

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. AMIT SHUKLA, JUDICIAL MEMBER**

ITA No.3504/Del/2017  
Assessment Year: 2011-12

<b>ACIT Circle Bhiwani Haryana</b>	<b>Vs</b>	<b>S. K. Foils Ltd. 17, Industrial Area Bhiwani PAN No. AABCS8183Q</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Umesh Takyar, Sr. DR
Respondent by	Sh. Vinod Jain, CA

Date of hearing:	16/12/2021
Date of Pronouncement:	13/01/2022

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A), Hisar dated 31.03.2017 pertaining to A.Y.2011-12.

2. The grievance of the revenue read as under :-

1.1 *On the facts & circumstances of the case, the Ld. CIT(Appeals) has erred in deleting addition of Interest portion is Rs. 5,87,82,683/- out of total amount of Rs. 8,41,58,148/- waived under OTS. The amount spread from the A.Y. 2004-05 to 2008-09 and assessee has submitted that the same has been added back under section 43B for A.Y. 2007-08 & 2008-09, being amount not actually paid. But, during the assessment proceedings no documentary evidence in this regard has been furnished, in the absence*

of which same could not be verified. The Ld. CIT(A), Hisar has erred in law in deleting the addition made by the AO without calling any remand report from the AO on this issue. **Hence, the further appeal to the Hon'ble ITAT is recommended on this score.**

1.2 The Principle portion is Rs. 2,53,75,465/- out of total amount of Rs. 8,41,58,148/- waived under OTS. The AO had made addition of this amount by considering the receipt as revenue nature. The Ld. CIT(A) has erred in law in deleting the addition by ignoring the facts of the case and by wrong application of provisions of the Act. Ld. CIT(A) deleted the addition by considering section 41(1), whereas the addition has been made u/s 28(iv) of the Income tax Act, 1961. It is an established fact that if loan is taken for day to day business needs or for trading purposes as mentioned by the AO in this assessment order and the same is taxable under section 28(iv) of the Income tax Act, 1961.

The reliance in this regard can be placed on the judgments delivered by the Hon'ble Bombay High Court in the case of Solid Containers ltd. Vs DCIT reported in 308 ITR 417&Mahindra & Mahindra Ltd. Vs CIT reported in 261 ITR 501 and the Hon'ble Delhi High Court in the case of Logitronics Pvt. Ltd. Vs CIT 333 ITR 386&Rollatainers Ltd. Vs CIT 339 ITR 54.

Notwithstanding, if at a later stage assessee contests that funds were borrowed for purchase of capital assets, the same is also taxable u/s 28(iv) and reliance can be placed on the recent judgment delivered by Hon'ble Madras High Court in the case of CIT Vs Ramaniyam Homes Pvt. Ltd. reported in 68 Taxmman 289 where it has been held that the waiver of loan for purchase of capital assets is taxable under section 28(iv) of the Income tax Act, 1961.

3. Briefly stated the fact of the case are that during the course of the scrutiny assessment proceedings the AO noticed that the assessee has credited an amount of Rs.8,41,58,148/- under the head "interest remission and profit on settlement" As per Schedule 12 of the P & L account, the above figure comprised the following amounts :-

i)	SBI Interest remission	Rs3,82,40,827/-
ii)	HFC Interest remission	Rs.2,68,10,240/-
iii)	Profit of settlement with SBI	<u>Rs.2,51,07,081/-</u>
		<u>Rs.8,41,58,148/-</u>

4. The assessee was asked to furnish complete details and reasons for remission of the aforesaid amounts. In its reply the assessee explained that as regard interest waiver the unpaid interest of SBI and HFC were added back in the statement of income of the respective years u/s.43B of the Income Tax Act, 1961. Therefore, the interest remission by SBI and HFC during the year is not income of the assessee. In alternative, the assessee claimed that the aforesaid claim of interest has been disallowed by it in the respective years.

5. The AO was of the opinion that no year wise bifurcation of the expenditure on account of interest claimed in the respective years and how much disallowed by the assessee and how much adjusted in the subsequent years have been furnished. The AO declined to accept the submissions of the assessee.

6. As regards remission of Principal of Rs.2,51,07,081/- is concerned the AO was of the opinion that the said remission is arising as a result of remission of liability in respect of secured loans from SBI. The AO was of the opinion that since no details

of total loan allowed, purpose of loan etc. have been filed. The AO again dismissed the claim of the assessee. The AO further observed that when the waiver took place the credits received by the assessee no longer represented liability but they become part of business income and, therefore, the sum of Rs.2,51,07,081/- was taxable as income u/s. 28 (iv) of the IT Act. The AO completed the assessment by making the addition.

7. The assessee carried the matter before the CIT(A). As regards interest payable to SBI and HFC, it was explained that the same are related to A.Y. 2004-05 to A.Y. 2008-09 and the same debited to P & L account in the respective years and as the same was not paid the amount was disallowed u/s. 43 B of the Act. The CIT(A) was convinced with this contention of the assessee. It was further explained that remission of Principal amount of loan by the financial institutions was credited to P & L account during A.Y.2011-12. It was strongly contended that the Principal remission is taxable only if the same was allowed as expenditure during the previous year and since no deduction was claimed, therefore, remission cannot be added to the taxable income. The

CIT(A) was also convinced with this contention of the assessee and deleted the additions.

8. We have given a thoughtful consideration to the findings of the CIT(A). We find that the assessee has claimed that the interest portion has been added back u/s. 43B of the Act for A.Y.2007-08 and 2008-09. The assessee is directed to furnish the details and the AO is directed to examine the same and if found correct no addition is to be made on this account.

9. In so far as the Principal portion of Rs.25375465/- which is part of the waiver under one time settlement, the addition has been made by AO treating the same as revenue receipt.

10. A perusal of the balance sheet of the assessee show that the said amount represents loan from Heavy Financial Corporation and SBI. The said loan was taken for the purchase of fixed assets as per exhibit 117 and 118 of the paper book. Whether this waiver becomes part of taxable income u/s. 28 (iv) of the Act r.w.s. 41 (1) is concerned, this issue has been decided by the

## Hon'ble Supreme Court in the case of Mahindra Mahindra 404

### ITR 1. The relevant findings read as under :-

13. On a plain reading of Section 28 (iv) of the IT Act, *prima facie*, it appears that for the applicability of the said provision, the income which can be taxed shall arise from the business or profession. Also, in order to invoke the provision of Section 28 (iv) of the IT Act, the benefit which is received has to be in some other form rather than in the shape of money. In the present case, it is a matter of record that the amount of Rs. 57,74,064/- is having received as cash receipt due to the waiver of loan. Therefore, the very first condition of Section 28 (iv) of the IT Act which says any benefit or perquisite arising from the business shall be in the form of benefit or perquisite other than in the shape of money, is not satisfied in the present case. Hence, in our view, in no circumstances, it can be said that the amount of Rs 57,74,064/- can be taxed under the provisions of Section 28 (iv) of the IT Act.

14. Another important issue which arises is the applicability of the Section 41 (1) of the IT Act. The said provision is re-produced as under:

"41. Profits chargeable to tax.- (1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,-

(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

15. On a perusal of the said provision, it is evident that it is a *sine qua non* that there should be an allowance or deduction claimed by the assessee in any assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. Then, subsequently, during any previous year, if the creditor remits or waives any such liability, then the assessee is liable to pay tax under Section 41 of the IT Act. The objective behind this Section is simple. It is made to ensure that the assessee does not get away with a double benefit once by way of deduction and another by not being taxed on the benefit received by him in the later year with reference to deduction allowed earlier in

case of remission of such liability. It is undisputed fact that the Respondent had been paying interest at 6 % per annum to the KJC as per the contract but the assessee never claimed deduction for payment of interest under Section 36 (1) (iii) of the IT Act. In the case at hand, learned CIT (A) relied upon Section 41 (1) of the IT Act and held that the Respondent had received amortization benefit. Amortization is an accounting term that refers to the process of allocating the cost of an asset over a period of time, hence, it is nothing else than depreciation. Depreciation is a reduction in the value of an asset over time, in particular, to wear and tear. Therefore, the deduction claimed by the Respondent in previous assessment years was due to the depreciation of the machine and not on the interest paid by it.

**16.** Moreover, the purchase effected from the Kaiser Jeep Corporation is in respect of plant, machinery and tooling equipments which are capital assets of the Respondent. It is important to note that the said purchase amount had not been debited to the trading account or to the profit or loss account in any of the assessment years. Here, 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.

In view of above discussion, we are of the considered view that these appeals are devoid of merits and deserve to be dismissed. Accordingly, the appeals are dismissed. All the other connected appeals are disposed off accordingly, leaving parties to bear their own cost.

11. Respectfully following the findings of the Hon'ble Supreme Court (supra) we decline to interfere with the findings of the CIT(A) in so far as this issue is concerned.

12. In the result, the appeal filed by the revenue is allowed in part for statistical purpose.

**The order is pronounced in the open court on 13.01.2022.**

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

Sd/-  
**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Dated: 13.01.2022

\*Neha\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	13.01.2022
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	