

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.6898/Del/2019  
Assessment Year: 2002-03

<b>M/s. Luxor Writing Instruments (P) Ltd. 229, Okhla Industrial Estate-III, New Delhi PAN No.AAACL1980D (APPELLANT)</b>	<b>Vs</b>	<b>DCIT Circle – 4 (1) Delhi (RESPONDENT)</b>
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Appellant by	Sh. S.K. Tulsian, Advocate Mrs. Parnashree Beberee, Advocate Ms. Bhoomija Verma, Advocate
Respondent by	Ms. Smita Singh, Sr. DR

Date of hearing:	31/07/2023
Date of Pronouncement:	02/08/2023

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the assessee is preferred against the order of the CIT(A)-5, New Delhi dated 26.06.2019 pertaining to A.Y. 2002-03.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.33485700/-

on account of waiver of liability treating the same as cessation of liability invoking the provision of section 41 (1) of the Act.

3. Representatives of both the sides were heard at length. Case records carefully perused. We find that in the first round of litigation the impugned quarrel travelled upto the Tribunal and the Tribunal in ITA No.1108/Del/2007 and 2386/Del/2007 adjudicated the quarrel as under :-

*“We thus reach to the conclusion that unless it is examined in the present case as to what was to purpose of taking the loan amount which was waived, the taxability of the waived amount as income cannot be adjudicated upon. Since this material aspect of the facts has remained to be examined by the authorities below before holding the waived amount as income exigible to tax, we to meet the end of justice, while setting aside the orders of the authorities below remand the matter to the file of the A.O. with direction to adjudicate upon the issue afresh in view of the decision of the Hon’ble Delhi High Court in the case of Logitronics P. Ltd. Vs. CIT and Others (Supra) as discussed above after affording proper opportunity of being heard to the assessee. In the result the ground nos. 2, 2.1 & 2.2 are allowed for statistical purpose. The issue involved therein is now to be decided by the AO”.*

4. Pursuant to the directions of the Tribunal, in the fresh assessment proceedings the assessee once again contended

that the waiver of loan basically constituted capital receipts and that the waiver was by the holding company of the share holder, hence section 41(1) of the Act is inapplicable irrespective of the manner of utilization of loan. The AO observed as under :-

*“However, it is correct that when the amount was received it was in nature of capital receipt. But when the loan was waived off, its nature changed to revenue receipt. Since, the assessee now does not have to repay the sum received it changes the character of receipt. The act of waiver of loan is a subsequent event, which imprints a different quality on receipt. The loan so waived off was basically for the purpose of working capital and for the same, reliance can be placed on the following judicial pronouncement”.*

5. Once again following the order of the Hon’ble High Court in the case of Logitronics Private Limited 333 ITR 386 the AO made the addition of Rs.334,85700/-.

6. The impugned quarrel has now been well settled by the Hon’ble Supreme Court in the case of Mahindra and Mahindra in Civil Appeal No.6949-6950 of 2004 with others. The relevant findings of the Hon’ble Supreme court read as under :-

*“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) (iii) of the IT Act qua the payment of interest in any previous year.

18) In view of above discussion, we are of the considered view that these appeals are devoid of merits and deserve to be dismissed. Accordingly, the appeals are dismissed. All the other connected appeals are disposed off accordingly, leaving parties to bear their own cost.

7. Respectfully following the ratio laid down by the Hon'ble Supreme Court (supra) we direct the AO to delete the impugned addition. The appeal of the assessee is accordingly allowed.

Order pronounced in the open court on 02.08.2023.

Sd/-  
**[ASTHA CHANDRA]**  
**JUDICIAL MEMBER**

Dated: .08.2023

Sd/-  
**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

\*Neha\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar  
ITAT, New Delhi