

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD - BENCH 'B'  
[Through Virtual Court]**

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT  
AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

*आयकर अपील सं./* **ITA No.201/Ahd/2019**

*निर्धारण वर्ष/* **Asstt. Year: 2010-11**

ITO, Ward-2(1)(1) Ahmedabad.	Vs.	Echon Industries Ltd. D-93, Aakash Flats Opp: Premchand Nagar Nr.Judges Bungalows Bodakdev, Ahmedabad. PAN : AAACE 7427 J
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<i>अपीलार्थी/</i> (Appellant)		<i>प्रत्यर्थी/</i> (Respondent)
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Revenue by :	Shri Vinod Tanwani, CIT-DR Shri R. Makwana, Sr.DR
Assessee by :	Shri Tushar Hemani, Sr.Adv.

*सुनवाई की तारीख/*Date of Hearing : 16/08/2021

*घोषणा की तारीख/*Date of Pronouncement: 24/08/2021

**आदेश/ORDER**

**PER RAJPAL YADAV, VICE-PRESIDENT**

Present appeal is directed at the instance of the Revenue against order of the Id.CIT(A)-2, Ahmedabad dated 20.11.2018 for the Asstt.Year 2010-11, vide which the Revenue has challenged deletion of addition of principal part of loan waived by the bank amounting to Rs.2,47,88,187/- by relying on the judgment of Hon'ble Supreme Court in case of Mahindra and Mahindra, 93 taxmann.com 32.

2. Facts in brief are that the assessee is a limited company engaged in manufacturing and trading of PVC Foam sheets. The assessee has e-filed return of income by declaring total loss of Rs.2,72,39,776/- which was processed under section 143(1) of the Act. Thereafter, on the basis of information received from DIT(R), Delhi that no relief/concession was envisaged by the BIFR while considering sanctioned scheme under OTS. Therefore, after recording reasons, notice under section 148 was issued for reopening and reframing of the assessment under section 147 of the Act.

3. During the assessment, the Id.AO observed that as per one time settlement scheme with the IDBI Bank, the assessee company has paid a sum of Rs.441 lakhs towards loan taken from the bank, and received a relief of Rs.2,47,88,187 in the form of wavier towards principal portion of loan as per the order of the BIFR. However, no concession or relief was allowed by the BIFR on the receipt of Rs.2,47,88,187/- being waiver of principal portion of the loan. It was further observed by the AO that the assessee shown the amount of Rs.2,47,88,187/- as income from other sources and credited the same to the profit & loss account. However, in the return of income and computation of income, the assessee has claimed the waiver portion of the principal amount as deductible income, which claim, according to the AO, was not justifiable. The Id.AO, therefore, show-caused the assessee as to why the same should not be disallowed and added to the income of the assessee. It was explained by the assessee that since the loan was taken for the purpose of setting up of a unit, they are capital expenditure and not a trading liability, and waiver of part of principal portion of the amount loan would not be taxable in the hands of the assessee. The Id.AO did not accept this contention of the assessee, and held that since the character of receipt has been changed from capital to revenue as the assessee has credited the amount in the profit & Loss account, and the amount of waiver principal amount has not

been spent wholly and exclusively for the purposes of earning business profit, no relief or deduction is allowable, because assessee has no liability to pay back that receipt. He accordingly made addition of Rs.2,47,88,187/- being waiver of portion of principal loan, and added to the total income of the assessee. Dissatisfied with the action of the AO, the assessee went in appeal before the first appellate authority. The Id.CIT(A) allowed the claim of the assessee by relying the decision of Hon'ble Supreme Court in the case of CIT Vs. Mahindra & Mahindra Ltd. 93 taxamnn.com 32 (SC), by holding that waiver of loan amount could not be brought to tax, as the same was on capital account and not in the nature of income. Aggrieved Revenue is in appeal before the Tribunal.

4. The Id.DR relied upon order of the AO, while the Id.counsel for the assessee supported the order of the Id.CIT(A).

5. On due consideration of facts and circumstances, and perusal of the impugned orders, we find that the issue in dispute is about taxability of amount of loan waived by the financial institution, on account of one time settlement. The assessee had outstanding loan liability of Rs.6,88,90,057/- with the IDBI Bank, which was settled under OTS at Rs.441 lakhs, and the balance amount of Rs.2,47,88,187/- representing principal portion of the loan waived by the Bank has been shown as income. The assessee credited the sum as income in the profit & loss account and shown it in the return of income, at the same time, claimed the same deductible income. The Id.AO did not accept treatment of waiver amount by the assessee, and held that since the assessee has shown the relief by way of waiver of part of principal amount of loan in the profit & loss account, the character of loan changed from capital to revenue, and therefore, the same liable to be taxed in the hands of the assessee. However, when the matter carried in appeal before the Id.first appellate authority, claim

of the assessee was allowed by relying upon the decision of Hon'ble Supreme Court in the case of Mahindra & Mahindra Ltd. (supra). The Hon'ble Apex Court in that case held that the waiver of the amount of term loan availed by the assessee under OTS will not fall under the purview of income either u/s 28(iv) or u/s 41(1) of the Act. Taking support from the judgment of Hon'ble Apex Court, we are of the view that the sum amount in dispute representing waiver of loan liability was on the capital accounts, and not in the nature of income, more so when no deduction and allowance was made in respect of such loan in any assessment year. Therefore, the Id.CIT(A) has rightly appreciated the facts of the case in terms of the judgment of Hon'ble Supreme Court, and allowed the claim of the assessee, which we do not find any infirmity. Thus, order of the Id.CIT(A) is confirmed, and the ground of appeal of the Revenue is rejected.

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

Order pronounced in the Court on 24<sup>th</sup> August, 2021 at Ahmedabad.

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Sd/-  
(RAJPAL YADAV)  
VICE-PRESIDENT

Ahmedabad; Dated 24/08/2021