

आयकर अपीलीय अधिकरण
मुंबई पीठ "इ", मुंबई

श्री जी. एस. पन्नू, अध्यक्ष एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI
BEFORE SHRI G. S. PANNU, PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 926/मुं/2020 (नि.व. 2007-08)
ITA NO.926/MUM/2020 (A.Y.2007-08)

Jt. CIT (OSD)-4(3)(2),
Room No. 649, 6th Floor,
Aayakar Bhavan,
Mumbai-400020.

..... अपीलार्थी /Appellant

बनाम Vs.

M/s Supertex Industries Ltd.
45/49, Balkrishna Krupa,
Babu Genu Road, Princes Street,
Kalbadevi, Mumbai-400002
PAN: **AAACS7274D**

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Abhijeet Chaudhary

प्रतिवादी द्वारा/Respondent by : Sh. Rajesh Shah.

सुनवाई की तिथि/ Date of hearing : 14/12/2021

घोषणा की तिथि/ Date of pronouncement : 10/03/2022

आदेश / ORDER

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-9, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 25.11.2019 for the Assessment Year (AY) 2007-08. The Revenue in appeal has raised following grounds:

1. *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is right in directing to delete the amount of interest waived on ‘One Time Settlement’ without appreciating the fact that the assessee has credited this interest as income in the books of accounts maintained treating it as income, however, claimed deduction of the same U/s 43B of the I.T. Act. In no case such income can be claimed deduction U/s 43B of the I.T. Act.”*

2. *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in deleting the addition made on account of waiver of principal amount under ‘One Time Settlement’ without appreciating the fact that the assessee itself has credited such amount to its ‘Reserve & Surplus” and ‘Reserve & Surplus’ can only be credited with profit earned and hence a taxable amount.”*

2. The brief facts of the case as emanating from records are: The assessee is engaged in manufacturing, processing and trading of synthetic yarns and fabrics. The assessment in the case of assessee for AY 2007-08 was re-opened. Notice dated 28.03.2014 under section 148 of the Act was served on the assessee. The reasons for re-opening states that the assessee had entered into One Time Settlement (OTS) with IDBI Bank Ltd. In the scheme of settlement interest liability of Rs. 196.86 lakhs and principal amount of Rs. 158 lakhs was waved off. The assessee had credited the interest amount to the Profit & Loss A/c and the principle amount to the Reserve & Surplus. The assessee allegedly claimed deduction of the interest expenditure under section 43B of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’). According to the Assessing Officer (AO), waiver of loan has resulted in benefit/gain to the borrower. Hence, the principal amount and the interest waved by the Bank is taxable. The AO vide order dated 25.03.2015 passed under section 143(3) r.w.s. 147 of the Act, interalia, made addition of Rs. 3,54,85,810/- in respect of the waiver of loan made under OTS by IDBI Bank Ltd.

Aggrieved by the assessment order, the assessee filed appeal before the CIT(A) challenging re-opening of assessment, as well as, addition on merits.

In First Appellate Proceedings, the CIT(A) upheld the validity of re-opening. On merits of the addition, the CIT(A) deleted the entire addition in respect of waiver of principal loan amount. As regards waiver of interest, the CIT(A) in principle held that no addition is warranted, however, the issue was restored back to the AO for limited purpose of verification of the interest amount disallowed by the assessee under section 43B in the preceding years vis-a-vis interest waived by IDBI Bank Ltd. The Revenue is in appeal before the Tribunal, against the relief allowed by the CIT(A).

3. Sh. Abhijeet Chaudhary representing the Department vehemently defending the assessment order submitted that the assessee has not brought on record the purpose for which loan was taken i.e. for purchase of fixed assets or for working capital. Further, it is not emanating from records whether the assessee has made disallowance of interest under section 43B of the Act. The waiver of loan i.e. principal and interest has been rightly held as income of the assessee by the AO.

4. Per contra, Sh. Rajesh Shah appearing on behalf of the assessee supported the impugned order and placed reliance on the findings given in para 4.3 of the impugned order. The Id. AR further placed reliance on the decision of Hon'ble Supreme Court of India in the case of CIT Vs. Mahindra & Mahindra Ltd. reported as 404 ITR 1 and the decision of Tribunal in the case of JCIT Vs. Garware Chemicals Ltd. in ITA No. 1438/Mum/2012 decided on 08.03.2011.

5. We have heard the rival sides and have examined the orders of the authorities below. The solitary issue in present appeal is with respect to the waiver of loan by IDBI Bank Ltd. in the scheme of OTS. It would be relevant to mention here that the waiver of loan was made to re-habilitate the assessee as

the assessee had turned sick and had approached BIFR under Sick Industrial Companies (Spl. Provisions) Act, 1985. The assessee had taken term loan facility from the Bank. On waiver of the term loan which includes principal Rs. 1.58 crores and interest Rs. 1.96 crores, the AO held that the aforesaid amounts are liable to be taxed.

6. The CIT(A) while dealing with this issue has separately dealt with the waiver of principal amount and waiver of interest amount. As regards principal amount, the CIT(A) has held that since the loan was in the nature of capital receipt, its waiver would not result in generating any revenue. The reliance is placed on the decision of CIT Vs. Mahindra & Mahindra Ltd. (supra). The Hon'ble Apex Court in the aforesaid case had held that waiver of loan for acquiring capital asset can neither be taxed as perquisite under section 28(iv) of the Act as the receipt in the hands of assessee/debtor are in the form of cash/money, nor it can be taxed as remission of liability under section 41(1) of the Act, as waiver of loan does not amount to cessation of trading liability. Though, in the present case, the AO has not referred to any of the provisions under which the waiver of loan is held to be taxable, the CIT(A) has dealt with both the possible provisions i.e. section 28(iv) and section 41(1) of the Act. The Revenue has not been able to controvert the findings of CIT(A). Since, the loan was in the nature of capital receipt, the provisions of section 41(1) are not attracted as it deals with trading liability. Hence, we find no infirmity in the order of CIT(A) in deleting the addition of principal amount of Rs. 1.58 crores on account of waiver of loan.

7. In so far as waiver of interest, the contention of the assessee is that in none of the preceding AYs, the assessee had claimed interest expenditure under section 43B of the Act. Once the interest expenditure has not been claimed by

the assessee, there is no question of its disallowance. The AO in assessment order has recorded that in absence of relevant information the fact whether disallowance of interest under section 43B of the Act was made by assessee could not be verified. The CIT(A) in principle has accepted the contentions of assessee, however, for factual verification of the amount of interest waived vis-a-vis disallowance under section 43B, if any made by the assessee in preceding AYs, restored it to the AO. We seen no infirmity in the order of CIT(A).

8. We concur with the findings of the CIT(A), hence, the same are upheld and the appeal of Revenue is dismissed, being devoid of any merit.

Order pronounced in the open court on **Thursday**, the **10th** day of March, 2022.

Sd/-
(G.S. PANNU)

Sd/-
(VIKAS AWASTHY)

अध्यक्ष / PRESIDENT

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 10/03/2022

SK, Sr. PS

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai