

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

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI MANU KUMAR GIRI, HON'BLE JUDICIAL MEMBER**  
**AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No.: 623/Chny/2024

निर्धारणवर्ष / Assessment Year: 2018-19

Dy. Commissioner of Income  
Tax, Central Circle-2(1)  
No. 46, M.G. Road,  
Nungambakkam,  
Chennai – 600 034.  
(अपीलार्थी/Appellant)

NAPC Pvt Ltd.,  
v. No.3, 6<sup>th</sup> Floor, Apex Plaza,  
Nungambakkam High Road,  
Nungambakkam – 600 034.  
**[PAN: AACCN-3625-P]**  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri. V. Nandakumar, CIT  
: Shri. T. Banusekar, Advocate and  
Shri. Suraj Nahar, CA

सुनवाईकीतारीख/Date of Hearing : 01.07.2024

घोषणाकीतारीख/Date of Pronouncement : 14.08.2024

**आदेश / O R D E R**

**PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:**

This appeal by the revenue is filed against the order of the Commissioner of Income Tax (Appeals), Chennai-19, for the assessment year 2018-19, vide order dated 12.01.2024.

2. The revenue has raised the following grounds of appeal:

"1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2 The Ld.CIT(A) erred in holding that the AO failed to make necessary findings upon the rejection of books of accounts and rejection of books of accounts without providing due

*opportunity is bad in law. The Ld.CIT(A) erred in deleting the addition of Rs.10,78,42,468/- made by AO estimating 8% of turnover.*

*2.1 The Ld.CIT(A) failed to appreciate that the assessing officer made clear finding in the assessment order before rejecting books of accounts u/s.145(3) of the fact. The assessing officer mentioned that the assessee had not produced details of project wise contract revenue, as per ICDS-III as mandated by Sec.43CB r.w.s 145(2) of the Act. Further the assessee has not furnished explanation for increase in material and labour expenses. After recording these reasons, the AO proceeded to reject the books of accounts and to estimate the income from business.*

*2.2 As per the ICDS-III, a person doing construction contract business shall disclose in respect of completed contracts, (a) the amount of contract revenue recognized as revenue In the period; and (b) the methods used to determine the stage of completion of contracts In progress. And in respect of contracts in progress, he shall disclose (a) amount of costs incurred and recognised profits (less recognized losses) upto the reporting date; (b) the amount of advances received; and (c) the amount of retentions.*

*Since the assessee failed to disclose the above details project wise, the assessing officer rejected the books of accounts u/s.145(3) and proceeded to estimate income @ 8% of contract receipts.*

*3 The Ld.CIT(A) erred in deleting the addition of Rs.28,92,01,373/- made towards difference between the receipts as per books of accounts and receipts as per 26AS on the basis of explanation furnished by the assessee.*

*3.1 The assessee furnished reconciliation before CIT(A) and in response. to remand report called in the remand report, the AO partially accepted the reconciliation and also gave reasons for non-acceptance of reconciliation on remaining amount as nonproduction of supporting evidences. But the Ld.CIT(A) deleted the entire addition made on this account.*

*4 The Ld.CIT(A) erred in deleting the addition of Rs.23,91,28,611/- made towards waiver of loan amount holding that the principal amount waived is not in the nature of trading liability but only financial liability, hence provision ofSec.41(1) is not applicable in this case.*

*4.1 The Ld.CIT(A) failed to appreciate that waiver of loan taken for trading purposes is taxable (ie) working capital borrowing waived by banks or financial service providers in view of decision of Delhi High Court in the case of Logitronics Pvt Ltd Vs CIT(2011) 333 ITR 386. The assessee In the instant case failed to furnish the details whether the loan borrowed was in the nature of loan acquired for capital assets or for working capital purposes.*

*5. For these grounds and any other ground including amendment of grounds that may be raised during: the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored."*

3. The brief facts of the case are that, the assessee is a private limited company, carrying on the business of civil contracts, filed its return of income on 26/09/2018 by declaring loss of Rs.24,14,02,912/- for the A.Y.2018-19. The return was processed U/s.143(1) on 15/02/2020 and after making adjustment of Rs.2,02,67,165/- U/s.36(1)(va) of the Act, by reducing the loss to Rs.22,11,35,747/-. Further, the case was selected for complete scrutiny and statutory notices were issued to the assessee. The AO thereafter completed the assessment U/s.143(3) r.w.s.144B vide order dated 18/09/2021 assessed income at Rs.43,56,64,196/-. In completing the assessment, the AO has done the following:

*"4. In completing the assessment, the Assessing Officer has:*

*(a) Estimated the revenue at 8% of the reported value of operations i.e., Rs.10,78,42,468/- (8% of Rs.134,80,30,855/-) and*

*(b) Added a sum of Rs.28,92,01,373/- being difference between the contract receipts as per Form 26AS (Rs.163,50,29,232/-) and the*

*contract receipts declared by the assessee (Rs.134,80,30,855/-) as the undisclosed income of the assessee and*

*(c) Added a sum of Rs.23,91,28,611/- as waiver of loan amount as income under the head profits and gains of business or profession and*

*(d) Disallowed a sum of Rs.2,06,27,491/- u/s.2(24)(x) r.w.s.36(1)(va).*

*5. In the meanwhile, a rectification order passed u/s.154 r.w.s.143(3) wherein income was assessed at Rs.25,56,25,243/- after giving effect to unabsorbed depreciation for assessment years 2014-15 to 2016-17, revising the tax liability to Rs.7,76,98,940/-.*

Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld.CIT(A).

4. The Ld.CIT(A) vide order dated 12/01/2024 deleted the addition in respect of 4(a), (b) & (c) mentioned in AO's order (supra) and upheld the addition of Rs.2,06,27,491/- [4(d) of the AO's order] on account belated payment of ESI and PF. Aggrieved by the order of the Ld.CIT(A), the Revenue is before us.

5. The Ld.DR assailing the action of the Ld.CIT(A) and vehemently argued that, the Ld.CIT(A) has erred in deleting the additions made by the AO on all three issues. He further, stated that Ld.CIT(A) has arbitrarily deleted the additions and

reiterated the findings of AO and prayed for setting aside the impugned order.

6. The Ld.AR of the assessee filed paper book 1 (page 1 to 65) & paper book 2 (page 1 to 64), consisting of documents filed before the lower authorities. Ld.AR also filed separate paper book consisting of 'case laws' (Page 1 to 32). Further, the Ld.AR filed a detailed note / written submission along with the Annual report consisting of financials of the company for A.Y.2018-19, remand report dated 06/06/2023 given by the AO to Ld.CIT(A) during the appellate proceedings. The Ld.AR further filed a chart showing the particulars of annexures, paper book reference, nature / contents of the annexure which were filed before the AO during the Assessment proceedings, which runs into 13,861 pages in response to the details / information called for from time to time. The Ld.AR canvassed the submission referring the additions made by the AO as below:

**A. Addition on account of "Estimation of the revenue" @ 8% of the contract receipts by the AO, i.e. Rs.10,78,42,468/- (8% of Rs.134,80,30,855/-) :**

The Assessing Officer while passing the assessment order had rejected the books of accounts U/s.145(3) of the Act, and went

on to estimate the revenue of the assessee at 8% of the turnover reported by the assessee, i.e. 8% of Rs.134,80,30,855/- amounting to Rs.10,78,42,468/- and added the same under the head income from business or profession. The reasons stated in brief by the Assessing Officer for rejection of books of accounts are as under:

- Workings of contract revenue furnished as per AS-7 and not as per ICDS III.
- The assessee failed to explain:
  - a) Reason behind rise in cost of operations which includes cost of machinery, power and fuel etc. and corresponding fall in the revenue.
  - b) Reason behind incurrance of high labour charges and increase in cost of legal and professional charges.
- Assessee did not furnish the Profit & Loss account for each project separately, especially for some projects / clients.

## **7. Submission of the Ld.DR on this issue :**

7.1 The Ld.DR stated that the Ld.CIT(A) erred in holding that the AO failed to make necessary findings upon the rejection of books of accounts and such rejection of books of accounts without providing due opportunity is bad in

law. He also stated that the Ld.CIT(A) has erred in deleting the addition of Rs.10,78,42,468/- by estimating 8% of turnover.

7.2 The Ld.DR further stated, the Id.CIT(A) failed to appreciate that the assessing officer made clear finding in the assessment order before rejecting books of accounts u/s.145(3) of the fact. The Ld.DR by asserting the action of the assessing officer mentioned that the assessee had not produced details of project wise contract revenue, as per ICDS-III as mandated by Sec.43CB r.w.s 145(2) of the Act. Further the assessee has not furnished explanation for increase in material and labour expenses. After recording these reasons, the AO rightly proceeded to reject the books of accounts and to estimate the income from business.

7.3 The Ld.DR further stated that as per the ICDS-III, a person doing construction contract business shall disclose in respect of completed contracts,

(a) the amount of contract revenue recognised as revenue In the period; and

(b) the methods used to determine the stage of completion of contracts in progress.

And in respect of contracts in progress, he shall disclose

- (a) amount of costs incurred and recognised profits (less recognised losses) upto the reporting date;
- (b) the amount of advances received; and
- (c) the amount of retentions.

7.4 Since the assessee failed to disclose the above details project wise, the assessing officer rejected the books of accounts u/s.145(3) and proceeded to estimate income @ 8% of contract receipts and hence prayed for setting aside the order of the Id.CIT(A) on this issue.

## **8. Submission of the Ld.AR on this issue :**

8.1 The Ld.AR submitted that the rejection of books of accounts and estimation of revenue thereof is not warranted in the facts and circumstances of the case due to the following reasons:

*1. At the outset, it may be noted that the Assessing Officer has not provided any cogent reasons for rejecting the books of accounts of the assessee before proceeding to estimate the revenue at 8%.*

*2. He also submitted that the assessee had furnished project wise details regarding the working of contract revenue for all projects undertaken during the year under consideration and referred Pages 16 and 17 of the Index of Paper Book 1.*

8.2 As regards the contention of the Assessing Officer that the assessee did not furnish details of contract revenue of some projects / clients as stated in Para 3 of Page 4 of the assessment order, he submitted that contract works are assigned with different project names and are included under specific client heads. In respect of the Assessing Officer observation at Para 3, Page 4 of the assessment order regarding a few clients that the assessee did not furnish details of contract revenues, the Ld.AR contended as under:

- a) *The contract revenue of Golden Oak Projects Pvt. Ltd. which is an offshoot project of Apollo Tyres is included under the client's name Apollo Tyres.*
- b) *The contract revenue of Executive Engineer KSTP Division PonkunnamKanjirapally which is a project undertaken for KSTP is included under client name KSTP - EM Upgradation Road Work.*
- c) *The contract revenue of Nam Estates Pvt. Ltd. is reflected under the client's name Embassy (NAM Estates).*
- d) *The contract revenue of NAPC Ltd. Anchor Consortium is included under the client's name CMWSSB Avadi.*
- e) *The contract revenue of Renault Nissan Automotive India Pvt. Ltd. is shown under the client's name Renault Nissan.*
- f) *The contract revenue details in respect of Bus Route Road Department would not form part of contract revenue workings for the impugned assessment year since this project was undertaken and completed by the assessee in an earlier year.*
- g) *The assessee did not enter into any transactions with Huchinson Industrial Rubber Products Pvt. Ltd. and thus there is no data pertaining to contract revenue for the impugned assessment year.*
- h) *The assessee had paid man power deputation charges to Radiance Realty Development India Pvt. Ltd. and had not*

*undertaken any project for such project during the impugned assessment year.*

- i) The assessee did not enter into any transactions with MOA Engineering Private Limited and thus there is no data pertaining to contract revenue for the impugned assessment year.*
- j) The Ld.AR further more submitted that since the turnover reported in the books of accounts tallies with the contract revenue workings furnished at Pages 16 and 17 of the Index of Paper Book-1 goes on to disprove the contention of the Assessing Officer that details of contract revenue of some projects/ clients were not furnished by the assessee. He further pointed out that the said workings as per AS-7 duly matches with the contract revenue declared by the assessee in its books of accounts for the impugned assessment year - Refer Pages 18 and 19 of the Index of Paper Book -1.*

8.3 He contended that the working of contract revenue was submitted as per AS-7, however, it was the case of the Assessing Officer that the assessee did not submit the workings of contract revenue as per ICDS III which is mandated as per law, which thereon constituted one of the reasons for rejection of books of accounts of the assessee. In fact, it was his contention that the assessee had submitted voluminous data regarding all project-wise details of expenditure along with supporting bills valued above Rs.1 lakh pertaining to financial years 2015- 16 to 2017-18 (Assessment Years 2016-17 to 2018-19) totalling to 13,861 pages before the Assessing Officer.

| Sl. No | Particulars of Annexure                     | Paper Book Reference   | Nature/contents of Annexure   | No. of pages of annexure |
|--------|---|------------------------|---|--------------------------|
| 1      | <b>Reply dated 18.02.2021</b><br>Annexure 1 | Page 14 of Index of PB | Party wise break-up of contract income as per books and Form 26AS and reasons for difference in contract income | 1                        |

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|---|---|--|---|--|
|   | <b>Reply dated 18.03.2021</b><br>Annexure 1<br><br>Annexure 2   | Page 3 of Index of PB-2  | <b>Annexure 1:</b> Details of payment of interest / Finance Cost in the prescribed format (Page 4 of Index of PB- 2)<br><br><b>Annexure 2:</b> Details of name, PAN and address of parties from whom construction material were purchased (Pages 5 to 13 of Index of PB- 2)   | 1<br><br>9   |
| 3 | <b>Reply dated 19.04.2021 in response to SCN</b><br>Annexure 1 and 1a<br><br>Annexure 2 and 3<br><br>Annexure 4, 4a, 4b & 4c  | Page 17 of Index of PB-2<br><br>Page 19 of Index of PB-2<br><br>Page 25 of Index of PB-2 | <b>Annexure 1 and 1a:</b> Summary of contract revenue<br><br><b>Annexure 2 and 3:</b> Detailed statement reconciling the income admitted with data appearing in Form 26AS<br><br><b>Annexure 4, 4a, 4b &amp; 4c:</b> Submissions regarding disallowance u/s.36(1)(va)   | 4<br><br>3<br><br>29   |
| 4 | <b>Reply dated 10.05.2021</b><br>Annexure A1 along with ledger accounts and bills<br><br>Annexure A2 along with ledger accounts and bills<br><br>Annexure A3 along with ledger accounts and bills<br><br>Annexure A4 along with ledger accounts and bills<br><br>Annexure A5 along with ledger accounts and bills<br><br>Annexure A6 along with ledger accounts and bills<br><br>Annexure A7 along with ledger accounts and bills<br><br>Annexure A8 along with ledger accounts and bills | Page 33 of Index of PB-2   | <b><u>Annexure A1 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project CMWSSB<br><br><b><u>Annexure A2 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project Albatross/Apollo Tyres<br><br><b><u>Annexure A3 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project HCL<br><br><b><u>Annexure A4 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project Enfield<br><br><b><u>Annexure A5 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project Roop<br><br><b><u>Annexure A6 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project Minda<br><br><b><u>Annexure A7 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project MRF<br><br><b><u>Annexure A8 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project Renault Nissan<br><br><b><u>Annexure A9 along with ledger accounts and bills:</u></b> | 67<br><br>1470<br><br>71<br><br>547<br><br>284<br><br>589<br><br>94<br><br>20<br><br>130 |

|   |   |      |
|---|---|------|
| Annexure A9 along with ledger accounts and bills  | Details regarding expenditure incurred along with supporting bills in respect of project Sundaram Clayton Limited   |      |
| Annexure A10 along with ledger accounts and bills | <b><u>Annexure A10 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project Mahindra & Mahindra     | 101  |
| Annexure A11 along with ledger accounts and bills | <b><u>Annexure A11 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project SSN College             | 12   |
| Annexure A12 along with ledger accounts and bills | <b><u>Annexure A12 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project Ashok Leyland           | 15   |
| Annexure A13 along with ledger accounts and bills | <b><u>Annexure A13 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project BBMP – Central Business | 2162 |
| Annexure A14 along with ledger accounts and bills | <b><u>Annexure A14 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project BBMP – Footpath         | 301  |
| Annexure A15 along with ledger accounts and bills | <b><u>Annexure A15 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project Embassy                 | 1200 |
| Annexure A16 along with ledger accounts and bills | <b><u>Annexure A16 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project TRMN                    | 83   |
| Annexure A17 along with ledger accounts and bills | <b><u>Annexure A17 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project Hubli                   | 100  |
| Annexure A18 along with ledger accounts and bills | <b><u>Annexure A18 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project KSTP                    | 5099 |
| Annexure A19 along with ledger accounts and bills | <b><u>Annexure A19 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project Shimizu                 | 1127 |
| Annexure A20 along with ledger accounts and bills | <b><u>Annexure A20 along with ledger accounts and bills:</u></b> Details regarding expenditure incurred along with supporting bills in respect of project HLL – Jimper            | 338  |
| Annexure A2                                       | <b><u>Annexure 2:</u></b> Compilation of details of income recognized and income as per 26AS  | 4    |

8.4 In this connection, Ld.AR submitted that AS-7 and ICDS III are not divergent in their approach and it is the percentage of completion method that is prescribed under both AS-7 and ICDS III for recognising contract revenue, which the assessee had duly complied with during the impugned assessment year. As per ICDS III, the relevant portion that deals with the recognition of contract revenue and expenses is as under- Refer Pages 2 and 3 of Index of Case Laws:

*"Recognition of Contract Revenue and Expenses*

*16. Contract revenue and contract costs associated with the construction should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date.*

*17. The recognition of revenue and expenses by reference to the stage of completion of a contract is referred to as the percentage of completion method. Under this method, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed." (Emphasis supplied)*

8.5 Similarly, as per AS-7, the relevant portion that deals with the recognition of contract revenue and expenses is as under - Refer Pages 10 and 11 of Index of Case Laws:

*"Recognition of Contract Revenue and Expenses*

*21. When the outcome of a construction contract can be estimated reliably, contract revenue and contract costs associated with the construction contract should be recognised as revenue and*

*expenses respectively by reference to the stage of completion of the contract activity at the reporting date. An expected loss on the construction contract should be recognised as an expense immediately in accordance with paragraph 35.*

*24. The recognition of revenue and expenses by reference to the stage of completion of a contract is often referred to as the percentage of completion method. Under this method, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed. This method provides useful information on the extent of contract activity and performance during a period.*

*(Emphasis supplied)”*

8.6 The Ld.AR from the above, summarizes that there is no difference in the approach as regards recognition of contract revenue as per AS-7 and ICDS III as both standards recommend the percentage of completion method for recognition of contract revenue and thus, contended that the assessee had in fact duly followed the requirements of ICDS III despite furnishing the working of contract revenue recognition as per AS-7 and had not in any manner deviated from the requirements of law. It may also be noted that the Assessing Officer nowhere had mentioned the exact deviation from ICDS III on perusal of the workings as per AS-7.

8.7 The Id.AR further vehemently argued that the Assessing Officer on one hand rejects the books of accounts of the

assessee and on the other goes on to adopt the contract revenue declared by the assessee in its books of accounts for the purpose of estimation of revenue at 8% which only goes to prove that the Assessing Officer accepts the value of turnover reported by the assessee in its books and has only arbitrarily rejected the books of accounts without giving any cogent reasons in doing so.

8.8 With regard to furnishing of explanation and supporting evidences regarding increase in cost of production despite fall in revenue, incurrance of high labour charges, increase in cost of legal and professional charges etc., the Ld.AR stated that the assessee had given detailed submissions along with supporting evidences wherever applicable before the Assessing Officer, details of which are as under:

- a) Refer Pages 12 to 15 of the Index of Paper Book - 1.
- b) Refer Pages 5 to 13 of the Index of Paper Book - 1.
- c) Refer Para 4 at Page 20 and Paras 6 to 9 at Page 21 of the Index of Paper Book - 1.

8.9 As regards non-furnishing of the Profit & Loss account for each project separately, the Ld.AR stated that the assessee had submitted voluminous data regarding project-wise details of

expenditure along with supporting bills valued above Rs.1 lakh pertaining to financial years 2015-16 to 2017-18 (Assessment Years 2016-17 to 2018-19) totalling to 13,861 pages (referred supra) before the Assessing Officer but there was not even a whisper about the same in the assessment order and he has referred Pages 28 to 34 of the Index of Paper Book-1 and also chart containing details of annexures, No. of pages of such annexures submitted before the Assessing Officer.

8.10 Finally, the Ld.AR contended that the Assessing Officer erred in rejecting the books of accounts of the assessee and estimating the revenue at 8% of the turnover reported by the assessee and he prayed before us to delete the addition made in respect of estimation of income at 8% considering the facts and circumstances of the case.

## **9. OUR FINDINGS ON THIS ISSUE**

9.1 The assessee is a private limited company and has maintained books of accounts in their regular course of business, which was duly audited by statutory auditors of the company. Subsequently the same has been audited by the tax auditors before filing the return of income of the assessee.

According to the Ld.AR the assessee has consistently followed the mercantile system of accounting by adopting the mandatory AS 7 and ICDS III as prescribed by respective guidelines. It is noted that, while rejecting the books of accounts U/s.145 of the Act, the AO has not followed the 3 conditions stated in sub section 3 of Section 145, which are as under:

*145. Method of accounting*

*(1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.*

*(2) The Central Government may notify in the Official Gazette from time to time 2 [income computation and disclosure standards] to be followed by any class of assesseees or in respect of any class of income.*

***(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) 3 [has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2)], the Assessing Officer may make an assessment in the manner provided in section 144.]***

9.2 It is noted that, the AO has observed that, the assessee had not submitted the Profit and loss account for the few projects of the clients and hence decided to reject the entire books of accounts, which is not permissible as per law. It is also noted that, the Assessing Officer on one hand rejects the books of accounts of the assessee and on the other goes on to

adopt the contract revenue declared by the assessee in its books of accounts for the purpose of estimation of revenue at 8% which only goes to prove that the Assessing Officer accepts the value of turnover reported by the assessee in its books and has only arbitrarily rejected the books of accounts without giving any cogent reasons in doing so.

9.3 Further in the present case, the AO has not given any specific finding that the assessee has not followed continuously accounting method. The Hon'ble Supreme court in the case of CIT Vs. Woodward Governor (2009) 312 ITR 254 (SC) held that the accounting method followed by an assessee continuously for a given time period has to be presumed to be correct till the AO comes to know the reasons to be given that system does not reflect the true profits.

9.4 In the case of Veeraiah Reddier Vs. CIT, 385 ITR 152 (sic) and Punjab Trading Co. Ltd Vs. CIT 53 ITR 335 (P &H), it was held that it is not for the assessee to prove that the method of Accounting followed are not to be rejected. It is observed that Assessing Officer at Para 3, Page 4 of the assessment order regarding a few clients stated that the assessee did not furnish

details of contract revenues. In this regard, we have gone through the submissions of Ld.AR who contended as under:

- a) *The contract revenue of Golden Oak Projects Pvt. Ltd. which is an offshoot project of Apollo Tyres is included under the client's name Apollo Tyres.*
- b) *The contract revenue of Executive Engineer KSTP Division Ponkunnam Kanjirapally which is a project undertaken for KSTP is included under client name KSTP - EM Upgradation Road Work.*
- c) *The contract revenue of Nam Estates Pvt. Ltd. is reflected under the client's name Embassy (NAM Estates).*
- d) *The contract revenue of NAPC Ltd. Anchor Consortium is included under the client's name CMWSSB Avadi.*
- e) *The contract revenue of Renault Nissan Automotive India Pvt. Ltd. is shown under the client's name Renault Nissan.*
- f) *The contract revenue details in respect of Bus Route Road Department would not form part of contract revenue workings for the impugned assessment year since this project was undertaken and completed by the assessee in an earlier year.*
- g) *The assessee did not enter into any transactions with Huchinson Industrial Rubber Products Pvt. Ltd. and thus there is no data pertaining to contract revenue for the impugned assessment year.*
- h) *The assessee had paid man power deputation charges to Radiance Realty Development India Pvt. Ltd. and had not undertaken any project for such project during the impugned assessment year.*
- i) *The assessee did not enter into any transactions with MOA Engineering Private Limited and thus there is no data pertaining to contract revenue for the impugned assessment year.*

9.5 Therefore, we are of the considered view that, the AO has grossly erred in rejecting the books of accounts of the assessee in the above factual matrix. We also gone through the reasons given for rejecting the books of accounts by the AO is not as per

the provisions of Section 145 of the Act and allegations made in the AO's order is de hors the facts.

9.6 Further, it is noted that the Assessee has furnished the details of all the projects giving true picture of turnover and the corresponding loss / profit earned in the respective projects in the consolidated statement showing the percentage of completion method by offering revenues on year-on-year basis by following the AS 7 along with ICDS prescribed under the Act. In light of the above factual matrix, the addition made by the AO, based on the estimation of profit @ 8% on the turnover derived from the books of accounts is not justified and arbitrary and hence we are inclined to delete the said addition by not interfering in the impugned order of the Id.CIT(A) on this issue.

**B. Addition on account of difference in contract receipts as per 26AS and Books of accounts :**

The AO in his order noted that, the assessee has failed to provide the complete reconciliation of the turnover between the books of accounts and 26AS and hence added the difference of contract receipts of Rs.28,92,01,373/- to the total income as unexplained.

**10. Submission of the Ld.DR on this issue:**

10.1 The Ld.DR asserting the action of the AO, stated that the Ld.CIT(A) erred in deleting the addition of Rs.28,92,01,373/- made towards difference between the receipts as per books of accounts and receipts as per 26AS on the basis of explanation furnished by the assessee. The assessee furnished reconciliation before CIT(A) and in response to remand report called in the remand report, the AO partially accepted the reconciliation and also gave reasons for non-acceptance of reconciliation on remaining amount as non-production of supporting evidences. But the Ld.CIT(A) deleted the entire addition made on this account.

**11. Submission of the Ld.AR on this issue:**

11.1 The Ld.AR submitted that the assessee in this regard had filed various documents as additional evidence before the Commissioner of Income Tax (Appeals) vide petition in terms of Rule 46A of the Income Tax Rules, 1962 and had also furnished detailed explanation regarding the difference in contract receipts in respect of each project / party. The Ld.CIT(A) has rightly called for a remand report from the Assessing Officer in respect of the same and the Assessing Officer in turn had accepted the

explanation of the assessee in respect of most of the parties but made adverse observations in respect only the following 4 parties / projects namely:

1. **Public Works Department Kerala State Transport Project TC:** Not acceptable, since assessee had not submitted evidence of reversal of RA Bill.
2. **Minda Projects Limited:** Not acceptable, since reason for accounting in two difference heads not explained properly.
3. **NAM Estates Private Limited:** Not acceptable, since confirmation letter from party not submitted.
4. **Eicher Motors Ltd.:** No submissions furnished by assessee.

11.2 In respect of the above, the assessee had submitted as follows:

**Public Works Department Kerala State Transport Project TC**

*With regard to this party, the Ld.AR submitted that, it is not a separate line item and the income received from this client is reflected under the ledger by name "Kerala Road Transport". The difference in contract receipts as regards to this party was Rs.11,26,11,702/-. The said difference constituted 3 parts and the same was explained as under:*

**a) Difference of Rs.8,47,78,852/-**

*This difference is due to the fact that the assessee raised a bill having reference number RA 25 dated 27.03.2017 in the Financial Year 2016-17 and accounted the same as revenue in the financial year 2016-17 - **Refer Page 20 (First line item) and Page 50 [Highlighted as (B)] of the Index of Paper Book-1.** It may further be noted that the narration RA bill only refers to an internal billing reference number used by the assessee for accounting purposes.*

**b) Difference of Rs.1,07,76,437/-**

*The difference of Rs.1,07,76,437/- is nothing but the VAT component involved in each of the contract receipts after GST implementation. The assessee's client has shown the contract*

revenue as the gross value which includes the VAT component at the rate of 4% and tax was deducted at source on such gross value whereas the assessee has accounted for the VAT component separately in its books and that only the net value of the contract excluding VAT is accounted for as revenue in the books of the assessee. It is further submitted that the client had refused to pay GST on the transactions post GST implementation and hence the assessee in respect of those transactions had paid GST at the rate of 12% (i.e., 4% VAT collected from client plus balance 8% GST paid out of its own pocket)**Refer Page 20 (Line items 5 to 16 from the bottom of the page) of the Index of Paper Book-1.**

**c) Balance difference of Rs.1,70,56,413/-**

In this regard, it is submitted that the balance difference of Rs.1,70,56,413/- are towards credit notes issued to the client by the assessee in respect of GST portion of the invoices raised by the assessee. The Ld.AR referred the break-up of the credit notes are as follows:

- Credit Note to the tune of Rs.51,56,179/- dated 31.03.2018- **Refer Page 20 (3<sup>rd</sup> line item from the bottom of the page) of the Index of Paper Book-1 and Page 36 of the Index of Paper Book- 2.**
- Credit Note to the tune of Rs.1,02,70,204/- dated 28.02.2018- **Refer Page 20 (2<sup>nd</sup> line item from the bottom of the page) of the Index of Paper Book-1 and Page 37 of the Index of Paper Book- 2.**
- Credit Note to the tune of Rs.17,57,069/- dated 30.03.2018- **Refer Page 20 (1<sup>st</sup> line item from the bottom of the page) of the Index of Paper Book-1 and Page 38 of the Index of Paper Book-2.**

**Minda Projects Limited**

In this connection, the Ld.AR submitted that the primary reason for difference of Rs.45,43,843/- under Minda Projects Limited is due to the fact that two bills of value of Rs.30,12,048/- and Rs.44,20,166/- were accounted as income under the ledger by name UNO Minda but payment in respect of the same was made by Minda Projects Limited. The Ld.AR referred a table showing the effect of such accounting treatment in respect of the said bills and the position of contract receipts declared for this party as against

Form 26AS is enclosed at **Page 52 of the Index of Paper Book-1.**

The Ld.AR stated that from the above table, it can be seen that after considering the above adjustments in value of contract receipts in the name of Minda Projects Limited, the assessee has shown higher value of contract receipts as compared to that reflected in the TDS Portal. The assessee in support of the above referred adjustments, had submitted the ledger account by name UNO Minda for assessment year 2018-19 to evidence that bills to the tune of Rs.74,32,214/- were actually accounted as income under UNO Minda and the relevant entries are highlighted and marked as (A) - **Refer Page 53 of the Index of Paper Book-1.**

**NAM Estates Private Limited**

In this regard, the Ld.AR submitted that the assessee had raised a bill of Rs.1,56,44,075/- in respect of development work done for NAM Estates Pvt. Ltd. (Client) vide bill having reference number RA 16 dated 14.06.2017. However, while making payment towards the said bill, the client had inadvertently declared the bill value as Rs.1,63,43,819/- and deducted tax at source on the same which resulted in a difference of Rs.6,99,747/-. It is further contended that the difference of Rs.6,99,747/- is purely on account of an inadvertent mistake committed by the client. The assessee had correctly declared revenue in respect of the said bill in its books of account for the impugned assessment year- **Refer Pages 61 and 62 of the Index of Paper Book-1.**

**Eicher Motors Ltd.**

In this regard, the Ld.AR pointed out that the assessee had submitted a table showing the reconciliation of difference between contract receipts between Form 26AS and book of accounts in respect of Eicher Motors Ltd. which can be seen at **Page 63 of the Index of Paper Book-1.** the Ld.AR drew our attention to the said table, the manner in which income is being offered to tax right from financial year 2011-12 to financial year 2021-22 based on mercantile system of accounting can be seen clearly.

11.3 The Ld.AR stated that the assessee had taken up contract work with Eicher Motors Ltd. for the first time in financial year

2011-12. In Financial Year 2011-12, the assessee had received a mobilisation advance of Rs.6,20,76,300/- in two parts, i.e., 12.03.2012 and 26.03.2012 to commence the contract work for Eicher Motors Ltd. and offered Rs.95,68,324/- as income in the said financial year based on the billed value. The advance amount is recovered from each running bill raised on pro rata basis, as such this amount cannot be treated as income. The Ld.AR contended that Eicher Motors Ltd. pays the assessee for completion of contract work on an adhoc basis and not on a bill to bill basis. Hence, the Ld.AR submitted that there is bound to be a difference in the contract receipts reflected in the Form 26AS as against the value shown as per the books of accounts. In most of the financial years, it can be seen that the assessee has offered income based on the billed value but payments in respect of the same have been received only in subsequent years.

11.4 The Ld.AR, vehemently argued that the assessee has offered very high income, i.e., Rs.28,24,44,764/- as against Rs.19,22,41,950/- reflected in the Form 26AS for that year which goes on to show that the assessee has excess income to the tune of Rs.9,02,02,814/- in such year. It is also pointed out

the Ld.AR that the assessee has offered more income when compared to the value reflected in Form 26AS as regards financial year 2020-21. Therefore, on considering the complete flow of transactions in the above table and after accounting for all the advances received for the contract work, it can be seen that the assessee has eventually declared higher amount of contract receipts as against the value shown in Form 26AS. However, the Assessing Officer had inadvertently stated in the remand report that the assessee did not furnish any submissions in respect of difference in contract receipts regarding Eicher Motors Ltd. On the contrary, the acknowledgement of filing the above submissions as additional evidence and as part of written submissions before the Commissioner of Income Tax (Appeals) and the same is enclosed at **Pages 64 and 65 of the Index of Paper Book-1.**

11.5 Therefore, in light of the above, the Ld.AR prayed before us that since the assessee has furnished detailed explanation along with supporting evidence to the extent of addition of Rs.28,92,01,373/- in respect of difference in contract receipts of each party, more particularly the difference in respect of the 4

parties mentioned herein above, the addition made by the Assessing Officer on this account deserves to be deleted.

## **12. OUR FINDINGS ON THIS ISSUE**

12.1 Now, we adjudicate the next issue of addition made by the AO on account of undisclosed contract revenue of Rs.28,92,01,373/-. The AO has observed that the assessee has not furnished the reconciliation of the turnover of few clients with the total turnover of Rs.163.50 Crores shown and hence made an addition(supra). During the appellate proceedings before the Id.CIT(A), the AO submitted the remand report and mostly accepted the explanation of the assessee. The AO has objected for the turnovers relating to the following parties as reasoned below:

1. **Public Works Department Kerala State Transport Project**  
*TC: Not acceptable, since assessee had not submitted evidence of reversal of RA Bill.*
2. **Minda Projects Limited:** *Not acceptable, since reason for accounting in two difference heads not explained properly.*
3. **NAM Estates Private Limited:** *Not acceptable, since confirmation letter from party not submitted.*
4. **Eicher Motors Ltd.:** *No submissions furnished by assessee.*

12.2 In this regard the Ld.AR, further submitted the entire details of turnover reconciliation of the all the parties before the

Ld.CIT(A) and the Ld.CIT(A) having satisfied with the relevant documents filed along with the reconciliation statement of turnover, deleted the addition made on account of contract receipts. On perusal of the submission made by the Ld.AR, we note that the assessee has maintained the project wise details of all the clients for having executed the projects reported the turnover and profit based on percentage completion method. Further it is also noted that, the assessee has furnished the reconciliation of the turnover of the clients before Id.CIT(A), wherein the AO had not accepted the explanation of the assessee in respect of 4 clients in remand report, which are as under:

**1. Public Works Department Kerala State Transport Project TC**

*With regard to this party, as pointed out by the Ld.AR it is not a separate line item and the income received from this client is reflected under the ledger by name "Kerala Road Transport". The difference in contract receipts as regards to this party was **Rs.11,26,11,702/-**. The said difference constituted 3 parts and the same was explained as under:*

**a) Difference of Rs.8,47,78,852/-**

*Page 20 (First line item) and Page 50 [Highlighted as (B)] of the Index of Paper Book-1*

**b) Difference of Rs.1,07,76,437/-**

*Page 20 (Line items 5 to 16 from the bottom of the page) of the Index of Paper Book-1*

**c) Balance difference of Rs.1,70,56,413/-**

*(i) Credit Note to the tune of Rs.51,56,179/- dated 31.03.2018- Page 20 (3rd line item from the bottom of the page) of the Index of Paper Book-1 and Page 36 of the Index of Paper Book- 2.*

*(ii) Credit Note to the tune of Rs.1,02,70,204/- dated 28.02.2018-Page 20 (2<sup>nd</sup> line item from the bottom of the*

page) of the Index of Paper Book-1 and Page 37 of the Index of Paper Book- 2.

(iii) Credit Note to the tune of Rs.17,57,069/- dated 30.03.2018- Page 20 (1= line item from the bottom of the page) of the Index of Paper Book-1 and Page 38 of the Index of Paper Book-2.

**2. Minda Projects Limited - difference of Rs.45,43,843/-**  
Page 52 of the Index of Paper Book-1.

Page 53 of the Index of Paper Book-1.

**3. NAM Estates Private Limited-difference of**  
Rs.6,99,747/-

Pages 61 and 62 of the Index of Paper Book-1.

**4. Eicher Motors Ltd. Difference Rs.1,12,89,428/-**  
Page 63 of the Index of Paper Book-1.

12.3 It is further noted that, on perusal of the statement of turnover calculation as per AS 7 for the A Y 2018-19, (Paper book No.1 – page No.16 to 18, we find the argument of the Ld.AR as submitted (supra), the reconciliation of the Turnover along with 26AS has been carried out correctly. Therefore, we are of the view that the addition made by the AO is not justified on this issue and hence dismiss the ground of the revenue by affirming the impugned order of the Ld.CIT(A) on this issue.

**C. Addition of Rs.23,91,28,611/- in respect of waiver of loan:**

The Assessing Officer has added a sum of Rs.23,91,28,611/- in respect of waiver of loan as income under the head profits and

gains of business or profession during the impugned assessment year. The said addition has been deleted by the Ld.CIT(A) by holding as under :

*"8.6.4 The undersigned has carefully examined the issue under consideration. While going through the Assessment Order and submission of the Appellant, it can be seen that the Appellant is contending that what the loan waived by the financier is the principal amount and not the interest. The Appellant has explained that as per the terms of settlement agreement entered with the lender on 25.07.2017, the Appellant is required to pay interest in full and upon payment of Rs.23,90,00,000/- towards owed, amounting principal, the balance amount of principal amount Rs.23,90,00,000/- would be waived. The Appellant has furnished the copy of the Settlement Agreement. Thus as pointed out by the Appellant the waiver is effected by the lender only in respect of principal amount. The loan amount waived by the lender, obviously, is not chargeable to tax u/s 41(1) of the Act, which deals with nature of trading liability. The Appellant has not enjoyed the dual benefit as provided u/s 41(1) of the Act i.e. claiming one part as expenditure and claiming benefit by way of waiver of interest.*

*8.6.5 As per the loan agreement dated 11.04.2014 the Appellant has availed the loan facility for a total amount of Rs.80 Crores from M/s. SocieteGenerale. As on 25.07.2017 (date of settlement of agreement for waiver) the outstanding position of loan is as under:*

|  |                          |
|--|--------------------------|
| <i>Principal Loan amount outstanding</i> | <i>Rs.47,80,00,000/-</i> |
| <i>Interest amount outstanding</i>       | <i>Rs. 1,32,90,141/-</i> |

*8.6.6 From the above, it may be appreciated that the Appellant has paid a sum of Rs.32,20,00,000/- towards the principal amount from April 2014 to July 2017 as per the repayment schedule specified in the loan agreement. The balance amount payable upon the principal is Rs.47,80,00,000/-. As per the terms of settlement agreement in the event of payment of Rs.23,90,00,000/- the balance amount payable amounting Rs.23,90,00,000/- will be waived. Accordingly, the Appellant paid Rs.23,90,00,000/- and the lender has waived the balance principal amount of Rs.23,90,00,000/-.*

*8.6.7 Thus, it is very clear that what the amount waived by the lender is the principal amount only which is per se a financial liability*

and not a trading liability. The lender as per the settlement agreement has not offered any waiver of interest but only waived the repayment of loan. In the Profit & Loss Account, the Appellant has claimed the interest amount only. The Appellant relied upon the decision of the Apex Court in the case of CIT vs. Mahindra & Mahindra Ltd (2018) 93 [taxmann.com](http://taxmann.com) 32 (SC), wherein it has been held that

"Section 41(1) specifically talks of cessation of trading liability, whereas in the instant case, waiver of loan amounted to cessation of liability other than trading liability. As such, there was no force in the Revenue's argument and section 41(1) is not applicable in this case.

8.6.8 The A.O. in the Assessment Order has considered the decision of the Apex Court cited supra but made an observation that the Appellant has claimed the deduction continuously including the present A.Y. The A.O. failed to appreciate that what the Appellant has claimed is only in respect of payment of interest, and not the principal amount paid in the earlier Assessment Years. The A.O. is of the view that the Appellant has not submitted any details by way of evidence during the course of Assessment Proceedings and made a finding that personal use of loan amount cannot be ruled out. The Appellant during the course of Appellate Proceedings before the CIT(A), NFAC, all the evidences to support the claim by way of additional evidence in terms of Rule 46A. The CIT (A) has called for the Remand Report from the A.O. and the A.O. after examining the evidences has submitted a Remand Report on 06.06.2023. While going through the Remand Report of the A.O. dated 06.06.2023, the A.O., NFAC, has not at all made any submission upon the issue relating the waiver of loan amount, amounting Rs.23,91,28,611/-. The Appellant has submitted a rejoinder upon the Remand Report. In this rejoinder, the Appellant has made the following submission:

"The assessing officer has not gone through the details submitted on 11-03-2021 and 03-07-2021 where in the Appellant has submitted the detailed submission and loan documents and waiver conditions etc. The Id. Assessing Officer categorically rejected the claim stating that the Appellant has not submitted any details/evidences on this count, whereas, the Appellant submitted a detailed evidences along with jurisprudence in the above cited letters dated 11/03/2021 and 03/07/2021."

8.6.9 The A.O. in the Remand Proceedings is entitled to call for the details and conduct enquiry from the assessee. However, from the Remand Report submitted it is seen that the A.O. has simply

forwarded his comment, without making any findings upon the evidences furnished. The Remand Report called for from the A.O. is not for the purpose of making any comment upon the additional evidences filed. Obviously, the A.O. failed to make any enquiry upon the new evidences submitted by the Appellant. From the records it is evident that the A.O. is not making any attempt to go through the details filed by the assessee during the course of Assessment Proceedings on 11.03.2021 and 03.07.2021. Further, the A.O. is also not cared to submit any detailed Remand Report upon the evidences fled by the Appellant. The action of the A.O. proves that the AO has made the addition in a mechanical way and reluctant to consider any of the evidences filed by the assess00, It is not fair on the part of the A.O, being a quas-judicial authority to make such addition mechanically without any application of mind, The undersigned has carefully examined all the evidences along with the submission made by the Appellant. The amount waived by the lender la only the loan amount and not the interest amount, obviously, it is not in the nature of trading liability but only a financial liability. In view of this, the undersigned is not inclined to accept the observation of the A.O, to treat such waiver of principal loan amount as Income of the Appellant, Accordingly, in the backdrop of discussion made supra the grounds raised by the Appellant upon this issue are treated as allowed, and the A.O, la hereby directed to delete the addition of Rs.23,91,28,611/- by treating the waiver of loan an income.

#### 8.7 Ground No. 22 to 25.

8.7.1 The Appellant in these grounds has agitated over the disallowance of employees contribution to PF and ESI amounting Rs.2,06,27,491/-, It may be appreciated that the disallowance was made earlier while processing the return u/s143(1) of the Act. The Appellant has taken up this issue before the CIT(A), NFAC, and the Appeal was dismissed, The Appellant has taken up this issue before the Hon'ble ITAT, Chennai and the Hon'ble ITAT Its order dated 02.08,2023 in ITA No. 487/Chny/2023, has dismissed the assessee's Appeal by following the decision of the Apex Court in the case of M/s, Check Mate Services Pvt. Ltd, v/s, CIT.

8.7.2 The grounds raised in the present Appeal by the Appellant is relating to the same issue which was decided by the Jurisdictional Tribunal in respect of the Appellant's own case for the A.Y. 2018-19, The Appellant during the course of Appellate Proceedings has not pressed the Grounds of Appeal. In view of this, by following the decision of the Hon'ble Apex Court and the Jurisdictional Tribunal,

*the grounds raised by the Appellant upon this issue are hereby treated as dismissed and the disallowance of Rs.2,06,27,491/- is hereby sustained.*

*9. In the result the appeal is treated as partly-allowed."*

### **13. Submission of the Ld.DR on this issue:**

13.1 The Id.DR assailing the action of the Ld.CIT(A) and contended that, the Ld.CIT(A) erred in deleting the addition of Rs.23,91,28,611/- made towards waiver of loan amount holding that the principal amount waived is not in the nature of trading liability but only financial liability, hence provision of Sec.41(1) is not applicable in this case. Further, the Ld.DR vehemently argued that, the Ld.CIT(A) failed to appreciate that waiver of loan taken for trading purposes is taxable i.e. working capital borrowing waived by banks or financial services providers in view of decision of Delhi High Court in the case of Logitronics Pvt Ltd vs. CIT [2011] 333 ITR 386. The assessee in the instant case failed to furnish the details whether the loan borrowed was in the nature of loan acquired for capital assets or for working capital purposes.

### **14. Submission of the Ld.AR on this issue:**

14.1 Per contra, the Ld.AR submitted and relied on the decision of the Hon'ble Supreme Court in the case of CIT v

Mahindra and Mahindra Ltd. [2018] 404 /TR 1 (SC) - **Refer Pages 12 to 17 of Index of Case Laws Paper book** to contend that the waiver of loan in the instant case would not be taxable u/s.28(iv) or u/s.41(1) of the Income Tax Act, since what was being waived was purely the principal portion of the loan under a one-time settlement agreement with Societe Generale and thus prayed that said addition ought to be deleted. However, the Assessing Officer was of the view that the assessee had claimed interest deductions for last 3 years including impugned assessment year and stated that the reliance placed on the decision of the Hon'ble Supreme Court in CIT v Mahindra &Mahindra Ltd. (cited supra) will not be of any use since the Hon'ble Supreme Court in that case had granted relief to the assessee in respect of waiver of loan where there was no claim of interest deduction. Further, the Assessing Officer stated that the assessee did not furnish details regarding usage of amount of Rs.23,91,28,611/- being waiver of 50% of outstanding loan, in which case according to him, the personal use of such loan amount could not be ruled out.

14.2 The Ld.AR further stated that the waiver of loan in the instant case pertains only to the waiver of the principal portion

of loan. The Ld.AR further argued that the interest portion of the loan obtained from 'Societe Generale' is not waived since the interest portion on such loan has been fully paid and that only the principal portion of the loan was waived off during the impugned assessment year.

14.3 The Ld.AR furthermore argued that as per the loan agreement dated 11.04.2014, the assessee had availed a loan of Rs.50.00 crores from Societe Generale. As on 25.07.2017 (date of settlement agreement for waiver), the outstanding loan position was as under:

- Principal loan amount outstanding - Rs.47,80,00,000/-.
- Interest amount outstanding - Rs. 1,32,90,141/-.

14.4 In this regard, the Ld.AR pointed out that the assessee paid Rs.3,20,00,000/- towards principal from April, 2014 to July, 2017 as per repayment schedule in loan agreement, leaving balance of Rs.47,80,00,000/- as outstanding loan amount being only the principal portion. As per the terms of the settlement agreement, on payment of Rs.23,90,00,000/- (50% of Rs.47,80,00,000/-), it was agreed that the balance outstanding of Rs.23,90,00,000/- would be waived by 'Societe Generale'. In

this regard, according to Ld.AR the assessee paid Rs.3,20,00,000/- towards principal from April, 2014 to July, 2017 as per repayment schedule in loan agreement, leaving balance of Rs.47,80,00,000/- as outstanding loan amount being only the principal portion. As per the terms of the settlement agreement, on payment of Rs.23,90,00,000/- (50% of Rs.47,80,00,000/-), it was agreed that the balance outstanding of Rs.23,90,00,000/- would be waived by 'Societe Generale'. In this reference, the Ld.AR drew our attention to the audited financial statements of the assessee for the impugned assessment year to the break-up of short term borrowings **(Refer Page 10 of the financials enclosed separately)**, relevant portion of which is tabulated as under:

| Particulars                            | As at 31 <sup>st</sup><br>March 2018<br>(Amount in<br>INR) | As at 31 <sup>st</sup><br>March 2017<br>(Amount in<br>INR) |
|--|--|--|
| Secured Working Capital<br>Demand Loan | 8,31,12,336  | 56,11,12,336   |

14.5 From the above table, the Ld.AR shown us that the difference between the amount outstanding as on 31.03.2017 as against the amount outstanding as on 31.03.2018 is a sum of Rs.47,80,00,000/- which clearly represents the principal portion

of loan outstanding obtained by the assessee from 'SocieteGenerale' in respect of which the assessee had entered into a one-time settlement agreement to waive 50% of the principal portion of the loan. This only reiterates the fact that the waiver of loan was only with respect to the principal portion of the loan and not the interest portion of such loan.

14.6 The Id.AR further drew our attention to Note 25.1 One Time Settlement (OTS) with 'Societe Generale' (Refer Page 18 of the financials enclosed separately) where it can be ascertained that the waiver of loan obtained from SocieteGenerale is only with respect to the principal portion of the loan and not the interest portion. The said waiver pertained to the principal portion of the loan as one-time settlement of the loan borrowed by the assessee. The Ld.AR further argued that the interest charged on such loan borrowed has been fully paid by the assessee and thus the waiver cannot be in respect of waiver of interest at all.

14.7 In view of the above, the Id.AR submitted that the addition of Rs.23,90,00,000/- being only the principal portion of the loan being waived cannot be taxed as income under the

head profits and gains of business or profession and hence cannot be subject to tax as per the provisions of section 28(iv) by treating the same as income of the assessee.

14.8 The Id.AR further relied upon the decision of the Hon'ble Supreme Court in the case of CIT v Mahindra and Mahindra Ltd. (cited supra) - Refer Pages 12 to 17 of Index of Case Laws paper book wherein in respect of application of section 28(iv), which refers to 'non-monetary' benefit or perquisite, whether convertible into money or not, it was held that in the context of waiver of loan, the provisions of section 28(iv) would not be applicable since the benefit derived is in the form of money. It was held as follows:

*"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 Rs57,74,064/- can be taxed under the provisions of Section 28 (iv) of the IT Act."*

*The Ld.AR pointed out that the decision of the Hon'ble Supreme Court in **CIT v Mahindra and Mahindra Ltd. (cited supra)** was followed by the Hon'ble Bombay High Court in the case of **PCIT v SICOM Ltd. [2020]***

**274 Taxman 58 (Bom) - Refer Pages 29 to 32 of Index of Case Laws paper book).**

The Ld.AR further submitted that one of the grounds raised by the revenue in the instant appeal, i.e., Ground No.4.1 specifically reads as under:

"4.1 The Ld. CIT(A) failed to appreciate that waiver of loan taken for trading purposes is taxable (ie) working capital borrowing waived by banks or financial service providers in view of decision of Delhi High Court in the case of Logitronics Pvt Ltd Vs CIT(2011) 333 /TR 386. The assessee in the instant case failed to furnish the details whether the loan borrowed was in the nature of loan acquired for capital assets or for working capital purposes."

At the outset, the Ld.AR humbly submitted that the reliance placed by the Departmental Representative on the decision of the Hon'ble Delhi High Court in the case of **Logitronics Pvt. Ltd. v CIT (cited supra)** is misplaced since the said decision was overruled by the decision of the Hon'ble Supreme Court in the case of Mahindra and Mahindra cited supra to the effect that waiver of principal portion of loan would not be taxable u/s.28(iv) of the Income Tax Act and therefore the ratio laid down in the decision of **Logitronics Pvt. Ltd. v CIT (cited supra)** is no longer good law. The fact that the decision of **Logitronics Pvt. Ltd. v CIT (cited supra)** is no longer good law and that the same has been overruled by the decision of the Hon'ble Supreme Court in **CIT v Mahindra and Mahindra Ltd. (cited supra)** is reaffirmed in clear terms in the decision of the Hon'ble Karnataka High Court in the case of I.G.Petrochemicals Ltd.

The Ld.AR further argued and submitted that the purpose of the loan taken which was ultimately waived will not have any effect on the taxability of waiver of loan, be it either for the usage on the working capital front or fixed asset purchase. In this connection, he placed reliance on the decision of the Hon'ble Karnataka High Court in the case of **I.G.Petrochemicals Ltd. Vs ITAT [2023] 295 Taxman 569 (Kar) - Refer Pages 18 to 28 of Index of Case Laws paper book** which was decision rendered following the ratio laid down in the case of Mahindra and Mahindra Ltd. cited supra wherein it was observed as follows:

"30. The clinching factor as per the Apex Court in Mahindra and Mahindra (supra) to bring the benefit/perquisite within the term 'income' under section 28(iv) of the IT Act was that the 'benefit/perquisite' should be 'other than in the shape of money', while holding that the benefit upon loan waiver was in the form of a cash receipt and did not satisfy the test to make it taxable within the

*terms of section 28(iv). Clearly, the purpose of loan was neither dealt with nor would be a relevant determinative factor. The only test is that the 'benefit' or 'perquisite' should be other than 'in the shape of money'.*

*31. Thus, in the present case, the nature of loan would be of no relevance and accordingly, the exercise of ascertaining the purpose of loan as contended by the Revenue does not arise.*

*32. The judgment of Apex Court in Mahindra and Mahindra (supra) holds the field.*

*The benefit of waiver of loan in the present case is also not other than 'in the shape of money'. Accordingly, the 'benefit' would fall outside the ambit of section 28(iv) of IT Act.*

*33. The recent amendment to Section 28 of I. T. Act vide Finance Bill 2023, wherein the legislature has included 'benefit' even in form of 'cash' arising from business or profession as being chargeable to income tax. Such amendment substantiates the interpretation of the Apex Court in Mahindra and Mahindra (supra), wherein it was concluded that the 'benefit' not being "other than in the shape of money" i.e., 'benefit' in form of 'cash' would fall outside the ambit of Section 28(iv) of the IT Act by proposing the present amendment.*

*34. In light of the above reasoning, no purpose would be served by referring to the judgments relied upon by the Revenue. Even otherwise, as referred to in para-6 of the written submissions filed by the petitioner dated 4-8-2023, the judgments of High Courts Logitronics (P.)Ltd. v. CIT [2011] 9 taxmann.com 302/197 Taxman 394/333 ITR 386 (Delhi); C/Tv. Ramaniyam Homes (P.) Ltd. [2016] 68 taxmann.com 289/239 Taxman 486/384 /TR 530 95 CCH 0147 Chen HC relied upon by the Revenue have been dismissed by the Apex Court in Mahindra and Mahindra (supra)."*

## **15. Our findings on this issue:**

15.1 The next ground raised by the revenue is waiver of loan of Rs.23,91,28,611/- deleted by the Id.CIT(A). It is noted that, during the A.Y. 2018-19 the assessee has written off the 50% of loan from M/s. 'Societe Generale' and has not added in the

computation of Income. The same has been added as Income by the AO while framing the assessment order holding as under:

*The claim of the assessee is not as per law. Even the judgement of the Hon'ble Apex court in the case of Mahindra & Mahindra relied upon by the assessee does not come to rescue of the assessee. The ground on which the Hon'ble court allowed relief to the petitioner was that the assessee never claimed deduction on this loan amount. But in the instant case, the assessee has claimed deduction continuously for the last 3 years, including the present assessment year by saying that the details of usage / application of loan amount of Rs.23.91 Crore which has been waived with full supporting documentary evidence but the assessee did not submit any such evidence. Thus, personal use of loan amount cannot be ruled out.*

15.2 According to the Ld.AR the waiver of loan in the instant case pertains only to the waiver of the principal portion of loan, the interest portion of the loan obtained from 'Societe Generale' is not waived since the interest portion on such loan has been fully paid.

15.3 According to Id.AR the assessee paid Rs.3,20,00,000/- towards principal from April, 2014 to July, 2017 as per repayment schedule in loan agreement, leaving balance of Rs.47,80,00,000/- as outstanding loan amount being only the principal portion. As per the terms of the settlement agreement, on payment of Rs.23,90,00,000/- (50% of Rs.47,80,00,000/-), it was agreed that the balance outstanding of Rs.23,90,00,000/- would be waived by 'Societe Generale'. As noted by us, as per

the loan agreement dated 11.04.2014, the assessee had availed a loan of Rs.50.00 crores from Societe Generale. As on 25.07.2017 (date of settlement agreement for waiver), the outstanding loan position was as under:

- *Principal loan amount outstanding - Rs.47,80,00,000/-.*
- *Interest amount outstanding - Rs. 1,32,90,141/-.*

15.4 We have gone through the audited financial statements of the assessee for the impugned assessment year to the break-up of short term borrowings as per the audited financials, relevant portion of which is tabulated as under:

| <i>Particulars</i>                         | <i>As at 31<sup>st</sup> March 2018<br/>(Amount in INR)</i> | <i>As at 31<sup>st</sup> March 2017<br/>(Amount in INR)</i> |
|--|---|---|
| <i>Secured Working Capital Demand Loan</i> | <i>8,31,12,336</i>  | <i>56,11,12,336</i>   |

15.5 From the above table, it is explicitly clear that the difference between the amount outstanding as on 31.03.2017 as against the amount outstanding as on 31.03.2018 is a sum of Rs.47,80,00,000/- which represents the principal portion of loan outstanding obtained by the assessee from 'Societe Generale' in respect of which the assessee had entered into a one-time settlement agreement to waive 50% of the principal portion of the loan.

15.6 We further observed that the Note 25.1 of the audited financials, One Time Settlement (OTS) with 'Societe Generale' where it can be ascertained that the waiver of loan obtained from Societe Generale is only with respect to the principal portion of the loan and not the interest portion. The said waiver pertained to the principal portion of the loan as one-time settlement of the loan borrowed by the assessee. The Ld.AR further argued that the interest charged on such loan borrowed has been fully paid by the assessee and thus the waiver cannot be in respect of waiver of interest at all.

15.7 In view of the above, we are of the view that the addition of Rs.23,90,00,000/- being only the principal portion of the loan being waived cannot be taxed as income under the head profits and gains of business or profession and hence cannot be subject to tax as per the provisions of section 28(iv) by treating the same as income of the assessee. The reliance made by the Id.AR upon the decision of the Hon'ble Supreme Court in the case of **CIT v Mahindra and Mahindra Ltd. (supra)** - wherein in respect of application of section 28(iv), which refers to 'non-monetary' benefit or perquisite, whether convertible into money or not, it was held that in the context of waiver of loan, the

provisions of section 28(iv) would not be applicable since the benefit derived is in the form of money. It was held as follows:

*"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 Rs57,74,064/- can be taxed under the provisions of Section 28 (iv) of the IT Act."*

15.8 We note that the reliance placed by the Departmental Representative on the decision of the Hon'ble Delhi High Court in the case of **Logitronics Pvt. Ltd. v CIT (cited supra)** is misplaced since the said decision was overruled by the decision of the Hon'ble Supreme Court in the case of Mahindra and Mahindra cited supra to the effect that waiver of principal portion of loan would not be taxable u/s.28(iv) of the Income Tax Act and therefore the ratio laid down in the decision of **Logitronics Pvt. Ltd. v CIT (cited supra)** is no longer good law.

15.9 Therefore, in the present case, the nature of loan would be of no relevance, since the interest paid on loan has been regularly claimed and allowed as expenditure and hence nature of loan cannot be disputed at this juncture and accordingly, the exercise of ascertaining the purpose of loan as contended by the Revenue does not arise.

16. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 14<sup>th</sup> August, 2024 at Chennai.

**Sd/-**

(मनु कुमार गिरि)

**(MANU KUMAR GIRI)**

न्यायिक सदस्य/**Judicial Member**

**Sd/-**

(एस. आर. रघुनाथा)

**(S. R. RAGHUNATHA)**

लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 14<sup>th</sup> August, 2024

**JPV**

आदेश की प्रति लिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Assessee
3. आयकर आयुक्त/CIT- Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF