**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 23/11/2010**

**CORAM**

**HON'BLE MR.JUSTICE F.M.IBRAHIM KALIFULLA**

**AND**

**HON'BLE MR.JUSTICE M.M.SUNDRESH**

**TC.A.812 OF 2010**

**Iskraemeco Regent Limited**

**Commissioner of Income Tax**

**IFOR PETITIONER : N.K.Poddar**

**FOR RESPONDENT : K.Subramaniam**

**:ORDER**

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED 23.11.2010**

**CORAM**

**THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA**

**AND**

**THE HONOURABLE MR. JUSTICE M.M.SUNDRESH**

**TAX CASE (APPEAL) NO.812 OF 2010**

**M/s.Iskraemeco Regent Limited**

**(Originally Seahorse Industries Ltd and**

**Subsequently Iskraemeco Seahorse Ltd)**

**126, K.Sathanoor Road**

**Trichirapalli _x0016_ 620 021.**

**Tamil Nadu .. Appellant**

**Versus**

**The Commissioner of Income Tax-I**

**4, Williams Road**

**Cantonment**

**Trichy _x0016_ 620 001.**

**Tamil Nadu .. Respondent**

PRAYER: Tax Case Appeal filed Under Section 260-A of the Income-Tax Act, 1961, against the order of the Income Tax Appellate Tribunal "B" Bench, Chennai, passed in I.T.A.No.1901/Mds/2009, dated 26.03.2010 for the assessment year 2001-02.

**For Appellant : Shri.N.K.Poddar**

**Senior Counsel**

**for Shri.P.Rajkumar**

**For Respondent : Shri.K.Subramaniam**

**Senior Standing Counsel**

**for Income Tax Department**

* * * * *

**JUDGMENT**

**M.M.SUNDRESH, J**

This appeal has been preferred by the assessee, challenging the order of the Income Tax Appellate Tribunal, "B" Bench, Chennai, dated 26.03.2010, in ITA No.1901/Mds/2009 for the assessment year 2001-02, confirming the order passed by the Commissioner of Income Tax (Appeals) which in turn has confirmed the order of the Assessing Officer by raising the following substantial questions of law:

"(i)Whether the learned Tribunal misdirected itself in law, and it adopted a wholly erroneous approach, in interpreting the provisions of Section 28(iv) of the Income Tax Act, 1961, to hold that the sum of Rs.5,07,78,410/- representing the principal loan amount, waived by the bank under the One Time Settlement Scheme (OTS), and credited by the appellant assessee to its Capital Reserve

Account, in its Balance Sheet drawn as at 31st March, 2001, is assessable to tax as a revenue receipt in the assessment for the assessment year 2001-02; and whether the findings of the learned Tribunal to this effect were wholly unreasonable, based on irrelevant considerations, contrary to the facts and evidence on record and/or otherwise perverse?

(ii)Whether the decision of the Hon'ble Supreme Court in CIT v. T.V.Sundaram Iyengar & Sons Ltd. [(1996) 222 ITR 344 (SC)], applied by the learned Tribunal in passing its said impugned order dated 26th March, 2010, has any application whatsoever, in the facts and circumstances of the instant case, and particularly in relation to Section 28(iv) of the said Act?

(iii)Whether on a correct interpretation of Section 28(iv) of the Income Tax Act, 1961, the Tribunal ought to have held that the principal amount of loan waived by the Bank under the OTS, not being a trading liability and also not being a "benefit or perquisite, whether convertible into money or not", the expression used in the said section, did not constitute revenue receipt and/or business income of the appellant assessee assessable to tax in its assessment for the assessment year 2001-02?

(iv)Whether the disposal of the said appeal by the learned Tribunal, through its said impugned order dated 26th March, 2010, without recording and dealing with the submissions made on behalf of the appellant assessee with reference to the undisputed facts on records, was wholly unreasonable, improper, irregular and unfair, amounted to denial of justice, and was not in accordance with law?

(v)Whether the Tribunal misdirected itself in law in disposing of the said appeal without applying its judicial mind properly to the essential matters on record including the submissions made with reference to several case decisions cited on behalf of the appellant assessee, and without giving objective reasons for its affirmation of the views of the lower tax authorities?"

2.Facts in brief:-

2.1.The asessee has been engaged in the business of development, manufacturing and marketing of Electro-Mechanical and Static Energy Meters. For the purchase of capital assets both by way of import as well as in the local market, as also fund based and non-fund based credit facility, through cash credit account, for import of capital assets as well as for meeting the working capital requirements, a term loan was provided by the State Bank of India, Commercial Branch, Trichy.

2.2.In view of the loss suffered, the assessee went before the Board for Industrial and Financial Reconstruction (BIFR). In case No.77 of 1992, the BIFR has held that the assessee was a sick Industrial Company. The BIFR in pursuant to the said conclusion, sanctioned a scheme for revival / rehabilitation. The State Bank of India has waived the outstanding due of principle amount of Rs.5 crores and the interest outstanding for another sum of Rs.2 crores. The assessee did not pay the interest for the preceded three years to the assessment year and has paid a sum of Rs.5 crores from the date of receipt of the loan.

2.3.Therefore under the one time settlement scheme with the State Bank of India entered into between the assessee and the State Bank of India there was a full settlement between the parties by accepting the adhoc payment of Rs.5 crores made by the assessee, with the waiver of another sum of Rs.5,07,78,410/- as the remaining principle amount and a sum of Rs.2,02,60,247/- as the outstanding interest amount. The assessee credited the waiver of principle amount to the "Capital Reserve Account" in the balance sheet treating it as capital in nature and the waiver of interest of Rs.2,02,60,247/- was credited in its "Profit and Loss Account" for the financial year ending 31.03.2001 corresponding to the assessment year 2001-02. The assessee filed its return declaring its total income assessable at Rs.45,160/- after setting off the carried forward business losses and unabsorbed depreciation.

2.4.The return was processed under section 143(1) of the Income Tax Act and by subsequent order under section 154 of the said Act, total income was rectified. Again for the purpose of giving effect to the order of the Commissioner of Income Tax (Appeals) for the assessment year 1995-96, the assessment made for the assessment year 2001-02 was revised and the total income was quantified at Rs.82,23,530/-.

2.5.A notice under section 148 of the Income Tax Act was issued by the Assessing Officer on the ground that the assessee has wrongly credited a sum of Rs.5,07,78,410/- in the Capital Reserve account in its balance sheet for the assessment year 2001-02. Therefore, the said account is sought to be assessed in as much as it being a waiver of principle loan amount, the same is assessable under Section 28(iv) of the Income Tax Act. Accordingly, after hearing the objections of the assessee, an order was passed under section 147 of the Income Tax Act holding that the said amount should be construed as income assessable to tax.

2.6.The appeals filed by the assessee before the Commissioner of Income Tax (Appeals) and the Tribunal were dismissed by holding that the said issue is no longer res integra in as much as the same has already been concluded by the judgment of the Honourable Supreme Court in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344]. Assailing the said orders passed by the authorities, the assessee has preferred this appeal by raising the above mentioned substantial questions of law.

3.Heard Shri.N.K.Poddar, learned Senior Counsel for Shri.P.Rajkumar appearing for the appellant / assesee and Shri.K.Subramaniam, learned Senior Standing Counsel appearing for the respondent / revenue.

4.Submissions of the Assessee:-

4.1.Shri.N.K.Poddar, learned senior counsel appearing for the assessee submitted that it is not in dispute that the assessee had obtained loan from the State Bank of India for the purchase of fixed assets. The assets purchased by the assessee both within the country and outside the country are admittedly capital assets. The term loan amount is completely utilised towards the purchase of capital assets. Therefore the transaction between the assessee and the Bank is a pure loan transaction and the same can never be termed as a trading transaction.

4.2.Further, in as much as the loan was obtained for the purchase of capital assets, the same would only amount to a capital receipt and not revenue receipt. The assessee has been doing the business in manufacturing and marketing of Electro-Mechanical and Static Energy Meters and it is not involved in any business involving the transaction of money lending. A loan given to buy a capital assets cannot be a trading transaction leading to a trading liability.

4.3.The learned senior counsel submitted that in as much as the Assessing Officer has not gone behind the loan arrangement and the loan arrangement in its entirety was not obliterated by the waiver, considering the fact that the assessee has paid a sum of Rs.5 crores and the waiver was only in respect of the remaining principle amount of term loan and also the outstanding interest, Section 43(B) of the Income Tax Act has no application, since it would apply only to a business transaction.

4.4.The learned senior counsel strenuously contended that all the authorities have committed a grave error in mechanically applying the judgment rendered by the Honourable Apex Court in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [(1996) 222 ITR 344] that without appreciating the factual scenario that the loan has been obtained towards the purchase of capital assets and not for a business transaction. The learned senior counsel further submitted that the loan has not been received in the course of trading transaction as in the case of the judgment referred supra and therefore, the same has got no application. It is his further submission that admittedly the facts involved in the judgment referred above would disclose that the transaction therein was a trading transaction as against the facts involved herein.

4.5.The learned senior counsel placed reliance upon the judgment of the Honourable Division Bench of the Bombay High Court in MAHINDRA AND MAHINDRA LTD. v. COMMISSIONER OF INCOME TAX [(2003) 261 ITR 501] wherein, the reliance has been made to the Honourable Division Bench of the Gujarat High Court in COMMISSIONER OF INCOME TAX v. ALCHEMIC PVT. LTD. [(1981) 130 ITR 168]. It is also submitted that the judgment of the Division Bench of the Gujarat High Court has also been approved by the Honourable Apex Court in COMMISSIONER OF INCOME TAX v. MAFATLAL GANGABHAI AND CO. (P.) LTD. [(1996) 219 ITR 644].

4.6.The learned senior counsel placed reliance upon the subsequent Division Bench of the Bombay High Court in SOLID CONTAINERS LTD. v. DEPUTY COMMISSIONER OF INCOME TAX [(2009) 308 ITR 417] and submitted that, in a case where a transaction involves a purchase related to capital assets namely towards the plant and machinery, a waiver made for the said amount would not constitute a business. Therefore, based upon the above said judgment, the learned senior counsel submitted that in view of the admitted position that there is no dispute regarding the genuineness of the transaction between the assessee and the State Bank of India being a transaction of loan for the purpose of capital assets, the waiver made for the part of the said sum cannot be made exigible to tax.

4.7.The further submission of the learned senior counsel of the petitioner is to the effect that the reasoning of the authorities that, Section 28(iv) of the Income Tax Act would be applicable to a money transaction is totally misconceived and contrary to the provision itself. The learned senior counsel submitted that Section 28(iv) provides for chargeablity of profits and gains of business or profession

with relation to the value of any benefit or perquisite arising out of business or the exercise of profession and therefore the same would not include the money transaction. It is the specific case of the learned senior counsel that a reading of Section 28(iv) of the Income Tax Act would make it clear that it would cover only transactions other than money transactions. Since in the present case on hand, the transaction involved being a loan transaction, and therefore being a transaction of money, Section 28(iv) of the Income Tax Act has no application.

4.8.The learned senior counsel also submitted that Section 41(1) of the Income Tax Act also does not apply in as much as it mandates that there has to be an actual allowance or deduction made for the purpose of computing under the said section. In as much as there is no allowance or deduction already in the present case on hand, the question of application of Section 41(1) also does not arise for consideration. The learned senior counsel further contended that, that is the reason why the Assessing Officer has rightly taken the view that Section 41(1) has got no application to the present case on hand.

4.9.In support of his contention, the learned senior counsel placed reliance upon the following judgments, COMMISSIONER OF INCOME TAX v. GANESA CHETTIAR (P.) [(1982) 133 ITR 103], COMMISSIONER OF INCOME TAX v. A.V.M. LTD. [(1984) 146 ITR 355], COMMISSIONER OF INCOME TAX v. ALCHEMIC PVT. LTD. [(1981) 130 ITR 168], COMMISSIONER OF INCOME TAX v. MAFATLAL GANGABHAI AND CO. (P.) LTD. [(1996) 219 ITR 644], and DEPUTY COMMISSIONER OF INCOME TAX (ASSESSMENT) v. GARDEN SILK MILLS LTD. [(2010) 320 ITR 720] and submitted that Section 28(iv) has no application to a money transaction and therefore, the orders passed by the authorities cannot be sustained. In so far as the scope of Section 41(1) of the Income Tax Act is concerned, the learned senior counsel has made reliance upon the judgments in POLYFLEX (INDIA) PVT. LTD. v. COMMISSIONER OF INCOME TAX [(2002) 257 ITR 343] and TIRUNELVELI MOTOR BUS SERVICE CO. P. LTD. v. COMMISSIONER OF INCOME TAX [(1970) 78 ITR 55].

4.10.The learned senior counsel submitted that a combined reading of Section 41(1) of the Income Tax Act read with Section 28(iv) would show that the words "whether no cash or any other manner as mentioned in Section 41(1) has not been incorporated under section 28(iv) which is indicative of the fact that section 28(iv) does not cover a cash transaction. The learned senior counsel also made substantial reliance on the judgments rendered by the various Tribunals/High Courts on the identical issues and submitted that, even though the orders passed by the Tribunals/High Courts are not binding on this Court, the same may be taken as part of his arguments in support of his contentions. The learned senior counsel submitted that in as much as the Tribunals/High Courts in the various parts of the country have taken the similar view, the same view will have to be adopted in the present case on hand as well.

4.11.Finally, the learned senior counsel submitted that the authorities committed an error by holding against the assessee by making reliance upon the judgment of the Honourable Apex Court in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [(1996) 222 ITR 344] without applying their mind to the facts of the case as well as the facts involved therein. The said orders passed by the authorities would amount to non-application of mind and therefore, they are arbitrary in nature. The learned senior counsel made reliance upon the judgment of the Honourable Apex Court rendered in COMMISSIONER OF CENTRAL EXCISE, BANGALORE v. SRIKUMAR AGENCIES AND OTHERS [(2009) 1 SCC 469] and submitted that a judgment cannot be read as a statute and has to be made applicable to the facts and consideration of each case and the ratio laid down therein will have to be applied to the facts and circumstances of each case. Therefore, the learned senior counsel

submitted that the orders passed by the authorities will have to be set aside and the appeal will have to be allowed.

5.Submissions of the Revenue:-

5.1.Shri.K.Subramaniam, learned Senior Standing Counsel appearing for the revenue submitted that the appeal filed by the assessee has been rejected by the Commissioner of Income Tax (Appeals) not on the ground of applicability under Section 28(iv) of the Income Tax Act, 1961. Similarly, the Tribunal has not considered the applicability of the said section, therefore in as much as Section 28(iv) of the Income Tax, 1961 having no applicability to the case on hand, the relevant provision that is applicable is Section 28(i) of the said Act. In the judgment of the Honourable Apex Court in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [(1996) 222 ITR 344], the applicability of Section 28(iv) has not been considered. As found by the authorities, Section 41(1) of the Income Tax Act is also not applicable and therefore, the findings rendered by the authorities below will have to be seen in the context of the provisions contained in Section 28(i) of the Income Tax Act, 1961.

5.2.The learned Senior Standing Counsel further submitted that the ratio laid down by the Honourable Apex Court in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344]. still holds good. The judgment of the Honourable Apex Court has been followed subsequently in COMMISSIONER OF INCOME TAX v. RAJASTHAN GOLDEN TRANSPORT CO. (P.) LTD. [(2001) 249 ITR 723] and also by a Division Bench of this Court in COMMISSIONER OF INCOME TAX v. SUNDARAM INDUSTRIES LTD. [(2002) 253 ITR 396] as well as in COMMISSIONER OF INCOME TAX v. ARIES ADVERTISING PVT. LTD. [(2002) 255 ITR 510]. Therefore, when the ratio laid down by the Honourable Apex Court in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344] having not been overruled and the same still covers the field, the authorities below have rightly applied the same in rejecting the case of the assessee.

5.3.The learned Senior Standing Counsel also submitted that, it is not in dispute that the amount has been borrowed by the assessee for the purpose of his business. When the said amount is used for business, the question as to whether it has been used for the purchase of capital assets or revenue receipts is immaterial. The assessee having become richer by the settlement, the said transaction would par take the character of the income assessable to tax. Even assuming an amount is utilised towards the capital assets, it would take the character of a revenue receipt, subsequently. The learned senior standing counsel has also made reliance upon Section 36(1)(iii) of the Income Tax Act dealing with the deduction for interest of the borrowal. According to the learned senior standing counsel, the borrowal and waiver are in the course of business during which the benefit accrues to the assessee is taxable. If the amount received in pursuant to a business or a contractual liability, then it is taxable as income.

5.4.The learned Senior Standing Counsel made reliance upon the judgment of the Division Bench of the Delhi High Court in JAY ENGINEERING WORKS LTD. v. COMMISSIONER OF INCOME-TAX [(2009) 311 ITR 299]. The learned senior standing counsel sought to distinguish the judgment relied upon on behalf of the assessee by submitting that the facts involved in those cases are different and that some of the judgments have been rendered prior to the ratio laid down by the Honourable Apex Court in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344].

Further, the orders passed by various Tribunals are not binding on this Court. Therefore, the learned senior standing counsel submitted that the appeal will have to be dismissed.

6.The facts involved in this case are not in dispute. The assessee entered into a loan transaction with the State Bank of India. The loan has been obtained for the purpose of acquiring capital assets which fact also is not in dispute. The assessee has paid part of the principle and interest amount for the earlier years. There was a settlement under the One Time Settlement Scheme (OTS) by which a settlement has been arrived at between the Bank and the assessee by accepting the adhoc payment of 5 crores made by the assessee already with the waiver of another sum of Rs.5,07,78,410/- as the outstanding principle amount. Further, a sum of Rs.2,02,60,247/- as the interest amount respectively.

7.The loan transaction between the assessee and the Bank and the subsequent settlement by way of rehabilitation process through the BIFR is also not in dispute. It is not the case of the revenue that the above said transactions are not genuine and colourable. The authorities have also not gone behind the transactions but proceeded on the footing that the transactions are true and genuine. The assessee has credited the waiver of principle amount to the "Capital Reserve Account" in the balance sheet treating it as capital in nature and the waiver in its "Profit and Loss Account".

8.The Assessing Officer has applied the provisions contained in Section 28(iv) and held that the amount waived in the "Capital Reserve Account" represents the value of benefit. Accordingly, he treated the said amount as income coming under the purview of Section 28(iv) read with Section 2(24) of the Income Tax Act. In so far as the applicability of Section 41(1) of the Income Tax is concerned, it was held that the said issue is irrelevant to the facts of the case.

9.Challenging the order passed by the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) contending that Section 28(iv) of the Income Tax Act, 1961, does not have any application in as much as the assessee is not involved in the business of money transaction and the amount borrowed has been utilised towards the purchase of the capital assets. The assessee has relied upon the various judgments of this Honourable High Court, Supreme Court and High Court of Bombay, Gujarat and Delhi apart from the orders passed by the various Tribunals and contended that the ratio laid down by COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344] does not apply to the facts of the case as held in those judgments. A detailed written submissions have also been made along with the grounds of the appeal. A similar exercise has also been done by the assessee before the Tribunal. However, both the Commissioner of Income Tax (Appeals) and the Tribunal have rejected the appeals filed by the assessee by merely following the judgment of the Honourable Apex Court in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344] referred supra. Therefore, with these admitted facts, the substantial questions of law raised in this appeal will have to be considered.

10.A perusal of the definition of Section 2(24) of the Income Tax Act, which defines "income" would include the value of any benefit or perquisite, whether convertible into money or not, that would arise from the business. In order to appreciate the issue involved, it is relevant to extract the necessary provisions of the Income Tax Act, 1961.

"2(24)"income" includes-

(i)profits and gains;

(vd)the value of any benefit or perquisite taxable under clause (iv) of section 28;"

11.Section 28(iv) of the Income Tax Act, 1961 comes under the heading "Profit and Gains of business or profession" and the same is extracted herein:

"28(iv)the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession."

12.Similarly, Section 41(1) of the Income Tax Act, 1961 deals with "profits chargeable to tax" and the same is extracted herein:

"41(1).Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,-

(a)the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

(b)the successor in business has obtained, whether in case or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.

[Explanation 1.-For the purposes of this sub-section, the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof" shall include the remission or cessation of any liability by a unilateral act by the first mentioned person under clause (a) or the successor in business under clause (b) of that sub-section by way of writing off such liability in his accounts.]

[Explanation 2].- For the purposes of this sub-section, "successor in business" means,-

where there has been an amalgamation of a company with another company, the amalgamated company;

(ii)where the first-mentioned person is succeeded by any other person in that business or profession, the other person;

(iii)where a firm carrying on a business or profession is succeeded by another firm, the other firm;

(iv)where there has been a demerger, the resulting company."

13.Necessity for a reasoned order:

13.1.Shri.N.K.Poddar, learned senior counsel appearing for the assessee submitted that when the assessee has pleaded specifically in the grounds of appeal as well as through the written submissions that the ratio laid down in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344] is not applicable to the facts on hand, the authorities below have committed an error in merely following the said judgment without considering the issues raised.

13.2.A perusal of the order passed by the Commissioner of Income Tax (Appeals) as confirmed by the Tribunal would show that none of the grounds raised by the assessee has been considered. The assessee has raised very many substantial grounds supported by the decisions of various High Courts and Tribunals across the country apart from the Supreme Court decisions which have not been considered by the authorities below. It was blindly held that the issue involved is covered by the ratio laid down in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344]. Such an approach by the authorities which are creation of the statute is wholly wrong, unwarranted and against the basic principles of law. A right to a reasoned order is a basic and constitutional right and the said order is fundamental to the justice delivery system. A judicial order must be supported by sufficient reasons for coming to the conclusion. An authority which is vested with the quasi judicial power is bound to record his reasons for its conclusions. What weighed in the mind of the authority for its conclusion will have to be expressed in its order. When a power is exercised, the same has to be exercised in accordance with law. The failure to record reason would violate the principles of natural justice and against the basic concept of fairness and transparency. A reasoned order is the soul of an order of an adjudicating authority.

13.3.The above said well established principle of law has been reiterated by the Honourable Apex Court in VICTORIA MEMORIAL HALL v. HOWRAH GANATANTRIK NAGRIK SAMITY [(2010) 3 SCC 732] wherein it has been held as follows:

"40.It is a settled legal proposition that not only an administrative but also a judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the

fundamentals of sound administration of justice-delivery system, to make known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of nature justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind." (Vide State of Orissa v. Dhaniram Luhar and State of Rajasthan v. Sohan Lal)

41.Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectively by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. (Vide Raj Kishore Jha v. State of Bihar, SCC p.527, para 19, (2003) 11 SCC 519; Vishnu Dev Sharma v. State of U.P. (2008) 3 SCC 172, SAIL v. STO (2008) 9 SCC 407, State of Uttaranchal v. Sunil Kumar Singh Negi (2008) 11 SCC 205, U.P.SRTC v. Jagdish Prasad Gupta (2009) 12 SCC 609, Ram Phal v. State of Haryana (2009) 3 SCC 258, Mohd.Yusuf v. Faij Mohammad (2009) 3 SCC 513 and State of H.P. v. Sada Ram. (2009) 4 SCC 422.

42.Thus, it is evident that the recording of reasons is a principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why his application has been rejected."

13.4.Therefore, we are of the opinion that the orders passed by the Commissioner of Income Tax (Appeals) and the Tribunal suffer from the violations of principles of natural justice and they cannot be sustained.

14.Interpretation of a Judgment:

14.1.In a multi-court system having its own hierarchy, a judgment rendered by a higher forum has its binding effect on the subordinate Courts. The judicial discipline would require that a judgment rendered by a higher forum will have to be followed by a lower forum in all respects. Further, a judgment of the Honourable Apex Court is binding on all Courts in the whole of the country under Article 141 of the Constitution of India. A binding precedent brings about a stability, uniformity and finality to an issue raised.

14.2.However, a judgment cannot be read like a statute. Courts should not place reliance on decision without discussing factual situation involved in the said decision and how it would apply to the facts involved in the subsequent case. A ratio laid down by a higher forum shall not be taken out of the context and construed like a statute.

15.LORD DENNING while dealing with the law of precedent has observed as follows:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

16.The Honourable Apex Court in COMMISSIONER OF CENTRAL EXCISE, BANGALORE v. SRIKUMAR AGENCIES AND OTHERS [(2009) 1 SCC 469] has held as follows:

"4.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

17.Therefore, applying the above said ratio laid down therein, we are of the firm view that the authorities below have committed an error in merely lying upon the judgment rendered in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344] without applying the facts involved therein, vis-a-vis the facts involved in the present appeal.

18.Applicability of the ratio laid down by the SUNDARAM IYENGAR (T.V.) AND SONS LTD.:-

18.1.In as much as both the Commissioner of the Income Tax (Appeals) and the Tribunal have dismissed the appeals filed by the assessee, placing reliance only upon the judgment rendered in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344], we deem it fit to consider the ratio laid down therein and its applicability to the facts involved in the present case on hand.

19.In the said judgment as submitted by the learned Senior Counsel appearing for both sides, the applicability of Section 28(iv) of the Income Tax Act, 1961 was not considered. The assessee received money during the course of carrying on his business by accepting deposits from trade parties. The said parties did not make any claim for repayment of balance. The amounts deposited by the assessee were not in the nature of security deposits and they have been deposited by adjustment made from time to time. The said amount represented the credit balances in the name of the trade parties. The deposit having been taken in the course of trade, the customers did not claim the remaining amount back after adjustment.

20.The claim of the customers have become barred by limitation and the assessee has treated the said amount as its own money. Therefore, a new asset came into being by the automatic operation of

law through the trade transaction the said amount has been entered into "Profit and Loss Account". Therefore, in as much as the deposited amount had its character changed, when it becomes the money of the assessee due to the operation of the law of limitation, such an amount would become an income exigible to tax at the hands of the assessee. The ratio laid down by the Honourbale Apex Court is extracted herein:

"In the present case, the money was received by the assessee in the course of carrying on his business. Although it was treated as deposit and was of capital nature at the point of time it was received, by efflux of time the money has become the assessee's own money. What remains after adjustment of the deposits has not been claimed by the customers. The claims of the customers have become barred by limitation. The assessee itself has treated the money as its own money and taken the amount to its profit and loss account. There is no explanation from the assessee why the surplus money was taken to its profit and loss account even if it was somebody else's money. In fact, as Atkinson J. pointed out that what the assessee did was the commonsense way of dealing with the amounts."

21.Therefore, the Honourable Apex Court in the above said judgment 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.

22.In the present case on hand, 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 this loan amount along with this interest was waived by way of an agreement between the parties. Therefore, the facts involved in the present case are totally different in the facts involved in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344]. In the said case, admittedly there was a trading transaction whereas, in the present case it is not so. What has been done in the present case is a mere waiver of loan. It is only a mere waiver which has been effected by the bank in favour of the assesee. There is no change of character with regard to the original receipt which was capital in nature into that of a trading transaction. It is further seen that there is a marked difference between a loan and a security deposit.

23.In COMMISSIONER OF INCOME TAX v. GANESA CHETTIAR (P.) [(1982) 133 ITR 103], this Court has held that a debt forgiven cannot be treated as income. The relevant portion is extracted herein:

"It is settled law that a debt forgiven cannot be treated as income. The question as to whether a remission of debt would constitute income was considered in British Mexican Petroleum Co. Ltd. v. Jackson [1932] 16TC 570 (HL). The assessee in that case entered into a contract with an oil producing company for the purchase of petroleum over a period of years. The unpaid price of the oil supplied was debited in the accounts. In view of the adverse effect of a business slump on the assessee-company, the petroleum producing company accepted payment of a part of the debt and released the assessee-company from its liability to pay the balance which was due. The House of Lords held that the amount remitted could not be included as a revenue receipt. Lord Macmillan observed (p.593):

"I cannot see how the extent to which the debt is forgiven can become a credit item in the trading account for the period within which the concession is made."

24.It is a well established principle of law that, every deposit of money would not constitute a trading receipt. Broadly speaking even though a receipt may be in connection with the business, it cannot be said that every such receipt is a trading receipt. Therefore, the amount referable to the loans obtained by the assessee towards the purchase of its capital asset would not constitute a trading receipt. The said issue has been fortified by the judgment of this Court in COMMISSIONER OF INCOME TAX v. A.V.M. LTD. [(1984) 146 ITR 355].

25.The very same contention has been raised on behalf of the revenue before the Division Bench of the Bombay High Court in SOLID CONTAINERS LTD. v. DEPUTY COMMISSIONER OF INCOME TAX [(2009) 308 ITR 417], by relying upon the judgment of the Honourbale Apex Court rendered in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344]. However, in the said case, a finding was given that the money was received by the assessee in the courts of carrying on in his business. Agreement was completely obliterated. The loan in its entirety was completely waived. The loan itself was taken for a trading activity and on waiving it was retained in business by the assessee. In the said judgment, the Division Bench of the Bombay High Court has distinguished the earlier judgment of the said High Court rendered in MAHINDRA AND MAHINDRA LTD. v. COMMISSIONER OF INCOME TAX [(2003) 261 ITR 501]. The said judgment rendered in [(2003) 261 ITR 501] which is similar to the present case on hand was distinguished by the Bombay High Court in view of the finding that there is a trading transaction and the money received was used towards a business transaction and accordingly the ratio laid down in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344] was followed.

26.Therefore, the above said facts would indicate that the ratio laid down in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344] has no application at all to the facts and circumstances of the present case on hand. Hence, we are of the view that the authorities below have wrongly applied the ratio laid down in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344] and therefore, the orders passed by them cannot be sustained.

27.Applicability of Section 28(iv) and 41(1)(a) of the Income Tax Act, 1961.

27.1.Even though the learned Senior Standing Counsel appearing for the revenue submitted that Section 28(iv) and Section 41(1)(a) of the Income Tax Act do not apply to the facts of the case, we deem it fit to consider the same in as much as the authorities below have considered the scope of Section 28(iv) based upon which the decision has been made. Section 28(iv) of the Income Tax Act speaks about the benefit or perquisite received in kind. Such a benefit or perquisite received in kind other than in cash would be an income as defined under Section 2(24) of the Income Tax Act. In other words, to any transaction which involves money, Section 28(iv) has got no application. Hence, we are of the view that Section 28(iv) has no application whatsoever, as admittedly even by the learned senior standing counsel for the revenue to the present case on hand. We do not agree with the stand taken by the learned senior standing counsel for the revenue that section 28(iv) of the Act is not the basis upon which the decision has been arrived at by the authorities below, in as much as the orders passed by them would clearly reveal the above said fact.

27.2.The Division Bench of the Bombay High Court presided over by His Lordship Justice S.H.Kapadia (as he then was) in MAHINDRA AND MAHINDRA LTD. v. COMMISSIONER OF INCOME TAX [(2003) 261 ITR 501], while approving the ratio laid down by the Division Bench of the Gujarat High Court in COMMISSIONER OF INCOME TAX v. ALCHEMIC PVT. LTD. [(1981) 130 ITR 168], has held as follows:

"At the outset, we wish to clarify that this judgment is confined to the facts of this case. This is because the value of any benefit or perquisite arising from business, as contemplated by section 28(iv), could accrue in numerous ways. The income which can be taxed under section 28(iv) must not only be referable to a benefit or perquisite, but it must be arising from business. Secondly, section 28(iv) does not apply to benefits in cash or money (see CIT v. Alchemic Pvt. Ltd. [1981] 130 ITR 168 (Guj). Applying section 28(iv) to the facts of this case, one finds that on June 18, 1964, the assessee entered into an agreement to purchase toolings from KJC. In 1964-65, India was facing foreign exchange crunch. In the circumstances, around June 7, 1965, the Government of India and the Reserve Bank of India, in this case, approved the arrangement under which KJC (supplier of toolings) was permitted to advance a loan of $ 6,50,000 to the assessee for ten years bearing interest at the rate of 6 per cent., free from income-tax. KJC was later on taken over by AMC and as a part of take-over, AMC agreed to waive the principal amount of the loan and not the interest. In the circumstances, as stated in the above three undisputed facts, the assessee paid interest at 6 percent, per annum, for ten years, being the contractual period. According to the Assessing Officer, the loan arose from business dealings. According to the Assessing Officer when AMC waived the loan, the credits became part of business income; that prior to such waiver, the credits represented liability. In the circumstances, the Assessing Officer has taxed such credits as business income. However, in this connection, there are two important facts which are overlooked by the Assessing Officer. Firstly, the assessee has continued to pay interest at 6 per cent, for a period of ten years on the loan amount. In this case, the Assessing Officer has not gone behind the loan agreement. In this case, the approval by the Government of India and the Reserve Bank of India are on record. In this case, the agreement for purchase of toolings was entered into, much prior to the approval of the loan arrangement given by the Reserve Bank of India. Therefore, the loan arrangement, in its entirety, was not obliterated by such waiver. Secondly, in this case we are concerned with the purchase consideration relating to capital asset. The toolings were in the nature of dies. The assessee was a manufacturer of heavy vehicles and jeeps. It required these dies for expansion. Therefore, the import was that of plant and machinery. The consideration paid was for such import. In the circumstances, section 28(iv) is not attracted. Lastly, we may mention that, in this case, AMC agreed to forego the principal amount of loan as a part of take-over arrangement with KJC to which the assessee was not a party. The waiver of the principal amount was unexpected. In the circumstances, one fails to understand how such waiver would constitute business income."

28.The facts involved in the present case are more or less identical to the case dealt with by the Bombay High Court as discussed earlier. The Division Bench has held in the said judgment that the loan agreement in its entirety, as in the present case is not obliterated by the waiver in as much as the assessee has partly complied with, the Assessing Officer has not gone behind the loan agreement, the loan amount was towards the purchase of capital asset and the waiver of the amount was accepted and hence such an activity is not an income assessable to tax. The Division Bench was also pleased to hold that Section 28(iv) does not apply to the benefits in cash or money and it applies only to a transaction arising from business. The said view was also taken by the High Court of Delhi in RAVINDER SINGH v. COMMISSIONER OF INCOME-TAX [(1994) 205 ITR 353] wherein, the earlier decision in COMMISSIONER OF INCOME TAX v. ALCHEMIC PVT. LTD. [(1981) 130 ITR 168] was quoted with approval, the relevant paragraphs are extracted herein:

"So far as the question of s.28(iv) of the Act is concerned, s.28(iv) provides that income falling under cl.(iv) of s.28 shall be chargeable to income-tax under the head: Profits and gains of business or profession". Clause (iv) provides:

"the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession."

It is obvious that if what is received either by way of benefit or perquisite is money, there is no question of considering the value of such monetary benefit or perquisite under cl.(iv) and including the value of such benefit or perquisite under the head "Profits and gains of business or profession". It is only if the benefit or the perquisite is not in cash or money but is non-monetary benefit or non-monetary perquisite that the question of including the value of such benefit or perquisite would ever arise. Under these circumstances, the Tribunal was right in rejecting the contention urged on behalf of the revenue that the amount of Rs.15,964 should be brought to tax as value of any benefit or perquisite within the meaning of s.28(iv). The Tribunal doubted whether the amount of Rs.15,964/- was any benefit-"It may or may not be a benefit". Another question is whether the phrase "whether convertible into money or not" would normally mean something else than money. In our opinion, the conclusion of the Tribunal that s.28(iv) would not apply when the amount received is cash or is considered in terms of money, is correct, and the provisions of s.28(iv) can never be made applicable to the facts of the present case, where excise refund was received by the assessee."

29.Therefore, the transaction in the present case being a loan transaction having no application with respect to Section 28(iv) of the Income Tax Act, the same cannot be termed as an income within the purview of Section 2(24) of the said Act. In other words, in as much as Section 28(iv) is not applicable to the transactions on hand, it cannot be termed as income which can be made taxable as receipt. Hence, such a receipt which does not have any character of an income being that of a loan cannot be made exigible to tax.

30.Similarly, in so far as the applicability of Section 41(1)(a) of the Income Tax Act is concerned, the same also cannot have any application in as much as the said provision would be applicable only to a trading liability. Accordingly, it was held that a loan received for the purpose of capital asset would not constitute a trading liability and hence Section 41(1) has no application. The said issue has also been considered in MAHINDRA AND MAHINDRA LTD. v. COMMISSIONER OF INCOME TAX [(2003) 261 ITR 501], wherein it has been held as follows:

"Alternatively, it was argued on behalf of the Department that in this case waiver constituted remission of trading liability and, therefore, section 41(1) stood attracted. We do not find any merit in this argument. Firstly, in the present case, the prerequisite of section 41(1) is not applicable. In order to apply section 41(1), an assessee should have obtained a deduction in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. In this case, the assessee has not obtained such allowance or deduction in respect of expenditure or trading liability. It is not disputed that the assessee has paid interest at 6 per cent, over a period of ten years to KJC Rs.57,74,064. In respect of that interest, the assessee never got deduction under section 36(1)(iii) or section 37. In the circumstances, section 41(1) of the Act was not applicable. Secondly, even assuming for the sake of argument that the assessee had got deduction on allowance even then section 41(1)

was not applicable because such deduction was not in respect of loss, expenditure or trading liability. In order to get over this alternative argument, it was argued by the Department that the loan was used to buy toolings on which assessee got depreciation allowance of Rs.27,29,585 and, therefore, the amount of Rs.27,29,585 should be set off against Rs.57,74,064. We do not find any merit in this argument. The Department's case is that the assessee got remission of Rs.57,74,064. Remission for depreciation is not in issue before us. The only argument of the Department throughout has been that the waiver constituted remission of Rs.57,74,064. In the circumstances, we cannot direct set off of Rs.27,29,585 against Rs.57,74,064. It is important to bear in mind that before section 41(1) came to be enacted, various judgments as reported in Mohsin Rehman Penkar v. CIT [1948] 16 ITR 183 (Bom) and Orient Corporation v. CIT [1950] 18 ITR 28 (Bom) had laid down that remission was not income and in order to get over those judgments section 41(1) came to be enacted. In the case of CIT v. Phool Chand Jiwan Ram [1981] 131 ITR 37 (Delhi), the assessee-firm had purchased goods. They had also obtained loans from a party, accounts were settled and the balance was credited to the partners' account. It was held by the Delhi High Court that the amount referable to loans was not a trading liability. That, only amounts allowed as deduction in earlier years could be treated as a trading liability. In other words, unless the amounts have been allowed as deduction in earlier years they cannot be treated as trading liability. In the circumstances, section 41(1) was not applicable. This case applies to the facts of our case also. In the case of CIT v. A.V.M. Ltd. [1984] 146 ITR 355 (Mad), it has been held by the Madras High Court that every deposit money does not constitute trading receipt. That, although such a receipt may be in connection with business, it could not be dealt with by the assessee as a receipt of its trade. Therefore, the amounts referable to loans received for purchase of capital assets would not constitute a trading liability and accordingly section 41(1) was not attracted."

31.A similar view was also taken by the Division Bench of the Honourable Gujarat High Court in COMMISSIONER OF INCOME-TAX v. CHETAN CHEMICALS (P.) LTD. [(2004) 139 TAXMAN 301] wherein it has been held as follows:

"2.The assessee, a private limited company, was incorporated in the year 1974-75 as required under the Companies Act, 1956. Since 1976 the company was operating its factory at Nandesari, District Baroda, wherein commercial production of various inorganic chemicals was being carried on. The assessment year is 1982-83 and the accounting period is the year ended on 30th June, 1981. The company maintained its accounts as per mercantile system of accounting. In the course of carrying on its business, the company had obtained unsecured loans from various creditors, and in the light of the financial difficulties faced by the company, the creditors approached the High Court by filing various company petitions. During the course of those proceedings, it transpires that a compromise was reached between the assessee-company and its creditors wherein, as per the terms of the compromise, certain creditors remitted unsecured loans amounting to Rs.1,77,052. At the same time, interest which had accrued in favour of the creditors amounting to Rs.2,96,171 was also remitted. Such remitted interest was declared by the assessee as income liable to tax under section 41(1) of the IT Act, 1961 (hereinafter referred to as "the Act"), while filing its return of income, but the remission of loans amounting to Rs.1,77,052 was not returned as income liable to tax.

3.The ITO treated the aforesaid remission of loans as a benefit accruing to the company during the course of its business activity and brought to tax the same by invoking provisions of section 28(iv) of the Act. The CIT(A) confirmed the assessment order and the assessee approached the Tribunal. The Tribunal for the reasons recorded in its order held that the remission of unsecured loans could not be subjected to tax by invoking provisions of section 28(iv) r/w section 41(1) of the Act.

4.We have heard Mr.Akil Kureshi, learned standing counsel appearing on behalf of the applicant-Revenue. Though served, none appears on behalf of the respondent-assessee. At the time of hearing, Mr.Kureshi invited our attention to provisions of section 41(1) of the Act and contended that this was a liability insofar as the assessee-company was concerned and such liability had been remitted by the creditors of the company, and thus a benefit had been obtained by the assessee-company which was liable to payment of tax under section 41(1) r/w section 28(iv) of the Act.

5.Section 41(1) as was applicable for the assessment year under consideration reads as under:

"(1)Whether an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value or benefit accruing to him, shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business of profession in respect of which the allowance or reduction has been made is in existence in that year or not.

On a reading of the provisions, it is apparent that before the section can be invoked, it is necessary that an allowance or a deduction has been granted during the course of assessment for any year in respect of loss, expenditure or trading liability which is incurred by the assessee, and subsequently during any previous year the assessee obtains, whether in cash or in any other manner, any amount in respect of such trading liability by way of remission or cessation of such liability. In that case, either the amount obtained by the assessee or the value of the benefit accruing to the assessee can be deemed to be the profits and gains of a business or profession and can be brought to tax as income of the previous year in which such amount or benefit is obtained. In the facts of the case on hand, without entering into the aspect as to whether the liability to repay the loans would be a trading liability or not, it is an admitted position that there had been no allowance or deduction in any of the preceding years and hence, there is no question of applying the provision as such.

6.Section 28 of the Act deals with profits and gains of business or profession and clause (iv) thereof says that the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession shall be chargeable as income under the head profits and gains of business or profession. In the facts of the present case, it cannot be said that the assessee-company was carrying on business of obtaining loans and that the remission of such loans by the creditors of the company was a benefit arising from such business."

32.Therefore, we are of the considered view that Section 41(1) has no application at all to the present case on hand which is also not the case of the revenue as well.

33.Applicability of Section 28(i), 36(i) (iii) of the Income Tax Act, 1961:-

33.1.Shri.K.Subramaniam, learned senior standing counsel appearing for the revenue submitted that the facts involved in the present case would come under the purview of Section 28(i) of the Act. The said contention in our considered view cannot be accepted for the simple reason that it is not the case of the Assessing Officer as well as the other authorities that the present case would come under the purview of Section 28(i) of the Act. As observed above that the authorities proceeded only on the footing of Section 28(iv) of the Act would be applicable. Further Section 2(24) of the Income Tax Act defines "income". While defining "profit and gains" it refers to the transactions involved under Section 28(iv) of the Act. Therefore, in as much as the provision contained under Section 28(i) having been not defined as income under Section 2(24) of the Act, the same would not par take the character of the income and therefore, it is not assessable to tax. In other words, only an income as defined under Section 2(24) alone can be made assessable to tax. It is a well established principle of law that all receipts are not income and therefore liable to be taxed.

34.In so far as the reference made under Section 36(1)(iii) of the Income Tax Act is concerned, it is seen that the above said Section speaks about other deductions. The said provision deals with the amount of interest paid in respect of capital borrowal for the purpose of business. Therefore, it has no relevance to the case on hand. A receipt cannot be taxed unless it is a revenue receipt. Hence in view of the admitted fact the receipt involved in the present case is a capital receipt it cannot be taxed. Further Section 37(1) of the Income Tax Act specifically deals with the capital expenditure which cannot be allowed in computing income. Hence it is very clear that the contentions on behalf of the revenue has no legal basis.

The judgments relied upon by the learned senior standing counsel appearing for the revenue also do not apply to the facts on hand. In all those cases, a finding of fact has been rendered that the transactions involved are trading transactions. In JAY ENGINEERING WORKS LTD. v. COMMISSIONER OF INCOME-TAX [(2009) 311 ITR 299], the issue was the applicability of Section 41(1) of the Income Tax Act and also one involving a unilateral return of the assessee which is not the situation in the present case on hand.

36.Similarly in **COMMISSIONER OF INCOME-TAX v. RAJASTHAN GOLDEN TRANSPORT CO. (P.) LTD. [(2001) 249 ITR 723] by applying the judgment in COMMISSIONER OF INCOME TAX v. SUNDARAM IYENGAR (T.V.) AND SONS LTD. [[1996] 222 ITR 344**], the Honourable Apex Court has observed that if an amount is received in the course of trading transaction being revenue in character and when the said amount becomes the assessee's own money because of limitation or by any other statutory or contractual right the same would be an income at the hands of the assessee. As observed earlier, the facts involved in the said case is totally different to the present case on hand and therefore not applicable.

37.Likewise in **COMMISSIONER OF INCOME TAX v. SUNDARAM INDUSTRIES LTD. [(2002) 253 ITR 396]** while construing the application of Section 41(1) of the Act it was held that in a trading liability the assessee obtained a benefit by trading the money as its own without any explanation then the same would become an income. As discussed above, the said judgment also is not applicable. The judgment relied upon by the revenue in SAHNEY STEEL AND PRESS WORKS LTD. v. COMMISSIONER OF INCOME-TAX [(1997) 228 ITR 253], only helps the case of the assessee, in as much as it was held therein that the character of the subsidy in the hands of the waiver, whether revenue or capital will have to be determined, having regard to the purpose for which is given. In as much as that it is not in dispute in the present case on hand that the purpose of loan is towards the purchase of capital asset, the said judgment would only help the case of the assessee.

38.In **VINOD BEHARI JAIN v. INCOME-TAX OFFICER [(2008) 306 ITR 392],** the Honourable Apex Court was pleased to hold that in order to find out the character of the receipt in the assessee the purpose of the grant will have to be seen. By applying the purpose test, it was held that the object of the grant will have to be seen. Therefore, by applying the principle laid down by the Honourable Apex Court the object of the transaction namely the loan transaction is towards the purchase of the capital asset as against the running of the regular business such a receipt would be a capital receipt. Therefore, by applying the said principle laid down by the Honourable Apex Court there is no doubt that the grant of loan being one for the purpose of purchase of capital asset which was also utilised for the same is only a capital receipt.

39.Hence, on a consideration of the facts involved and applying the legal principle discussed above, we are of the view that the substantial questions of law will have to be answered in favour of the assessee and against the revenue and accordingly the appeal is allowed, by setting aside the orders passed by the authorities below. The substantial question of law are answered in favour of the assessee and against the revenue.

In fine, the orders passed by the authorities below are hereby set aside and the appeal is allowed to the extent indicated above. No costs.

(F.M.I.K.,J.) (M.M.S.,J.)

23.11.2010

Index : Yes

Internet : Yes

Note : Issue Order Copy on 30.11.2010

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To

1.The Income Tax Appellate Tribunal "B" Bench

Chennai.

2.The Commissioner of Income Tax-I

4, Williams Road

Cantonment, Trichy _x0016_ 620 001.

Tamil Nadu.

F.M.IBRAHIM KALIFULLA, J.

AND

M.M.SUNDRESH, J.

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PRE-DELIVERY JUDGMENT IN

TAX CASE (APPEAL) NO.812 OF 2010

23.11.2010