

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.947/Ahd/2023
Assessment Year : 2010-11

ACIT, Cir.2(1)(1) Ahmedabad.	Vs	Interkiln Industries P.Ltd. Sanghvi Chambers B/h. Canara Bank Navrangpura Ahmedabad. PAN : AAACI 4563 R
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(Applicant)	(Responent)
Assessee by :	Shri Jaimin A. Gandhi, AR
Revenue by:	Shri Prateek Sharma, Sr.DR

सुनवाई की तारीख/Date of Hearing : 25/04/2024
घोषणा की तारीख /Date of Pronouncement: 15/07/2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

This appeal has been filed by the Department against the order of the Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, New Delhi dated 5.10.2023 under section 250 of the Income Tax Act, 1961 ("the Act" for short) for the assessment year 2010-11.

2. The grounds raised in the appeal are as under:

1. *Whether the Id.CIT(A) has erred in law and on facts in deleting the addition of Rs.1,34,12,000/- made u/s.28(iv) of the Act by treating benefit from One Time Settlement with the Bank of Baroda as income without considering the facts of the case.*
2. *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary."*

3. The solitary issue raised in the present appeal relates to taxability of waiver of loan in One Time Settlement Scheme (OTS) with bank.

The facts of the case being that during the impugned year, the assessee's bank i.e. Bank of Baroda ,had entered into one time settlement scheme with the assessee and waived off loan amounting to Rs.1,32,12,000/-. This amount was treated as taxable by the AO ,which addition was deleted by the Id.CIT(A). Against the order of the Ld.CIT(A) the Revenue has come up in appeal before us.

4. We have gone through the orders of the authority below, and we find that there has been a complete misguided and misdirected approach by the Revenue authorities while dealing with this issue. This is evident from the fact that when the AO confronted the assessee with the taxability of waiver of the loan by its bank under OTS, the assessee explained that the same was not taxable in terms of provisions of section 41(1) of the Act. The order of the AO, however reveals that he rejected this contention of the assessee and relying upon the decision of the Hon'ble Madras High Court in the case of Mahindra & Mahindra Ltd. Vs. CIT, (2018) 93 taxmann.com 32 (SC), he held that the quantum of impugned loan waiver was taxable under section 28(iv) of the Act. The AO , we have noted , held so without dealing with the assesses contention of the same being not taxable u/s 41(1) of the Act. Thus, while the assessee contended that it was not taxable under section 41(1) of the Act, the AO, without considering its taxability under section 41(1) of the Act, went on to hold that it was taxable under section 24(iv) of the Act. The Ld.CIT(A) in turn deleted the addition made u/s 28(iv) of the Act.

5. Why these facts are important is for the reason that, both these sections are slightly overlapping in their operation - while section 41(1) deals with taxability of remission or cessation of the liability, under section 28(iv) of the Act perquisites received during the course of conducting business are treated as income . On the issue of waiver of loans ,the taxability of the same is considered both u/s 41(1) of the Act and u/s 28(iv) of the Act in various judicial decisions. The Ld. CIT(A)'s order reveals that the Hon'ble apex court in the case of Mahindra & Mahindra Ltd. Vs. CIT, (2018) 93 taxmann.com 32 (SC) had ruled out taxability of the same u/s 28(iv) of the Act. Before us, the ld.DR has pointed out that the taxability of loan wavier has been dealt with by the Apex Court and several other High Courts in a series of decisions u/s 41(1) of the Act, i.e. -

- i) Solid Containers Ltd. Vs. DCIT, (2009) 308 ITR 417;
- ii) CIT Vs. T.V. Sundaram Iyengar & Sons Ltd. 222 ITR 344;
- iii) Logitronics P.Ltd. Vs. CIT, (2011) 333 ITR 386, (Delhi);
- iv) Rollatainers Ltd. Vs. CIT, (2011) 339 ITR 54 (Delhi)

and the ratio of all these decisions is that if the loan has been taken for trading purpose waiver of such loan would tantamount to cessation of liability ,liable to tax under section 41(1) of the Act.

6. In the present case the taxability of the loan waived has not been considered in terms of the provisions of section 41(1) of the Act by the authorities below, though surprisingly the assesses submission to the AO was solely in the context of section 41(1) of the Act, ruling out its applicability in the case of the assessee.

7. In the light of the same, this matter needs reconsideration particularly as to under which section the benefit accruing to the assessee under One Time Settlement Scheme is taxable. And for the said purpose, the facts relevant to the waiver of the loans needs to be brought on record.

The matter is therefore restored back to the AO for consideration afresh of the taxability of loan waived under one time settlement scheme by the bank. The AO is directed to bring out all facts relevant for the issue and thereafter adjudicate the same in accordance with law. Needless to add the assessee be afforded due opportunity of hearing in this regard.

8. In the result, the appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the Court on 15th July, 2024 at Ahmedabad.

Sd/-

**(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 15/07/2024

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**