



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 23.09.2008

+ **ITA 1143/2008**

**COMMISSIONER OF INCOME TAX
DELHI (CENTRAL) - II**

... Appellant

- versus -

TOSHA INTERNATIONAL LTD

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr R. D. Jolly

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. This appeal by the revenue is directed against the order dated 31.07.2007 passed by the Income Tax Appellate Tribunal in ITA 4922/Del/2005 in respect of the assessment year 2001-2002.

2. The assessee was engaged in the manufacturing of black and white picture tubes. The assessee company ran into huge losses and it ultimately became a sick company and registered with the BIFR.

Under the one time settlement scheme the financial institutions and



principal and waived the entire interest payment. There is no dispute with regard to the waiver of interest payment. The only objection raised by the Assessing Officer is with regard to the waiver of the principal amount to the extent of Rs 10,47,93,857/- which the assessee had directly credited to the Capital Reserve Account. According to the Assessing Officer the assessee had derived benefit on the basis of either depreciation or utilizing the working capital which would have formed part of the earlier year's income. According to the Assessing Officer since the loans ceased to exist, this amounted to cessation of liability and, therefore, it has to be treated as an income. Consequently, the Assessing Officer added the said sum of Rs 10.47 crores in the income of the assessee. The Commissioner of Income Tax (Appeals) deleted the addition by observing that the remission of the principal amount of loan did not amount to income under Section 41 (1) nor under Section 28 (iv) nor under Section 2(24) of the Income Tax Act, 1961 (hereinafter referred to as the 'said Act').

3. The revenue went in appeal before the Tribunal against the order of the Commissioner of Income Tax (Appeals) with regard to the deletion of the said sum of Rs 10.47 crores. We note that the Tribunal has examined the case in detail and particularly from the standpoint of the provisions of Section 41 (1) of the said Act. The Tribunal has



“As per our considered view, for attracting the provisions of Section 41 (1), the first requisite condition to be satisfied is that the assessee should have got deduction or benefit of allowance in respect of loss, expenditure or trading liability incurred by it and subsequently during any previous year, the assessee should have received any amount in respect of such loss, expenditure or trading liability by way of remission or cessation thereof. The remission would become income only if the assessee has claimed deduction in respect of expenditure or trading liability. In *Mahindra & Mahindra Ltd. Vs. CIT*, Hon’ble High Court of Bombay 261 ITR 501, held that no allowance or deduction having been allowed in respect of loan taken by assessee for purchase of capital assets, Section 41 (1) was not attracted to remission of principal amount of loan. In the instant case, the assessee has not got any deduction on account of acquisition of capital assets as the same has been reflected in the balance sheet and not in the P&L account, and also the remission of the principal amount of loan so obtained from the bank and financial institution had not been claimed as expenditure or trading liability in any of the earlier previous year. So far as waiver of interest is concerned, the assessee company itself has treated the same either as income or has not claimed the same as expenditure in the computation of income filed before the lower authorities.”

4. We see no reason to interfere with the conclusions of the Tribunal as the same have been rendered on a correct appreciation of law. The principles enunciated in *Mahindra & Mahindra Limited v. CIT: 261 ITR 501(Bom)* are fully applicable and we see no reason to take a different view.



5. Consequently, no substantial question of law arises for our consideration. The appeal is dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

September 23, 2008
SR