



DEL ITAT: Absence Of Write Back / Remission Of Advance / Loan Does Not Trigger Taxability

Facts of the case

J L G Developers Ltd. ('Assessee') had borrowed an amount of Rs. 8.22 crores from M/s Sethi Housing Private Ltd. and the same was utilised for the repayment of the loan taken from the Bank of India. The amount borrowed was returnable by the Assessee. The Assessee has not claimed this amount as trading expenses in its books of accounts in any of the preceding years. The AO considered this liability, as a cessation of liability u/s 41(1) of the Act and treated the same as deemed income, while passing the assessment order for the AY 2016-17. The CIT(A) deleted the addition made by the AO. Aggrieved, the Revenue preferred an appeal before the Delhi ITAT.

Contentions of the Revenue

The Revenue contended that the amount is no longer payable by the Assessee and therefore, the same is taxable u/s 41(1) of the Act. The Revenue contended that the Assessee stands dissolved in terms of the notice issued by the Registrar of Companies, AP & Telangana ('ROC') u/s 248(5) of the Companies Act, 2013 ('CA2013') and hence, the liability to return the loan ceased to exist. Thus, the AO has correctly added the amount to the income of the Assessee u/s 41(1) of the Act.

Further, even without an express write-back, cessation could be inferred, relying on the principle laid down by the Hon'ble Supreme Court in the case of T. V. Sundram Aiyangar & Sons 222 ITR 344 (SC).

Contentions of the Assessee

The Assessee contended that the provisions of section 41(1) cannot be invoked in the facts of this case, and following arguments were taken:

- Striking off of a company u/s 248 of the CA2013 by the ROC, due to non-compliance, does not amount to winding up under the CA2013. It merely results in temporary removal of the name from the ROC, but the Company's legal obligations, including its liabilities are not extinguished.
- There is a difference between the striking off u/s 248 and winding up. Striking off ends the legal existence of the company for operational purposes, but does not result in the distribution or extinguishment of its assets or liabilities. Winding up, on the other hand, is a judicial or administrative process, by which the assets are realised and the liabilities are discharged under the oversight of the Tribunal or Liquidator.
- U/s 252(3) of the CA2013, the name of the company struck off u/s 248 can be restored by the NCLT, on an application made within 20 years of the publication of the striking-off notice in the Official Gazette. Thus, the right to recover or enforce liabilities against the struck-off company remains intact.
- Effective date of striking off is July 21, 2017, which is subsequent to the relevant AY 2016-17. Therefore, it has no bearing on the Assessee's liability position during the year under appeal.
- Detailed documentary evidence has been already submitted for FYs 2010-11 to 2018-19, which confirms that neither any deduction or expenses was ever claimed in respect of this liability, in any earlier year, nor has any amount been written back to the profit and loss account in the current year. The liability continues to be reflected under Sundry Creditors, as on March 31, 2018.



Observations and Ruling of the Delhi ITAT

The Delhi ITAT accepted the contentions of the Assessee and held that the provisions of section 41(1) of the Act are not attracted. While rendering this decision, the ITAT has made following observations:

- The Assessee has not written back any amount relating to this liability, as a remission or cessation of liability in its profit and loss account and that the said liability was still outstanding in the books, and the same has not been controverted. It is an accepted fact that the loan taken was to repay the loan from the Bank of India and there is no amount debited to the profit and loss account, relating to this liability.
- The liability is not a trading liability, but rather a capital liability, in the form of an advance / loan received, which was used for the repayment of a bank loan. There has been no unilateral act of write-off, and the liability is duly acknowledged as outstanding, both in the books of the Assessee and in the confirmation furnished by the Creditor.
- The decision of the Hon'ble Supreme Court, in the case of T V Sundram Aiyangar & Sons (cited supra), cannot be applied, since the facts are not comparable. In the Hon'ble Supreme Court case, the taxpayer had a trading liability, which was written back in the profit and loss account. Whereas, in the case of the Assessee, the loan was outstanding and not written back to the profit and loss account and it is refundable.

Citation

J L G Developers Ltd. [TS-1662-ITAT-2025 (Delhi)]

Our Comments

Considering the facts of the case, the Delhi ITAT has accepted the contentions of the Assessee and not invoked the provisions of section 41(1) of the Act. Some of the critical aspects that become clear from this decision are-

- Outstanding loans reflected in books, cannot be taxed merely due to passage of time or corporate status changes.
- Struck-off companies continue to have enforceable liabilities.
- Confirmations should be obtained from the Creditors, for loans outstanding.
- Proper classification is made, between the trading and capital liabilities, to mitigate the deeming provisions of section 41(1) of the Act.

This decision would provide support in cases, involving old outstanding loans or advances. While section 41(1) may not apply for remission of liabilities on capital account, the possibility of the department applying s 28 cannot be ruled out altogether.