

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'A'**

**BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.634/Bang/2014
(Asst. Year 2011-12)

The Dy. Commissioner of Income-tax,
Circle-1, Udupi.

. Appellant

Vs.

M/s Manipal Finance Corpn., Ltd.,
Manipal.

. Respondent

Appellant by : Dr. PK Srihari, Addl. CIT

Respondent by : Smt. Sheetal, Advocate

Date of Hearing : 17-11-2015

Date of Pronouncement : 20-11 -2015

ORDER

PER SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

The appeal is directed against the order of Commissioner of Income-tax (Appeals), Mysore dated 4/3/2014 for the assessment years 2011-12.

2. The assessee is a domestic company engaged in the business of acceptance of deposits from public and also carrying on the business of acceptance of deposits from public and also carrying on the business of hire purchase, leasing of machinery, motor vehicles etc. For the assessment year 2011-12, the assessee had filed the return of income on 24.9.2011, declaring therein business loss of Rs.25,88,340/-. Also filed a revised return on 25.9.2012 declaring revised business loss of Rs.1,44,61,942/-. The return was initially processed u/s 143(1) of the Income-tax Act. After issue of notices u/s 143(2) & 142(1) of the Act the assessment was completed on 29.11.2013 u/s 143(3).

3. The assessee's claim of principle written back arising out of settlement of deposits, debentures and debts amounting to Rs.21,03,900/-, Rs.1,21,13,200/- and Rs.4,13,650/- respectively aggregating to Rs.1,46,30,750/- as capital expenditure was rejected by AO treating the same as income from business.

4. The AO has stated that, on going through the financial statements it was found that the Company has settled the deposits/debentures/debts at a discount and principal write back arising on such settlement has been transferred to Capital Reserve amounting to Rs.1,46,31,750/-. However, the interest written back on such settlement was Rs.36,91,000/-, duly included in the total income. The company has filed the details regarding amount transferred to capital reserve as below.

<i>On account of settlement of debentures.</i>	<i>Rs. 21,03,900</i>
<i>On account of settlement of debts</i>	<i>Rs.1,21,13,200</i>
<i>On account of settlement of deposits</i>	<i><u>Rs. 4,13,650</u></i>
<i>Total</i>	<i><u>Rs.1,46,30,750</u></i>

5. The AR while reiterating the arguments before the AO emphasized on the fact that, in the assessee's own case, Hon'ble ITAT Bangalore Bench for the assessment year 2009-2010 in ITA No.1369/Bang/2012 vide order dated 2.8.2013 has allowed this issue in favour of the assessee. He has also relied on the decision of the Hon'ble High Court of Karnataka in the case of CIT Vs. Compaq Electric Ltd. 42 (I) (ITCL-491) wherein it was held that, loan written

back by that assessment amounted to capital receipt and hence, not chargeable to tax u/s 41(1).

6. On appeal before the CIT(A), the CIT(A) held that this issue was also before him in assessee's own case for the assessment year 2009-10 in ITA No.154/UDP/CIT(A)MNG/11-12, dated 18.1.2012, wherein he had decided the issue in favour of the assessee.

7. Since, the decision of Hon'ble Tribunal in the assessee's own case in the other years cited above, is in favour of the assessee, the CIT(A) stated that he was bound to respectfully follow the decision of Hon'ble Tribunal's decision in the assessee's own case and allowed the appeal on this issue.

8. The grounds of appeal raised by the Revenue are as under:

The order of learned CIT(A) is against law and facts of the case.

The learned CIT(A) erred in allowing the principal portion of deposits amounting to Rs.4,13,650/- principal

portion of debentures amounting to Rs.21,03,900/- and principal portion of debts amounting to Rs.1,21,13,200/- as capital receipts.

The learned CIT(A) failed to appreciate the fact that the principal portion of deposits, debentures and debts foregone by the depositors/customers is similar to forfeiture of deposits and attains the character of revenue receipts, and hence, it becomes appellant's income as held by the Hon'ble Supreme Court in the case of CIT Vs. Lakshmi Vilas Bank Ltd. (220 ITR 305).

The learned CIT(A) failed to appreciate the fact that though the amount is not taxable in the year of receipt, the amount charges its character when the amount becomes appellant's own money because of limitation or any other statutory or contractual rights as held by Hon'ble Supreme Court in the case of CIT Vs. TV Sundaram Iyengar & Sons Ltd. (222 ITR 344).

The learned CIT(A) erred in not taking cognizance of the provisions of sec.28(iv) of the IT Act and failing to note that since the appellant is carrying on finance business the principal portion forgone by the depositors is benefit or perquisite arising from exercise of business.

The learned CIT(A) erred in not considering the decision of Hon'ble ITAT, Bangalore Bench, in the case of Manipal Sowbhagya Nidhi Ltd. for the asst. year 2003-04, who in their order dated 7/11/2008 in ITA

No.379(Bang)/08 have upheld the assessment or principal portion of deposits forgone by the depositors.

For these and other grounds that may be urged at the time of hearing, the order of CIT(A) may be set aside and that of AO is restored.

The appellant craves leave to add, delete, amend or modify any of the grounds of appeal.”

9. We find that similar issue has been decided by the Co-ordinate Bench of tribunal in ITA No.1369/Bang/2012 for the asst. year 2009-

10. The relevant portion is reproduced as follows:-

“Per contra, the learned authorized representative of the assessee submitted that this issue of treatment of principal portion of deposits, debentures and debts as capital has been held in favour of the assessee by the co-ordinate bench of this Tribunal in the assessee’s own case for asst. year 2005-06 in its order in ITA No.298/Bang/2009 dt. 7.8.2009 and which decision was followed by another co-ordinate bench of this Tribunal in the assessee’s own case for asst. years 2007-08 and 2008-09 in ITA No.667 & 668/Bang/2012 dt. 12.3.2013. In this view of the matter, the learned authorized

representative pleaded that since this issue has been adjudicated in favour of the assessee in its own case for the earlier years, revenue's appeal for asst. year 2009-10 was liable to be dismissed.

We have heard both parties and carefully perused and considered the material on record, including the judicial decisions cited. We find from the record that this issue has been considered and adjudicated in favour of the assessee by a co-ordinate bench of this tribunal in the assessee's own case for asst. year 2003-04 and 2004-05 in ITA Nos.626 & 627/Bang/2007 dt. 7.3.2008 wherein at para 4 on page 3 thereof it has been held as under:

"4. After considering the rival submissions in our opinion, the following undisputed facts emerge out. The balance amount of deposit which could not be paid by the assessee to the depositors was never a charge to the profit and loss account and thereby at no point the tax liability, if any, of the earlier years was reduced. We find the situation is identical to the one that was considered by the Bombay High Court. There is no cessation of a trading liability. What was borrowed by the assessee was a capital asset repayable as such, could not be repaid in view of the circumstances in which the assessee was placed. Section 41(1) of the Act would get attracted only when there in an amount that is charged to the profit and

loss account reducing the tax liability of any of the earlier years. That not being the case here, the decision of the Bombay High Court (Supra) squarely apply and, accordingly, we uphold the claim of the assessee.”

The aforesaid decision (supra) has been followed in subsequent years by co-ordinate benches of this Tribunal as under:

- (i) For asst. year 2005-06 in ITA No.298/Bang/2009 dt. 7.8.2009; and*
- (ii) For asst. years 2007-08 and 2008-09 in ITA Nos.667 & 668/Bang/2012 dt. 12.3.2013:*

We, therefore, following the above mentioned decisions of the co-ordinate benches of this Tribunal in the assessee’s own case for the earlier years, dismiss the grounds raised by revenue on this issue.

10. Respectfully following the Co-ordinate Bench decision we dismiss the Revenue’s appeal.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on **20th Nov, 2015.**

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

Bangalore

Dated : 20/11/2015

Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

By order

Asst. Registrar, ITAT, Bangalore.