

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 518/CHNY/2017

निर्धारण वर्ष /Assessment Year: 2012-13

Sivanandha Steels Ltd.,

Plot No.18-20, Ambit Park Road,
Ambattur Industrial Estate,
Chennai – 600 058.

The DCIT,

Corporate Circle 3,
Coimbatore.

PAN: AADCS 0678N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri Ravindra T. Mishra, JCIT

सुनवाई की तारीख/Date of Hearing

: 20.07.2022

घोषणा की तारीख/Date of Pronouncement

: 20.07.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-1, Coimbatore in Appeal No.20/15-16 dated 28.12.2016. The assessment was framed by the DCIT, Corporate Circle-2, Coimbatore for the assessment year 2012-13 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 13.03.2015.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in making addition by waiver of outstanding principal amount of unsecured loan as income u/s.28(iv) of the Act. For this assessee has raised following grounds

2. The Commissioner of Income tax (Appeals) erred in confirming the addition of Rs.1,04,00,000/- representing the waiver of outstanding principal amount of unsecured loan as income u/s 28(iv) of the IT Act.

3. The Commissioner of Income tax (Appeals) ought to have appreciated that the waiver of the loan was a capital receipt and, therefore, not liable to be taxed either u/s. 28(iv) or u/ s. 41(1) of the Act.

4. The Commissioner of Income tax (Appeals) ought to have appreciated that capital receipts and monetary waiver are inherently outside the scope of an income which can be taxed under section 28 (iv).

3. We have heard rival contentions and gone through the facts and circumstances of the case. Briefly stated facts are that the assessee claimed a sum of Rs.1,04,00,000/- as waiver of unsecured loan claimed as exempt being capital receipt but the AO added the same as income u/s.28(iv) of the Act. The assessee contented the fact that it has borrowed a sum of Rs.2,04,00,000/- as unsecured loan in the year 1999 and it had defaulted in the repayment of loan. After negotiation it had settled for a sum of Rs.1 crore in the year 2012 and the balance Rs.1.04 crore was waived by the lender by way of Memorandum of Understanding with Kothari International

Trading Ltd. The assessee claimed the amount of Rs.1.04 crores as capital receipt but the AO has not accepted the claim of assessee and added the same as income u/s.28(iv) of the Act. The CIT(A) confirmed the action of AO by observing in para 13 as under:-

13. I have considered the submissions of the appellant and the Remand Report of the Assessing Officer. The assessee has relied on the judgment of the Hon'ble Madras High Court in the case of Iskreamco Regent Ltd Vs CIT (331 ITR 317) wherein it was held that Section 28(iv) does not apply to the benefits in cash or money and it applies only to a transaction arising from business section.

(i) However, in a subsequent judgment, the Hon'ble High Court in the case of Ramaniyam Homes (P) Ltd (68 taxmann.com 289 [MAD]) has held that the waiver of principal amount would constitute income falling under Section 28(iv) being the benefit arising for the business after considering and explaining the mistakes which has crept into the judgement in the case of Iskreamco Regent Ltd. This case law squarely applies to the assessee' case.

(ii) In view of the same, the waiver of loan amounting to Rs.1,04,00,000/- will stand confirmed in the hands of the appellant u/s 28(iv) of the Income Tax Act, 1961. Therefore this ground of the assessee stands dismissed.

4. After hearing both the sides and going through the facts, we noted that this issue is squarely covered now by the decision of Hon'ble Supreme Court in the case of Mahindra & Mahindra Ltd., (2018) 404 ITR 0001 (SC), wherein the Hon'ble Supreme Court has considered this issue vide para 13 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.

We also noted that the CIT(A) and the AO has relied only on the decision of Hon'ble Madras High Court in the case of Ramaniyam Homes (P) Ltd., 68 taxmann.com 289 (Mad) but this was considered by the Hon'ble Supreme Court in this case of Mahindra & Mahindra Ltd., *supra* in civil appeal No.4546 of 2018. Since, the issue is squarely covered, we allow the claim of assessee and accordingly, the appeal of assessee is allowed.

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

Order pronounced in the open court on 20th July, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 20th July, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |