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Present: Ms. Sonia Mathur, Advocate for the appellant.
Mr.C.S.Aggarwal, Sr.Advocate with Mr.Prakash Kumar, Advocate for the respondent.

+ITA No. 320/2007
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The respondent/assessee, *inter alia,* deals with manufacturing and sale of Quartz and Digital Watches. It had issued debentures of a value of Rs.140/- for raising certain finances. These debentures carried interest of 12.5% on the face value of the debentures. After some time, the assessee Company repurchased 1,42,850 debentures from ICICI Ltd. at a price of Rs.80.50 per debenture (Rs. 79.10 towards principles and Rs.1.40 towards accrued interest). It also repurchased 5,59,850 debentures from UTI at a price of Rs.88.07 which consisted of Rs.83.83 paise towards principle and Rs.4.24 towards interest. It is thus clear that the assessee company repurchased these debentures from the aforesaid two companies at a rate lesser than the rates at which these were issued and in this manner they had an amount of Rs.11956219 while liquidating the capital liability of Rs.7.70 crores on account of these debentures. The question that falls for

consideration is as to whether it is a 'capital receipt' or a 'revenue receipt'. The Assessing Officer had treated it as short-term capital gain. However, CIT(Appeal) after notice to the respondent, modified the order of the Assessing Officer, treated it to be a 'revenue receipt' and exigible to tax. In further appeal preferred by the assessee, the Tribunal has held that it would be a 'capital receipt'. While doing so, the Tribunal has relied upon the judgment of Bombay High Court in **C.I.T. vs. Scindia Steam Navigation Co. Ltd.,** 125 ITR 118. The Tribunal was also of the view that in fact the very nature of transaction would suggest that when the debentures were issued, it was a loan taken and that was the liability which was not a trading liability and once these debentures were repurchased at a lesser rate, the liability got extinguished by paying the amount less than the amount which was received and, therefore, it would not be treated as income at the hands of the assessee. For this proposition, the Tribunal has relied upon the judgment of this Court in **Commissioner of Income-Tax, New Delhi vs. Phool Chand Jiwan Ram,** 131 ITR 37. Relevant discussion in this behalf is reproduced hereunder:-

"A conspectus of the aforesaid decisions goes to show

that the discount at which the debentures or bonds are issued on a premium which is payable on the redemption of the bonds or debentures, is regarded as a revenue expenditure by the various Courts treating the same as akin to the additional interest payable by the assessee-company in respect of the said bonds or debentures and as such the discount or premium so payable as per the terms and conditions of the debenture or bond was considered as the cost incurred by the assessee for the purpose of its business in order to generate funds for its business activities. It is thus clear that the character of discount or premium payable on the redemption of debentures as per the agreed terms and conditions is altogether different from the surplus arising to the assessee from the redemption of debentures prematurely in the present case inasmuch as the discount/premium on the debentures operates in the revenue field whereas the surplus on redemption of debentures being an integral part of the exercise of restructuring its capital operates in the capital field. We, therefore, are of the view that the discount on debentures cannot be equated with the surplus on the redemption of debentures arising to the assessee in the present case and this being so, the analogy on the basis of which the discount was held to be revenue expenditure by the various Courts cannot be straightway applied to the surplus on redemption in the present case to hold it as a revenue receipt. As a matter of fact, the liability on account of debentures was certainly not a trading liability and as held by the Hon'ble Delhi High

> Court in the case of CIT vs. Phool Chand Jiwan Ram (supra) the remission of portion of such liability does not give rise to any income of revenue nature which could be subjected to tax."

We are in total agreement with the aforesaid view taken by the Tribunal following the aforesaid judgments and are of the opinion that no question of law arises. We may point out that Karnataka High Court in a recent case of **CIT vs. Industrial Credit And Development Syndicate Ltd.**, 285 ITR 310 has dealt with precisely the same nature of transaction and has opined in the following manner:-

> "13. From the foregoing what emerges is that income-tax is a levy on income. The Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt. It is the income which has really accrued or arisen to the assessee that is taxable. Whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation. Income is what comes in from outside. Given its ordinary and natural meaning, the word income will take in any monetary return "coming in". When in reality there is neither accrual nor receipt of income by the assessee, even though an entry to that effect might, in certain circumstances have been made in the books of account, it would not constitute income for the purpose of levy of tax. In other words, income means real income and not fictional one. This involves really two aspects. One is

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that the receipt should connote a real or tangible coming and not something notional or fictional. A rebate obtained by the purchaser or remission of debt by a creditor would not result in the creation of income in the hands of the purchaser or debtor. As in those instances the assessee does not receive any income to his nets though by such rebate or remission he is benefited to the extent of the rebate or remission.

15. This provision was also the subject-matter of interpretation by various Courts. The Bombay High Court in the case of Mahindra & Mahindra Ltd. v. reported in [2003] 261 ITR 501 was dealing with a case where assessee had borrowed a loan and paid interest at the rate of 6 per cent per annum for 10 years being the period of contract and he never got deduction for payment of interest under Section 36(1)(iii) or under Section 37 of the Act and the said loan was waived. In that context, Assessing Officer held that credits became part of business income and prior to such waiver credit representing the said liability and accordingly, the same was taxable as business income, which finding was affirmed by both the appellate authorities. The High Court set aside the said order holding that the prerequisite of Section 41(1) was not applicable. In order to apply Section 41(1), the assessee should have obtained a deduction in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. The waiver of principal amount was unexpected. Therefore, such waiver would not construe business income and it would not constitute a trading liability and accordingly Section 41(1) was not attracted."

This Court has also reiterated the aforesaid principle in **CIT Vs.**

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Tosha Industrial Ltd., 176 Taxman 187 and we are informed that Special Leave Petition against this decision has also been dismissed by the Supreme Court. We thus dismiss this appeal holding that that no substantial question of law arises for consideration of this Court.

A.K. SIKRI, J.

MANMOHAN SINGH, J.

AUGUST 13, 2010
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