आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.915/PUN/2022
निर्धारण वर्ष / Assessment Year : 2011-12

Dy. Commissioner of Income Tax,
Central Circle -1, Nashik

.....अपीलार्थी / Appellant

बनाम / V/s.

Windsor Machines Limited,
102/103, Dev Milan CHS Ltd.,
Next to Tip Top Plaza, LBS Road,
Thane West, Mumbai – 400604

PAN : AAACD4302P

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor B. Phadke
Revenue by : Shri Ajay Kumar Kesari

सुनवाई की तारीख / Date of Hearing : 26-07-2023
घोषणा की तारीख / Date of Pronouncement : 20-10-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the Revenue against the order dated 30-09-2022 passed by the Commissioner of Income Tax (Appeals)-12, Pune ['CIT(A)'] for assessment year 2011-12.

2. Ground No. 1 raised by the Revenue challenging the action of CIT(A) in allowing carry forward of unabsorbed depreciation of Rs.19,89,09,661/- pertaining to A.Ys. 1997-98 to 2000-01 for set off without any time limit.

3. It is noted from para 4 of the assessment order that the assessee claimed set off of unabsorbed depreciation waiver from A.Ys. 1997-98 to 2000-01 to an extent of Rs.19,89,09,661/-. The details of which reproduced by the AO in page 9 of the assessment order, but however, restricted the set off of said unabsorbed depreciation up to A.Y. 2000-01 taking reference to ITAT Special Bench, Mumbai in the case of M/s. Times Guaranty Limited in ITA Nos. 4917 & 4918/Mum/2008. The CIT(A) taking support from the decision of Hon'ble Supreme Court in the case of Petrofils Co-operative Ltd. reported in (2021) 130 taxmann.com 191 (SC), wherein, the Hon'ble Supreme Court dismissed the SLP filed by the Revenue and upheld the decisions of Hon'ble High Court of Delhi, Gujarat, Madras and Bombay, wherein, it was held the unabsorbed depreciation pertaining to A.Ys. 1997-98 to 2000-01 is to be dealt in accordance with the provisions of section 32(2) of the Act as amended by the Finance Act, 2001 by holding that the carry forward unabsorbed depreciation is to be allowed and set off against the profits and gains of subsequent years without any limit whatsoever. For better understanding, the relevant portion in paras 5.3 to 5.5 of the impugned order is reproduced here-in-below :

> *"5.3 I have considered the facts of the case as well as the submission of the appellant, which has been reproduced above. Briefly, the facts are that during the course of assessment proceedings, the AO observed that the appellant had unabsorbed depreciation of Rs.19,89,09,661/- as per the return of income filed by it for A.Y. 1997-98 to 2000-01, while the assessed unabsorbed depreciation was Rs.17,58,31,415/-. Further, the AO noted that as per the decision of the Hon'ble ITAT, Special Bench, Mumbai, in the case of M/s. Times Guaranty Limited (ITA Nos. 4917 & 4918/Mum/2008), the unabsorbed depreciation relating to A.Y. 1997-98 to A.Y. 2000-01 is to be dealt with as per the provisions of section 32(2) as applicable for those years, which provided the carry forward of unabsorbed depreciation for 8 years only and accordingly, the AO restricted the carry forward of unabsorbed depreciation pertaining to A Y 1997-08 to AY 2000-01 for set off for 8 years only. However, as correctly contended by the appellant, the decision of Hon'ble ITAT in M/s Times Guaranty Limited (Supra) is no more a good law and in subsequent decision In the case of General Motors India (P) Ltd., 354 ITR 244 Guj.), the Hon'ble Gujarat High Court has held that the unabsorbed depreciation pertaining to AY 1997-08 to AY 2000-01 would be dealt in accordance with the provision of section 3 (2) of the Act, as amended by Finance Act, 2001,and therefore would be allowed to be carried forward and set off against the profits and gains of subsequent years, without any*

limit whatsoever. While holding the same, the Hon'ble High Court took note of the position as per section 32(2) of 1he Act prior to the Finance Act No. 2 of 1996, amended position after the Finance Act No. 2 of 1996, further amended position as per Finance Act 2001 and Circular No. 14 of 2001 issued by the CBDT clarifying the purpose of this amendment. The relevant part of the judgment is reproduced below:

> *37. The CBDT Circular clarifies the intent of the amendment that it is for enabling the industry to conserve sufficient funds to replace plant and machinery and accordingly the amendment dispenses with the restriction of 8 years for carry forward and set off of unabsorbed depreciation. The amendment is applicable from assessment year 2002-03 and subsequent Years. This means that any unabsorbed depreciation available to an assessee on 1st day of April, 2002 (A.Y. 2002-03) will be dealt with in accordance with the provisions of section 32(2) as amended by Finance Act, 2001 and not by the provisions of section 32(2) as it stood before the said amendment. Had the intention of the Legislature been to allow the unabsorbed depreciation allowance worked out in A.Y. 1997-98 only for eight subsequent assessment years even after the amendment of section 32(2) by Finance Act, 2001 it would have incorporated a provision to that effect. However, it does not contain any such provision. Hence keeping in view the purpose of amendment of section 32(2) of the Act, a purposive and harmonious interpretation has to be taken. While construing taxing statutes, rule of strict interpretation has to be applied, giving fair and reasonable construction to the language of the section without leaning to the side of assessee or the revenue. But if the legislature fails to express clearly and the assessee becomes entitled for a benefit within the ambit of the section by the clear words used in the section, the benefit accruing to the assessee cannot be denied. However, Circular No. 14 of 2001 had clarified that under Section 32(2), in computing the profits and gains of business or profession for any previous year, deduction of depreciation under Section 32(2), shall be mandatory. Therefore, the provisions of section 32(2) as amended by Finance Act, 2001 would allow the unabsorbed depreciation allowance available in the A.Y. 1997-98, 1999-2000, 2000-01 and 2001-02 to be carried forward to the succeeding years, and if any unabsorbed depreciation or part thereof could not be set off till the A.Y. 2002-03 then it would be carried forward till the time it is set off against the profits and gains of subsequent years.*
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> *38. Therefore, it can be said that, current depreciation is deductible in the first place from the income of the business to which it relates. If such depreciation amount is larger than the amount of the profits of that business, then such excess comes for absorption from the profits and gains from any other business or business, if any, carried on by the assessee. If a balance is left even thereafter, that becomes deductible from out of Income from any source under any of the other heads of Income during that year. In case there is a still balance left over, it is to be treated as unabsorbed depreciation and it is taken to the next succeeding year. Where there is current depreciation for such succeeding year the unabsorbed depreciation is added to the current depreciation for such succeeding year and is deemed as part thereof. If, however, there is no current depreciation for such succeeding year, the unabsorbed depreciation becomes the depreciation allowance for such succeeding year. We are of the considered opinion that any unabsorbed depreciation available to an assessee on 1st day of April 2002 (A.Y.2002-03) will be dealt with in accordance with the provisions of section 32(2) as amended b by Finance Act, 2001. And once the Circular No. 14 of 2001 clarified that the restriction of 8*

years for carry forward and set off of unabsorbed depreciation had been dispensed with, the unabsorbed depreciation from A.Y. 1997-98 upto the A. Y. 2001-02 got carried forward to the assessment year 2002-03 became part thereof, it came to be governed by the provisions of section 32(2) as amended by Finance Act, 2001 and were available for carry forward and set off against the profits and gains of subsequent years, without any limit whatsoever.

5.4 Similar decisions were given by the Hon'ble Mumbai ITAT in the cases of Bajaj Hindustan Ltd. Vs. DCIT, 149 ITD 709 and Hindustan Unilever Ltd., 22 ITR (T) 737 (Mum-Trib.) and other judicial authorities. This position is further upheld by the Hon'ble Supreme Court in the cases of Panchmahal Steel Ltd. (2019) 106 taxmann.com 132 (SC). Supreme Petrochem Ltd. (2020) 115 taxmann.com 222 (SC) and Petrofils Co0operative Ltd. (2021) 130 taxmann.com 191 (SC), wherein the SLP filed by the Department has been dismissed. In the case of Petrofils Co-operative Ltd., the Hon'ble Supreme Court observed while dismissing the SLP that in view of the judgments on the interpretation of section 32(2) of the Income-tax Act delivered by Delhi High Court, Gujarat High Court, Madras High Court and Bombay High Court, upheld by the Apex Court by special leave petitions being dismissed, the Hon'ble Court did not agree with the learned Additional Solicitor General that the question of law has to be determined in those special leave petitions, and the SLPs were dismissed. In view thereof, it is a settled position of law that the unabsorbed depreciation pertaining to A.Y. 1997-98 to A.Y. 2000-01 is to be dealt in accordance with the provisions of section 32(2) of the Act, as amended by Finance Act, 2001, and therefore, it would be allowed to be carried forward and set off against the profits and gains of subsequent years, without any limit whatsoever. In view thereof, this ground raised by the appellant is found correct and therefore, allowed. The AO is directed to allow carry forward of unabsorbed depreciation pertaining to AY 1997-98 to AY 2000-01 for set off without any time limit, in accordance with the provisions of section 32(2) of the Act as discussed above.

5.5 However, it is seen that in this ground of appeal, the appellant has challenged the disallowance of carry forward of unabsorbed depreciation totaling to Rs.19,89,09,661/- pertaining to AY 1997-98 to AY 2000-01, while as noted by the AO, the assessed unabsorbed depreciation pertaining to AY 1997-98 to AY 2000-01 was Rs.17,58,31,415/-, while it was claimed by the appellant in its submissions as Rs.17,75,78,629/-. Therefore, while giving effect to this order, the AO is directed to verify the record and determine the correct allowable unabsorbed depreciation pertaining to AY 1997-98 to AY 2000-01 and allow the same to be carried forward for set off with income for this year and to carry forward the unabsorbed depreciation for set off in subsequent years."

4. In the light of the above, we note that now it is a settled position of law that the unabsorbed depreciation pertaining to A.Ys. 1997-98 to 2000-01 could be carried forward and set off against the profits and gains of subsequent years without having 8 years of limit. Further, we note that the CIT(A) directed the AO to verify record and determine the correct allowable unabsorbed depreciation pertaining to A.Ys. 1997-98 to 2000-01,

to allow the same to be carried forward for set off with income for the year under consideration and also to carry forward unabsorbed depreciation for set off in the subsequent years. In view of the decision of Hon'ble Supreme Court as referred by the CIT(A) in para 5.4 of the impugned order, we do not find any infirmity in the reasons recorded by the CIT(A) and we agree with the same. Thus, the order of CIT(A) is justified and ground No. 1 raised by the Revenue is dismissed.

5. Ground No. 2 raised by the Revenue challenging the action of CIT(A) in allowing Rs.20,04,30,668/- on account of write back of onetime settlement of loans treating the same as capital receipt in nature, not liable to tax in the facts and circumstances of the case.

6. The AO noticed that an amount of Rs.33,81,64,668/- was reduced from the computation of income on account of waiver of loan. We note that out of above said amount, principal amount is Rs.32,77,80,028/- as secured loan and principal amount of Rs.1,03,84,640/- as unsecured loan. It was explained by the assessee that the BIFR declared the assessee as seek unit and written back of Rs.33,81,64,668/- as per the sanctioned scheme which was borrowed funds in earlier years contended the written back amount is consist of principal amount, treating the same as capital in nature, not chargeable to tax. The AO asked the assessee to submit details of the same. The assessee submitted details which were reproduced at page 8 of the assessment order. The AO was of the opinion on an examination of balance sheet that the interest accrued which was credited to term loans, by debiting to profit and loss accounts claimed the same as deduction, the AO held the assessee used the same for working capital and cannot be termed as loan used for capital goods. Thereby, considering the

provisions u/s. 28(iv) of the Act where no relief was provided in the sanctioned scheme, the claim of deduction restricted to Rs.1377.34 lacs and excess of Rs.20,04,30,668/- was disallowed. The CIT(A) considered various decisions and by relying the decision of Hon'ble High Court of Karnataka in the case of Compaq Electric Ltd. reported in (2011) 16 taxmann.com 385 (Kar.) held the principal amount of loan waived would neither be chargeable to tax u/s. section 41 (1) of the Act nor u/s 28(iv) of the Act and allowed the claim of the assessee by treating the same as capital in nature, not chargeable to tax. The relevant portion at paras 6.17 to 6.20 of the impugned order is reproduced here-in-below for ready reference :

> *"6.17 In the above decision, the ITAT has discussed the nature of liability on loan taken by the appellant and held that it was capital in nature and not a trading liability, waiver of which is neither covered u/s 28(iv) of the Act nor u/s 41 (1) of the Act.*
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> *6.18 In fact, even in those cases, where the assessee is in finance business, the remission of loan was not found chargeable to tax being capital receipt. It was held so by the Hon'ble High Court of Bombay in the case of SICOM Ltd. [2020] 116 taxmann.com 410 (Bombay). The assessee is a PFI engaged in the business of providing finance to industries in the state of Maharashtra for which funds were provided by the Government of Maharashtra. The loans given by Government to assessee-company was waived off and such waiver of principal amount was considered as income u/s. 28(iv) being benefit arising from business of assessee and, accordingly, said amount was to be treated as income of assessee for year under consideration and taxable under section 41(1) and 28(iv). However, the CIT(A) has held that the loans were a liability on capital account and waiver of the same is neither covered u/s. 41(1) of the Act nor u/s. 28(iv) of the Act and the same was upheld both by the Hon'ble ITAT and the Hon'ble High Court.*
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> *6.19 Therefore, it is clear from the ratio laid down by the Hon'ble Supreme Court in the case of Mahindra & Mahindra and the other subsequent decisions that loan is not to be considered a trading liability but it is a capital receipt and it is not relevant for what purpose, the loan was taken. The loan' taken would not be a trading liability but a capital receipt and its waiver would not attract provisions of either section 41 (1) of the Act nor 28(iv) of the Act.*
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> *6.20 Similarly, in the case of MIs Colour Roof (India) Ltd., the assessee had taken unsecured loans of Rs.4,11,27,086/-, which were added by the AO u/s 41(1) of the Act. It was held by the CIT(A) as well as ITAT that the unsecured loan obtained by the assessee were capital in nature and do not represent any trading liability, the deduction of which has been allowed to assessee. Since addition u/s. 41 (1) can be made only in respect of remission or cessation of trading liabilities, the allowance or deduction of which has been made in the assessment for any year, the provisions of section 41 (1)*

are not applicable. The Hon'ble High Court of Bombay upheld the same in its decision in ITA no. 896 of 2017 and held that neither provisions of section 41 (1) nor section 28(iv) are applicable on waiver of such liabilities and dismissed the appeal of the Department. Similarly, in the case of Essar Shipping Ltd. 273 Taxman 49, it was held by the Hon'ble High Court of Bombay that no taxable income arose on write back of loan received from the Government of Karnataka and a loan was considered to be not of a revenue nature."

7. In the light of the above, we note that the assessee made vehement contention before the CIT(A) rebutting the finding of AO in restricting the claim. We note that the assessee made many submissions before the CIT(A) which were reproduced and discussed by the CIT(A) in detail in the impugned order. It was stated that the said loans were obtained from F.Ys. 1996-97 to 2001-02 which were utilized for investment in fixed assets. It is also referred that the said loans were utilized for fixed assets. The assessee vehemently contended that the AO wrongly stated that the loans obtained during the above said period for not utilized for acquiring capital assets and the finding of AO is without any basis. It was contended there was no indication in the balance sheet for the year under consideration that the loans were utilized for working capital and the finding of AO in this regard is incorrect without any basis.

8. By considering the submissions of assessee the CIT(A) by referring to provisions of section 41(1) and 28(iv) of the Act held non-applicability of provisions u/s. 41(1) of the Act as on waiver of principal amount as it is not a trading liability. Further, he held the provisions u/s. 28(i) of the Act is not applicable as the assessee is in the manufacturing business nor u/s. 28(iv) of the Act as there is no benefit received by the assessee in some other form rather than in the shape of money. The ld. DR placed on record the decision of Hon'ble Supreme Court in the case of T.V. Sundaram Iyengar & Sons Ltd. reported in 222 ITR 344 (SC) and argued that the ratio

laid down by the Hon'ble Supreme Court is applicable to the present facts, waiver of principal amount of loan becomes the assessee own money and chargeable to tax. Further, he referred to the decision of Hon'ble High Court of Delhi in the case of Rollatainers Ltd. reported in 339 ITR 54 (Delhi) and argued the waiver of the loans has to be treated as income in the hands of the assessee as the loans were taken in the course of business was regarded as benefit in the revenue field.

9. The ld. AR fairly conceded that the decisions of Hon'ble Jurisdictional High Court of Bombay in the case of Solid Containers Ltd. reported in 308 ITR 417 (Bombay) and Logitronics (P.) Ltd. reported in 333 ITR 386 (Delhi) are against the assessee, however, supported the order of CIT(A) and vehemently opposed the decision preferred by the ld. DR in the case of T.V. Sundaram Iyengar & Sons Ltd. (supra) and Rollatainers Ltd. (supra).

10. As relied on by the ld. DR in the case of T.V. Sundaram Iyengar & Sons Ltd. (supra), we note that the question of law raised by the Revenue which is at para 8 of the said judgment which reads *"Whether on the facts and in the circumstances of the case, the appellate Tribunal is right on law in deleting the addition made by the Income Tax Officer representing unclaimed sundry credit balances written back to the Profit & Loss Account by the assessee during the previous year relevant for the assessment year under consideration"*. The Hon'ble Supreme Court was pleased to observe the money was received by the assessee in the course of carrying on his business, although it was treated as deposit and was of capital nature at the point of time it was received, by influx of time the money had become the assessee's own money. The said deposits had not been claimed by the

customers and become barred by limitation. The assessee itself has treated the money as its own money and taken the amount in its profit and loss account. In our opinion, the facts and circumstances of the present case is different from the facts before the Hon'ble Supreme Court as far as, no claim by the customers in the present case for adjustment of deposits and such claims becoming barred by limitation. Here in the present case, the lenders have waived of principal loan amounts, whether such waiver is to be taxed u/s. 41(1) or section 28(iv) of the Act or not. Therefore, we hold the case law as referred by the ld. DR is not applicable to the facts in the present case.

11. Further, coming to the case of Rollatainers Ltd. (supra), we note that the question of law raised therein "*whether on the facts and circumstances of the case, the Tribunal erred in law in holding that Rs.2,05,42,468/- being the principal amount of working capital loans granted in the form of cash credit limits by the bank and subsequently waived off, constitutes taxable income of the appellant*". The High Court of Delhi was pleased to refer many decisions, but however, followed the ratio laid down in Logitronics (P.) Ltd. (supra). The facts in the case of Rollatainers Ltd. (supra) was that where term loans are concerned, waiver thereof by the financial institutions has not been treated as income at the hands of the assessee. It is only the writing off loans on cash credit account which was received for carrying out the day to day operations is treated as income in the hands of the assessee. The Hon'ble High Court of Delhi held, section 28(iv) of the Act is not applicable and section 41(1) of the Act is clearly applicable.

12. Further, the Hon'ble High Court of Delhi in the case of Tosha International Ltd. reported in (2009) 176 Taxman 187 (Del.), wherein, it is

noted that the assessee in the case of Tosha International Ltd. (supra) was engaged in manufacturing of black and white picture tubes. It ran into huge losses and ultimately became a sick company and was so registered with the BIFR. Under one time settlement Scheme, the banks and financial institutions required the assessee to pay 60% of the amount towards the principal and waived the entire interest amount, whether such waiver of the principal amount credited to the capital reserve account, constituted income or not. The High Court of Delhi was pleased to come to the conclusion that the amount is not covered by the provision contained in section 41(1) of the Act by placing reliance on the decision of the Mahindra & Mahindra reported in 261 ITR 501(BOM). We note that the Hon"ble Supreme Court was pleased to confirm the view of Hon"ble High court of Bombay in the case of Mahindra & Mahindra reported in 404 ITR 1 (SC).

13. The decision of Hon'ble Supreme Court in the case of Mahindra & Mahindra Ltd. reported in 404 ITR 1 (SC) is placed at page 426 of the paper book. The facts of the case therein is discussed in para 3 of the said judgment. On perusal of the same, we note that the assessee therein, Mahindra & Mahindra Ltd. decided to expand its jeep product line and entered into an agreement with Kaiser Jeep Corporation (for short "the KJC"), wherein KJC agreed to sell the dies, welding equipments and die models for $6,50,000 including cost, insurance and freight (CIF). Later on, the said KJC has been taken over by American Motor Corporation, wherein, it was agreed to waive the principal amount of loan advanced by the KJC to the assessee. The assessee claimed cessation of its liability towards the American Motor Corporation. The ITO concluded, that with the waiver of the loan amount, the credit represented income and not a liability and held taxable u/s. 28 of the Act. The CIT(A) upheld the order of ITO.

The Tribunal quashed the order of CIT(A). The Revenue filed reference before the Hon'ble High Court of Bombay, which in turn, was pleased to confirm the order of Tribunal. The Revenue preferred an appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court was pleased to hold the purchase effected from the KJC is in respect of plant, machinery and tooling equipments, are capital assets. The purchase amount had not been debited to the trading account or to the profit or loss account in any of the assessment years. Since, it is not debited to the trading account or to profit & loss account, held no applicability of section 41(1) of the Act. Further, it held section 28(iv) of the Act does not apply on the present case since the receipts are in the nature of cash or money.

14. The Hon'ble High Court of Bombay in the case of Essar Shipping Ltd. reported in 426 ITR 220 (Bombay) on 05-03-2020 which is at page 530 of the paper book followed the ratio laid down by the Hon'ble Supreme Court in the case of Mahindra and Mahindra Ltd. (supra) and held even if a loan is written off or waived, which can be for various reasons, that waiver of loan cannot be brought to tax under Section 28(iv) of the Act. The facts therein the case of Essar Shipping Ltd. (supra) are that the Government of Karnataka waived off loan advanced to the assessee as the said loan amount had become irrecoverable and claimed the same as deduction. The AO did not accept the claim of the assessee and held the waiver of loan benefitted the assessee in carrying on its business in terms of the provisions u/s. 28 of the Act. The CIT(A) held amount would be includible u/s. 28(iv) of the Act only, if it is a non-cash item and cash item cannot be treated as a pre-requisite. The Tribunal held the view of AO in making addition considering the waiver of loan as a revenue receipt. The assessee challenged the said order of Tribunal before the Hon'ble High Court of

Bombay. The Hon'ble High Court of Bombay discussed the decision of Hon'ble Supreme Court in the case of Mahindra & Mahindra Ltd. (supra) observed for "applicability of section 28(iv) of the Act, the income which can be taxed as to arise from the business or profession. That a part, the benefit which is received as to be in some other form rather than the shape of money, held that section 28(iv) was not satisfied in as much as the prime condition of section 28(iv) that any benefit or pre-requisite arising from the business or profession shall be in the form of benefit or pre-requisite other than in the shape of money was absent, therefore, that the said amount could not be taxed u/s. 28(iv) of the Act in no circumstances.

15. In the present case, loans were availed from ARCIL, Bank of India, Corporation Bank and Canara Bank, details of which are at page 20 of the impugned order, wherein, the assessee contended it has got waiver of the said loans to an extent of Rs.3277.80 lacs. The AO allowed waiver of loan amount to an extent of Rs.1377.34 lacs availed from ARCIL stating it to be utilized for acquisition of capital assets. For remaining, he held used for working capital. The contention of the assessee is that, the loans were obtained for the said financial institutions for acquisition of fixed assets from 1997-98 to 2002-03 and contended the AO erred in stating the remaining amount as working capital. On perusal of the impugned order at page 48, held the same as capital receipt and not a revenue receipt. Therefore, in our opinion, the provisions u/s. 41(1) of the Act is not applicable for the reason that the assessee did not have the benefit of any allowance or deduction in respect of the said amount which is evident from page 48 of the impugned order.

16. Coming to the provisions u/s 28(iv) of the Act, the AO asked the assessee to submit details in respect of breakup of utilization of loans availed from banks/financial institutions which are reproduced by the AO at page 8 of the assessment order, wherein, it is clearly noted that no details were submitted to the AO regarding the utilization of the said loans. In the absence of details regarding at sl.no-2 & 3 , the AO held that the said loans utilized for working capital by taking into consideration the balance sheet for the year under consideration. The ld. AR expressed his inability to furnish the details before us stating as the assessment year is too old and gathering information is also very difficult. We note that no evidences were furnished about the utilization of loan amounts before CIT(A), showing said loans utilized for acquisition of fixed assets etc. The CIT(A) mainly relied on the statements made by the assessee and also case laws. Further, we note that the DIT(R) addressed a letter to BIFR stating that no relief u/s. 28(iv) of the Act was considered by the Department. Further, the fact remains admitted that the assessee itself admitted that no relief u/s. 28(iv) of the Act is provided in the sanction scheme. since, the waiver is not in the nature of cash or money, condition provided u/s. 28(iv) of the Act is satisfied, Therefore, in the absence of any evidences showing that the loans availed, utilized for acquisition of fixed assets which are in capital in nature, We find the order of CIT(A) is not justified and restore the order of AO. Thus, the order of CIT(A) is set aside and the ground No. 2 raised by the Revenue is allowed.

17. Ground No. 3 raised by the Revenue challenging the action of CIT(A) in allowing the provision of additional liability made in respect of Thane Worker which is later on write back under rehabilitation scheme of BIFR to an extent of Rs.7,41,13,347/-.

18. We note that the assessee made provision towards liabilities in respect of dues payable to the workers in the earlier years. The Industrial Court of Maharashtra, Thane Bench directed the assessee to pay dues to the workers. Having aggrieved, the assessee preferred an appeal before the Hon'ble High Court which finalized the liabilities as per its order dated 06-09-2010. The assessee cleared the said liabilities to an extent of Rs.4,06,97,854/- on 05-10-2010 in the year under consideration. We note that the assessee made total provision of Rs.11,78,55,854/-, having paid of Rs.4,06,97,854/- under the order of Hon'ble High Court, remaining amount of Rs.7,71,58,000/- was written back by reflecting in profit and loss account. The assessee submitted its details of provisions of disallowance before the CIT(A) which were reproduced in page 96 of the impugned order. Further, we note that the details of outstanding liabilities were also furnished to the CIT(A) which were reproduced in page 97 and 98 of the impugned order. The CIT(A) examined the same by referring it to tax audit report and found the said outstanding liabilities record in pages 97 and 98 of the impugned order consisting of liabilities incurred over the years which were made towards wages, leave encashment, PF, bonus, gratuity etc. for Thane workers. At the outset, we agree with the ld. AR that the amount of contingent liability provided against ongoing Labour Court case with respect to Thane workers liability was disallowed while computing the total income for the respective assessment years. More specifically from Page Nos. 319 and 320 of the Paper Book-I, the assessee disallowed an amount of Rs.1,96,19,488/- r.w. Note No. 1 appended thereto for the A.Y. 2005-06. A similar amount of disallowance was also made while computing the total income for the A.Y. 2006-07 which is placed at Page Nos. 324 and 326. We also note that for A.Y. 2007-08 an amount of Rs.1,47,14,614/- was disallowed vide Clause (v) read with Note

No. 1 thereto. On verification of company's audit report r.w. tax audit report, we find that the assessee has disallowed the amount only to the extent of contingent liability provided in the books of account, thus, leaving thereby no excess balances to be returned back for the purpose of additional claim to be made through ground No. 3. We note that for year under consideration, the assessee failed to prove any such liability provided in the books of account and disallowed over and above the amount of final settlement Rs.4,06,97,854/-. Therefore, we find force in the contention of ld. DR as to when no such provision remained standing in the accounts of the assessee, there is hardly any balances to be returned back. We also note that a similar findings were also noted by the CIT(A), however, while adjudicating the issue under consideration, he has carried away by aggregating the balance disallowance u/s. 43B of the Act by turning blind eye to section 43B allowance for the respective assessment year claimed by the assessee. Faced with this situation, the action of CIT(A) allowing the additional claim, in our considered opinion, deserves to be cancelled. In addition, we also note that the assessee vide its Miscellaneous Application applied to the CBDT for the claim of aforestated allowance which came rejected and this fact has been rightly travelled throughout both the remand reports of AO which are placed on record. Once, the claim for additional relief of reconsideration against the impugned ground was rejected by CBDT vide its order dated 10-09-2013, therefore, allowing such claim of assessee overstepping the order of rejection of higher authority, in our considered opinion, is not justified. In the light of our aforestated discussion, we reverse the allowance and ground No. 3 raised by the Revenue is allowed.

19. Ground No. 4 raised by the Revenue challenging the action of CIT(A) in allowing the provision of interest which was later on write back under rehabilitation scheme of BIFR to the extent of Rs.654.28 lakh in the facts and circumstances of the case.

20. We note that the assessee claimed relief of interest Rs.11.05 crores which was written back in the profit and loss account. The CIT(A) asked the assessee to give details as to how the same has been accounted in the profit and loss account and disallowed in the earlier years. Since, we are concerned with the interest accrued but not due to an extent of Rs.654.38 lakhs regarding which the assessee submitted that the lenders ICICI Bank, Bank of India, State Bank of India, Canara Bank and Corporation Bank approved restructuring package (CDR) to the assessee in 2005-06 proof of which have filed before the CIT(A). In pursuance of the same deferment of interest payment was provided with reduction in the rate of interest. The said deferment interest was payable from the year 2013 and the assessee started accruing/making provision of interest from F.Y. 2005-06 as per agreed terms with Banks. The CIT(A) examined the ledger account for interest accrued in the First Appellate proceedings, the details of which reproduced at page 104 of the impugned order. We observe the interest accrued but not due of Rs.6.54 crore was not part of BIFR order which was clubbed under the current liability. The CIT(A) discussed the same in para 18.5 of the impugned order and held when there is no deduction in the earlier years and written back is not chargeable to tax. We note that pursuant to corporate restructuring package (CDR) approved by the banker, the assessee was allowed to defer the payment of interest to the Financial Year 2013. Such accumulated interest, i.e. outstanding balance amounting to Rs.654.38 lakhs was carried in the audited financial

statement upto 31-03-2009. In the Financial Year 2009-10 this outstanding accumulated amount of interest accrued but not due was merged with other loans which was subjected to concession. Therefore, once, this liability of interest accumulated but not due was clubbed and treated in accordance with the relief sought and granted, therefore, the question of reversing the same or writing back the same in the impugned year separately does not arise. For this reason, we do not see any merits in allowing this additional claim to the appellant in the First Appellate proceedings. Further, as held in the forgoing para, the assessee vide its Miscellaneous Application applied to the CBDT for the claim of aforestated allowance which came rejected and this fact has been rightly travelled throughout both the remand reports of AO which are placed on record. Once, the claim for additional relief of reconsideration against the impugned ground was rejected by CBDT vide its order dated 10-09-2013, therefore, allowing such claim of assessee overstepping the order of rejection of higher authority, in our considered opinion, is not justified. In the light of our aforestated discussion, we reverse the allowance and ground No. 4 raised by the Revenue is allowed.

21. Ground No. 5 raised by the Revenue challenging the action of CIT(A) in allowing write back of sundry creditors amounting to Rs.52,61,122/-.

22. We find the assessee claimed relief of write back of sundry creditors on account of sanction granted by the BIFR on 21-09-2010. According to the CIT(A) that the specified unsecured liabilities including sundry creditors were to be paid only 15% of the principal amount and the rest of the liability was to be written back. Accordingly, the assessee written back

unsecured creditors of Rs.52,61,122/- to the profit and loss account, which was part of Rs.6914.12 lakhs written back on account of BIFR Scheme under the head "Extraordinary Items". It was contended by the assessee that the DIT(R) specifically mentioned the period of such waiver has neither been specified in the sanctioned scheme nor in the replies furnished by the assessee. Taking into account the CIT(A) while allowing the ground raised by the assessee but directed the AO to verify whether such waiver is not allowed earlier and it is not on capital account as mandated by the DIT(R). This amount of sundry creditors beyond the iota of doubt represents a outstanding payment towards the expenditure incurred, claimed and allowed in the preceding assessment years. Therefore, the subsequent remission thereof which is credited in the books of account rightly, fails to prove the test of non-taxability. We also note that alongwith preceding two claims (i.e. ground Nos. 3 and 4) the claim for this additional amount, the assessee made Miscellaneous Application before the CBDT which was ultimately rejected. Therefore, the CIT(A)'s action in allowing the same would be in contravention of the order passed by the higher authority u/s. 119 of the Act. For this reason and aforesaid discussion, ground No. 5 raised by the Revenue is allowed.

23. In the result, the appeal of Revenue is partly allowed.

Order pronounced in the open court on 20th October, 2023.

Sd/-	Sd/-
(G.D. Padmahshali)	(S.S. Viswanethra Ravi)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 20th October, 2023.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-12, Pune.
4. The DGIT (Inv.), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune