere with the judgment and order passed by the High court in view of the following reasons:

(a)Section 28(iv) of the IT Act does not apply on the present case since the receipts of Rs 57,74,064/- are in the nature of cash or money.

(b)Section 41(1) of the IT Act does not apply since waiver of loan does not amount to cessation of trading liability. It is a matter of record that the Respondent has not claimed any deduction under Section 36 (1) (iii) of the IT Act qua the payment of interest in any previous year.

15. On a careful consideration of the facts of the case as reflected by the orders of the authorities below, we are of the considered opinion

that section 28(iv) and section 41(1) of the Act do not apply to the facts of the case and are squarely covered by the decision of the Hon'ble Apex Court in the case of Mahindra and Mahindra limited (supra).

16. For the reasons recorded in the preceding paragraphs, we hold that no violation was committed by the assessee in respect of the directions given by the Tribunal, but the material furnished by the assessee was not properly appreciated by the learned Assessing Officer in the impugned assessment order and since the Ld. CIT(A) rectified the mistake committed by the learned Assessing Officer while considering all the material facts relevant for disposal of the appeal in detail and reached a legally right conclusion, there is no scope to interfere with the findings returned by the Ld. CIT(A) in the impugned order. We consequently find that the appeal is devoid of merits and is liable to be dismissed. We order so.

17. In the result appeal of the Revenue is dismissed.

**Order pronounced in the Open Court on 18<sup>th</sup> October, 2019.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**sd/-  
(K.NARASIMHA CHARY)  
JUDICIAL MEMBER**

Dated: 18<sup>th</sup> October, 2019.

VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Draft dictated on	16.10.2019
Draft placed before author	18.10.2019
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on	
Date of uploading order on the website	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	