

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
ALLAHABAD BENCH, ALLAHABAD  
(THROUGH VIRTUAL COURT)  
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.142/Alld./2017  
Assessment Year: 2007-08

Bharat Pumps & Compressors Limited, Naini, Allahabad , U.P. 211010	v.	Deputy Commissioner of Income Tax, Circle-II, Aayakar Bhawan 38, M.G. Marg, Allahabad, U.P.
<b>PAN:AAACB9309A</b>		
(Appellant)		(Respondent)

Appellant by:	Smt. Tanu Singhal C.A.
Respondent by:	Smt. Nidhi Verma Singh, CIT-D.R.
Date of hearing:	09.09. 2021
Date of pronouncement:	07.10.2021

**ORDER**

**PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal, filed by assessee, being ITA No.142/Alld./2017, is directed against an appellate order dated 17.03.2017 in Appeal No.12/DCIT/R-II/Alld/15-16 passed by learned Commissioner of Income Tax (Appeals), Allahabad (hereinafter called "the CIT(A)"), for assessment year(ay):2007-08, the appellate proceedings had arisen before learned CIT(A) from an assessment order dated 31<sup>st</sup> March, 2015 passed by learned Assessing Officer (hereinafter called "the AO") under Section 147 read with Section 143 (3) of the Income-tax Act,1961 (hereinafter called "the Act") for ay: 2007-08 .We have heard both the parties through Video Conferencing mode through Virtual Court.

2. The grounds of appeal raised by assessee in ITA No. 142/Alld./2017 for ay: 2007-08, in memo of appeal filed with Income-Tax Appellate Tribunal, Allahabad Bench , Allahabad (hereinafter called “ the tribunal”) , reads as under:-

*“1. Because the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts to confirm the impugned addition made by the Assessing Officer on account of write-back of Government Loan to the tune of Rs. 7292.72 lakhs being waiver of loan duly approved by the Ministry of heavy Industries and Public Enterprises as revival package for financial restructuring of sick Public Sector Enterprises, without making any reference to the relevant section of the Income Tax Act, 1961 under which he has made such addition which is a mandatory practice for making any such disallowances or additions.*

*2. Because the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts to confirm the addition made by the Assessing Officer by referring to certain decisions of the Court, the facts of which are clearly different from the facts of the appellant’s case.*

*3. Because the Ld. Commissioner of Income Tax (Appeals) has erred on facts to confirm the addition Rs. 7292.72 lacks made by the Assessing officer on account of write-back of Government Loans routed through Profit & Loss Accounts (Below the Line) by treating this write-back of Non-Plan Government Loan as ordinary trading transaction though according to the accounting principles and practices such write-backs are not ordinary trading transactions or revenue receipts either.*

*Further, the phrase “Plan and “Non-Plan” has nowhere been defined under the Income Tax Act, 1961 and this nomenclature is basically adopted by the Government for their budget estimates and allocation thereof for sanctioning loans Public Sector Enterprises.*

*4. Because the Ld. Commissioner of Income Tax (Appeals) erred in charging interest u/s 234A & 234B & 234C of the Income Tax Act, 1961.*

*5. Because the order of Ld. C.I.T.(Appeals), Allahabad was bad in law and on facts.”*

3. The brief facts of the case are that the assessee is a Public Sector Undertaking(PSU), engaged in manufacturing of Pumps , Compressors and Gas Cylinders. The assessee filed its return of income u/s 139(1) of the 1961 Act on 28.10.2007 with Revenue declaring ‘Nil’ Income , which return of income was originally scrutinized by Revenue u/s 143(3) read with Section 143(2) of the 1961 Act, wherein additions to the tune of Rs. 1,39,76,000/- were made to income declared by assessee to the tune of Rs. 46,93,69,062/- under the head ‘Profit and

Gains of Business or Profession' , and finally loss to the tune of Rs. 56,35,22,086/- was assessed and allowed to be carried forward by Revenue to the subsequent years after set off of income so assessed for the year under consideration against the brought forward losses, vide assessment order dated 21.12.2009 passed by AO u/s 143(3) of the 1961 Act . The additions to the tune of Rs. 1,39,76,000/- which were made by Revenue to the income of the assessee vide aforesaid assessment framed by AO u/s 143(3) , were mainly on account of alleged suppression of closing stock and gross profits by invoking provisions of Section 145A of the 1961 Act, disallowance of Prior Period expenses and disallowance of excess depreciation. Thereafter, proceedings under Section 147 were initiated by Revenue for impugned ay: 2007-08 , and notice under Section 148 , dated 16<sup>th</sup> January, 2014 was issued by the AO to the assessee , and the said notice was claimed by Revenue to be duly served on the assessee. The assessee duly participated in the proceedings conducted by Revenue u/s. 147/148 of the 1961 Act. During the course of aforesaid reassessment proceedings, the assessee requested AO to furnish reasons recorded by the AO for reopening of the assessment u/s 147/148 of the 1961 Act . The reasons recorded by Revenue for reopening of the assessment by invoking provisions of Section 147/148 of the 1961 Act were duly furnished by AO to the assessee. Thereafter, the assessee filed return of income 'under protest' on 14<sup>th</sup> February, 2014, in pursuance to notice dated 16.01.2014 issued by AO u/s 148, wherein income declared by assessee in the aforesaid return of income filed was 'Rs. Nil', whereas Book Profit for MAT u/s 115JB was declared at (-) Rs. 34,90,58,000/- . Thereafter, the AO issued statutory notices under Section 143(2) and 142(1) of the 1961 Act, which was claimed by Revenue to have been duly served on assessee. The assessee raised various objections against initiation of the proceedings u/s 147/148 of the Act , which objections were stated to be disposed off by AO vide order dated 9<sup>th</sup> Feb., 2015. So far there is no dispute between rival parties. The Solitary issue which has now

arisen in this appeal is with respect of taxability of waiver and write off by Government of 'Non-Plan loans by Government', which Non-Plan loans were earlier granted by Government to the assessee from time to time starting from 1993 till 2006(details of said loans submitted by assessee in paper book at page 2A along with sanction letters placed at page 3-135/paper book), to the tune of Rs. **7292.72 lacs**. The AO observed from para 2(v)(c) of the Auditors Report (Page 12 of the Annual Report) to the shareholders for the financial year 2006-07, which states as follows:

*“ In view of the financial restructuring and strengthening of the company, the Government of India has written off the Government of India's Plan and Non-Plan loan of Rs. 10275.05 lacs (as on 31-03-2006) as well as interest dues of Rs. 4984.83 lacs (as on 31-03-2006) on Government of India Plan & Non-Plan loans (schedule 11.1-Note No. 17 & 18) and as such, the company has created capital reserve of Rs. 1982.33(whereas Rs. 2982.33 lacs is the correct figure as per schedule 1.2 to Balance Sheet) lacs to the extent of Plan loan portion of the GOI loan written off during the year (schedule 1.2).”*

Thus, from the above note, the AO observed that a portion of the said loan on account of write off by Government of Plan expenditure amounting to Rs. 2982.33 lacs was directly taken by assessee to Capital Reserves and the balance loan i.e. loan on account of Non-Plan expenditure written off by Government amounting to Rs. 72.9272 crores was credited by assessee to P&L account as prepared by the assessee. The AO observed that this write off of 'Non Plan loan by Government' was not included by assessee in its computation of 'total income' under the normal provisions of the 1961 Act, and consequently the same was not offered for taxation by the assessee. The AO observed that in the affairs of Government, the Plan expenditure are those expenditure which are utilized for acquiring Capital Assets, while non-plan expenditure are those expenditure, which are incurred otherwise. The AO observed that the assessee has rightly credited write off/waiver by Government of 'Plan Government Loans' to the Capital Reserves and there is no

dispute between rival parties so far as waiver/write off by Government of 'Plan Government Loans' , as these loans were granted to meet capital expenditure, and hence its waiver as per AO will not be taxable. But as per AO , the write off/waiver by Government of 'Non-Plan Government Loans' shall be taxable in the hands of the assessee as the said loans were granted by Government to assessee to meet revenue expenditure. The AO vide notice issued u/s 142(1) of the 1961 Act , dated 13.02.2015 asked assessee to explain as to why the said amount of write off/waiver of 'Non-Plan Government Loans' by Government amounting to Rs. 72.9272 crores may not be added to the income of the assessee as income from 'Profits and Gains from Business or Profession', under the normal provisions of the 1961 Act. The assessee submitted before the AO during the course of reassessment proceedings that *' as a part of the relief measures and basically to improve the financial and net worth of the company, the said Government loans have been waived ; these waivers have come by way of a relief/revival measures and are different from cessation of any liability in respect of any trading transactions, and as such the said amount was not included in the taxable income. There is no provision in the Income Tax Act, 1961 under which written off Government Loans of Rs. 7292.72 lacs should be added to profits from business'*. The ld. Counsel for assessee further submitted before the AO that the said " Non-Plan Government Loan" was not a loss, expenditure or trading liability and was never accounted for through the P&L Account. The ld. Counsel for the assessee further submitted before the AO that the Principal amount waived cannot be treated as a trading liability and waiver of a debt cannot be treated as income. The ld. Counsel for the assessee relied upon the judgment of Hon'ble Madras High Court in the case of CIT v. Ganesa Chettiar (1982) 133 ITR 103(Mad.) and judgment of Hon'ble Delhi High Court in the case of Logitronics Private Limited v. CIT (2011) 333 ITR 386(Del.) . The ld. AO rejected the contentions of the assessee and held the same to be chargeable to income-tax under the normal provisions of the 1961 Act as firstly , the AO observed that the

assessee has itself credited the said write off of 'Government Non Plan Loan' to its Profit and Loss Account. Secondly, the AO distinguished the case laws relied upon by assessee and held that either the same are not applicable to the facts of the instant case, or are in-fact in favour of Revenue. The ld. AO relied upon judgment of Hon'ble Supreme Court in the Case of CIT v. T.V. Sundaram Iyengar and Sons Ltd., reported in (1996) 222 ITR 344 (SC), and also judgments of Hon'ble Bombay High Court in the case of Solid Containers Limited v. DCIT, reported in (2009) 308 ITR 417(Bom.) and also Hon'ble Madras High Court in the case of CIT v. Aries Advertising Private Limited, reported in (2002) 255 ITR 510(Mad.), to come to conclusion that the said receipts are trading receipts and are chargeable to tax in the hands of the assessee. The AO observed that Hon'ble Delhi High Court in the case of Logitronics Private Limited (supra) by following the judgment of Hon'ble Supreme Court in the case of T.V.Sundaram Iyenger and Sons Limited (supra), has held that waiver of loan obtained by an taxpayer may result in income if the loan is taken for trading purposes and is treated as such from the very beginning in the books of accounts. The AO observed that the said 'Non Plan Government Loan' was not taken by assessee for acquiring Capital Assets, but the said loan was for trading purposes and the assessee has rightly treated the said waiver of loan by Government of 'Non Plan Government loan' as revenue receipts by crediting the same to its P&L Account. Thus, the AO by following the ratio of decision of Hon'ble Supreme Court in the case of T.V.Sundaram Iyenger and Sons Limited(supra), which was followed by Hon'ble High Court(s) in the case of Solid Containers Limited(supra) and Logitronics Private Limited (supra) held that the said 'Government Non-Plan Loan' written back amounting to Rs.72.9272 crores is an income of the assessee from the business and accordingly the AO made additions to the income of the assessee of the aforesaid amount, vide reassessment order dated 31.03.2015 passed by the AO u/s 147 read with Section 143(3) of the 1961 Act.

4. Aggrieved by an reassessment order dated 31.03.2015 passed by AO u/s 147 read with Section 143(3) of the 1961 Act, the assessee filed first appeal with Ld. CIT (A) . The assessee challenged the taxability of the said write back of 'Non-Plan Government Loans' amounting to Rs. 72.9272 crores claiming the same to be capital receipts not chargeable to income-tax. The Ld. CIT (A) rejected the contention of the assessee and held the same to be taxable in the hands of the assessee , vide appellate order dated 17.03.2017 , by holding as under:

**"2.2 Discussion & Decision :**

*On perusal of the details, I find that the assessee company had itself bifurcated the loans obtained from Government of India into two categories – **Plan & Non-plan**. The write off of loans on account of Plan expenditure amounting to Rs. 29.82 Crores was directly taken by the assessee company to the Capital Reserve account without routing it through the profit & loss account; while the balance loan of Rs. 72.92 Crores on account of non-plan expenditure was credited to the profit & loss account for the year. This issue has been elaborately discussed by the A.O. at para 3 of the assessment order. The Ld. A.R. has stated that the provisions of Section 41(1) are not applicable to the facts of the case. There is no quarrel with that proposition as the A.O. has also not made any reference to Section 41(1) of the I.T. Act while making the impugned addition. As regards the nature of the said loan from the Government of India (to the assessee company), it has itself made distinction between the loans on account of plan & non-plan expenditure. The Income Tax department has not added back the waiver of land amount on account of plan expenditure as it was taken directly to the Capital Reserve account with the belief and understanding that such loan were purely on Capital Account. It is only the waiver of the loan on account of non-plan expenditure (which was routed by the assessee company itself though the profit & loss account) that has been brought to tax. Now the assessee cannot be allowed to say that such bifurcation of loans was not as per facts. Moreover, there is a letter from Department of Heavy Industries, Government of India (dated 18.12.2006) which also mentions about plan & non-plan loans amounting to Rs. 102.75 crores. The law on taxability of such write – offs is very clear and settled. The A.O. has referred to various decisions of the Hon'ble Supreme Court and High Courts, which are clearly applicable to the facts of the case. In CIT vs. T.V. Sundaram Iyengar & Sons Ltd. (1996) 222 ITR 344 (SC), it was found that the assessee had received certain deposits which were originally treated as capital receipts, but later on, some of the said deposits were neither claimed by nor returned to the depositors and the assessee itself treated the said unclaimed/ retained amount as its trade receipts by bringing it to its P& L a/c. On these facts, the Hon'ble Supreme Court held that –*

*"if a commonsense view of the matter is taken, the assessee, because of the trading operation, had become richer by the amount which it transferred to its P and L a/c. The moneys had arisen out of ordinary trading transactions. Although the amounts received originally were not of income nature, the amounts remained with the assessee for a long period unclaimed by the trade parties. By lapse of time, the amount attained a totally different quality. It*

*became a definite trade surplus. The commonsense demanded that the amount should be entered in the P and L a/c for the year and be treated as taxable income."*

*In view of the matter, the action of the A.O. is hereby upheld and his ground is dismissed."*

5. Still aggrieved by appellate order dated 17.03.2017 passed by Id. CIT(A), the assessee filed second appeal with tribunal . This appeal was heard by Division Bench of ITAT, Allahabad Bench through Video Conferencing mode through Virtual Mode. The Ld. Counsel for the assessee opened arguments and submitted that the assessee is a Public Sector Undertaking(PSU) engaged in manufacturing of Pumps, Compressors and Gas Cylinders. It was submitted by Id. Counsel for the assessee that the company is a sick company registered with BIFR. The Id. Counsel for the assessee submitted that the company has accumulated losses of around Rs. 175 crores. It was submitted that the government sanctioned restructuring package and the 'Plan loans' as well 'Non Plan loans' granted by Government, were waived/written off by Government. Our attention was drawn to GOI-Ministry of Heavy Industries Letter, dated 18.12.2006, which is placed in paper book at page 30-31, wherein Government of India , inter-alia, waived loans to the tune of Rs. 102.75 crores towards both 'Plan Loans' and 'Non-Plan Loans', interest to the tune of Rs. 50.40 crores were also waived by Government. The Id. Counsel for the assessee submitted that there is no dispute so far as write off/write back of Government 'Plan-loans' are concerned and the dispute is only with respect to write off/write back of 'Government Non-Plan Loans' amounting to Rs. 72.9272 crores. It was also submitted by Id. Counsel for the assessee that these 'Non-Plan Loans' were granted by Government to the assessee from time to time to meet expenses towards Salaries, PF, ESI, VRS etc., and these loans carried interest which was charged to Profit and Los Account in earlier years as per contractual obligation, and it was submitted that interest waived by Government is credited back to income of the assessee and offered for taxation , on being

waived by Government. It was submitted that the dispute is only with respect to write off/write back of Principal component of 'Non-Plan Government Loans' to the tune of Rs. 72.9272 crores written off/waived by Government. It was submitted that these loans and interest were written off by Government to revive and rehabilitate the assessee which is a PSU. It was submitted by Id. Counsel for the assessee that details along with sanction letters issued by Government for grant of Non-Plan loans in favour of assessee, which are now waived/written off by Government, are placed in paper book at page number 2A to 135 (paper book dated 11.08.2021 containing 162 pages, filed by assessee with tribunal on 12.08.2021 (placed in file)). It was submitted by Id. Counsel for the assessee that AO added the loan amount treating the same as Revenue, by relying on judgment of Hon'ble Supreme Court in the case of T V Sundaram Iyenger and Sons Limited (supra) and decision of Hon'ble Bombay High Court in the case of Solid Containers Limited (supra). It was submitted by Id. Counsel for the assessee that the AO made the additions without mentioning relevant and applicable provisions under the 1961 statute and hence on this short ground itself this addition is liable to be deleted. The Id. Counsel for the assessee drew our attention to the orders of authorities below and written submissions filed by it, and reference was drawn to para 6.2 and 6.3 (page 25/paper book) and it was submitted that the decision of Hon'ble Supreme Court in the case of T V Sundaram Iyenger and Sons Limited (supra) is not applicable on the facts of the instant case, as because in that case the taxpayer received security deposit but in the instant case, the loans to revive sick company were obtained by assessee from Government which is one of the major shareholder, and the said loans are now written off/waived by Government in order to revive and rehabilitate assessee. It was submitted by Id. Counsel for the assessee that the assessee suo motu offered write back/write off of interest to taxation, and it is the Principal amount which was not offered for taxation. It was submitted that by stretch of no imagination Loan Principal can be

taken as Revenue income as it was never allowed as deduction while computing income of the assessee chargeable to tax. It was submitted by Id. Counsel for the assessee that proceeds of the Non-Plan Government loan were earlier utilized for payment of Salary, PF, Gratuity, VRS compensation etc. and by its waiver, no cash benefit was obtained by the assessee. Thus, it was claimed by Id. Counsel for the the assessee that the said waiver /write off of Non-Plan Government Loan cannot be brought to tax , either by invoking provisions of Section 41(1) or Section 28(iv) of the 1961 Act. The Id. Counsel for the assessee relied upon following judgments in support of her contentions, cited as under:

- a) Hon'ble Supreme Court judgment in the case of CIT v. Mahindra and Mahindra Limited in Civil Appeal Nos. 6949-6950 of 2004, judgment dated 24.04.2018.
- b) Hon'ble Bombay High Court judgment in the case of Essar Shipping Limited v. CIT, in Income Tax Appeal(IT) No. 201 of 2002, judgment dated 05<sup>th</sup> March, 2020
- c) Hon'ble Bombay High Court judgment in the case of The Pr. CIT v. SICOM Limited, in Income Tax Appeal(IT) No. 1692 of 2017, judgment dated 21<sup>st</sup> January, 2020
- d) Hon'ble Allahabad High Court judgment in the case of Scooters India Limited v. CIT , in ITA No. 1 & 2 of 2015, judgment dated 15.02.2017

5.2 The Ld. CIT-DR, on the other submitted that interest on these loans as per contractual obligation of the assessee with Government was claimed as expenditure by assessee in earlier years . It was also submitted by Id. CIT-DR that waiver of loan will create surplus and hence the same is to be brought to tax. The Id. CIT DR relied upon orders of the authorities below and prayers were made to uphold the appellate order passed by Id. CIT(A) .

6. We have considered rival contentions and perused the material on record , including orders of authorities below and cited case laws. The facts in this case are undisputed and are cited by us in preceding para's of this order , which are not repeated again for sake of brevity. In brief, the assessee is a Public Sector Undertaking(PSU) under Central Government , Ministry of Heavy Industry , Ministry of Industry , Government of India. , engaged in manufacturing of Pumps, Compressors and Gas Cylinders. As per details furnished by the assessee in paper book/page 136, the assessee has incurred heavy losses over last decade from 1998-99 onwards, so much so its networth was negative to the tune of (-) Rs.117.15 crores , as at 31.03.2006. The assessee is a Sick Company registered with The Board for Industrial and Financial Restructuring(BIFR). The Government of India has been providing assessee with both Plan Government Loans as well Non-Plan Government Loans , from time to time to meet its financial requirements both capex and to meet its working capital requirements as well to recoup cash losses. The Plan Government loans are stated to be provided by Government of India to assessee to acquire capital assets and to meet capital expenditure , while Non Plan Government Loans are stated to be provided by Government of India to assessee from time to time to meet its working capital requirements towards meeting business expenses and to recoup cash losses and these loans are on revenue field. From the details of Non-Plan Government Loans furnished by assessee at the directions of the Bench (Sanction letters for grant of Non-Plan loan by Government in favour of assessee, furnished by assessee at page 2A-135 of paper book) , it emerges that the Government of India , Ministry of Heavy Industry , Ministry of Industry , has sanctioned Non-Plan Government Loans in favour of assessee from time to time starting from 1993 to 2006. Perusal of the aforesaid sanction letters reveals that the said loans were granted by Government of India in favour of the assessee to meet its regular expenses towards Salary, Gratuity, PF, VRS , guarantee fee for availing cash credit from

banks etc. as well to recoup its cash losses which the assessee had incurred in the regular course of business by the assessee, and thus these Non Plan Government Loans were on revenue field to meet its regular working capital requirements. These loans carry rate of interest which the assessee is obligated to pay to Government of India as per contractual terms specified in the Sanction letter. Thus, in nut-shell, the assessee has availed these Non-Plan Government Loans from Government of India to meet its day to day normal business expenses and to recover cash losses incurred in the normal course of business and were on revenue field, or in other words, these Non-Plan Government Loans were not granted by Government of India for acquisition of capital assets or to meet the capital expenditure requirements of the assessee. Then, came the event wherein Government of India decided , inter-alia, to write off/waive Plan Government Loans, Non-Plan Government Loan as well interest payable by assessee on both these loans. The Government of India , Heavy Industries and Public Enterprises , Department of Heavy Industry, vide letter reference number 2(16)/2004-PE IV , dated 18.12.2006 (placed in paper book/page 30-31) informed assessee that a proposal for revival of assessee through its financial restructuring and strengthening was placed before the Board for Reconstruction of Public Sector Enterprises. The matter was later placed before the Committee of Secretaries and also Group of Ministers. It is further stated in letter dated 18.12.2006 that based on recommendation of Board for Reconstruction of Public Sector Enterprises, Committee of Secretaries and Group of Ministers, a proposal was placed before the Cabinet in its meeting held on 07.12.2006 for its approval. It is further intimated that competent authorities has , inter-alia, approved the proposal to waive Plan Government Loans and Non-Plan Government Loans to the tune of Rs. 102. 75 crores as at 31.03.2006 and to waive off interest dues payable by the assessee to Government to the tune of Rs. 50.40 crores as at 31.03.2006, so that stand could be taken before the BIFR for taking the assessee company out of its

purview. The assessee has accordingly, written back Plan Government Loans to Capital Reserves, and there is no dispute between rival parties so far as write back of Plan Government Loans are concerned. There is also no dispute so far as write back of interest due and payable by assessee to Government on both these Plan and Non-Plan Government loans are concerned, as the assessee has voluntarily and suo-motu offered such write back of interest for taxation in the return of income filed with Revenue .

6.2 Thus, the solitary dispute which has arisen between rival parties is with respect to taxability of write back of Non-Plan Government Loans amounting to Rs. 72.9272 crores by assessee in its books of accounts by crediting the same to Profit and Loss Account, which loans were earlier granted by Government of India to assessee from time to time from 1993 to 2006 for meeting regular and normal business expenses towards Salary, PF, Gratuity, VRS etc. and to recoup cash losses incurred by assessee in the regular course of business, which now stood waived/written off by Government of India in order to revive and rehabilitate the assessee as it was continuously incurring losses and was referred to BIFR as a sick company. The assessee has claimed firstly that since AO has not mentioned the provisions of relevant Section of 1961 statute and hence the same cannot be brought to tax in the absence of mentioning of the relevant section under which the said amount is taxable. We have carefully gone through the assessment order and it is observed that the AO has categorically held the said waiving off of Non Plan Government Loan by Government of India , which loans were earlier granted by GOI in favour of assessee to meet regular business expenses, as an income in the hands of the assessee as the said loans were granted for trading purposes and not for acquiring capital assets, and the AO held that the assessee has rightly credited the same to Profit and Loss Account which is to be brought to tax as the assessee did not offer the same for taxation in the return of income filed with Revenue. The AO has followed the ratio of judgment of Hon'ble Supreme Court in

the case of T.V.Sundaram Iyenger and Sons Limited(Supra) and decision of Hon'ble Bombay High Court in the case of Solid Containers Limited(supra) , while bringing to tax the said waiver of Non Plan Government Loan as income from business of the assessee being a revenue receipts. Thus, we donot find fault with the assessment order passed by the AO that merely because relevant provision of the 1961 statute is not mentioned in assessment order, will take otherwise taxable receipt out of taxation purview merely on the ground that relevant Section is not mentioned by the AO. Thus, this contention raised by assessee lacks merit and deserves to be rejected . Thus, Ground No. 1 is adjudicated against the assessee. We order accordingly.

6.3 Now, coming to Ground No. 2 and 3 which concerns itself with the merits of the issue. We have observed that it is an admitted position that Government of India granted Non-Plan Loans to assessee from time to time from 1993 to 2006 to meet normal and regular business expenses such as Salaries, Gratuity, PF, VRS expenses, guarantee fee for availing cash credit facilities from bank etc. and also to recover cash losses incurred by assessee in normal course of business, and thus these loans were on revenue field to meet day to day normal business expenses, and were not granted for meeting capital expenditure or acquiring capital assets by the assessee. The said Non-Plan Loans aggregating to Rs. 72.9272 crores which were outstanding as on 31.03.2006 were waived /written off by Government of India in order to revive and rehabilitate the assessee. It is also an admitted position that these loans bear contractual obligation on part of the assessee to pay interest to Government of India regularly as per agreed terms. It is also an admitted position that the assessee was claiming regularly deduction from business income on account of interest payable on these loans , while filing return of income with Revenue . It is also an admitted position that normal and regular business expenses incurred/paid by assessee towards Salary, PF, Gratuity, leave encashment, VRS , guarantee fee payable to bank to avail cash credit limits and

other normal business expenses were claimed as deduction by assessee from business income , while filing of return of income with Revenue. It is also an admitted position that the assessee was consistently making losses on account of its expenses being higher than its income, and these loans were , inter-alia , granted to recoup cash losses and to pay regular business expenses , which expenses were sought to be claimed as deduction from business income. The assessee was claiming from Revenue benefit of carried forward of losses to subsequent years in case the income was not sufficient to cover these expenses, in terms of Section 72 of the 1961 Act. These loans over the period of time were shown as liability in the books of accounts until these loans were waived/written off by Government of India. On being waived/write off these loans by Government of India, the assessee transferred these loans to Profit and Loss Account , but did not offer the same for taxation. In our considered view, since these Non-Plan Government loans were granted to meet regular and normal trading/business expenses and they were on revenue field , its waiver by Government will be a business income chargeable to tax within the provisions of Section 28(iv) of the 1961 Act, as the assessee has obtained the benefit arising from business which is by waiver of loan by GOI in favour of the assessee , as now assessee will not be required to repay these loans to Government on being waived off and the amount representing by these loans which was so far liability of the assessee will now convert to assessee's own money being rightly transferred/credited by assessee to its Profit and Loss Account and will give rise to taxable event in the hands of the assessee. In our considered view, it is also hit by provisions of Section 41(1) of the 1961 Act, as the Non-Plan Government Loans were granted by GOI to assessee on revenue field to meet day to day working capital requirements of the assessee and to recoup the cash losses. The assessee has claimed deduction by way of interest payable on such loans from year to year, while computing income chargeable to tax in the return of income filed with Revenue. The proceeds of such

Non Plan Government Loans were utilized by assessee towards payment of day to day normal business expenses towards Salaries, PF, Gratuity, VRS expenses etc. and to recoup cash losses from normal business operations, and these expenses are claimed as deduction from business income, while computing income chargeable to tax from year to year. The assessee is regularly incurring expenses which are higher than its income leading to losses, and the assessee has admittedly claimed carry forward of unabsorbed losses to be set off against income of subsequent years in terms of Section 72 of the 1961 Act. The proceeds of these Non Plan Government Loans were utilized to meet recurring business expenses and to recoup cash losses incurred in regular/normal course of business. Reference is drawn to decision of Hon'ble Supreme Court in the case of T V Sundram Iyengar and Sons Limited(supra), wherein in this case deposits were taken by the tax-payer which was a trade transaction. Originally the deposit bore the character of capital receipts, but later these deposits were not claimed by nor returned to the depositors. The Hon'ble Supreme Court held that the money by way of deposits was received by the taxpayer in course of carrying business , which were capital in nature at the point of time when it was received but by influx of time the money had become tax-payers own money. The said money was not claimed by the customers after adjustments, nor returned by taxpayer to the customers. The claims of the customers had become time barred by limitation . The tax payer treated the said money as its own money and taken/credited the amount to Profit and Loss Account . The Hon'ble Supreme Court held that the said deposit which were originally of capital in nature, has by efflux of time have attained a totally different quality and has definitely become trade surplus, liable to tax. Reference is also drawn to decision of Hon'ble Madras High Court in the case of CIT v. Ramaniyam Homes Private Limited , reported in (2016) 68 taxmann.com 289(Mad.). In this case, the issue before Hon'ble Madras High Court was as to chargeability to tax of the deletion of the Principal portion of the term

loan waived by the Indian Bank under one time settlement scheme. The term loan availed by the taxpayer in this case was for purchase of capital assets. The Hon'ble Madras High Court in this case discussed relevant scheme of chargeability of income to tax and various relevant case laws on the subject and came to conclusion that by waiver of loan by bank in favour of the tax-payer, the benefit has accrued in favour of the tax-payer as earlier the loans were reflected as liability in the books of the tax-payer which now stood waived by the Bank under one time settlement scheme. It was also observed by Hon'ble Madras High Court in the case of Ramaniyam Homes Private Limited (supra) that even if the loan is taken for acquisition of capital assets, the interest is deductible from business income under the provisions of Section 36(1)(iii) from the date the asset is first put to use , and the waiver of loan under one time settlement scheme by the Bank will bring benefit to the tax-payer from business or profession as the loan which was liability of the tax-payer now stood waived under one time settlement scheme approved by Bank , and hence it is hit by Section 28(iv) and such waiver will be chargeable to tax in the hands of the tax-payer. The decision of Hon'ble Madras High Court in the case of Ramaniyam Homes Private Limited(supra) is reproduced hereunder:

*“16. We have carefully considered the above submissions.*

*17. For the purpose of convenience, we shall divide the discussion into two parts, the first dealing with the statutory provisions and the second dealing with the decisions of various High Courts and the Supreme Court.*

*STATUTORY PROVISIONS*

*18. The expression "income" is defined in Section 2(24) of the Act to include several things, some of which that may be of relevance for the case on hand, are as follows:*

- (a) any sum chargeable to income tax under Clauses (ii) and (iii) of Section 28 or Section 41 or Section 59;*
- (b) any sum chargeable to income tax under Clause (iiia) of Section 28;*
- (c) any sum chargeable to income tax under Clause (iiib) of Section 28;*

(d) any sum chargeable to income tax under Clause (iiic) of Section 28; and

(e) any sum chargeable to income tax under Clause (iv) of Section 28.

**19.** The expression "total income" is defined in Section 2(45) to mean the total amount of income referred to in Section 5, computed in the manner laid down in the Act. Under Section 5(1), the total income of any previous year, of a person who is a resident, includes all income from whatever source derived, which (i) is received or deemed to be received in India in such year by or on behalf of such person, or (ii) accrues or arises or deemed to accrue or arise in India during such year, or (iii) accrues or arises outside India during such year.

**20.** Under Section 4(1), income tax shall be charged in respect of the total income of the previous year of every person. It must be noted at this stage that while the expression "total income" is defined in Section 2(45) to mean what is referred to in Section 5, the expression "income" is defined in Section 2(24) to include the list of things provided in various clauses. In other words, the definition of the expression "income" is inclusive.

**21.** Keeping the above in mind, if we go to Section 28, Clause (iv) of Section 28 makes "the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession" as income chargeable to income tax under the head "profits and gains of business or profession".

**22.** Section 41 which deals with profits chargeable to tax, speaks about the receipt of a benefit in respect of a trading liability, by way of remission or cessation of the liability. Section 41(1) requires to be extracted and hence, it is extracted as follows:

'Section 41:

- (a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or
- (b) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly

*chargeable to income-tax as the income of that previous year.*

*1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year –*

*Explanation 1. - For the purposes of this sub-section, the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof" shall include the remission or cessation of any liability by a unilateral act by the first mentioned person under clause (a) or the successor in business under clause (b) of that sub-section by way of writing off such liability in his accounts.*

*Explanation 2. - For the purposes of this sub-section, "successor in business" means –*

- (i) where there has been an amalgamation of a company with another company, the amalgamated company;*
- (ii) where the first-mentioned person is succeeded by any other person in that business or profession, the other person;*
- (iii) where a firm carrying on a business or profession is succeeded by another firm, the other firm;*
- (iv) where there has been a demerger, the resulting company.'*

**23.** *Keeping in mind the statutory provisions, we shall now turn to the decisions made upon by the learned Standing Counsel for the Department.*

**24.** *In T.V. Sundaram Iyengar & Sons Ltd.(supra) the assessee transferred certain amounts to the profit and loss account for two assessment years, claiming that those accounts were credit balances standing in favour of the customers of the assessee and that since the customers did not claim these amounts, they were transferred to the profit and loss account. The Income Tax Officer took the view that these amounts represented surplus that had arisen as a result of trade transactions and that therefore, the amounts had the character of income. Therefore, the Assessing Officer added these amounts as the income of the assessee for the purpose of assessment. The Commissioner (Appeals) deleted these additions and the same was upheld by the Tribunal. On an application under Section 256(2) to the High Court, the High Court held that the issue was already covered by the decision of the High Court in CIT v. A.V.M. Ltd. [\[1984\] 146 ITR 355/\[1985\] 21 Taxman 232 \(Mad.\)](#). When the matter was taken to the Supreme Court, the Supreme Court found that there was a conflict of decisions among various High Courts. Some High Courts had taken the view that if deposits taken by the company in the course of its trading operations were not refunded, partly or in full, the amounts retained by the assessee would constitute its income. Some*

other High Courts had taken the view that if the deposits were originally of a capital nature, their character will not change merely by lapse of time and even when the amount was taken to the profit and loss account of the assessee. The reasoning behind the second view was that the origin of the amount may be the business activity of the assessee, but every receipt need not be an income.

**25.** The question that was actually taken up for consideration by the Supreme Court in *T.V.Sundaram Iyengar & Sons Ltd. (supra)* was as to whether the deposits, which were of capital nature, at the point of receipt by the assessee, have their character changed by efflux of time. Before answering the said question, the Supreme Court took note of the test laid down by Lord Greene in *Morley [H.M.Inspector of Taxes] v. Tattersall [1939] 7 ITR 316 (CA)* to the effect that the taxability of a receipt was fixed with reference to its character at the moment it was received and that merely because the recipient treated it subsequently in his income account as his own, it would not alter that character. The Supreme Court noted that this test laid down by Lord Greene formed the basis of several judgments delivered by our courts.

**26.** After taking note of the principle of law laid down by Lord Greene, the Supreme Court considered a few decisions of different High Courts as well as the Supreme Court, where the Courts distinguished the decision in *Morley*. Thereafter, the Supreme Court pointed out that the amounts in question were not in the nature of security deposits held by the assessee for the performance of contract by its constituents. The Supreme Court also held that the unclaimed surplus retained by the assessee will be its trade receipt and the assessee itself treated the same as trade receipt by bringing it to the profit and loss account.

**27.** Finally, in *T.V.Sundaram Iyengar & Sons Ltd. (supra)* the Supreme Court took note of the opinion expressed by Atkinson, J in *Jay's-The Jewellers Ltd. v. I.R.C. [1947] 29 TC 274 (KB)*, wherein the Bench distinguished the decision in *Morley*. On the basis of the said opinion, the Supreme Court held that the assessee became richer, by the amount, which it transferred to its profit and loss account and that those monies had arisen out of ordinary trading transactions. The Supreme Court observed that although the amounts received originally were not of income nature, the amounts remained with the assessee for a long period unclaimed by the trade parties and that by lapse of time, the claim became time barred and attained a different quality. In the third last paragraph of its judgment, the Supreme Court summarised the principle as follows :

*"In other words, the principle appears to be that if an amount is received in the course of trading transaction, even though it is not taxable in the year of receipt as being of revenue character, the amount changes its character when the amount becomes the assessee's own money because of limitation or by any other statutory or contractual right. When such a thing happens, commonsense demands that the amount should be treated as income of the assessee."*

**28.** *In Solid Containers Ltd (supra), a Bench of the Bombay High Court was concerned with a case, in which, a loan obtained by the assessee during the previous year for business purposes was written back as a result of the consent terms between the parties. The assessee claimed that the loan was the capital receipt and was not claimed as deduction from the taxable income as expenses and hence, it did not come under Section 41(1). The Assessing Officer held that the credit balances written back was the income of the assessee that arose out of the business activity and hence, liable to tax under Section 28. The Tribunal relied upon the decision in T.V. Sundaram Iyengar & Sons Ltd. (supra) and upheld the contention of the Revenue. Before the High Court, the assessee relied upon a judgment of the Bombay High Court in Mahindra & Mahindra Ltd. v. C.I.T. [2003] 261 ITR 501/128 Taxman 394 (Bom.) to the effect that in relation to such transactions, Section 28(iv) was not attracted. But, the Bombay High Court followed the decision in T.V. Sundaram Iyengar & Sons Ltd. (supra) and rejected the claim of the assessee.*

**29.** *In Logitronics, the Delhi High Court was concerned with the very same questions that we are called upon to deal with in this case. In the case before the Delhi High Court, the assessee availed a loan from the State Bank of India, but failed to discharge its liability. The loan was categorized as a non performing asset and proceedings for recovery have been initiated. During the pendency of those proceedings, a One Time Settlement was arrived at and a portion of the loan as well as interest were waived. In the return filed by the assessee, they showed the interest waived as income, but not the amount of loan waived. The principal amount written off was directly taken to the balance sheet under the head 'capital reserve' and it was not offered for taxation. The Assessing Officer looked at the expanded meaning of the expression 'income' under Section 2(24) and held that the principal amount of loan written off was nothing but gain/income in the hands of the assessee by relying upon Section 28(iv) and 41(1). The assessee's first appeal was allowed by the Commissioner, but his order was reversed by the Income Tax Appellate Tribunal, forcing the assessee to file a tax case appeal before the High Court of Delhi.*

**30.** *In Logitronics, two substantial questions of law were taken up for consideration by the Delhi High Court and they are as follows :*

- "(1) Whether the Tribunal was right in law in holding that taxability of waiver of loan would be governed by the purpose for which the loan was taken, in as much as, though waiver of loan taken/ utilized for acquiring capital asset does not constitute income, however, waiver of loan taken for the purpose of business/trading activity gives rise to income taxable under the Act ? and*
- (2) Whether waiver of loan, a subsequent event has the effect of changing the nature and character of loan, a capital receipt into a trading receipt and therefore, the ratio of the judgment of the Honourable Supreme Court in CIT v. T.V. Sundaram Iyengar &*

*Sons Limited [(1996) 222 ITR 344], wherein unclaimed deposits received in the course of trading transaction were held to be taxable is applicable to waiver of loan?"*

**31.** *Before proceeding with the discussion on the substantial questions of law, the Delhi High Court took note of the broad scheme of the Act and posed a question to itself as to what would be the character of waiver of part of the loan at the hands of the assessee, though such waiver definitely brings some benefit to the assessee. If the waiver of the part of the loan brings a capital receipt, then only the capital gains tax would be chargeable under Section 45 and if not, the question was whether remission of loan was no income at all.*

**32.** *The Delhi High Court started with the decision of the Supreme Court in T.V.Sundaram Iyengar & Sons Ltd. (supra) and after analysing the same in great detail, the Delhi High Court took note of the decision of this Court in Iskraemeco Regent Ltd.(supra) on which, heavy reliance is placed in this case by the assessee.*

**33.** *On the basis its analysis of the decision of this Court in Iskraemeco Regent Ltd.(supra) the Delhi High Court came to the conclusion in paragraph 23 of the report that 'in the context of waiver of loan amount, what follows from the reading of the aforesaid judgment would be that the answer would depend upon the purpose for which the loan was taken.' If the loan had been taken for acquiring the capital asset, waiver thereof would not amount to any income exigible to tax. But, if the loan was for trading purpose and was treated as such from the beginning in the books of account, the waiver thereof may result in the income more so when it was transferred to the profit and loss account.*

**34.** *In Rollatainers, the Delhi High Court was again concerned with a case where in terms of a corporate debt restructuring package worked out between the assessee and the bank, a portion of the principal and interest were waived. The Income Tax Appellate Tribunal held that the waiver of the working capital loan utilised towards the day-to-day business operations resulted in manifest in the revenue field and hence, was taxable in the year of waiver.*

**35.** *Finding on facts that the term loans in question were taken for the purchase of capital assets from time to time and these amounts did not come into the possession of the assessee on account of any trading transactions, the Delhi High Court reiterated the opinion rendered in Logitronics.*

**36.** *Therefore, the law as expounded by the Delhi High Court appears to be that if a loan had been taken for acquiring a capital asset, waiver thereof would not amount to any income exigible to tax. If the loan is taken for trading purposes and was also treated as such from the beginning in the books of account, the waiver thereof may result in the income, more so when it is transferred to the profit and loss account.*

**37.** *But, the Delhi High Court, both in Logitronics as well as in Rollatainers, did not take note of one fallacy in the reasoning given in paragraph 27.1 of the decision of this Court in Iskraemeco Regent Ltd. (supra) In paragraph 27.1 of the decision in*

*Iskraemeco Regent Ltd. (supra)* this Court held that Section 28(iv) speaks only about a benefit or perquisite received in kind and that therefore, it would have no application to any transaction involving money. This observation was actually based upon the decision of the Bombay High Court in *Mahindra & Mahindra Ltd. (supra)* which, in turn, had relied upon the decision of the Delhi High Court in *Ravinder Singh v. CIT* [\[1994\] 205 ITR 353/\[1993\] 71 Taxman 336](#).

**38.** With great respect, the above reasoning does not appear to be correct in the light of the express language of Section 28(iv). What is treated as income chargeable to income tax under the head 'profits and gains of business or profession' under Section 28(iv), is "the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession."

**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 what 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 instalments, the instalment 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 thereunder 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 capitalised 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 Reserves, 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."*

Reference is also drawn to decision of Hon'ble Bombay High Court in the case of Solid Containers Limited(supra) and decision of Hon'ble Delhi High Court in the case of Logitronics Private Limited(supra). The assessee has relied on the decision of Hon'ble Supreme Court in the case of Mahindra and Mahindra

Limited(supra) . In this case, the tax-payer decided to expand its jeep product line by including FC-150 and FC-170 models. The tax-payer entered into agreement with Kaiser Jeep Corporation(KJC) for purchase of dies, welding equipment's and die models. The said KJC also provided loan to the tax-payer with interest @6% repayable after 10 years in installments. The Principal amount of loan was later waived by American Motor Company which took over KJC. The Hon'ble Supreme Court observed in para 15 and 17 that the tax-payer in that case never availed any deduction on account of interest paid on loans under the provisions of Section 36(1)(iii) of the 1961 Act , while computing income chargeable to tax. The tax-payer only claimed depreciation on the capital asset so acquired , which Hon'ble Supreme Court observed was due to depreciation of the machine and not on the interest paid on it. The Hon'ble Supreme Court on the facts of that case came to conclusion that said waiver of principal amount of loan is not income chargeable to tax under the provisions of Section 28(iv) and/or Section 41(1) of the 1961 Act. But, in the instant case before us the loan was obtained by the assessee from Government of India on revenue field to meet day to day business expenses , its working capital requirements and to recoup cash losses, and its waiver in our considered view will be chargeable to tax within the provisions of Section 28(iv) and 41(1) of the 1961 Act, as the assessee availed deduction of interest expenses on these loans from its income as well normal business expenditure were incurred by assessee from the proceeds of these loans which were claimed as deduction as business expenditure while computing income chargeable to tax. The unabsorbed expenditure were carried forward to subsequent years for being set off against the income of the subsequent years within the provisions of Section 72 of the Act. Thus, it could not be said that the assessee has not obtained or derived benefit from the waiver of these loans which were earlier obtained on revenue field by assessee from GOI from time to time as now the assessee will not be required to repay these loans to GOI and infact it has

become its own money which in our considered view is chargeable to tax , and hence the assessee is definitely hit by provisions of Section 28(iv) and 41(1) of the 1961 Act. The assessee has placed reliance on the decision of Hon'ble Bombay High Court in the case of Essar Shipping Limited(supra), where in Hon'ble Bombay High Court followed the decision of Hon'ble Supreme Court in the case of Mahindra and Mahindra Limited(supra) and granted relief to the tax-payer . We have already discussed the decision of Hon'ble Supreme Court in the case of Mahindra and Mahindra(supra) and distinguished the facts of the present case before us. The assessee has also placed reliance on the decision of Hon'ble Bombay High Court in the case of SICOM Limited(supra), where in Hon'ble Bombay High Court followed the decision of Hon'ble Supreme Court in the case of Mahindra and Mahindra Limited(supra) and granted relief to the tax-payer . We have already discussed the decision of Hon'ble Supreme Court in the case of Mahindra and Mahindra(supra) and distinguished the facts of the present case before us. The assessee has also relied upon decision of Hon'ble Jurisdictional High Court in the case of Scooters India Limited(supra), in this case the issue before Hon'ble High Court was regarding taxability of grant/subsidy, and the said grant / subsidy was held not to form part of total income by Hon'ble Jurisdictional High Court . The relevant ay's before Hon'ble High Court were ay's: 2002-03 and 2003-04, while Hon'ble High Court noted at para 23 that sub-clause (xviii) has been inserted in Section 2(24) by Finance Act, 2015 w.e.f. 01.04.2016 which deals with certain kind of subsidy or grant or cash incentives etc. by Government of India or State Government but that clause has no application in the present case. Thus, the facts of the case before Hon'ble Jurisdictional High Court are clearly distinguishable than the facts of the present case before us. Thus, based on facts and circumstances of the case and as per our detailed discussions as above, we hold that the waiver of Non Plan Government Loan to the tune of Rs. 72.9272 crores is an income of the assessee for the impugned assessment year chargeable

to tax and we decide Ground No. 2 and 3 against the assessee and in favour of Revenue. We order accordingly.

6.4 Ground No. 4 is consequential in nature , while Ground No. 5 is general in nature and is thus dismissed. We order accordingly.

7. In the result appeal filed by assessee in ITA no. 142/Alld/2017 for ay: 2007-08 stand dismissed. We order accordingly.

Order pronounced in the open court on 07/10/2021 at Allahabad through virtual Court through Video Conferencing

***Sd/-***

[VIJAY PAL RAO]  
JUDICIAL MEMBER  
DATED: 07/10/2021

kd

Copy forwarded to:

1. Appellant – Bharat Pumps and Compressors Ltd., Naini , Allahabad, U.P.
2. Respondent –The Deputy Commissioner of Income-tax, Circle-II, Allahabad, U.P.
3. CIT(A) –Aayakar Bhawan, 38, M.G.Marg, Civil Lines, Allahabad,U.P.
4. CIT, Aayakar Bhawan, 38, M.G.Marg, Civil Lines, Allahabad, U.P.
5. The CIT-DR (ITAT), Aayakar Bhawan, 38, M.G.Marg, Civil Lines, Allahabad, U.P.

By order  
Assistant Registrar