

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

**BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.18/Ahd/2020
Assessment Year: 2014-15**

Technichem Organics Pvt. Ltd.
5th Floor, Malak Building,
B/h. Old High Court,
Navrangpura,
Ahmedabad.
[PAN – AACCT 2027 K]
(Appellant)

vs.

Income Tax Officer,
Ward-4(1)(1), Ahmedabad.

(Respondent)

Appellant by : Shri Chetan Agarwal, A.R.
Respondent by : Shri Mukesh Kumar Sharma, Sr. DR

Date of hearing : 01.06.2022
Date of pronouncement : 07.07.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This is an appeal filed by the assessee against the order dated 15.10.2019 passed by the CIT(A)-8, Ahmedabad for the Assessment Year 2014-15.

2. The grounds of appeal are as under:

- “1. That the Ld. Commissioner of Income Tax (Appeals)-8 (Herein referred as CIT(A)) has erred on facts by making addition for the Term Loan taken waiver of secured loan of Rs.1,29,78,902/- from ICICI Bank which was credited to the Capital Reserve Account.
2. That the Ld. CIT(A) had erred in making addition on account of Loan settlement with ICICI Bank by invoking the provisions under section 28(i) r.w.s. 2(24) and even rejected the assessee contention that loan are used for capital Goods and not for other business activity.”

3. The assessee company is engaged in the business of manufacturing of organic chemicals. The assessee filed its return of income on 28.11.2014 declaring total

income at Rs. Nil. The case was selected for scrutiny under CASS for the reasons that large amount not credited in Profit & Loss account as per Scheduled-A OI and mismatch in amount paid to related person under Section 40A(2)(b) of the Income Tax Act, 1961 reported in Audit Report and ITR. Notice under Section 143(2) of the Act was issued on 01.09.2015. In response to the notice, the assessee filed copy of return of income along with statement of income, Balance Sheet, Profit & Loss account, tax audit report in Form No.3CD etc. The Assessing Officer made addition at capital receipts amounting to Rs.1,29,78,902/- thereby observing that waiver of principal loan amounting to Rs.1,29,78,902/- which forms income of the assessee as contemplated under section 28(iv) of the Act.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. Ld. AR submitted that the CIT(A) erred in confirming the Addition. The Ld. AR further submitted that the waiver of principle loan taken from ICICI bank was credited to capital reserve account, therefore, Section 28(iv) read with section 2(24) is not applicable in the present case. Ld. AR further submitted that the Assessing Officer as well as the CIT(A) rejected the assessee's contention that loans are used for capital assets and not for other business activities. Ld. AR relied upon the decision of Hon'ble Supreme Court in the case of CIT vs. Mahindra and Mahindra Limited, 404 ITR 1 (SC). The Ld. AR submitted that the reliance of the Hon'ble Apex Court decision in CIT vs. T.V. Sundaram Iyengar & Sons Limited, 222 ITR 344 (SC) and decision of the Hon'ble Madras High Court in case of CIT vs. Ramaniyam Homes Pvt. Ltd. 384 ITR 530 by the CIT(A), is not just and proper. Ld. AR also relied upon the decision of the Delhi Tribunal in the case of in case of Anil Kumar Bansal vs. ITO, ITA Nos.2320 to 2322/Del/2019, order dated 02.08.2019.

6. Ld. DR submitted that the Assessing Officer has rightly made the addition as the waiver of principal loan comes under the purview of Section 28(iv) of the Act and the same is part of the income of the assessee. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has used the loan amount for capital assets and this fact was never disputed by the Revenue. The waiver of principal amount of loan which was made by the Bank has been deducted by the assessee from the outstanding loan and credited to reserves & surplus. The CIT(A) has relied upon the decision of Hon'ble Supreme Court in the case of TV Sundaram Iyengar & Sons (supra) and decision of the Hon'ble Madras High Court in case of Ramniyam Homes Pvt. Ltd. It is seen that in case of TV Sundaram Iyengar (supra) money was received by the said assessee for carrying on trading activities. But in the present assessee's case the loan was utilized only for the purpose of obtaining capital assets. Thus, the decision of the Hon'ble Apex Court in case of Mahindra & Mahindra (supra) is applicable in the present case as in the said case it was categorically held that when the assessee had not claimed deduction under Section 36(1)(iii) of the Act for interest on loan and loan was taken for acquiring capital asset then the waiver was on account of liability other than trading liability and thus provisions of Section 41(1) does not apply in such cases. Section 28(iv) of the Income Tax Act, 1961 will not be applicable in the present assessee's case as the receipts are in the nature of cash or money. The waiver of loan amounts to cessation of liability other than trading liability, thus, the said amount cannot fall under Section 28(iv) will not be applicable. Therefore, the Assessing Officer as well as the CIT(A) was not right in making the said addition and confirming the same. Hence, appeal of the assessee is allowed.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 7th day of July, 2022.

Sd/-
(P.M. JAGTAP)
Vice President

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 7th day of July, 2022

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Copies to: (1) The appellant
(2) The respondent

- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad