

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.3704 OF 2010

The Commissioner of Income Tax-3,
Aayakar Bhavan,M.K.Road,
Mumbai-400 020.

...Appellant.

Vs.

M/s. Xylon Holdings Pvt. Ltd.,
A-491, 3rd Pasta Lane, Colaba,
Mumbai-400 005.

...Respondent.

Mr.Vimal Gupta for the Appellant.

Mr. Percy Pardiwalla, Senior Counsel with Mr. Divesh Chawla and
Mr.Ativ Patel i/by Hariani & Co. for the Respondent.

**CORAM : S.J.VAZIFDAR &
M.S. SANKLECHA, JJ.**

DATE : 13th September, 2012

JUDGMENT (Per M.S. SANKLECHA, J.):

This appeal by the revenue under Section 260A of the
Income Tax Act (“the Act”) is filed against the order dated
13/8/2009 of the Income Tax Appellate Tribunal (“the Tribunal”) in

ITA No.3323/Mum./2008 relating to assessment year 2004-05.

2) Being aggrieved, the revenue has formulated the following questions of law for consideration of this Court.

(a) Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in holding that the benefit of cessation of liability to repay a loan liability is not taxable u/s. 41(1) of the Income Tax Act?

(b) Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in holding that the benefit of cessation of liability to repay a loan liability is not taxable u/s. 28(iv) of the Income Tax Act?

3) On 31/10/2004, the respondent-assessee filed its return of income for the assessment year 2004-05 declaring a total income of Rs.98.23 lacs. During the course of assessment

proceedings it was found that the respondent-assessee had entered into an agreement with its holding company one M/s. Vossloh Schwabe (India) Private Ltd. (holding company) by virtue of which the liability to pay a loan of Rs.29.17 lacs taken towards the purchase of a car was taken over by the holding company. The motor car for which the loan was taken continued to be a part of the schedule of assets of the respondent-assessee and depreciation thereon was also claimed. The Assessing officer by an order dated 22/12/2006 under Section 143(3) of the Act added back an amount of Rs.29.17 lacs to the income of the respondent-assessee as being taxable under Section 41(1) of the Act.

4) The Commissioner of Income Tax (Appeals) by an order dated 31/10/2008 allowed the respondent-assessee's appeal. The Commissioner of Income Tax (Appeals) held that the liability to repay a loan taken towards the purchase of a motor car which had ceased cannot be subjected to tax. This is for the

reason that the extinguishment of the loan which was taken for the purchase of a capital asset like a motor car is not a revenue receipt. Hence, the same is not taxable.

5) The appeal by the revenue to the Tribunal on the aforesaid issue was dismissed by an order dated 13/8/2009. The Tribunal held that the cessation of liability to repay a loan taken to purchase a capital asset does not result in a revenue receipt. Further, the amount of Rs.29.17 lacs was not taxable under Section 41(1) of the Act as the same was not an expenditure incurred in the earlier years. The issue according to the Tribunal was covered in favour of the respondent-assessee by a decision of this Court in the matter of *Mahindra and Mahindra Ltd. v. Commissioner of Income Tax reported in 261 ITR 501*. Consequently, the Tribunal held that amount of Rs.29.17 lacs is not taxable either under Section 41(1) or 28(iv) of the Act.

6) In support of the appeal, Mr. Vimal Gupta, the learned

Counsel for the revenue contends that the decision in the matter of Mahindra and Mahindra Limited (supra) would not be applicable in view of the subsequent decision of this Court in the matter of *Solid Containers Ltd. v. Deputy Commissioner of Income Tax reported in 308 ITR 407*. In the above case, this Court has distinguished the decision rendered in the matter of Mahindra and Mahindra Limited (supra) and held that waiver of loan taken for trading activity would become the assessee's income and be subject to tax. Alternatively, Mr. Gupta submits that the loan amount written off would be taxable under Section 28(iv) of the Act as a benefit arising from business.

7) As against the above, Mr. Pardiwalla, Counsel for the respondent-assessee submits that the issue arising in this appeal would stand covered by the decision of this Court in the matter of Mahindra & Mahindra Ltd. (supra). According to him, the decision

of this Court in the matter of Solid Containers (supra) is not applicable as in that case the loan was taken for business purposes and not for purchase of a capital asset as in this case. So far as the alternative submission is concerned, Mr. Pardiwalla submits that Section 28(iv) of the Act would not apply to any benefit received in cash or money as in this case. This issue according to Mr. Pardiwalla is also covered by the decision of this Court in the matter of Mahindra & Mahindra Ltd. (supra). Therefore, he submits that the appeal should not be entertained.

8) We have considered the submissions. The issue arising in this case stand covered by the decision of this Court in the matter of Mahindra & Mahindra (supra). The decision of this court in the matter of Solid Containers (supra) is on completely different facts and inapplicable to this case. In the matter of Solid Containers (supra) the assessee therein had taken a loan for

business purpose. In view of the consent terms arrived at, the amount of loan taken was waived by the lender. The case of the assessee therein was that the loan was a capital receipt and has not been claimed as deduction from the taxable income in the earlier years and would not come within the purview of Section 41(1) of the Act. However, this Court by placing reliance upon the decision of the Apex Court in the matter of *CIT v. T.V. Sundaram Iyengar and Sons Ltd.* 222 ITR 344 held that the loan was received by the assessee for carrying on its business and therefore, not a loan taken for the purchase of capital assets. Consequently, the decision of this Court in the matter of Mahindra and Mahindra Limited (supra) was distinguished as in the said case the loan was taken for the purchase of capital assets and not for trading activities as in the case of Solid Containers Limited (supra). In view of the above, the decision of this Court in the matter of Solid containers Limited (supra) will have no

application to the facts of the present case and the matter stands covered by the decision of this Court in the matter of Mahindra & Mahindra Limited (supra). The alternative submission that the amount of loan written off would be taxable under Section 28(iv) of the Act also came up for consideration before this Court in the matter of Mahindra & Mahindra Limited (supra) and it was held therein that Section 28(iv) of the Act would apply only when a benefit or perquisite is received in kind and has no application where benefit is received in cash or money.

9) In view of the issue arising in this appeal being covered by the decision of this Court in the matter of Mahindra & Mahindra Ltd.(supra), no substantial question of law arises and both the questions are dismissed.

10) The appeal is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)

(S. J. VAZIFDAR, J.)