

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A" KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.830 & 923/Kol/2012
Assessment Years:2005-06

Delite Properties Pvt. Ltd. Circular Court, 9 th Floor, 8, AJC Bose Road, Kolkata-700 017 [PAN No.AABCD 0241 J]	<u>बनाम</u> / V/s.	DCIT, Circle-7, Kolkata, P-7, Chowringhee Square, 5 th Floor, Room No. 15, Kolkata-69
DCIT, Circle-7, P-7, Chowringhee Square, 5 th Floor, Room No.15, Kolkata-700 069	<u>बनाम</u> / V/s.	M/s Delite properties Pvt. Ltd., Circular Court, 9 th Floor, 8 AJC Bose Road, Kol-17
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आवेदक की ओर से/By assessee	Shri D.S.Damle, FCA
राजस्व की ओर से/By Respondent	Shri Sallong Yaden, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	01-08-2016
घोषणा की तारीख/Date of Pronouncement	21-09-2016

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

These are cross-appeals by the assessee and Revenue against common order of Commissioner of Income Tax (Appeals)-XXIV, Kolkata dated 18.03.2012. Assessment was framed by DCIT, Circle-7, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 31.12.2007 for assessment year 2005-06.

Shri D.S. Damle, Ld. Authorized Representative appeared on behalf of assessee and Shri Sallong Yaden, Ld. Departmental Representative appeared on behalf of Revenue. ITA No.830 & 923/Kol/2012.

2. The facts in brief as culled out from the order of lower authorities and other documents are that various companies were amalgamated with the assessee with effect from 1st April 2004 which was approved by Hon'ble Jurisdictional High Court vide its order dated 7th September 2005. The assessee for the year under consideration filed its return of income on 31st October 2005 showing total income of Rs.1,03,402/- comprising of business income only. Thereafter the case was selected for scrutiny and accordingly notice issued u/s 143(2) r.w.s. 142(1) of the Act were issued upon the assessee. The assessment was framed under section 143(3) of the Act at a total income of Rs 2,77,88,569/- by disallowing the advances written off for Rs 2,76,85,167/- only. This amount of advances were pertaining to one of the transferor/ amalgamating company i.e. Delite Spinning Mills Pvt. Ltd which was in the business of buying yarn/ cotton and getting it is processed from outside on job work basis.

3. The assessee used to get its processing work done on job work basis through some spinning Mills located at Bhagalpur. These spinning mills were having sufficient machineries for doing such processing job. Accordingly the assessee used to supply yarn/ cotton to such mills for the job work. The assessee simultaneously used to provide advance to these mills for their electricity bills and labour expenses. As per the arrangement the assessee kept paying advances to these spinning Mills to get the job work done on the goods supplied to them. The assessee sometime in the year 2000 could not provide the advances of these spinning Mills due to its poor financial condition. As a result, these advances became irrecoverable and accordingly the assessee at the time of amalgamation has written off such advances in its books of accounts by debiting profit & loss account. The details of advances stand as under :

1)	Bhagalpaur Co-op Spinning Mills Ltd.	Rs.2,07,57,716.10
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2)	Pandual Co-op Spg. Miills Ltd.	Rs. 56,49,842.38
3)	Economic Transport Organization	Rs. 1,42,532.00
4)	Industrial Cotton Yarn Project	Rs. 11,35,076.22
		Rs.2,76,85,166.70

However the AO during the assessment proceedings observed that:-

- 1) The assessee failed to furnish the copy of the arrangement with the spinning mills with regard to the advances paid to them for the payment of their bills and labour expenses.
- 2) The assessee has not taken any legal action against the spinning Mills to recover the advances.
- 3) In the scheme of amalgamation there was no clause for writing off such advances in the books of accounts.

In view of above the AO has disallowed the claim of the assessee for the writing off these advances and added to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to Id. CIT(A) who found that the following amounts were written off by the assessee for the year under consideration.

<i>“i) Advances to contract processors / Manufacturers (i.e. Co-op Mills)</i>	<i>Rs.2,04,39,222/-</i>
<i>ii) Amounts on account of sales to Co-op. Mills</i>	<i>Rs. 56,10,934/-</i>
<i>ii) Interest bearing loans to Co-op Mills</i>	<i>Rs. 16,35,010/-</i>
<i>Total amounts written off</i>	<i>Rs.2,76,85,166/-</i>

In view of above the Id CIT(A) found that advances of Rs.2,04,39,222/- were given to the Spinning Mills in the course of the business of the assessee. Similarly an amount of Rs.56,10,934/- is representing on account of sales made to the Spinning Mills. Accordingly the Id CIT(A) deleted the addition made by the AO for these amounts.

However, the amount of Rs.16,35,010/- is the representing the interest bearing loan given to the Spinning Mills which was confirm by the Id CIT(A). The relevant extract of the Id. CIT(A) order is reproduced below:-

“It has been explained that the provisions of Section 36(1)(vii) read with Section 36(2) are applicable to the amount of Rs.56,10,934/- written off as the said amount relates to sales made to the co-operative mills. The decisions of the Hon'ble ITAT, Kolkata in the case of ACIT, Cir-7, Kolkata vs. Britania Industries Ltd in ITA No. 1708 (Kol) of 2008 for the AY 2004-05 is squarely applicable to the instant case. Respectfully relying on the above decision of the Hon'ble ITAT, Kolkata and also considering the acts of the case as discussed above, I am of the opinion that the advances of rs.2,04,39,222/- were written off in the course of the business of the appellat company. Accordingly, the assessing officer is directed to delete (i) the addition of Rs.2,04,39,222/- on account of advances written off and (ii) the addition of Rs.56,10,934/- on account of amount written off in respect to sales. The written off is confirmed. Thus the appellat gets relief of Rs.2,60,50,156/- (Rs.2,76,85,166/- - Rs.16,35,010/-). These grounds of appeal are partly allowed.”

Being aggrieved by this order of Id CIT(A) both Revenue and assessee are in appeal before us.

5. The assessee is in appeal against the order of Id CIT(A) for sustaining the addition of Rs.16,35,010/- representing the interest-bearing loan given to the Spinning Mills. Similarly the Revenue is in appeal against the order of Id CIT(A) for the deletion of advances of Rs.2,04,39,222/- and the debtors amount of Rs.56,10,934/- only.

The assessee has raised following grounds of appeal:-

“1) For that on the facts and in the circumstances of the case, the CIT(A) was unjustified in law and on facts in upholding the disallowance of Rs.16,35,010/- being debt written off; due from a co-operative Mill.

2) For that on the facts and in the circumstances of the case, the CIT(A) failed to appreciate that since the interest bearing loan was granted by the assessee in the course of and in connection with carrying on appellat's business, the said irrecoverable loan; written off was allowable as “business loss”.

3)For that on the facts and in the circumstances of the case, the AO be directed to allow the deduction for write off of interest bearing loan to a co-operative mill; amounting to Rs.16,35,010/- as “business loss” in computing income under the head profits & gains of business.

4) For that on the facts and in the circumstances of the case, the CIT(A) wrongly dismissed the appellant's claim for exclusion of Rs.2,64,54,856/- from the total income on the ground that liability written back had arisen in the normal course of business and therefore chargeable as income for the AY 2005-06.

5) For that on the facts and in the circumstances of the case, the authorities below failed to appreciate that the "liability written back" inter alia included "principal" amount due to Punjab National Bank amounting to Rs.2,64,54,856/- and the said amount not having been received by the assessee in the course of its business and the said amount being in the nature of principal debt amount on which the assessee had liability to pay interest, the waiver of principal debt did not represent income earned by the assessee in the course of its business.

6) For that on the facts and in the circumstances of the case, the authorities below be directed to exclude from the total income "liability written back" amounting to rs.2,64,54,856/- since no deduction in respect of such liability was allowed and the liability written back did not represent trading liability of the appellant.

7) For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before."

The Revenue has raised following ground of appeal:-

"1) That on the facts and in the circumstances of the case the Ld. CIT(A) erred in allowing the claim of expenditure to the tune of Rs.2,04,39,222/- on account of irrecoverable balances written off; without appreciating the fact that such balances were not clearly revue in nature."

6. Before us the ld. AR has filed a paper book which is running from pages 1 to 108 and submitted that the advances and loan amount was given to the spinning mills in the course of business and therefore it should be allowed. The interest earned on the loan amount was offered as business income and the same was accepted. The assessee drew our attention on pages 26 to 75 of the paper book where the request and other correspondence with spinning mills were placed.

On the other the ld. DR submitted that the assessee kept paying the advances in the instant case even there was disturbance in the business of the spinning mills. The

assessee was aware that there is situation of lock out in the spinning mills but still it paid advances. Therefore it cannot be said that the assessee has given the advances and loan in the course of business.

7. We have heard the both the parties and perused the materials available on the record. From the foregoing discussion we find that that the assessee has not taken any action for the recovery of the advances given to the spinning mills and such advances was not appearing in the scheme of amalgamation. Similarly the assessee failed to provide any written arrangement for giving such advances. Therefore the AO has made the addition. However the learned CIT(A) found that advances were given in the course of the business for Rs.2,04,39,222/- and deserves to be allowed for computing the business profit as it is a current account transactions. But the Id. CIT(A) sustained in the addition for the loan given to the spinning middle for Rs.16,35,010/- as it is a capital account transaction. Now the following issues arise before us for the consideration.

1. Whether the amount of advances given in the course of business is allowable expenses while computing the business profit.
2. Whether the amount of loan given in the course of business is allowable expenses while computing the business profit.

Now we first take up the Revenue appeal 923/Kol/2012.

8. From the above facts we find that there is no doubt that the advance was given by the assessee in the course of its business and this fact has not been doubted by the lower authorities. The assessee was in the practice of giving the advances to the spinning mills for their electricity dues and labour expenses. The purpose of the assessee for giving such advances is to get its work done through these spinning mills. So it is inferred that the advances were provided in the course of the business of the assessee. Therefore we are inclined to concur with the view of the learned CIT(A). In this connection we rely in the case of *CIT Vs. Mysore Sugar Company Limited*. 46 ITR 649 where the Hon'ble Apex Court has held as under :

“The amount advanced was towards the price of one crop. The sugarcane growers received the money not as an investment but only as an advance

*payment of price. The amounts represented the current expenditure. It made no difference that the sugarcane procured by the assessee was grown with the seedlings, fertiliser and money taken on account from the assessee-company. The assessee-company in advancing was only entering into a forehand arrangement to ensure smooth supply of canes and that the crop does not suffer due to want of funds. The resultant loss was a revenue loss.—English Crown Spelter Co. Ltd. vs. Baker (1908) 5 Tax Cases 324, Charles Marsden & Sons Ltd. vs. IRC (1919) 12 Tax Cases 217 and Reid's Brewery Co. Ltd. vs. Male (1891) 3 Tax Cases 279 **applied**; Judgment of the Mysore High Court in ITRC No. 2 of 1955 dt. 7th Sept., 1959 **affirmed**. Loss on account of failure of crops of sugarcane growers to whom assessee advanced money, seedlings and fertilizers to be adjusted against supply of sugarcane is a revenue loss for assessee, a sugar manufacturer”*

From the above, we find that the advance was provided on the principal of commercial expediency and for the purpose of the business. It is settled proposition of law that in what manner the assessee should conduct his business is that left to the discretion of the assessee and the assessing officer cannot sit in the arm chair of the businessman to decide what should have been the income earned. Therefore in our considered view we do not find any interfere in the order of Id. CIT(A). Hence the ground of appeal of Revenue is dismissed.

9. Now coming to the 2nd question where the assessee is in appeal before us against the order of Id CIT(A) for sustaining the addition of Rs. 16,35,010/-. In this case, we find that the assessee has given the loan to the same spinning mills to which the advances were also provided in the course of the business. However, we find that the loan given is representing the transaction on capital account and this is not a business of the assessee to provide the loan on interest of basis. However, the Id. AR before us argued that even a single transaction can be regarded as business transaction and the income earned from such transaction was also shown as business income. From the facts, we find that the loan was given to the same mills to which the advances were provided and such advances have been held by us as in the course of the business. Therefore the color of the transaction should not be changed on the basis of the nomenclature of the similar kind of transaction. Therefore we are inclined to reverse the order of the authorities below. In this connection we rely in the case of *CIT*

Vs. *Ramaniyam Homes (P) Ltd.* [2016] 68 taxmann.com 289 (Madras) where the Hon'ble HIGH COURT OF MADRAS has held as under :

*“39. Therefore, it is not the actual receipt of money, but the receipt of a benefit or perquisite, which has a monetary value, whether such benefit or perquisite is convertible into money or not, which is covered by Section 28(iv). Say for instance, a gift voucher is issued, enabling the holder of the voucher to have dinner in a restaurant, it is a benefit of perquisite, which has a monetary value. If the holder of the voucher is entitled to transfer it to someone else for a monetary consideration, it becomes a perquisite convertible into money. But, irrespective of whether it is convertible into money or not, it should have a monetary value so as to attract Section 28(iv). A monetary transaction, in the true sense of the term, can also have a value. Any number of instances where a monetary transaction confers a benefit or perquisite that would have a value, can be conceived of. There may be cases where an incentive is granted by the supplier, waiving a portion of the sale price or granting a rebate or discount of a portion of the price to be paid, when the payments scheduled over a period of time, are made promptly. It is needless to point out that in such cases, the prompt payment of money itself brings forth a benefit in the form of an incentive or a rebate or a discount in the price of the product. We do not know why it should not happen in the case of waiver of a part of the loan. Therefore, the finding recorded in paragraph 27.1 of the decision in *Iskraemeco Regent Ltd.* (supra) that Section 28(iv) has no application to any transaction, which involves money, is a sweeping statement and may not stand in the light of the express language of Section 28(iv). In our considered view, the waiver of a portion of the loan would certainly tantamount to the value of a benefit. This benefit may not arise from "the business" of the assessee. But, it certainly arises from "business". The absence of the prefix "the" to the word "business" makes a world of difference.*

40. We shall now turn our attention to the distinction sought to be made between the waiver of a portion of the loan taken for the purpose of acquiring capital assets on the one hand and the waiver of a portion of the loan taken for the purpose of trading activities on the other hand.

41. It appears that in so far as accounting practices are concerned, no such distinction exists. Irrespective of the purpose for which, a loan is availed by an assessee, the amount of loan is always treated as a liability and it gets reflected in the balance sheet as such. When a repayment is made in monthly, quarterly, half yearly or yearly installments, the installment is divided into two components, one relating to interest and another relating to a portion of the principal. To the extent of the principal repaid, the liability as reflected in the balance sheet gets reduced. The interest paid on the principal amount of loan, will be allowed as deduction, in computing the income under the head "profits and gains of business or profession", as per the provisions of the Act.

42. *But, Section 36(1)(iii) makes a distinction. The amount of interest paid in respect of capital borrowed for the purpose of business or profession is allowed as deduction under Section 36(1)(iii), in computing the income referred to in Section 28. But, the proviso there under states that any amount of interest paid in respect of capital borrowed for acquisition of an asset for extension of existing business or profession, whether capitalized in the books of account or not for any period beginning from the date on which the capital was borrowed for the acquisition of the asset, till the date on which such asset was put to use, shall not be allowed as deduction.*

43. *Therefore, it is clear that the moment the asset is put to use, then the interest paid in respect of the capital borrowed for acquiring the asset, could be allowed as deduction. When the loan amount borrowed for acquiring an asset gets wiped off by repayment, two entries are made in the books of account, one in the profit and loss account where payments are entered and another in the balance sheet where the amount of unrepaid loan is reflected on the side of the liability. But, when a portion of the loan is reduced, not by repayment, but by the lender writing it off (either under a one time settlement scheme or otherwise), only one entry gets into the books, as a natural entry. A double entry system of accounting will not permit of one entry. Therefore, when a portion of the loan is waived, the total amount of loan shown on the liabilities side of the balance sheet is reduced and the amount shown as Capital Reserve is increased to the extent of waiver. Alternatively, the amount representing the waived portion of the loan is shown as a capital receipt in the profit and loss account itself. These aspects have not been taken note of in Iskraemeco Regent Ltd.(supra)*

44. *In view of the above, the questions of law are liable to be answered in favour of the Revenue/appellant. Accordingly, they are answered in favour of the appellant/Revenue and the appeal filed by the Revenue is allowed. No costs.”*

In the above case the waiver of the loan has been held as business income of the assessee. Following the same analogy, we find that the loan given in the course of the business is a business transaction and therefore it should be allowed for deduction while computing the business income of the assessee. Hence the issue raised by the assessee is allowed.

10. The second issue raised by assessee in inter-connected ground no. 4 to 6 is that Id. CIT(A) erred in holding that the loan liability written back has arisen in the normal course of business and therefore chargeable to tax as income.

The assessee was having the amount of loan outstanding for Rs. 10,80,69,408/- due to Punjab National Bank. The assessee during the year got the same settled from the bank for Rs. 4.50 crores and the balance amount for Rs. 6,30,69,408/- was written back in the books of accounts which was comprising of principal amount of Rs.2,64,54,856/- only and unpaid interest amount of Rs.3,66,14,552/- only. The assessee offered the entire written off amount as business income for the year under consideration. However the assessee raised the issue 1st time before the learned CIT(A) that it has shown the principal amount of loan for Rs. 2,64,54,856.00 from the bank which was written in the year under consideration has been shown as business income of due to inadvertent mistake. As such the principal amount written off is not the income of the assessee. The assessee before the Id. CIT(A) has prayed for not to include the said amount as business income by way of raising the additional grounds of appeal. However the Id. CIT(A) dismissed the grounds of appeal of the assessee by observing as under :-

“4. Additional Grounds No. 1&2:

*In these additional grounds of appeal, the appellant has claimed for deduction of Rs.2,64,54,856/- on account of “**Liabilities no longer required written back**”. I have carefully considered above two additional grounds of appeal. In the P/L A/c, the appellant has credited the amount of Rs.2,64,54,856/- as “**liabilities written back**”. The remission of liability for Rs.2,64,54,856/- has arisen during the normal course of the business of the appellant company. Moreover, the said amount has not been claimed as deduction by the appellant either in its return of income or during the assessment proceedings before the Assessing Officer. The appellant has not claimed the deduction for the said amount of Rs.2,04,54,856/- by filing revised return of income. I find that the appellant company has correctly credited the above sum of Rs.2,64,54,856/- as “**liabilities written back**” in its P & L A/c and the remission of the said liabilities has arisen in its normal course of business. Accordingly, I hold that it has been correctly assessed as income In the hand of the appellant on the basis of its return of income. These two additional grounds of appeal are dismissed.”*

Being aggrieved by this order of Id CIT(A) assessee came in second appeal before us.

11. At the outset we find that we have decided the similar issue in **Para-9** of this order by holding that the loan was given to the mills in the course of the business and in the event of writing off the same in the books as irrecoverable is allowable for

deduction. While holding so, we have relied in the case of *CIT Vs. Ramaniyam Homes (P) Ltd. (Supra)*. Accordingly in our considered view the same ratio is also applicable in the instant issue. Therefore we do not find any reason to interfere in the order of Id. CIT(A). Hence the ground of appeal of assessee is dismissed.

12. In the result, appeal of Revenue stands dismissed and that of assessee is partly allowed.

Order pronounced in open court on 21/09/2016

Sd/-
(S.S.Viswanethra Ravi)
Judicial Member

Sd/-
(Waseem Ahmed)
Accountant Member

*Dkp

दिनांक:- 21/09/2016 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-Delite Properties Pvt. Ltd. Circular Court, 9th Floor, 8, AJC Bose Road, Kolkata-17
2. राजस्व/Revenue-DCIT, Circle-7, P-7, Chowringhee Square, 5th Floor, Room No. 15, Kolkata-700 069
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता