

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
MS. PADMAVATHY S, AM**

आयकरअपीलसं./ I.T.A. No.609 & 608/Mum/2023
(निर्धारणवर्ष / Assessment Year 2013-14 & 2014-15)

DCIT-19 (3). Matru Mandir, 2 nd Floor, Room No. 206, Grant Road. Mumbai-400 006	बनाम/ Vs.	M/S. RAMANI EXPORTS. 6/B, Shreeji Darshan, Tata Road, No. 01 & 02, Opera House. Mumbai-400 004
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAAFR2080B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

CO NO-39/MUM/2023
(Arising out of ITA No.609/Mum/2023
(Assessment Year :2013-14)
&
CO NO-38/MUM/2023
(Arising out of ITA No.608/Mum/2023
(Assessment Year :2014-15)

M/S. RAMANI EXPORTS. 6/B, Shreeji Darshan, Tata Road, No. 01 & 02, Opera House. Mumbai-400 004	V s	DCIT-19 (3). Matru Mandir, 2 nd Floor, Room No. 206, Grant Road. Mumbai- 400 006
PAN/GIR No. AAAFR2080B		
(Appellant)	.	(Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri. Bhupendra Shah, CA
प्रत्यर्थीकीओरसे/ Respondent by	:	Smt. Mahita Nair (Sr. Ar. CIT)
सुनवाईकीतारीख/ Date of Hearing	:	04.05.2023
घोषणाकीतारीख / Date of Pronouncement	:	16.05.2023

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeals have been filed by the Revenue and cross objection by the Assessee against separate order of even date 03.01.2023 passed by the NFAC Delhi, for the quantum of assessment passed u/s. 143(3), for the A.Ys. 2013-14 & 2014-15.

2. In Revenue's appeal, the common ground raised in both the years relates to deletion/ addition made by the AO, towards secession of liability u/s. 41 (1) of the Act, for sums amounting to Rs. 7,72,42,014/- in AY: 2013-14 & Rs. 9,24,00,000/- in AY: 2014-15.

3. The facts in briefs for the A.Y. 2013-14 are that, Assessee had taken loan from three banks namely, Axis Bank, IDBI Bank and Saraswat Co-Operative Bank for working capital requirement

during the earlier years. These loans were post shipment credit loan, which was sanctioned in the year 2008 and was reflected in the balance sheet under the head 'secured loan'. The interest paid on this loan was debited to the profit and loss account in the earlier years. Due to financial crisis and huge business losses and non realization of exports proceeds from overseas clients, led to erosion of capital. Owing to these reasons the Assessee approach banks for one time settlement waiver of certain parts of principle loan in details of which are as under:

Name	Loan amount	One time settlement	Amount waived credited to Capital account of partners
IDBI Bank	102970876	61804000	41166876
The Saraswat bank	26483000	20941000	5542000
AXIS Bank	70533138	40000000	30533138
TOTAL			77242014

4. The said waiver amount of loan was exclusive of interest amount and was credited to the capital account of the partners.

5. The Ld. Assessing Officer, held that the since assessee has availed the loan for working capital requirement, therefore waiver of the same and the resultant benefit accruing to it should have been offered to tax and instead assessee has credited the same to the partners to the capital account. The Ld.AO invoked section 41(1)(a), holding it to be benefit out of cessation of trading liability, that is, the benefit would be deemed to be from “profits and gains of business of profession”. He also referred to the decision of **Hon’ble Delhi High Court**, in the case of **Logitronics P. Ltd. Vs. CIT, 333 ITR 386 (Del)**; Judgment of **Hon’ble Bombay High Court** in the case of **solid containers Ltd Vs. DCIT (2009) reported in 178 Taxmann 192**; and judgment of **Hon’ble Supreme Court** in the case of **CIT Vs. T.V.Sundaram Iyengaran 1996, 222 ITR 334**. Finally, he added the amount of loan waived of as Income of the Assessee.

6. The Ld. CIT(A) held that the loan amount taken by the Assessee, does not given rise to any sale or purchase of any goods

albeit it will enable to assessee to have buffer amount in case of any exigencies and such amount can be used for anything and not only for the purpose of purchasing of sailing goods. He further held that, **Hon'ble Supreme Court in the case of Mahindra and Mahindra Ltd.**, reported in 2018 93 Taxmann 32, clearly clinches the issue in the favour of the assessee and also quoted the relevant paragraphs of the said judgement. He also referred to the decision of **PCIT Vs. M/s. Gujarat State Financial Corporation SLP No. 272/221** order dated 19 Feb, 2021 and held that, addition cannot be made u/s. 41(1)(a) for u/s. 21 of the Act. He has also quoted various other judgment of the Hon'ble Bombay High Court.

7. We have heard both the parties, and perused the relevant finding given in the impugned order. The only issue involved here is, whether the waiver of certain part of principal loan taken from the banks, taken for post shipment credit for a period between the time shipments is sent and the time when the shipment is received by the other party. It is an undisputed fact that due to heavy business losses and non realization of export proceeds from overseas clients, Assessee could not repay the entire. In the early

years, whenever the interest was paid or accrued, the same was credited to the profit and loss account till the loan was not NPA. The condition for invoking of section 41(1) (a) is that, 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 and subsequently during any previous year, any benefit, whether in terms of money or not, in lieu of such loss, expenditure or trading liability shall be chargeable to income-tax as the income of that previous year.

8. Here in case of the Assessee, the loan was never part of profit & loss account in any of the previous year and was capital in nature. **Hon'ble Supreme Court in the case of Mahindra and Mahindra Ltd** (Supra), while deciding the issue of waiver of loan, whether constitute income either u/s.41(1) or u/s. 21 (IV) of the Act. The principle laid down by the Hon'ble Supreme Court in the said judgment reads as under:

10. The term "loan" generally refers to borrowing something, especially a sum of cash that is to be paid back along with the interest decided mutually by the parties. In other terms, the debtor

is under a liability to pay back the principal amount along with the agreed rate of interest within a stipulated time.

11. It is a well-settled principle that creditor or his successor may exercise their "Right of Waiver" unilaterally to absolve the debtor from his liability to repay. After such exercise, the debtor is deemed to be absolved from the liability of repayment of loan subject to the conditions of waiver. The waiver may be a partly waiver ie., waiver of part of the principal or interest repayable, or a complete waiver of both the loan as well as interest amounts. Hence, waiver of loan by the creditor results in the debtor having extra cash in his hand. It is receipt in the hands of the debtor/assessee. The short but cogent issue in the instant case arises whether waiver of loan by the creditor is taxable as a perquisite under Section 28 (iv) of the IT Act or taxable as a remission of liability under Section 41 (1) of the IT Act.

12. The first issue is the applicability of Section 28 (iv) of the IT Act in the present case. Before moving further, we deem it apposite to reproduce the relevant provision herein below:-

28. Profits and gains of business or profession. The following income shall be chargeable to income-tax under the head "Profits and gains of business profession".—

(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;

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 deprecation 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) (ii) of the IT Act qua the payment of interest in any previous year.

9. Thus, Hon'ble Supreme Court held that for invoking the provision of section 41(1), it is sine-qua-non that allowance of deduction should be claimed by the Assessee in any assessment for any year, in respect of loss, expenditure or trading liability incurred by the Assessee and then subsequently, if the creditor remits or waives any such liability then assessee liable to pay tax u/s. 41 of the Act. Objective behind this section is to ensure that assessee does not get way with the double benefit. Here in this case the loan taken by the assessee was neither an expenditure nor trading liability and therefore waiver of such loan which otherwise was capital in nature, the provision of section 41 (1) cannot be invoked. Further, as held by the Hon'ble by the Supreme Court, section 28 (iv) also does not apply, as benefit on waiver of loan was not in the kind of money, i.e., cash receipt. Thus, the Ld. CIT (A) has rightly followed the principle laid down by the Hon'ble Apex Court. This principle has been retreated in several judgments on waiver of loan including the judgment of **PCIT Vs. Gujarat State Financial**

Corporation reported in 2020 122 taxmann.com 101. And SLP by the department has been dismissed as reported by the Ld. CIT(A).

10. Accordingly, the order of the CIT (Appeals) is confirmed and the grounds raised by the Revenue dismissed.

11. In the AY: 2014-15, similarly, issue is involved except for that, waiver amount of loan amounted to Rs. 5,34,10,651/- and not 9,24,00,000/- as held by the AO. Since, similar finding has been given by the Ld. CIT(A), therefore, our aforesaid finding will apply mutatis mutandis this years.

12. The cross objection filed by the Assessee are in support of order of the CIT (A), therefore same are also deleted and hence is treated as allowed.

13. In the result, appeal of the Revenue are dismissed and cross objection filed by the assesses are allowed.

Orders pronounced in the open court on 16th May, 2023.

Sd/-
(Padmavathy S)
Accountant Member

Sd/-
(Amit Shukla)
Judicial Member

मुंबई Mumbai;दिनांक Dated : 16.05.2023

Ms.Urmila

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

.उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai