

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.794/Chny/2016
निर्धारण वर्ष/Assessment Year: 2005-06

The Deputy Commissioner of
Income Tax,
Corporate Circle 1(2),
Chennai 600 034.

Vs. M/s. Cooper Standard Automotive
India P. Ltd., Plot No. 3-A, Ford
Supplier Park, Kilkarana Village,
Melrosapuram Post Via Singaperumal
Koil, Chengalpet 603 204.

[PAN:AABCC3665P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Varuvoor Sreedhar, Addl. CIT
प्रत्यर्थी की ओर से/Respondent by : Shri R. Meenakshisundaram, Advocate
सुनवाई की तारीख/ Date of hearing : 08.06.2022
घोषणा की तारीख /Date of Pronouncement : 10.08.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals) 1, Chennai, dated 05.01.2016 relevant to the assessment year 2005-06. The only effective ground raised in the appeal of the Revenue is as to whether the waiver of loan amount taken for business purposes is assessable as business income under section 28(iv) r.w.s. 41(1) of the Income Tax Act, 1961 ["Act" in short] or not.

2. Brief facts of the case are that the assessee filed its return of income on 31.10.2005 declaring a total income of ₹.3,18,13,900/-. The return filed by the assessee was processed under section 143(1) of the Act without making any addition. However, on perusal of the profit and loss account, the Assessing Officer has noted that a sum of ₹.75,99,892/- has been shown as exceptional item – waiver of unsecured loan liability. Further, in the notes to accounts, in para 18.6, it was stated that “during the year, the company has waived off the loan liability of ₹.75,99,892/-, which was classified under “unsecured loans” since it was no longer required to be paid. Accordingly, it was treated as capital receipt and shown as exceptional item under P/L account”. Since, the company has been waived off of the loan liability, the same attains the character of the income. Since the assessee has not offered the same for taxation, there was a reason to believe that the income has escaped assessment and the case was reopened under section 147 of the Act and notice under section 148 of the Act dated 30.09.2011 has been issued. Against the letter of the assessee dated 10.10.2011, the Assessing Officer provided the reasons recorded for reopening of the assessment. After considering the detailed reply of the assessee and by following the judgement of the

Hon'ble Supreme Court in the case of CIT v. TV Sundaram Iyengar & Sons Ltd. 222 ITR 344 (SC), the Assessing Officer treated the waiver of loan amounting to ₹.75,99,892/- as income of the year under section 28 of the Act and brought to tax. On appeal, after considering the submissions of the assessee as well as examining various case law, the Id. CIT(A) allowed the ground raised by the assessee.

3. Aggrieved, the Revenue is in appeal before the Tribunal. By referring to the grounds of appeal, the Id. DR has submitted that once the loan liability has been waived, the same attains the character of the income and the same has be treated as business income under section 28(iv) r.w.s. 41(1) of the Act. It was further submission that though the money received by the assessee for business purposes was treated as loan and was of capital in nature at the time it was received, by influx of time the money has become the assessee's own money since the loan outstanding has been waived by the creditor and pleaded for reversing the order of the Id. CIT(A) and that of the Assessing Officer is restored.

4. On the other hand, the Id. Counsel for the assessee has strongly supported the order passed by the Id. CIT(A).

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In the assessment order, the Assessing Officer has treated the loan amount waived by the creditor as business income of the assessee under section 28(iv) r.w.s. 41(1) of the Act. After considering the assessment records and detailed explanations of the assessee, the Id. CIT(A) has observed as under:

“15. I have carefully considered the facts of the case, the view taken by the AO, the explanations tendered by the appellant and material on record. In view of the facts that the disallowance/addition preferred by the AO is primarily on application of the ratio obtaining in the case of CIT v. TV Sundaram Iyengar & Sons Ltd. 222 ITR 344 which was followed by the Bombay High Court in the case of M/s Solid Containers Ltd v. DCIT 308 ITR 407, it will serve useful purpose to examine the decision in the former.

16. In CIT v. T.V. Sundaram Iyengar & Sons Ltd 222 ITR 344 the lead case, the ratio followed facts obtaining therein. The deposits which were held to the taxable income were received in course of the carrying on of the business of the assessee and the point to be decided was that even though the deposits were of capital nature at the point of time of receipt by the assessee could its character change by influx of time. The case of Morley (Inspector of Taxes) v. Tattersall (1939) 7 ITR 316 was referred to wherein the principle laid down by Lord Greene that the taxability of receipts 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 did not alter the character. The court examined several cases including Punjab Steel Scrap Merchants Association Ltd where the receipts concerned were essentially trading receipts in the hands of the dealer in scrap iron. In Punjab Distilling Industries Ltd 35 ITR 519 also the additional amounts taken as deposits by the licensed whole sellers were integral part of the commercial transaction of the sale of liquor in bottles and they were assessee's trading receipts. In CIT v. Sandersons & Morgans 75 ITR 433 concerning interest received by a solicitor on the amounts belonging to his clients were not trading receipts being held in fiduciary capacity. In Pioneer Consolidated

Company of India Ltd v. CIT 104 ITR 686 the unclaimed surplus of customers was treated as income in the hands of the assessee and were shown as such by it. In the case of CIT v AVM Ltd 146 ITR 355 the assessee a distributor of films took security deposits from exhibitors which were adjusted wholly or partly against dues. The unadjusted deposits which were forfeited were treated as chargeable receipts of the assessee from trade. In CIT v. Batliboi & Company P Ltd 149 ITR 604 a dealer in machinery was accepting deposits from intending purchasers which was later adjusted towards purchase price when machinery was sold. The unclaimed deposits which were written back was considered to be a part of trading receipt specially when the assessee brought them to its P & L alc. The unclaimed surplus retained by the assessee taken in course of the trade and adjustment made were its trade receipt.

17. *In sum, what follows is that, if the assessee because of the trading operation had become richer by the amount which it transferred to its P&L a/c the monies could have been said to be arisen out of ordinary trading transactions. Although the amounts received originally was not of income nature, the amounts remained with the assessee for a long period unclaimed by the trade parties and by lapse of time the claim of deposit become time-barred and the amount attained a totally different quality thereby becoming a definite trade surplus. 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 common sense demands that the amount should be treated as income of the assessee. On the facts obtaining in the case of TV Sundaram Iyengar it was noted by the Apex Court that the money was received by the assessee in course of carrying on his business. Although it was treated as a deposit and was of capital nature when received, by influx of time the money had become the assessee's own money. The claims of customer became barred by limitation and the assessee treated the same as its own money taking the same the P & L a/c. The ratio has been followed in the other relied upon case of Solid Containers Ltd v. DCIT 308 ITR 417.*

18. *The facts of the case at hand is materially different. The AO has himself recorded that consequent to global acquisition of Invensys PLC the Indian company, by M/s Cooper Tire & Rubber Company in 8.3.2001 the appellant company had recorded acquisition by absorbing assets and liabilities of M/s Invensys India P Ltd. One of the liabilities absorbed was "unsecured loan" to the tune of Rs.3,25,05,356 which inter alia included tooling advance given by M/s Ford India to M/s. Invenys India P Ltd of Rs.79,71,800. On this account it could not be said that there was any*

trading activity whatsoever between the parents and the absorbed subsidiary. This is so, as the merger/transfer effectuated in 2001, March 8 resulted in absorption of "unsecured loan" to the order of Rs.3,25,05,356 in which the impugned sum was embedded. The liability therefore, had lost its distinct identity post merger. The monies therefore could not be attributed to being a trading receipt. Secondly, the amount in question represented an advance made by Ford India for a particular purpose of buying fixed assets being capital tools for the manufacture of fuel handling systems of its new car the said CE-14 project. The advance therefore was not again a trading receipt. On the contrary the same was on capital account. Further, in pursuance thereof this tool was purchased by Invensys India and transferred to Cooper Standard, the appellant. Following the abandonment of the project by Ford India, the tooling advance in the books of the appellant appeared as unsecured loans which in fact was given for purchase of capital tools duly shown in the books of account under the head "fixed assets". Here also the impugned amount does not form a trading receipt. Subsequent writing off the impugned amount by Cooper Standard Automotive India P Ltd i.e, of the loan liability of Rs.75,99,892 was treated as a capital receipt and shown as exceptional item under P & L a/c. This does not alter the nature of the receipt. This is to as the appellant had in conformity with Part II and Part III of Schedule VI of Companies Act, 1956 accounted for the same in its P & L a/c as an exceptional item. However, this did not suo motto render the receipt as a revenue receipt for computation of total income under the Income-tax Act. On the basis of the elaborate discussion in the foregoing, I am of the considered view that the AO has not appreciated properly the relied upon decision in the case of CIT v. TV Sundaram Iyengar & Sons Ltd 222 ITR 344 and has wrongly applied the same to the facts of the case obtaining in the case of the appellant. The order of the AO bringing to tax the impugned amount therefore cannot be upheld.

19. *Before parting, the relied upon cases by the appellant are taken up for discussion. In the case of Mahindra & Mahindra Ltd v CIT 261 ITR 501 it was observed by the court that..." In our case, the most fundamental fact which is required to be borne in mind is that there was no deduction given to the assessee in earlier years and, therefore, Rs. 67,74,064 could not be included as income under section 41(1) of the Act. Lastly, it is important to bear in mind that the Toolings constituted Capital Asset and not stock-in-trade. Therefore, taking into account all the above facts, section 41(1) of the Act is not applicable". Similarly, in the case of Iskraemeco Regent Ltd 331 ITR 317 (Mad) it was observed in the context of the Apex Court decision that in TV. Sundaram Iyengar & Sons Ltd.'s case (supra), the Apex Court has clearly held that when in the course of a trading transaction, the assessee becomes entitled to the money, such an amount would become a taxable income at the hands of the assessee. In the*

instant case, admittedly, the assessee was not trading in money transactions. A grant of loan by a bank cannot be termed as a trading transaction and it cannot also be construed in the course of business. Indisputably, the assessee obtained the loan for the purpose of investing in its capital assets. A part of that loan amount along with the interest was waived by way of an agreement between the parties. What had been done in the instant case was a mere waiver of loan. It was only a waiver which had been effected by the bank in favour of the assessee. There was no change of character with regard to the original receipt which was capital in nature into that of a trading transaction. The other decisions are also on similar points of law. These case-laws reinforce the plea of the appellant with regard to the claim and the wrong application of the ratio obtaining in the case of TV Sundaram Iyengar & Sons (supra) to the facts of the case of the appellant by the AO. This ground of appeal is allowed."

5.1 It is an admitted fact that consequent to global acquisition of Invensys PLC, the Indian company, by M/s. Cooper Tire & Rubber Company in 08.03.2001, the assessee company had recorded acquisition by absorbing assets and liabilities of M/s Invensys India P Ltd. One of the liabilities absorbed was "unsecured loan" to the tune of ₹.3,25,05,356/- which *inter alia* included tooling advance given by M/s Ford India to M/s. Invenys India P Ltd. of ₹.79,71,800. On this account it could not be said that there was any trading activity whatsoever between the parents and the absorbed subsidiary. This is so, as the merger/transfer effectuated on 08.03.2001 resulted in absorption of "unsecured loan" to the order of ₹.3,25,05,356/- in which the impugned sum was embedded. Therefore, the liability had lost its distinct identity post merger. The monies therefore could not be attributed to being a

trading receipt. Further, the amount in question represented an advance made by Ford India for a particular purpose of buying fixed assets being capital tools for the manufacture of fuel handling systems of its new car, the said CE-14 project. The advance therefore was not again a trading receipt. On the contrary the same was on capital account. Further, in pursuance thereof this tool was purchased by Invensys India and transferred to the assessee. Following the abandonment of the project by Ford India, the tooling advance in the books of the assessee appeared as unsecured loans which, in fact, were given for purchase of capital tools duly shown in the books of account under the head "fixed assets". Here also the impugned amount does not form a trading receipt. Subsequent writing off the impugned amount by the assessee of the loan liability of ₹.75,99,892/- was treated as a capital receipt and shown as exceptional item under profit and loss account. We are of the considered opinion that the above treatment does not alter the nature of the receipt as has been confirmed in Part II and Part III of Schedule VI of Companies Act, 1956 accounted for the same in its P & L a/c as an exceptional item, which cannot be treated as revenue receipt for computation of total income under the Income-tax Act. After elaborately analyzing various case law

including the judgement in the case of CIT v. TV Sundram Iyengar and Sons Ltd. (supra), the Id. CIT(A) has rightly held that the loan waived by the creditor is capital in nature and we find no reason to interfere with the order passed by the Id. CIT(A). Thus, the ground raised by the Revenue is dismissed.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 10th August, 2022 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 10.08.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR &
6. गार्ड फाईल/GF.