आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री एन के चौधरी,न्यायिक सदस्य एवं श्री डि.एस .सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं**./I.T.A.No.261/Viz/2019**
(निर्धारण वर्ष**/Assessment Year:2015-16)**

Cross Objection No.109/Viz/2019
(Arising out of I.T.A.No.353/Viz/2019)
(निर्धारण वर्ष**/Assessment Year:2015-16)**

M/s Sahuwala High Pressure Cylinder (P) Ltd. Flat Nos.D1 &D2, B Block Auto Nagar, Visakhapatnam	Vs.	Asst.Commissioner of Income Tax Circle-4(1) Visakhapatnam
[PAN : AANCS4425P]		
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

आयकर अपील सं**./I.T.A.No.353/Viz/2019**
(निर्धारण वर्ष**/Assessment Year:2015-16)**

Asst.Commissioner of Income Tax Circle-4(1) Visakhapatnam	Vs.	M/s Sahuwala High Pressure Cylinder (P) Ltd. Flat Nos.D1 &D2, B Block Auto Nagar, Visakhapatnam
		[PAN : AANCS4425P]
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

निर्धारिती की ओर से / Assessee by	:	Shri G.V.N.Hari, AR
राजस्व की ओर से /Revenue by	:	Shri D.K.Sonowal, CIT(DR)
सुनवाई की तारीख / Date of Hearing	:	08.02.2021
घोषणा की तारीख/Date of Pronouncement	:	12.03.2021

आदेश /O R D E R

Per D.S.Sunder Singh, Accountant Member :

In this case, cross appeals are filed by the assessee and the revenue against the order of Commissioner of Income Tax (Appeals) [CIT(A)]-11, Hyderabad in Appeal No.32/2018-19/Cir.4(1), VSKP/CIT(A)-2, VSKP/18-19 dated 20.02.2019 for the Assessment Year (A.Y.) 2015-16. Cross objections are also filed by the assessee supporting the order of the Ld.CIT(A).

2. Brief facts of the case are that the assessee is a company engaged in the business of manufacturing of cylinders, availed loans from a consortium of three banks, viz, State Bank of India, State Bank of Hyderabad and Punjab National Bank in F.Y.2006-07 for its business activities. The company stated to be ran into losses and entered into one Time Settlement with the consortium of banks for settlement of outstanding loans and accordingly received the waiver of loan amount of Rs.32,88,97,775/- which is claimed to be consisting of Rs.1,81,82,800/- towards the interest and the principal amount of Rs.31,07,14,975/-. The assessee offered the interest amount of Rs.1,81,82,800/- as income by crediting it to the P&L account and taken the

remaining sum to the balance sheet directly as capital reserve. The Assessing Officer (AO) viewed that both the interest and the capital need to be brought to tax, therefore, issued show cause notice calling for the assessee's explanation as to why the principal amount also should not be brought to tax. The assessee filed explanation objecting for treating the principal amount as income, since, it was not claimed as expenditure in the earlier years, therefore, submitted that the cessation of liability towards principal amount is not to be treated as income. The Ld.AR also relied on the following decisions:

(a) Coastal Corporation Limited Vs. JCIT, Circle-3(1), Vsp in ITA No.407/Viz/2006 DT.30.05.2008, ITAT, Visakhapatnam Bench, Vsp.

(b) CIT-9, Mumbai Vs. Graham Firth Steel Products (I) Ltd. [2017] 85 taxmann.com 110 (Bombay) August 2017.

(c) Mahindra and Mahindra Ltd Vs. CIT [128 Taxman.394 Bom]

(d) Prism Cement Ltd. Vs. Joint Commissioner of Income Tax, Special range – 50(2006) 101 ITD 103 (Mum)

(e) IFB Securities Ltd. Vs. Income Tax Officer (2006) 101 TTJ (Kol) 829

(f) CIT Vs. Chetan Chemicals (P) Ltd 139 Taxman 301 Guj)

(g) APR Ltd. Vs. DCIT (87 ITD 618 – Hyd.1(ITAT)

2.1. The AO considered the explanation of the assessee and called for information from the banks u/s 133(6) of the Income Tax Act, 1961 (in short 'Act') and found that the entire loan taken by the assessee was for the purpose of working capital and viewed that both the principal and interest constitute income. Accordingly, the AO placing reliance on the decision of T.V.Sundaram Iyengar and Sons Ltd. (1996) 222 ITR 344 (SC) and Rollatainers Ltd. Vs. CIT, Delhi High Court and the decision of Hon'ble Madras High Court in the case of M/s Ramaniyam Homes Pvt. Ltd. (Order No.278 of 2014 dated 22.04.2016) held that the entire amount i.e. interest as well as principal waived by the banks as a result of One Time Settlement is liable to tax u/s 41(1) of the Act, accordingly, made the addition of Rs.31,07,14,975/- representing the principal amount.

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) recomputed the principal amount of term loan and working capital loan, since, the bifurcation of term loan and the working capital and interest was not given in the sanction of loan waiver by the banks. The Ld.CIT(A) reworked the waiver of term loan and working capital loan on percentage of each loan basis and worked out the sums at

Rs.22,03,47,150/- and Rs.9,03,67,825/- towards term loans and working capital loan respectively as under :

S.No.	Name of the Bank	Waived off principal relating		Total
1.	State Bank of India	15,34,17,469	6,85,15,139	22,19,32,608
2.	State Bank of Hyderabad	2,18,64,481	Nil	2,18,64,481
3.	Punjab National Bank	4,50,65,199	2,18,52,685	6,69,17,884
		22,03,47,150	9,03,67,825	31,07,14,975

3.1. The sum of Rs.9,03,67,825/- worked out as working capital loans was confirmed as income u/s 41(1) of the Act and the balance amount of Rs.22,03,47,150/- was treated as term loan and the addition was deleted, thus allowed the appeal partly.

4. Against the order of the Ld.CIT(A), the assessee filed appeal, challenging the sustaining of addition of Rs.9,03,67,825/- representing the working capital loan and the department preferred appeal against the deletion of addition of Rs. 22,03,47,150/- representing the term loan. The assessee also filed cross objections supporting the order of the CIT(A) with regard to deletion of term loan of Rs.22,03,47,150/-. During the appeal hearing, the Ld.AR argued that the assessee has debited the interest to the Profit & Loss account and rightly offered the waiver of interest component as income and taken the principal amount directly to the balance sheet as

capital reserve. The Ld. AR and submitted that the waiver principal doesnot constitute income, since it was never claimed as deduction or expenditure in the earlier years therefore, argued that the Ld. CIT(A) ought to have deleted the entire addition of Rs.31,07,14,975/-, instead of partly allowing the appeal. The Ld.AR relied on the decision of ITAT, Visakhapatnam in the case of Sri Vasavi Polymers Private Ltd. in I.T.A.No.606/Viz/2018 dated 05.06.2020.

5. Per contra, the Ld.DR argued that the Ld.CIT(A) ought to have confirmed the entire addition instead of deleting the addition relating to the waiver of term loan, since, the assessee has got the benefit of waiver of the entire loan. The Ld.CIT(A) relied on the decision of Solid Containers Ltd. Vs. Dy.CIT, 308ITR 417 (Bom), T.V.Sundaram Iyengar and Sons Ltd (supra) and the decision of Hon'ble Madras High Court in the case of M/s Ramaniyam Homes Pvt. Ltd. (supra).

6. We have heard both the parties and perused the material placed on record. In this case, the consortium of banks have waived the sum of Rs.32,88,97,775/-, comprising principal amount and interest .The assessee has arrived at the interest waiver of Rs.1,81,82,800/-and the principal of

Rs.31,07,14,975/-and offered the sum of Rs.1,81,82,800/- as income and did not admit the sum of Rs.31,07,14,975/- as income. The issue with regard to taxing of principal amount as income was decided by this Tribunal the case of Vasavi Polymers (P) Ltd supra and the case is squarely covered by the decision of this tribunal in favour of the assessee.

6.1. However, the breakup of loans, i.e., the principal component and interest component was not given by the bankers. We have gone through the settlement letters of banks dated 16/03/2015 of State Bank of India wherein the bank had informed the assessee that the sum of Rs.40.00 crores were settled for outstanding loans of Rs.57.39 crores which includes the interest up to 28/02/2015. Similar letters were also given by other consortium banks, thus, there was no bifurcation of principal and interest component in the sanction of banks. Against the outstanding loan of Rs.71,07,14,973/-including up-to-date interest, compromise was reached for one time settlement at Rs.40.00 crores and the Banks have waived the balance sum. The assessee had arrived at the interest waiver of Rs.1,81,82,800/- and the basis was not given. On perusal of the financial statements filed by the assessee, we find that the financial cost for the Financial Year 2014-15 was Rs.39,21,699/- and for the F.Y. 2013-14 was

Rs.7,52,78,348/-,thus, prima facie, it appears that the interest component worked out by the assessee appears to be incorrect. In our considered view, the interest debited to the Profit & Loss account from the date of loan till the date of waiver of the loan required to be brought to tax u/s 41(1) of the Act subject to the maximum waiver of the loan amount and the balance to treated as the principal.

6.2. The benefit gained by the assessee on account of waiver represent the interest debited to Profit and Loss account from the date of availing the loan in various assessment years till the date of redemption which was claimed by the assessee as deduction and the same required to be taxed u/s 41(1) of the Act. Thus the interest charged to the Profit and loss account on the term loans as well as working capital loans are the profits chargeable to tax u/s 41(1) of the act. Though this case is covered by the decision of this Tribunal in favour of the assessee in respect of waiver of principal amount of term loan as well as working capital loan in the case of Sri Vasavi Polymers Private Limited in I.T.A. No.606/Viz/2018 dated 05.06.2020, waiver of interest needs to be verified.

6.3. The assessee has furnished the interest amount at Rs.1,81,82,800/- and the principal amount at Rs.31,07,14,975/-. As observed from the financial statement, the outstanding loan amount was Rs.71.07crores inclusive of finance cost of Rs.39.21 lakhs for the A.Y.2015-16 and Rs.7.52 crores for the A.Y.2014-15. The details of interest debited to the P&L account on various years was not furnished by the assessee and hence, the bifurcation given by the assessee in respect of the principal and the interest amount appears to be incorrect. Therefore, the correctness of interest component as well as the principal component, required to be verified. In our considered opinion, the issue needs to be remitted back to the file of the AO to ascertain the correct amount of interest debited to the profit and loss account on term loan as well as working capital loan from the date of loan till redemption. Accordingly, we set aside the orders of the Ld. CIT(A) and remit the matter back to the file of the AO to verify the correct amount of interest which required to be taxed u/s 41(1) of the Act and decide the issue on merits. The AO is directed to give sufficient opportunity to the assessee before completion of assessment. Thus, the appeals filed by the assessee, the revenue and the cross objections of the assessee are allowed for statistical purposes.

7. In the result, the appeals filed by the assessee, the revenue and the cross objections filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 12th March, 2021.

Sd/-	Sd/-
(एन के चौधरी)	**(डि.एस .सुन्दर सिंह)**
(N.K.CHOUDHRY)	**(D.S.SUNDER SINGH)**
न्यायिकसदस्य/ JUDICIAL MEMBER	**लेखासदस्य/ACCOUNTANT MEMBER**

Dated : 12.03.2021
L.Rama, SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–M/s Sahuwala High Pressure, Cylinder (P) Ltd. Flat Nos.D1 &D2, B Block, Auto Nagar, Visakhapatnam
2. राजस्व/The Revenue –Asst.Commissioner of Income Tax, Circle-4(1), Visakhapatnam
3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-11, Hyderabad
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam