IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 477 OF 2015

The Commissioner of Income Tax-3, Pune … Appellant

V/s.

Rieter India Pvt. Ltd. … Respondent

Mr. Sham Walve for the Appellant.
Mr. Jas Sanghvi a/w Ms. Jasmin Amalsadvala i/b PDS Legal for the Respondent.

CORAM : S.C.DHARMADHIKARI &
SMT. VIBHA KANKANWADI, JJ.
DATE : 18th AUGUST, 2017

P.C.:

. Having heard both sides and after perusal of the order of the Tribunal, we do not think that the Appeal raises any substantial question of law.

2 The Tribunal passed an order for assessment year 2003-2004 on 25th July 2014.

3 As far as the issue at hand is concerned, the waiver of Rs.29,63,27,000/- of a principal amount of loan, the only argument was that this constitutes a trading liability. The provisions in question, Section 28(iv) and Section 41(1) clause (a) of the Income Tax Act, 1961 are attracted.

4 The Tribunal heard both sides extensively on this point and held as under:

> *13. In this context, we find that the assessee company had obtained the term loan from DEG, Germany in the course of the financial years 1994-95 and 1995-96. The term loan from DEG, Germany has been approved by the Reserve Bank of India vide a communication dated 05th June, 1995, a copy of which has been placed at pages 75 to 79 of the Paper Book. A perusal of the said RBI approval reveals that the assessee was permitted to raise foreign currency loan from DEG, Germany for financing the import of capital equipments for manufacturing of textile spinning machinery and components. Further, even the loan agreement with DEG, Germany reflects financing of the project undertaken by the assessee of manufacturing textile spinning machinery and components thereof. The said agreement also shows that the loan raised from DEG, Germany was a long term means of finance for the purposes of funding assessee's project of manufacturing textile spinning machinery and components for textile industries. At pages 80 to 82 of the Paper Book, assessee has placed the list of machineries which have been acquired from Spindle Fabrik Suessen, Germany and the respective invoices thereof. It is noticeable from the financial statements of the assessee as on 31.03.1995 that a liability of Rs.32.75 crores was outstanding as a part of current liabilities of Rs.42.60 crores against the name of Spindle Fabrik Suessen, Germany, against the machineries acquired. The aforesaid position is not disputed by the Revenue inasmuch as the same is also emerging from the relevant portion of the Balance Sheet incorporated by CIT(A) in his order at page 7. The loan from DEG, Germany was received on 30.09.1995 and was utilized for payment of the outstanding liability towards acquisition of fixed assets of*

Rs.32.75 crores, apart from meeting other liabilities. Be that as it may, factually speaking, it is not in dispute that assessee has utilized the loan raised from DEG, Germany for payment of Rs.32.75 crores to Spindle Fabrik Suessen, Germany, which was a liability outstanding against acquisition of fixed assets from the said concern. The Revenue contends that discharge of such liability of Spindle Fabrik Suessen, Germany cannot be treated as utilization of term loan from DEG, Germany for acquisition of fixed assets, because the assets already stood acquired prior to that date. So however, it is undisputable that the liability towards payment for acquisition of assets was outstanding and assessee has utilized the loan from DEG, Germany to pay-off such liability. In our considered opinion, factually speaking, the payment made by the assessee to Spindle Fabrik Suessen, Germany towards outstanding liability against acquisition of fixed assets of Rs.32.75 crores, which is out of the loan funds from DEG, Germany is to be understood as utilization of loan funds towards acquisition of capital assets. The inference of the CIT (A) to the contrary, in our view, is on account of misplaced appreciation of the facts. The CIT (A) is correct in saying that the "loan was utilized for re-payment of existing current liabilities", so however, it is abundantly clear that the re-payment to the extent of Rs.32.75 crores was for liquidating a liability which had arisen on account of acquisition of capital assets from Spindle Fabrik Suessen, Germany. Therefore, it has to be understood that the loan availed from DEG, Germany was utilized for the purposes of acquisition of capital assets, to the above extent. The subsequent waiver of such an amount, in our view, cannot be said to be waiver of a loan raised for trading activity. In this view of the matter, we therefore, hold that the waiver of *the principal amount of term loan granted by DEG, Germany of Rs.29,63,27,000/- was with respect to a loan which was granted as well as utilized for purchase of capital assets, namely, plant & machinery.*

14. Considered in the aforesaid factual backdrop, the waiver of Rs.29,63,27,000/- represents waiver of the principal amount of loan utilized for acquisition of capital assets and not for the purposes of trading activity and accordingly the issue is covered in favour of the assessee by the judgment of the Hon'ble Bombay High Court in the case of Mahindra and Mahindra Ltd. (supra). Following the ratio of the Hon'ble Bombay High Court in the case of Mahindra and Mahindra Ltd. (supra), it has to be held that the waiver of the principal amount of loan granted by the DEG, Germany to the extent of Rs.29,63,27,000/- in terms of OTS Scheme is in the nature of capital receipt not chargeable to tax.

5 From a perusal of these factual findings, we find the same to be in consonance with the principle of law laid down by the Division Bench of this Court in the case of ***Mahendra & Mahendra Ltd. V/s. CIT, (2003) 261 ITR 501***.

6 Mr. Walve appearing on behalf of the Revenue in support of the appeal, however, would urge that the Tribunal ignored the law laid down in another Judgment reported in ***Solid Containers Ltd. V/s. DCIT, 308 ITR 417.*** We do not think that the facts and circumstances involved in the present case were identical

to those considered in Solid Containers (supra). In a recent order passed by us, we have considered an identical issue. We found that such facts as are disclosed in the records of the present case are closer to that of Mahindra & Mahindra and not Solid Containers. Therefore, Shri. Sanghvi, Advocate appearing for the assessee has rightly relied upon our order passed in ITXA No. 1803 of 2014 dated 07th August 2017, ***Commissioner of Income Tax-9 V/s. M/s. Graham Firth Steel Products (I) Ltd***. In the light of the factual findings which are neither perverse nor vitiated by any error of law apparent on the face of record, we find no merit in this Appeal. It is dismissed. No order as to costs.

(SMT. VIBHA KANKANWADI, J.) **(S.C.DHARMADHIKARI, J.)**