IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

T.C.A.Nos.623 and 624 of 2011

The Commissioner of Income Tax-I
Coimbatore. .. Appellant in both T.C.A.'s

-vs-

M/s.Terra Agro Technologies,
Ltd (Now Jain Irrigation Systems Ltd),
Jain Plastic Park, Jain Fields, P.O.Box
No.72 Jalgaon-425 001.
(PAN AAACT7125Q) ... Respondent in both T.C.A.'s

Prayer: Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai dated 09.06.2011 passed in I.T.A.Nos.1503/Mds/2010 and 1584/Mds/2010.

For Appellant (in both Appeals)	:	Mr.T.R.Senthil Kumar Senior Standing Counsel for M/s.J.Naresh kumar
For Respondent (in both Appeals)	:	Mr.M.Swaminathan Senior Standing Counsel

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COMMON JUDGMENT

These Appeals are directed against the order passed of the Income Tax Appellate Tribunal, 'C' Bench, (For Brevity 'the Tribunal') Chennai dated 09.06.2011 passed in I.T.A.Nos.1503/Mds/2010 and 1584/Mds/2010.

2. On 06.02.2012, these Appeals are admitted on the following Substantial Questions of Law:

> *"(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the reopening of assessment have become futile and unsustainable, even though the notice under Section 148 was issued within the time limit of four years from the end of the relevant assessment year?*
>
> *(ii) Whether of the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the waiver of loan to purchase capital asset can not be treated as benefit under Section 28 (iv) of the Act and allowed the relief to the tune of Rs.9,93,35,857/-, even though that there is a positive income of Rs.1,18,30,263/- in the Profit and Loss Account which is taxable as a result of remission, though it constitute waiver of principle amount it is taxable under Section 41 (1) of the Income Tax Act, 1961 as per the decision of the Supreme Court reported in 222 ITR 334 in the case of T.V.Sundaram Iyengar and Sons Ltd.?"*

3. The short question that has been raised is whether the order of Tribunal in so far as it has held that the waiver of loan cannot be treated as income in the hands of the Assessee under Section 28(iv) of the Income Tax Act, 1961 (in short 'the Act') is valid?

4. The short facts pertaining to these cases are as follows:

(i) The Respondent/Asssessee Company is engaged in the business of growing farm products and dehydrated products. The assessee had obtained loans from banks and Body Corporate and that there was a waiver of loan of Rs.7,60,76,157/- by Banks and Rs.6,00,000,000/- by Body Corporate and the details of the same were filed before the Assessing authority. The notice under Section 148 was issued to the Assessee to explain why the above sum of Rs.13.53 Crores representing concessions by Bank by way of waiver of principal amount of loan should not be treated as income. The Respondent/ Assessee submitted their objections/ detailed explanations to the above notice. The Assessing authority passed the orders of Assessment rejecting the objections filed by the Respondent/ Assessee. Aggrieved the Respondent/Assessee filed an Appeal before the Appellate authority. The appeal was allowed in part, the relevant portions of the Appellate Authority's order is extracted hereunder:

> " *In this case, the total waiver of loan is Rs.13,60,76,517/- out of which about 73% was utilised for acquisition of fixed assets which works out to Rs.9,93,35,857/-, the balance of Rs.3,67,40,660/- was utilised for working capital, etc. Following the ratio of Hon'ble Bombay High Court in Solid Containers cited supra, the waiver of loan to the extent of RS.3,67,40,660/- is clearly a benefit arising from business as per the provisions of Section 28 (iv) of the Act and the addition is confirmed to that extent. The remaining amount of waiver of loan of Rs.9,93,35,857/- cannot be treated as a benefit u/s 28(iv) of the Act in view of the decision of the Bombay High Court in Mahindra & Mahindra cited supra and the same is deleted. The Assessing Officer is directed accordingly."*

(ii) Challenging which the Appellant and the Respondent filed Appeal before the Tribunal and the Tribunal vide order dated 09.06.2011 allowed the Appeal filed by the Assessee and dismissed the Appeal filed by the Revenue. The Tribunal after examining the applicability of Section 41 (1) and 28 (iv) of the Act observed as follows:

> "*15. We considered the issue in detail after hearing both sides. As held by the Hon'ble Supreme Court in the case of Commissioner of Agricultural Income-Tax Vs. Kerala Estate Mooraid Chalapuram, 161 ITR 155, the introduction of Section 41 (1) in the Income-tax Act, 1961 takes care of the nature of the remission of liabilities explained in terms of money. As rightly pointed out by the learned senior counsel appearing for the assessee, the issue involved in the present case are not covered by section 41(1) for want of satisfaction of other conditions. We have to further see that Section 41 (1) is a specific provision which deals with such remission of liabilities in terms of money. Therefore by scheme of law or by virtue of facts of the case, the remission of liabilities in this case does not come under section 41 (1). It is to be further noticed that the element of interest that has been remitted in the present case has already been offered for taxation by the assessee.*
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> *16. Now coming to the application of section 28(iv), we find that the decision of the Hon'ble jurisdictional High Court in the case of Iskraemeco Regent Ltd Vs. CIT 196 Taxman 103 is directly applicable to the present case. The facts of the present case and that of the case considered by the Hon'ble jurisdictional High Court are analogous and similar except the mode of passing the accounting entries. In the case considered by the Hon'ble High Court the remission benefit was credited by the assessee directly to its capital reserve account, whereas in the present case the assessee has credited the amounts as Extra Ordinary items in its profit and loss account, which ultimately goes to capital reserve or general reserve of the assessee company. Both the*

modes are permissible in accounting practices. The credit would directly go to the reserve account or it can go to the reserve account after travelling through the profit and loss account. It depends upon the disclosure requirements to be followed by the assessee under corporate laws and proclamation of regulatory bodies."

Challenging the said order the Revenue has come up with the present Appeal.

5. Heard both sides. Perused the material on record.

6. We find that the question raised stands resolved in view of the Judgment of Hon'ble Supreme Court in the case of ***Commissioner Versus Mahindra and Mahindra Ltd***. reported in ***[2018] 93 taxmann.com 32 (SC).*** The relevant portion of the said Judgment is extracted hereunder:

"15. On a perusal of the said provision, it is evident that it is a sine qua non that there should be an allowance of 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 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 (i)(iii) of the IT Act qua the payment of interest in any previous year."

7.Following the above Judgment of the Hon'ble Supreme Court, we find that the Tax Case Appeals are liable to be dismissed. Accordingly, these Appeals are dismissed. No costs.

[S.V.N., J.] **[M.S.Q., J.]**

15.12.2022

Index: Yes / No
Internet: Yes / No
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To

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Coimbatore.

2.The Income Tax Appellate Tribunal,
'C' Bench, Chennai.

S.VAIDYANATHAN, J.

and
MOHAMMED SHAFFIQ,J.

arr/mka

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