

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

Before Shri George George K, JM & Ms.Padmavathy S, AM

ITA No.214/Bang/2020 : Asst.Year 2012-2013

The Income Tax Officer Ward 2(1)(2) Bangalore.	v.	M/s.Crane Software International Private Limited No.2, Tavarekere, Bannerghatta Road , Stage-1 Phase-1, BTM Layout Bangalore – 570 029. PAN : AACCC4259J.
(Appellant)		(Respondent)

Appellant by : Sri.Sumer Singh Meena, CIT-DR

Respondent by : Sri.V.Srinivasan, Advocate

Date of Hearing : 05.07.2022	Date of Pronouncement : 11.07.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the Department is directed against CIT(A)'s order dated 15.11.2019. The relevant assessment year is 2012-2013.

2. The grounds raised read as follows:-

“1. Whether in facts and circumstances of the case, the ld.CIT(A) erred in holding the principal amount waived off by the bank which was utilized for trading activity is capital amount not liable for tax.

2. Whether in facts and circumstances of the case, the ld.CIT(A) erred in allowing the entire amount of principal outstanding of Rs.119,39,96,966/- instead of Rs.42,33,68,614 which is the amount used by assessee for purchase of software & development work.”

3. The brief facts of the case are as follows:

The assessee is a company engaged in the business of development, training & trading in computer software and related products. For the assessment year 2012-2013, the return of income was filed on 23.11.2022, declaring loss of Rs.26,97,03,678. The assessment was selected for scrutiny and notice u/s 143(2) of the I.T.Act was issued. The assessment was completed u/s 143(3) of the I.T.Act vide order dated 31.03.2015 determining `Nil' income instead of Rs.26,97,03,678 claimed in the return of income. One of the additions made by the Assessing Officer was a sum of Rs.119,39,96,966 u/s 41(1) of the I.T.Act being loan written off. The submission of the assessee was that a sum of Rs.119,39,96,966 written off was the principal amount of loan availed by the assessee from HSBC and Yes Bank and the loans were utilized on the capital front. It was further submitted that for section 41(1) of the I.T.Act to have application, it should be a trading liability and claimed as a deduction from the income earned by the assessee in any of the previous assessment year. The objections of the assessee was rejected and the A.O. added back a sum of Rs.119,39,96,966 u/s 41(1) of the I.T.Act. The relevant finding of the A.O. reads as follows:-

“The submission of the A/R of the assessee company has been examined in detail and the same is not acceptable in view of the decisions Court in the c/o Karam Chand Thapar 222 ITR 122 (SC) wherein the Apex Court has ruled that –

‘Where an amount was initially not received as a trading receipt, but subsequently credited to the P&L A/c shall be treated as own money of the assessee and taxable as the income of the previous year in which it was so credited’

This funds application in the instant case and in view of the circumstances for receipt cannot be considered as capital in nature as pleaded by the A/R. In view of the above, an amount of Rs.119,39,96,966/- is added back and brought to tax.”

4. Aggrieved, the assessee preferred an appeal before the first appellate authority. The assessee filed detailed written submissions. The contents of the same reads as follows:-

“5. The third issue in appeal relates to the addition of Rs.119,39,96,966/- under the provisions of Sec. 41{1} of the Act. It is submitted that the appellant company had entered into a one-time settlement in respect of Term Loans availed by it in the earlier years with M/s. HSBC and Yes Bank during the year. In terms of the one-time settlement with the aforesaid banks, they had waived principal outstanding of Rs. 119,39,96,966/- apart from the waiver of interest of Rs.17,12,55,363/-. The waiver of both the principal and interest was credited under the head "Extraordinary Items" in Schedule 3.24 by the appellant in the Profit and Loss account. However, while computing the Income for Income-tax purposes, the appellant, in the Statement of Total Income, excluded the waiver of principal amount as such waiver was in the nature of a capital receipt. In course of assessment proceedings, the learned A.O. called upon the appellant to state as to why the aforesaid waiver of the principal amount should not be considered as income by virtue of provisions of Sec. 41{1} of the Act. The appellant filed detailed submissions before the learned A.O. and the same has also been reproduced in the ,impugned order.

5.1 Thereupon, the learned A.O., placing reliance on the Judgment of the Hon'ble Supreme Court in Karam Chand Thapar and others reported in 222 ITR 113, rejected the contentions of the appellant company and brought to tax the aforesaid sum of Rs.119,39,96,966/- as income on the ground that the appellant had credited the aforesaid amount to the profit and loss account and although, it was not received as a trading result earlier, but subsequently the same will become taxable in the year under which so credited. In support of the aforesaid view, it is submitted that the learned A.O. has reproduced certain observations of the Hon'ble Apex Court as follows:-

"Where an amount was initially not received as a trading receipt, but subsequently credited to the profit and loss account shall be treated as own money of the assessee and taxable as the income of the previous year in which it was so credited".

5.2 It is submitted that there are no such observations as mentioned above in the entire judgment of the Hon'ble Supreme Court relied upon by the learned AO

5.3 Be that as it may, it is submitted that issue under dispute before the Hon'ble Supreme Court in the aforesaid case related to unclaimed balances of the assessee who was acting as Del Credere Agent of certain collieries. and also as agent of purchase of coal. The said assessee received certain amounts from the collieries on account of freight under charges for under loading of wagons. However, the purchasers had paid the full freight to the railways. The assessee claimed that the under charges received from the collieries was required to be paid to the purchasers as and when the same was claimed by them. Surplus on this account was credited to the profit and loss account and assessed as income in the earlier years.

5.4 On these facts, the Hon'ble Supreme Court found that the amounts were received by the said assessee in course of business and there was no liability to repay the amounts. Hence, it was held that it cannot be laid down as a matter of law that any amount which was initially not received as a trading receipt can never become a trading receipt as pleaded by the assessee. Thereafter, the Hon'ble Supreme Court has clearly observed on page 130 as follows:-

"To our mind, the case is a very simple one. The assessee, in the course of his business collected every year substantial amounts on account of undercharges. The sums so collected were the property of the assessee subject to certain contingencies. It did not cease to be a trading receipt because, in the words of Ungood-Thomas J., they might or might not have to be debited again. The assessee's account all along showed a steady surplus in this account. The claims made by the consignees were always less than the amounts received by the assessee from the collieries. As and when the consignees made their claims, they were paid. These payments will have to be treated as trading expenses. We do not see the case as a case of transaction on capital account. On the contrary, this is a simple case where trading receipts were more than expenditure. The balance will have to be brought to tax as profits of business. As pointed out by Atkinson J. in the case of Jays-The jewelers [1947] 29 TC 274

[KB], commonsense view will have to be taken in such case."

5.5 It is clear from the above aforesaid passage that the ratio of the Judgment of the Hon'ble Supreme Court has to be understood on the facts considered in the said judgment wherein certain amounts were received in ordinary course of business which were not trading receipt initially. However, by efflux of time and on account of the assessee considering the said amounts as no longer payable, it was held that the same becomes a trading receipt and taxable. However, the aforesaid judgment will have no application with regard to a case of pure capital receipts as these receipts can never become trading receipts at all. It is very clear that the Hon'ble Supreme Court has rendered the judgment clearly holding that the trading receipts were not on capital account. Thus, the ratio of the said judgment of the Hon'ble Supreme Court is not applicable to the facts of the appellant's case and the reliance placed by the AO on the same is clearly misplaced.

5.6 It is submitted that the waiver of the principal amount of loans by the appellant on a One Time settlement with Banks are purely in the nature of a capital receipt, as a loan partakes the character of a liability .and this aspect of the matter Is not in dispute. Hence, the waiver of the principal portion of the loan by the banks will not change the character of it to a revenue receipt, which is exigible to tax. The impugned addition made for waiver of principal is therefore opposed law and facts of the appellant's case and therefore, the same deserves to be deleted. It is prayed accordingly."

5. The CIT(A) decided the issue in favour of the assessee. The CIT(A) by placing reliance on the judgment of the Hon'ble Apex Court in the case of CIT v. Mahindra & Mahindra reported in 404 ITR 1 (SC), held that loans borrowed and utilized by the assessee was on the capital front. Thus, it was concluded by the CIT(A) that waiver of principal amount of loan on a one time settlement with the bank would be purely in nature of a capital receipt. The relevant finding of the CIT(A) reads as follows:-

“7.10 In view of the above, the principal portion of the loan waived off cannot be brought to tax as income u/s 41(1) of the Act. It is submitted that the waiver of the principal amount of loans by the appellant on a One Time Settlement with Banks are purely in the nature of a capital receipt, as a loan partakes the character of a liability and this aspect of the matter is not in dispute. Hence, the waiver of the principal portion of the loan by the banks will not change the character of it to a revenue receipt, which is exigible to tax. The impugned addition made for waiver of principle is therefore opposed law and facts of the appellant’s case and therefore, the same deserves to be deleted. It is prayed accordingly.”

6. The learned Departmental Representative relied on the assessment order and the grounds raised.

7. The learned AR has filed a paper book enclosing therein copy of the written submissions dated 21.08.2019 filed before the CIT(A)-2, Bengaluru along with (i) Annexure-1, copy of acknowledgement along with computation of total and financial filed for the assessment year 2012-2013, (ii) Annexure 7 copy of the No due certificate from HSBC Bank for one time settlement by the assessee, (iii) Annexure-8, Copy of the no due certificate from YES bank in support of the one time settlement by the assessee, (iv) Annexure-9 copy of letter addressed to the DCIT, Circle 11(2), Bengaluru along Statement of loan and interest write back, Annexure-10 copy of ledger account of Yes Bank loan book and HSBC Bank limited for the period 01.04.2011 to 31.03.2012 reflecting the loan accounts, where the settlement entry has been passed, Annexure-11, the case laws relied on, etc.

8. Further, the learned AR as per the directions of the Bench has filed details how the borrowed fund was applied, which was written back pursuant to one time settlement with banks. The particulars submitted by the assessee pursuant to the directions are as follows:-

- (i) Copy of the statement of utilisation of loan borrowals from HSBC and YES Bank which is written back during the year on one time settlement, filed before the AO in course of assessment proceedings.
- (ii) Copy of the sanction letter dated 19.11.2008 of M/s.HSBC.
- (iii) Copy of the Notarial Deed / Agreement on the purchase of transfer of shares between M/s.CUBEWARE GMBH, Systat Software Gmbh (100% subsidiary of the assessee) and the assessee.
- (iv) Copy of the details for payments made on 01.12.2006, 19.12.2006 and 09.03.2007 by the assessee through M/s.HSBC Ltd., M.G.Road, Bangalore for purchase of software from D & J Commercial Limited for Rs.11,36,26,500/-.
- (v) Copy of the payment made on 28.12.2006 through HSBC Ltd. MG Road, Bagnalore for purchase of software from M/s.Sysorex Federal Inc. for Rs.3,67,27,500/-.
- (vi) Copy of the invoice of M/s.CHESTER LINK LIMITED dated 14.08.2006 and the details of payment to Chester Link Limited dated 26.12.2006, 07.03.2007, 20.09.2007 and 26.12.2007 for purchase of software.

- (vii) Copy of the purchase invoice and payment made through YES Bank Ltd for purchase of computer software.

9. The learned AR relied on the findings of the CIT(A) and reiterated the submissions made before the Income Tax Authorities.

10. We have heard rival submissions and perused the material on record. The loan borrowed from HSBC and Yes Bank, which was settled during the year as one time settlement, was actually utilized for purchase of computer software and advance to a subsidiary company for acquisition of shares. The details of the same are as follows:-

Particulars	Amount (Rs.)	Amount (Rs.)
HSBC Bank Loan		
Advance to subsidiary for acquisition of shares	70,94,00,000	
Payment made towards purchase of computer software		
-D & J Commercial Limited	11,36,26,500	
-Sysorex Federal, Inc.	3,67,27,500	
-Chester Link Limited	27,30,14,614	
-Others	1,08,02,495	1,14,35,71,109
Yes Bank Loan		
Payment made towards purchase of computer software		3,04,25,857
		1,19,39,96,966

10.1 From the perusal of the above, it is clear that loans borrowed from HSBC and Yes Bank are utilized on the capital front. The assessee has also furnished the details of payments made to subsidiary and how the subsidiary has utilized these payments for acquiring controlling interest in another

company. Therefore, it is clear from the material placed on record that the loans which was borrowed from HSBC and Yes Bank is for the purpose of acquisition of shares and for purchase of computer software. Since loans have been actually utilized for the above said purpose, which are on the capital front and when the same is written off during the year on a one time settlement, it is nothing but capital receipt and not a revenue receipt. In this context, we rely on the judgment of the Hon'ble Apex Court in the case of CIT v. Mahindra & Mahindra (supra). Since the relevant extract of the Hon'ble Apex Court judgment has been extracted in the impugned order of the CIT(A), the same is not reproduced. Therefore, we see no reason to interfere with the order of the CIT(A) and uphold the same as correct and in accordance with law. It is ordered accordingly.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on this 11th day of July, 2022.

Sd/-
(Padmavathy S)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 11th July, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-2, Bangalore.
4. The Pr.CIT-2 , Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore