

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.606/Viz/2018
(निर्धारण वर्ष/Assessment Year:2013-14)**

Income Tax Officer
Ward-3
Srikakulam

Vs M/s Sri Vasavi Polymers P.Ltd.
S.No.125 & 126, Anthakapalli
Rajam
[PAN : AAECs1849J]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri S.Ravi Shankar Narayan,
CIT, DR
प्रत्यर्थी की ओर से / Respondent by : Shri Y.A.Rao, AR

सुनवाई की तारीख / Date of Hearing : 12.03.2020
घोषणा की तारीख/Date of Pronouncement : 05.06.2020

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-9, Hyderabad in ITA No.10300/CIT(A)-9, Hyd/2017-18 dated 09.08.2018 for the Assessment Year (A.Y.)2013-14. with the delay of 1 day. The department has filed condonation petition and submitted that the delay was due to the

administrative reasons beyond the control of the department, hence requested to condone the delay and admit the appeal. After hearing both the parties , we condone the delay and admit the appeal.

2. All the grounds of appeal are related to the addition made by the Assessing Officer (AO) for a sum of Rs.1,70,00,000/- u/s 41(1) of the Income Tax Act, 1961 (in short 'Act') which was deleted by the Ld.CIT(A). During the course of assessment proceedings, the AO found that the assessee had received the benefit of Rs.1,70,00,000/- as a result of one time settlement of loan by the Indian Overseas bank. The assessee was due to Indian Overseas Bank, Visakhapatnam in respect of term loan & OCC for a sum of Rs. 4.3 crores which included the interest subsidy as well as the working capital loan. The interest of Rs.43,81,572/- was added back to income and taxed u/s 43B of the Act. However, the sum of Rs.1.7 crores which represent the waiver of working capital loan was added as income u/s 41(1) of the Act in the assessment order made u/s 143(3) of the Act.

3. Against the order u/s 143(3), the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition following the order of Hon'ble ITAT Mumbai in the case of M/s SHRM Food & Allied Services Pvt. Ltd., in I.T.A.No.657/Mum/2009, 595/Mum/2008 & 1116/Mum/2013 and

ITAT Hyderabad in the case of Tini Pharma Ltd., Hyderabad dated 23.05.2018 and also the decision of Hon'ble Apex Court in the case of Mahindra & Mahindra.

4. Against which the department has filed appeal before this Tribunal.

The department has raised following grounds in this appeal.

1. *The Ld. CIT(A) erred on both facts and law in deleting the addition made by the AO of Rs. 1.70 crores on account of benefit of waiver of OCC loan amount received by the assessee during the year.*
2. *The Ld. CIT(A) ought to have appreciated that the OCC facility was availed by assessee for working capital requirements and waiver of any such OCC loan amount either partly or fully is a revenue receipt u/s. 28(i) of the I.T. Act, in view of the decision of the Apex Court in the case of CITVs, T.V. Sundaramlyengar and Sons Ltd. (222 ITR 344).*
3. *The Ld. CIT(A) ought to have further considered that the assessee itself carried the loan amount waived of Rs. 1.70 crore to any 'other reserve' instead of capital reserve under the head 'reserves and surplus in the balance sheet as on 31.03.2013 and therefore such benefit is liable to be assessed as income u/s. 28(i) of the I.T. Act.*
4. *The Ld. CIT(A) ought to have also appreciated that the OCC loan facility, a part of which was waived during the year, was not taken directly or indirectly for the purpose of acquisition of any capital asset though the assessee claimed that the part of the OCC loan was utilized indirectly for repayment of old term loans availed by the assessee from SBI.*
5. *The appellant craves leave to add or delete or substitute or amend any ground of appeal before and / or at the time of hearing of the appeal.*

5. During the appeal hearing, the Ld.DR submitted that the amount of Rs.1,70,00,000/- represent waiver of working capital loan which was used for day to day running of the business, therefore, submitted that the same required to be brought to tax u/s 28(i) of the Act. The Ld.DR relied on the following decisions :

- (a) Hon'ble High Court of Bombay in the case of Solid Containers Ltd. Vs. Dy.Commissioner of Income Tax
- (b) Hon'ble High Court of Delhi in the case of Rollatainers Ltd. Vs. Commissioner of Income Tax (2011) 15 taxmann.com 111 (Delhi)
- (c) Hon'ble High Court of Madras in the case of Commissioner of Income Tax, Chennai Vs. Ramaniyam Homes (P.) Ltd. [2016] 68 taxmann.com 289 (Madras)

6. On the other hand, the Ld.AR submitted that the AO made addition u/s 41(1) of the Act, but not under section 28(i) of the Act. The amount waived by the bank was relating to working capital loan which is not covered u/s 41(1) of the Act. The AO disallowed the interest debited to Profit and Loss account in the year, therefore, there is no trading liability claimed by the assessee representing the working capital in the earlier years, hence, argued that there is no case for taxing the waiver of working capital u/s 41(1) of the Act, therefore, argued that the Ld.CIT(A) has rightly deleted the addition and no interference is called for. The Ld.AR further argued that the AO's case is the addition u/s 41(1) of the Act, but not the case of section 28(i)/(iv) of the Act, hence, submitted that the department's

grounds and arguments with regard to taxing the waiver under section 28(i)/(vi) are not relevant to the addition made and the same should not be considered since, neither the AO nor the Ld.CIT(A) considered the issue u/s 28(i) of the Act. The Ld.AR relied on the decisions relied upon by the Ld.CIT(A).

7. We have heard both the parties and perused the material placed on record. The AO made the addition u/s 41(1) of the Act, but not u/s 28 of the Act. As per section 41(1) of the Act, trading liability or expenditure or the loan which was already claimed as incurred by the assessee and subsequently during any previous year received the benefit in respect of such trading liability by way of remission or cessation of liability is deemed to be profits and gains of the business or profession and accordingly chargeable to tax as the income of the previous year. From section 41(1), it is observed that there must be trading liability or expenditure or loss which was incurred by the assessee in the earlier years and allowed the same as deduction to tax the same u/s 41(1). The twin conditions required to be satisfied for taxing the benefit received by the assessee. i.e., the expenditure should be Revenue expenditure or the loss incurred and the same ought to have been allowed as deduction. The benefit received by the assessee

should be relating to such expenditure which was claimed and allowed in the earlier years. In the instant case, the trading liability or the expenditure or deduction was claimed by the assessee in respect of interest paid on the OCC loan. In respect of principal amount, though the assessee has gained the benefit by way of one time settlement the same cannot be brought to tax u/s 41(1) because the OCC loan represents the principal which was never claimed as expenditure. The AO also did not make out a case that the principal amount was debited to the Profit & Loss account in the earlier years. Therefore there is no case for making addition u/s 41(1) in respect of the principal amount. The Hon'ble Supreme Court in the case of CIT Vs. Mahindra & Mahindra Ltd considered the similar issue and held as under :

“15. On a perusal of the said provision, it is evident that it is a sine qua non that there should be an allowance or deduction claimed by the assessee in any assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. Then, subsequently, during any previous year, if the creditor remits or waives any such liability, then the assessee is liable to pay tax under Section 41 of the IT Act. The objective behind this Section is simple. It is made to ensure that the assessee does not get away with a double benefit once by way of deduction and another by not being taxed on the benefit received by him in the later year with reference to deduction allowed earlier in case of remission of such liability. It is undisputed fact that the Respondent had been paying interest at 6 % per annum to the KJC as per the contract but the assessee never claimed deduction for payment of interest under Section 36 (1) (iii) of the IT Act. In the case at hand, learned CIT (A) relied upon Section 41 (1) of the IT Act and held that the Respondent had received amortization benefit. Amortization is an accounting term that refers to the process of allocating the cost of an asset over a period of time, hence, it is nothing else than depreciation. Depreciation is a reduction in the value of an asset over time, in particular, to wear and tear. Therefore, the deduction claimed by the Respondent in previous

assessment years was due to the depreciation of the machine and not on the interest paid by it.

16. *Moreover, the purchase effected from the Kaiser Jeep Corporation is in respect of plant, machinery and tooling equipments which are capital assets of the Respondent. It is important to note that the said purchase amount had not been debited to the trading account or to the profit or loss account in any of the assessment years. Here, we deem it proper to mention that there is difference between 'trading liability' and 'other liability'. Section 41 (1) of the IT Act particularly deals with the remission of trading liability. Whereas in the instant case, waiver of loan amounts to cessation of liability other than trading liability. Hence, we find no force in the argument of the Revenue that the case of the Respondent would fall under Section 41 (1) of the IT Act.*

17. *To sum up, we are not inclined to interfere with the judgment and order passed by the High court in view of the following reasons:*

- (a) *Section 28(iv) of the IT Act does not apply on the present case since the receipts of Rs 57,74,064/- are in the nature of cash or money.*
- (b) *Section 41(1) of the IT Act does not apply since waiver of loan does not amount to cessation of trading liability. It is a matter of record that the Respondent has not claimed any deduction under Section 36 (1) (iii) of the IT Act qua the payment of interest in any previous year.*

The Hon'ble Supreme Court also considered the issue with regard to taxing the remission of liability u/s 28(iv) and decided the issue against the revenue and in favour of the assessee, since, the receipt was in the nature of cash or money. The Hon'ble Supreme Court held that section 28(iv) of the Act has no application since the receipt was in the nature of cash or money. In the instant case what the assessee has received was remission of liability which was in the form of cash or money and the difference amount of principal which was settled by onetime payment was never debited to Profit & Loss account. Therefore, the decision of Hon'ble Supreme Court is

squarely applicable in the instant case. The Ld.DR relied on the decision of Hon'ble Delhi High Court in the case of Rollatainers Ltd. Vs. Commissioner of Income Tax [2011] 15 taxmann.com 111 (Delhi) and the decision of Hon'ble High Court of Madras in the case of Commissioner of Income Tax, Chennai Vs. Ramaniyam Homes (P.) Ltd., the judgements were delivered prior to the judgement of Hon'ble Supreme Court in the case of Mahindra and Mahindra supra and the Hon'ble High Courts have no occasion to consider the decision of Hon'ble Supreme Court. Therefore, we do not find any reason to interfere with the order of the Ld.CIT(A) and accordingly, we uphold the same. The appeal of the revenue is dismissed.

8. In the result, appeal of the revenue is dismissed.

Order pronounced on 5th June, 2020.

Sd/-
(वी.दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/JUDICIAL MEMBER
 विशाखापटणम /Visakhapatnam
 दिनांक /Dated : 05.06.2020
 L.Rama, SPS

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)
लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. राजस्व/The Revenue –Income Tax Officer, Ward-3, Srikakulam
2. निर्धारिती/ The Assessee–M/s Sri Vasavi Polymers P.Ltd., S.No.125 & 126, Anthakapalli, Rajam
3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-9, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

// True Copy //

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam