

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH - 'A' NEW DELHI

BEFORE Hon'ble PRESIDENT SHRI G.D. AGRAWAL
AND
SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA No.591/Del/2012
ASSESSMENT YEAR : 2008-09

DCIT Circle-1 (1) New Delhi.	Vs.	Adroitec Information System (P) Ltd. D-194, Okhla Industrial Area, Phase-1, New Delhi. PAN AAACH2422A
(Appellant)		(Respondent)

Assessee by :	Shri S.K. Jain, Sr. DR
Department by:	Shri S.D. Kapila, Shri Sushil Kumar, Shri Pravesh Sharda & Shri Sanjay Kumar, Advocates
Date of Hearing	05/06/2017
Date of pronouncement	08/06/2017

Per BHAVNESH SAINI, Judicial Member

ORDER

This appeal by revenue has been directed against the order of Ld. CIT(A) IV New Delhi dated 1st November, 2011 for asstt. year 2008-09 challenging the deletion of addition of Rs. 1,21,02,913/- on account of waiver of loan.

2. Briefly the facts of the case are that as per assessment order, the assessee had a loan liability of Rs. 5,14,00,000/- payable to State

Bank of Hyderabad which was settled as per the one time settlement reached with the bank for an amount of Rs. 2,50,00,000/-. It was observed by the AO that the difference amount of Rs. 2,64,00,000/- was a waiver of the loan. Out of this, the assessee has suo motto offered an amount of Rs. 19,80,536/- as income for the year under consideration and Rs. 1,23,16,551/- as income in the earlier years. The AO has accordingly added the balance amount of Rs. 1,21,02,913/- as income of the assessee for the year under appeal u/s 28(iv) of the Act.

3. The assessee challenged the addition before Ld. CIT(A) and written submissions of the assessee is reproduced in the impugned order in which the assessee briefly explained that it has taken a loan from the bank long time back and had been making payments with the bank regularly. The loan was granted to the assessee @ 9.5% per annum. The assessee incurred losses in financial year 2001-02 onwards and was therefore not able to make some of the payments to the bank on time. As the some of payments were not made on time, bank started debiting in its books of accounts interest at higher rate. Assessee however continued to provide interest in its books of accounts at 9.5%. The outstanding amount as on 30th June, 2002 in the books of the assessee and with the bank was almost same but the

difference was due to additional interest debited by the bank in their books of accounts. In the assessment year under appeal the assessee was in the process of inducting a new investor and therefore assessee decided to settle the outstanding loan out of the money brought in by the new investor. On 31st March, 2008 the outstanding loan as per the assessee's book was Rs. 2,20,00,000/-. This balance was after writing back interest income of Rs. 1,23,16,551/- and loan of Rs. 19,80,536/-. If these have not been considered as income, then the loan as per books would have been Rs. 3.62 crores. Prior to that a sum of Rs. 30 lacs, had been paid to the bank as initial payment for settlement. Without this payment of Rs. 30 lacs , the balance would have been Rs. 3.92 crores. The total recoverable from the assessee was Rs. 5.14 crores as per books of the bank because of the differential rate of interest debited by the bank and noted in the books of accounts of the assessee . Settlement was arrived with the bank to pay Rs. 2.50 crores as full and final payment. Thus the assessee's liability was reduced by Rs. 1,42,97,087/- (Rs. 3,92,97,087/- - Rs. 2.50 crores) as per its books of accounts. The assessee in the books of accounts recorded the waiver of reversal of interest of Rs. 1,23,16,551/- and waiver of principal of Rs. 19,80,536/-. Thus total comes to Rs. 1.42 crores. Interest was reversed in assessment years 2004-05 to 2007-08. Copy of the

return of income and statement of income were filed for financial year 2004-05 to 2008-09. The amount of Rs. 1,42,97,087/- was considered as income. No deduction was claimed in the computation of income either in respect of Rs. 1.23 crores or in respect of Rs. 19,80,536/-. In the course of assessment proceedings, it was realized that sum of Rs. 1.23 crores was interest relating to financial year 2004-05, 2005-06 and 2006-07 and that the same was not claimed by assessee due to application of section 43B. The AO has however taken the view that the total waiver by the bank was of Rs. 2.64 crores (Rs. 5.14 crore as per books of the bank less Rs. 2.50 crores paid by the assessee). Based on this view that waiver is of Rs. 2.64 crores and assessee has already declared income of Rs. 1.42 crore as its income, difference was added of Rs. 1,21,02,913/- which is subject matter of the present appeal. It was submitted that the loan is shown because of the higher interest charged by the bank as against the interest on sanctioned loan. Merely because bank was making a claim of higher amount, it does not become waiver to the assessee

4. Ld. CIT(A) noted the details of loan liability as computed by the bank and reproduced the same in the impugned order. The assessee also filed reconciliation statement and the submissions filed by the assessee is reproduced in the impugned order and noted that

the difference of impugned amount of Rs. 1,21,02,913/- added by the AO related to the differential between the rate of interest charged by the bank and the rate applied by the assessee and also the amount of bank guarantee which was never invoked by the party. The assessee explained that since the said amount was never debited to the assessee's book and never claimed as expenditure in its return of income, the same cannot be added as cessation of liability or as benefit arising from business u/s 28(iv) of the Act. Ld. CIT(A) accordingly deleted the addition.

5. Ld. DR relied upon the order of AO and submitted that on waiver of loan assessee was under obligation to show impugned amount as its income. On the other hand Ld. Counsel for assessee redirected the submissions made before authorities below and submitted that in fact it was a waiver of the interest not as waiver of the loan. Therefore, Ld. CIT(A) correctly deleted the addition.

6. The record revealed that earlier departmental appeal was dismissed holding it to be infructuous vide order dated 23rd November, 2015. However the said order was recalled by allowing miscellaneous application filed by revenue vide order dated 18th

November, 2016 and departmental appeal was refixed for hearing on merits.

7. After considering rival submissions, we are not inclined to interfere with the order of the Ld. CIT(A) in deleting the addition. The facts as noted by the Ld. CIT(A) are not in dispute. It is not in dispute that assessee had taken loan from the bank at the interest of 9.5% per annum. Since assessee was incurring losses and some payments were not made to the bank on time therefore the banks started debiting higher rate of interest in their books of accounts. However, the assessee continued to provide interest in its books of accounts as were provided on the sanctioned loan. The assessee filed complete details to show that when the matter was settled with the bank and lumpsum payment of Rs. 2.50 crore was paid to the bank, there was a waiver of interest. The assessee therefore rightly contended that merely because bank was making a claim of higher amount of interest, it would not become waiver to the assessee. It is also admitted fact that assessee has never claimed a waiver of interest as expenditure in its books of accounts and return of income. Therefore, there is no question of considering it to cessation of liability or any benefit arises from the business. Ld. CIT(A), therefore, on proper appreciation of facts and material on record

rightly deleted the impugned addition. No interference is called for in the matter. The departmental appeal stands dismissed.

8. In the result departmental appeal is dismissed.

Pronounced in the Open Court.

sd/-
(G.D. AGRAWAL)
Hon'ble PRESIDENT

sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 08.06.2017

****Veena****

Copy forwarded to: -

1. Appellant
2. Respondent
3. Principal CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order,

ASSISTANT REGISTRAR