

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: D : NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
AND
SHRI I. C. SUDHIR, JUDICIAL MEMBER

ITA No. 1108/Del/2007
Assessment Year: 2002- 2003

M/s. Luxor Writing Instruments Pvt. Ltd. Vs.
5, Okhla Industrial Estate, Phase-III,
New Delhi

DCIT
Circle 4 (1),
New Delhi.

(Appellant)

(Respondent)

AND

ITA No. 2386/Del/2007
Assessment year : 2002-03

DCIT
Circle 4 (1),
New Delhi

Vs.

M/s. Luxor Writing Instruments Pvt. Ltd.
5, Okhla Industrial Estate, Phase-III,
New Delhi.

(Appellant)

(Respondent)

Appellant by : Shri Salil Agrawal, Gautam Jain, Advocate
Respondent by : Shri D.K. Mishra

Date of hearing : 23/07/2012
Date of pronouncement : /2012

ORDER

PER I.C. SUDHIR, JUDICIAL MEMBER

1. The revenue in their grounds to the appeal has raised following issues:
 1. *“Whether, on the facts and in the circumstances of the case, the learned CIT (Appeals) was justified in allowing the relief of Rs.108,49,67,917/- remitted by Gillette USA for repayment of its debts pursuant to sales of its entire shareholding in the assessee company to Newell as capital receipt without appreciating the fact that Gillette was neither its shareholder nor it increased the shareholding of Gillette USA or its subsidiaries in the assessee company.*
 2. *Whether, on the facts and in the circumstances of the case, the learned CIT (Appeals) was justified in restricting the addition on account of sum remitted by M/s Gillette Co. USA to the assessee company for payment of its debts at Rs.118,09,00,129/- to Rs.9,59,32,212/- crores whereas the component of remittance to bank account of the assessee company has been treated as revenue receipt and the*

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*component remitted directly to Bank of America for the same
purpose has been treated as capital receipt.”*

2. The assessee has questioned first appellate order on the following grounds:-

i. *“That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the addition of sum of ` 9,59,32,212.66 representing the amount remitted by M/s. Gillette, USA for repayment of loans of the assessee company.*

1.1 *That mere fact that the aforesaid sum had been credited to the bank account of the appellant company could not in law or fact be held to be a valid basis for concluding that such sum represents income of the appellant company, particularly when it is undisputed that the aforesaid sum had been utilized for repayment of debts by the appellant company.*

1.2 *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that, sums remitted were voluntary payments and, were not received by the assessee for any services rendered to M/s. Gillette, USA, which could not be taxed as income of the appellant company. In fact, the learned Assessing Officer has admitted that sum was remitted without any quid pro quo and, therefore could not be held as income under the Act.*

2. *That the learned Commissioner of Income Tax (Appeals) has further erred both in law and, on facts in confirming the addition of sum of ` 3,34,85,700/- representing the amount of loan waived by M/s. Gillette, USA.*

2.1 *That the learned Commissioner of Income Tax (Appeals) has confirmed the aforesaid addition by erroneously and,*

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arbitrarily concluding that, "it was although originally a capital receipt in the shape of loan, however since the appellant does not have to repay the sum received, it changes the character of receipt to revenue receipt."

- 2.2 *That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that, the judgment of Hon'ble Delhi High Court in the case of CIT v. Phool Chand Jiwan Ram reported in 131 ITR 37 was fully applicable to the facts of the case of the appellant and, therefore, there was no valid justification or basis to sustain the aforesaid addition.*
3. *That the various adverse findings recorded by the learned CIT(Appeal) are totally and wholly arbitrary in as much as he has failed to appreciate the submissions and evidence filed by the appellant during the course of appellate proceedings.*
4. *That the learned Commissioner of Income Tax (Appeals) has further erred in confirming the levy of interest u/s 234B and 234C of the Act. "*

3. The relevant facts are that on 19.3.1996 a joint venture agreement was drawn between (1) Gillette India (P) Ltd. (GIPL), and (2) Jain group comprising of members of one Mr. D.K. Jain's family (Jain Family) and JHPL Holdings (P) Ltd. (JHPL). The joint venture was formed to carry on the business of manufacture and marketing of writing instruments and the stationery products in India through an existing company, namely the assessee company, which was incorporated on 8.3.95, whose promoter/shareholders were Jain group. By a letter dated 19.3.1996, M/s Gillette Company USA, holding company of GIPL gave an undertaking inter

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alia that, assessee company will be the exclusive vehicle through which Gillette will undertake in India the business in the field of writing instruments and stationery products including introduction of new products and / or new brand in that field, and the Gillette will not undertake directly or indirectly any activities in competition with the assessee company in India.

4. As a result of the above arrangement, the assessee company has been engaged in the business of manufacture and distribution of writing instruments and stationery products. The equity share capital of the assessee company was held equally by Jain Group and GIPL and its affiliates.

5. The funds required by the assessee company for its business were financed out of interest bearing loans raised from Gillette Diversified Operations (P) Ltd. and affiliate of 'GIPL'.

6. The assessee company raised a loan of Rs.66 crores from Bank of America in Financial year 2000 – 2001, which was primarily utilized to repay the loans/debts of the company as per details given below.

-	Gillette Diversified Operations Pvt. Ltd.	-	Rs.47.25 cr
-	Repayment of ECB to The Gillette Co, USA -		Rs. 4.78 cr
-	Payment of Supplier's Credit to The Gillette Co.	-	Rs.1.78 cr
-	Repayment of loan to India promoters	-	Rs.9.50 cr.

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7. In the financial year 2001-02 the assessee company further borrowed an amount of Rs.20 crores from Bank of America which was primarily utilized to further repay the loans / debts of the company as per details given below.

- Gillette Diversified Operations Pvt. Ltd. - Rs.7.00 cr
- Repayment of ECB to The Gillette Co, USA - Rs.4.30 cr
- Repayment of loan to The ANZ Grindlays Bank- Rs.8.50 cr

8. The funds were raised from banks against the corporate guarantee of M/s Gillette company USA.

9. Besides, the loan was raised of USD 2.3 Million from M/s Gillette Company USA under the External of Commercial Borrowing scheme of Reserve Bank of India.

10. In the year 2001 Gillette Company USA sold its business of writing instruments to Newell Rubbermaid inc. USA (Newell). As part of such sale of business to Newell the shareholding of GIPL in assessee company was also sought to be transferred to Newell. For this purpose various agreements were executed between GIPL, Jain Group on 17.1.2001 whereby Newell was also made a party (Assignment Agreements), wherein the Jain Group had given consent to transfer of shares by GIPL and its affiliates to Newell.

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11. In the year 2002 Newell expressed its unwillingness to acquire the shareholding of the Gillette Group in the assessee company though agreed under the assignment agreement. Newell however, took over the writing instrument business of the Gillette Company USA in the rest of the World. Since the assessee company was incurring losses, Gillette Company USA considered it prudent to get itself discharged from the security provided by it in respect of loan taken by the assessee company. In furtherance thereto in March, 2002 Gillette Company USA, the holding company, thus remitted a sum of money to Bank of America, New Delhi Branch to LWIL account, specifically for the benefit of the banks including Banks of America, Standard Chartered Bank, Canara Bank etc. for obtaining the release of its corporate guarantee. The bankers after receipt of money had released the corporate guarantee of Gillette Company USA. Pursuant to the aforesaid, total sums remitted by Gillette USA aggregated to Rs.120,08,40,830.47/- comprising of Rs.97,06,00,000/- as per FIRC and Rs.23,02,40,830.47/- as per FIRC. Out of the aforesaid sums of Rs.120,08,40,830.47/- sums aggregating to Rs.108,49,67,916.81/- was directly appropriated for the benefit of 3 banks, as per the amendment to the master agreement dated 26.03.2002, namely :

(a) Bank of America Rs.96,35,08,609.81/-

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(b) Standard Chartered Bank	Rs.2,14,59,307.00/-
(c) <u>Canara Bank</u>	<u>Rs.10,00,00,000.00/-</u>
<u>Total</u>	<u>Rs.108,49,67,916.81/-</u>

12. The balance amount of Rs.11,58,72,913.66/- i.e. difference between Rs. 120,08,40,830.47/- and Rs.108,49,67,916.81/- was credited to the bank account of the assessee in the following manner.

(a) CA (LWIL)	Rs.70,91,390.19/-
(b) CA (LWIL)	Rs.8,88,40,822.47/-
(c) <u>CC (LWIL)</u>	<u>Rs.1,99,40,701.00/-</u>
<u>Total</u>	<u>Rs.11,58,72,913.66/-</u>

13. Out of the aforesaid a sum of Rs.1,99,40,701.00/- was already credited to the profit and loss account and was offered as income. However, the balance amount of Rs.9,59,32,212.66/- was utilized for repayment of debts. Thus out of total sum remitted of Rs. 120,08,40,830.47/- a sum of Rs. 1,99,40,701.00/- was credited to the profit and loss account and the balance sum of Rs.118,08,00,129.47/- was remitted for repayment of debts. Out of this sum of Rs.118,08,00,129.47/- the said sum of Rs.108,49,67,916.81/- was directly appropriated for the benefit of 3 banks and the balance amount

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of Rs.9,58,32,212.66/- was credited to the bank account of the assessee and utilized for repayment of loans.

14. The Gillette Company USA waived its claim to the foreign currency loans advanced by it to the assessee company for working capital under the External Commercial Borrowings Scheme.

15. On 30.10.2002 the assessee filed return of income declaring a loss of Rs.34,58,93,385/-. On 2.3.2005 assessment u/s 143 (3) was framed at income of Rs.54,95,90,790/- by making an addition of Rs.118,09,00,129/- representing sums remitted by M/s Gillette Company, USA as they were held in the nature of subsidy or grant, and was thus a revenue receipt.

16. The Ld. CIT (A) vide its order dated 24.1.2007 held that the sum remitted by M/s Gillette Company, USA, to the extent of Rs.108.49 crores is a capital receipt not chargeable to tax but Rs.11.58 crores which has been credited to the bank account of the assessee, is to be treated as business income of the assessee but the same is restricted by a sum of Rs.9.59 Crore as Rs.1.99 was already credited by the assessee to the profit and loss account and was offered to tax.

17. Now the issues involved in the cross-appeals are as under:

1. "As to whether in a case where a guarantor who is also a holding company of the shareholder in the assessee company,

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repaid the loan of Rs.108.49 crores advanced by the bank to the assessee company to discharge itself of its liability under the corporate guarantee, could such sum be regarded as income of the assessee company?

2. As to whether further sum of Rs.9.59 crores remitted by the said guarantor to discharge the liabilities of the assessee company could be treated as income and does not represent capital receipt?
3. As to whether the further waiver of loan of Rs.3.43 crores by the said guarantor could be treated as income and does not represent capital receipt?"

Issue nos.-1 & 2

18. The issues involved in ground nos. 1 and 2 of the appeal preferred by the revenue and the ground nos. 1, 1.1 and 1.2 of the appeal preferred by the assessee are connected. We have already discussed the relevant facts in the previous paragraphs. The AO made addition of Rs.118.09 crores representing the sum remitted by M/s Gillette Company, USA to the assessee company. The Ld. CIT (A) deleted Rs.108.49 crores out of the said addition which has been questioned by the revenue in their appeal. The remaining sum of Rs.9.59 crores out of the said addition has been sustained

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by the Ld. CIT (A) on the ground that the Gillette Co. USA, the assessee company of the joint venture, GIL paid the said sum to the credit of the assessee's account rejecting the claim that the said sum was not in the nature of the income as it did not arise in the course of carrying on its business and cannot be taxed u/s 28 (1) (iv) of the Act. This action of the Ld. CIT (A) has been questioned by the assessee in ground nos. 1, 1.1 and 1.2 of the appeal preferred by it.

19. In support of the grounds of the appeal of the revenue the Ld. DR has basically placed reliance on the assessment order. He submitted that there was no disruption in the business of assessee. The copy of memorandum of understanding (MOU), was not produced before the AO. The same was produced only before the Ld. CIT (A). He referred page nos. 463 to 465 of paper book Volume III i.e. copy of memorandum of understanding (MOU) dated 5.1.2002 in support. The Ld. DR submitted that the said MOU culminated into master agreement dated 4.3.2002 which was amended on 26.3.2002. The Ld. DR submitted that the nature of payment was revenue in nature as rightly held by the AO. He submitted that nature of the instruction received by the Bank of America USA by fax was to be seen. He referred page nos. 96, 97, 100 & 101 of the paper book Volume no. 1 in this regard. He submitted that neither the agreement nor payment to the bank were

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voluntary. The loan was for working capital. He referred page nos. 54 to 61 & 62 to 64 of the paper book Volume no. 1. i.e. copies of letter dated 13.06.1997 from Reserve Bank of India, and letters from Bank of America for credit facility. There was no necessity of entering into the guarantee and the guarantor comes in picture when loanee fails to pay. He referred page nos. 307 to 309 of the paper book Volume no. II. i.e. query raised by the Ld. CIT (A). The Ld. DR submitted further that the Ld. CIT (A) should have considered the contentions of the AO including the remand report in its entirety. He submitted further that nature of document is required to be considered and not the nomenclature of the material. Likewise nature of receipt is more important. Every receipt is income unless it is specifically excluded. He placed reliance on the following decisions:

1. S.B. Sugar Mills Ltd. Vs. CIT 166 ITR 783 A (SC)
2. Kettlewell Bullen and Co. Ltd. Vs. CIT 53 ITR 261(Cal)
3. S.Kumar Tyres Mfg. Co. Ltd. Vs. DCIT 61 ITD 326 (Indore)
4. Mahindra & Mahindra Ltd. Vs. CIT 261 ITR 501 (Bom)
5. Killick Nixon & Co. Vs. CIT 66 ITR 714 (S.C.)
6. CIT Vs. New Jehangir Valeil Mills Co. Ltd. 37 ITR 151 (SC)
7. Srinivasa Pitti & Sons Vs. CIT 173 ITR 306 (MP) (F.B.)

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8. Sahney Steel & Press Works Ltd. (pb) P.1 Vs. CIT 228 ITR 528 (SC)
9. CIT Vs. H.H.Maharani Sethee Parvathi Bagi 232 ITR 678 (Ker)
10. Raghunarayan Rice Mills Vs. CIT 75 ITR 682 (S.C.)
11. Hoshiarpur Electric Supply Co. Vs. CIT 41 ITR 608 (S.C.)
12. Mrs. Sheila Kaushik Vs. CIT 131 ITR 519 (S.C.)
13. Delhi Stock Exchange Assn. Ltd. Vs. CIT 41 ITR 495 (S.C.)
14. CIT Vs. Nova Promoters & Finlease (P) Ltd. 342 ITR 169 (Del)
15. Bombay Oil Industries Ltd. Vs. DCIT 82 ITD 626 (Mum)
16. Karanpura Development Co. Ltd. Vs. CIT 44 ITR 362 (SC)
17. Senairam Doongarmall Vs. CIT 42 ITR 392 (SC)
18. CIT Vs. G.R. Karthikeyan 201 ITR 866 (SC)
19. CIT Vs. Smt. Shanti Meattle 90 ITR 385 (Alld.)
20. CIT Vs. Avinash Parvicha 251 ITR 360 (Del)
21. Logitronics P. Ltd. Vs. CIT & Ors. 333 ITR 386 (Del)
22. National Cement Mines Industries Ltd. Vs. CIT 42 ITR 69 (SC)

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20. The Ld. AR tried to justify the first appellate order on the issue raised in the ground of appeal preferred by the revenue. He submitted that the Ld. CIT (A) should have deleted the entire addition of Rs.118,09,00,129/- made by the AO. He reiterated the submissions made before the authorities below in this regard. He submitted that the Gillette Company, USA had no interest in the assessee company. As the assessee company was incurring losses, Gillette Company, USA found it prudent to get itself discharged from the security produced by it in respect of the loans raised by the assessee company. In order to do so in March, 2002 Gillette Company, USA, the holding company voluntarily remitted a sum of money to Bank of America, New Delhi branch to LWIL account, specifically for the benefit of the banks including Banks of America, Standard Chartered Bank, Canara Bank etc. for obtaining the release of its corporate guarantee. The bankers on receipt of money released the corporate guarantee of Gillette Company, USA. Thereafter, Gillette's guarantee was no more available to the assessee company and the bank withdrew the loan facilities to the assessee company. Pursuant to the aforesaid, total sums remitted by M/s Gillette Company, USA aggregated to Rs.120,08,40,830.47/- comprising of Rs.97,06,00,000/- as per FIRC made available at page no. 93 of the paper book and Rs.23,02,40,830.47/- as per FIRC at page no. 94 of the paper book Volume

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I. Out of aforesaid sum of Rs.120,08,40,830.47/-, a sum aggregating to Rs.108,49,67,916.81/- was directly appropriated for the benefit of 3 banks as per the amendment to the master agreement dated 26.3.2002. The balance amount of Rs.11,58,72,913.66/- i.e. difference between Rs.120,08,40,830.47/- and Rs.108,49,67,916.81/- was credited to the bank account of the assessee. Out of the aforesaid sum Rs.1,99,40,701/- was credited to the profit and loss account and offered as income. However, the balance amount of Rs.9,59,32,212.66/- was utilized for repayment of debts, details of which have been made available at page no. 93 of the paper book. The AO made addition of Rs.118,09,00,129/- representing sums remitted by Gillette Company, USA, holding it in the nature of subsidy or grant and was thus held as a revenue receipt. The Ld. CIT (A) has held that the sum remitted by Gillette Company, USA, to the extent of Rs.108.49 crores is a capital receipt not chargeable to tax but Rs.11.58 crores which was credited to the bank account of the assessee has been treated by him as business income of the assessee however, same has been restricted by a sum of Rs.9.59 crore as Rs.1.99 crore was already remitted by the assessee to its profit and loss account. He submitted that return of income was filed by the assessee declaring a loss of Rs.34,58,93,385/- against which the AO has assessed an income of Rs.54,95,90,790/- by making the said addition of

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Rs.118,09,00,129/-. The Ld. AR referred page nos. 93 & 94 (copies of FIRC) of the paper book Volume 1, page nos. 185,293 (written submissions before Ld. CIT (A)) of the paper book Volume no. 2 and page no. 392 to 426 (agreements) of the paper book Volume no. 3. He also referred page nos. 62 to 92 (loan agreements) of paper Book – I, page No. 45 (letter of offer from Gillette Co. USA dated 4.12.1996) Paper Book – I, page nos. 46 to 53 (application for approval to RBI dated 4/11.3.1997) of Paper Book I, page nos. 54 to 60 (approval dated 13.6.1997 from RBI) Paper Book-I, page no. 61 (letter dated 23.7.1998 from Ministry of Finance) Paper Book- I, and page nos. 72 to 74 (letter dated 24.4.2001 from Ministry of Commerce & Industry) Paper Book – I etc. He placed reliance on the following decisions:

1. CIT Vs. General Electrodes & Equipments Ltd. 155 ITR 78 (Bom)
2. Ms. Payal Kapoor Vs. ACIT 98 ITD 19 (Del)
3. Smartalk (P) Ltd. Vs. ITO 313 ITR 96 (AT) (Bom)
4. Shyam Telelink Ltd. Vs. ITO 99 ITD 576 (Del)

21. In support of the grounds 1, 1.1 & 1.2 of the appeal preferred by the assessee, the Ld. AR submitted that the Ld. CIT (A) has sustained the addition of Rs.9.59 crores only on the basis that the amount of Rs.9.59

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crores stood credited in the assessee's bank account. Infact there was no difference wherein the credit has been made in the assessee's bank account of Rs.9.59 crores or credit made of Rs.108.49 crores. It appears that the Ld. CIT (A) gave such finding since the aforesaid amount of Rs.108.49 crores was the sum remitted to the bank account without recourse to assessee would have a different character. He fails to appreciate that so far as the nature of remittance is concerned the same would remain the same, as the amount was remitted by Gillette Co. USA for the purpose of discharging of their obligations as a guarantor and the balance sum was paid to the assessee specifically for the purpose of repayment of its debt. He submitted whether the mode of repayment of debts was by way of discharging of their liability as guarantor or for repayment of debts, the same would not affect the capital nature of the receipt. By no stretch of imagination it could be regarded that an amount remitted to the assessee to discharge its obligation to the creditors, could be regarded as revenue receipt since the receipt did not accrue or arise or stem from any commercial and business transaction. Infact, there was no business relationship between the assessee company and Gillette Company, USA. He cited following decisions in support:

1. Handicrafts and Handloom Export Corporation of India Vs.
CIT 140 ITR 532 (Del)

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2. CIT Vs. Stewart and Lloyds of India, Ltd. ,165 ITR 416
(Del)
3. ACIT Vs. Handicrafts and Handloom Export Corporation
133 ITR 590 (Del)
4. DCIT Vs. Lurgi India Ltd 114 ITD 1 (Del)

22. The Ld. AR submitted further that when an assessee discharges its liability from sums receive by it, it is a case where the amount received by it is applied by it to discharge its liability. There is a distinction between liability ceasing to exist and where a liability is discharged from the amount available to it, which is the application of receipt and as such Section 41 (1) of the Act has no application. In fact, assessee company had committed an error when it offered a sum of Rs.1.99 crores as income under misconception of law by failing to appreciate that such receipt represented capital and was not liable to tax. Mere fact that sum received of Rs.1.99 crores was not utilized for repayment of liabilities could not be a ground in law to regard the same as its income as it is a well settled position of law that every receipt is not income, submitted the Ld. AR while placing reliance on the following decisions:

1. Parimiseti Seetharamamma Vs. CIT 57 ITR 532 (S.C.)

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2. CIT Vs. N. Swamy 241 ITR 363 (Mad)
 3. Dilip Kumar Roy Vs. CIT 94 ITR 1 (S.C.)
 4. Kishnichand Chellaram Vs. CIT, 125 ITR 713 (SC)
23. The Ld. AR submitted further that a debt waved or forgone can not partake the character of income either under Section 41 (1) or Section 28 of the Act. He placed reliance on the following decisions:
- CIT Vs. Phool Chand Jiwan Ram 131 ITR 37 (Del)
 - DCIT Vs. Tosha International 116 TTJ 941 (Del), CIT Vs. Tosha International 176 Taxman 187 (Del)
 - CIT Vs. Goyal MG Gases Ltd (Del) in ITA No. 364,365,368,369,370 & 923/2007
 - Mahindra & Mahindra Mills Ltd Vs. CIT 261 ITR 501 (Bom)
 - CIT Vs. AVM Ltd. 146 ITR 355 (Mad)
 - CIT Vs. M/s P Ganesa Chettiar 133 ITR 103 (Mad)
 - Fidelity Textiles (P) Ltd Vs. ACIT 305 ITR 97 (AT) (Chennai)
 - Comfund Financial Services (P) Ltd Vs. DCIT 67 ITD 304 (Bang), CIT Vs. Comfund Financial Services 245 ITR 143 (Kar)
 - Accelerated Freez and Drying Co. (P) Ltd 31 SOT 442 (Cochin)

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- Deepak Fertilisers and Petrochemicals Corpn. Ltd. Vs. DCIT
117 TTJ 752 (Mum)
- Cipla Investments Ltd Vs. ITO 33 SOT 317 (Mum)
- Helios Food Improvers (P) Ltd. Vs. DCIT 14 SOT 546 (Mum)
- Nirmala P. Athavale Vs. ITO 117 TTJ 353 (Mum)
- Mindteck India Ltd. Vs. ITO 124 TTJ 830 (Mum)
- Prism Cement Ltd. Vs. JCIT 285 ITR 43 (Mum)
- CIT Vs. Aries Advertising (P) Ltd. 171 Taxation 969 (Mum)
- ITO Vs. Ahuja Graphite Machinery (P) Ltd. 109 ITD 71 (Mum)
(TM)
- Sunanda Capital Services Ltd Vs. JCIT 28 SOT 484 (Mum)
- CIT Vs. Chetan Chemicals (P) Ltd. 139 Taxman 301 (Gujarat)
- Velocient Technologies Ltd. (Del) ITA No. 1690/D/07
- CIT Vs. Jindal Equipments Leasing and Consultancy Services
Ltd. 37 DTR 172 (Del)

24. Ld. AR submitted that there have been substantial amendments in Section 56 (2) of the Act and yet, even after the insertion of Section 56(2) (viiia) in the Act by Finance Act 2010 w.e.f. 1.6.2010, such receipts are not eligible to tax. Under these facts the Ld. CIT (A) was not justified in

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sustaining the addition of Rs.9,59,32,212.66/- representing the amount remitted by M/s Gillette Company, USA for repayment of loans of the assessee company. The Ld. AR also asserted that a subsidy can only be granted by Government and not by Private Individual. Subsidy is a grant of money from a Government to a Private enterprise considered as a beneficial to the company. He cited following decisions:

- CIT Vs. Grace Paper Mills Ltd. 183 ITR 591 (Guj) approved by SC in P J Chemicals Vs. CIT, 210 ITR 830 (SC)
- Shri Ambica Mills Ltd Vs. The Textile Labour Association, 1972 (SCI.) GJX 648 (SC)

25. In rejoinder the Ld. DR submitted that all receipt unless exempt is income and placed reliance on the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Smt. Shanti Meattle 90 ITR 385 (All). He submitted that the payment is in the nature of subsidy and not subsidy. He also pointed out that waiver of payment was made to the assessee through Bank and not to the Bank as held by the Ld. CIT (A). The payment was made only out of the agreement, submitted the Ld. DR.

26. We have considered the above submissions in view of the orders of the authorities below, material available on record and the decisions relied upon. An undisputed fact remained that a total sums aggregating to

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Rs.120,08,40,830.47/- was remitted by M/s Gillette Company, USA. The said amount was comprising of Rs.97,06,00,000/- as per FIRC made available at page no. 93 of the paper book Volume 1 and Rs.23,02,40,830.47/- as per FIRC, made available at page no. 94 of the same paper book Volume 1. Out of the aforesaid sum of Rs. 120,08,40,830.47/-, sums aggregating to Rs.108,49,67,916.81/- was directly appropriated for the benefit of 3 banks i.e. Bank of America (Rs.96,35,08,609.81/-, - page no. 93), Standard Chartered Bank (Rs.2,14,59,307.00/- -, page no. 94), and Canara Bank (Rs.10,00,00,000.00/-, page no. 94) as per the amendment to the master agreement dated 26.3.2002. The balance amount of Rs.11,58,72,913.66/- i.e. difference between Rs.120,08,40,830.47/- and Rs.108,49,67,916.81/- was credited to the bank account of the assessee in following manner:

(a)	CA (LWIL)	Rs.70,91,390.19/- (page no.93)
(b)	CA (LWIL)	Rs.8,88,40,822.47/- (page no. 94)
(c)	<u>CC (LWIL)</u>	<u>Rs.1,99,40,701.00/- (page no. 94)</u>
	<u>Total</u>	<u>Rs.11,58,72,913.66/-</u>

27. Out of the aforesaid sum Rs.1,99,40,701.00/- had been credited to the profit and loss account and offered as income. However the balance amount

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of Rs.9,59,32,212.66/- was utilized for repayment of debts for which details were furnished by the assessee before the Ld. CIT (A). The raising of loans for its business by the assessee from banks against the corporate guarantee of M/s Gillette Company, USA is well supported by the sanction letter of Bank of America, New Delhi, dated 6.11.2001, a reference of which has been made by the Ld. CIT (A) at page no. 30 of the first appellate order with this observation that Bank of America, USA had extended credit to Bank of America, New Delhi on the basis of corporate guarantee provided to it by M/s Gillette Company USA. A copy of this letter has been made available at page nos. 88 and 89 of the PB-I. The Bank of America, New Delhi had extended short-term loans to the assessee only after receiving the debit authority from Bank of America, New York favouring Bank of America, New Delhi. The Bank of America, New Delhi had extended the loan to LWIL on the basis of the credit provided by the Bank of America, New York. Similarly loans from other banks namely Standard Chartered Bank and Canara Bank were provided. Besides, a loan of USD 2.3 million was also raised from M/s Gillette Company USA under the External Commercial Borrowing Scheme of Reserve Bank of India. The Gillette Co. USA later on waived its claim to this foreign currency loans advanced by it to the assessee.

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28. As stated hereinabove that on March 19th, 1996 a joint venture agreement was entered between M/s Gillette India Pvt. Ltd. (GIPL) a subsidiary of M/s Gillette Company USA, members of one Mr. D.K.Jain family (Jain Family) and JHPL Holdings pvt. Ltd. (JHPL) to incorporate the assessee company for carrying on the business of manufacture and distribution of writing instruments and stationery products in India. The share capital of assessee company was thus allotted to Jain Family, JHPL, JIPL and its affiliates. In the year 2001 Gillette Company USA, sold its business of writing instruments to Newell, USA. The share holding of the GIPL in LWIL was also sought to be transferred to Newell. For this purpose various agreements were executed between GIPL, and Jain Family on 17.1.2001, whereby Newell was also made a party (Assignment Agreement) and wherein the Jain Family had given consent to transfer of shares by GIPL and its affiliates to Newell and Newell had also been granted an approval by the Ministry of Commerce and Industry, Department of Industrial Policy and Promotion vide letter dated 24.4.2001 for acquisition of shares of the assessee company from Gillette Group. In the year 2002 Newell expressed its unwillingness to acquire the share holding of the Gillette Group in the assessee company. In other words Newell, desired not to join or become a part to the joint venture agreement. In furtherance to its decision of Newell a

ITA Nos. 1108, 2386/Del/2007 memorandum of understanding dated 5.1.2002 was executed between M/s Gillette Company USA, Newell, Jain Family and the assessee company. This memorandum of understanding culminated into a master agreement dated 4.3.2002. A copy of the said master agreement dated 4.3.2002 has been made available at page no. 392 to 416 of the paper book Volume III. The contents of clause no. 4 thereof are relevant for adjudicating the issue involved. The said clause is being reproduced herein for a ready reference:

“4 Further Consideration

4.1 M/s Gillette and Newell agree to pay the sums as set fort below:

- (a) Newell shall pay to the Jain Family (as per details previously notified by Mr.D.K. Jain), at Closing the consideration and compensation of USD 10,000,000:*
- (b) At the Closing M/s Gillette shall deposit into an escrow account the sum of USD 25,000,000, a portion of which sum shall be released to pay indebtedness owed by LWIL to the Bank of America, Barakhamba Road, New Delhi, and thereby secure the release and discharge of the corporate guarantee (s) given by M/s. Gillette to the said bank to guarantee credit facilities extended by the said bank to LWIL. The remainder of the escrowed funds shall be released to WLIL. Satisfaction of the*

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LWIL indebtedness to Bank of America shall be without recourse to LWIL or to the Jain Group; and

(c) *M/s. Gillette shall previous year to Ms. Pooja Jain, at Closing, a sum of USD 1,000,000, by way of compensation.”*

29. The above Clause no. 4 of the master agreement dated 4.2.2002 was further amended vide amendment to the master agreement dated 26.3.2002, which reads as under:

“4 Further Consideration

4.1 *On the Closing Date, M/s Gillette, Newell and / or LWIL agree to pay the sums as set forth below:*

(a) *Newell shall pay to the Jain Family (As per details previously notified by Mr. D.K. Jain), at Closing, the consideration and compensation of USD 10,000,000;*

(b) *M/s Gillette shall cause to be remitted a sum of Rs. USD 24,744,299.00 to the Bank of America, Barakhamba Road, New Delhi to be disbursed as follows:*

(i) *Rupee equivalent of USD 20,000,000.00 (United States Dollars twenty million only) to be paid to the Bank of America, Barakhamba Road, New Delhi in full and final settlement of the amounts owing at closing to the said Bank by LWIL and thereby*

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secure the release and discharge of the corporate guarantee(s) given by M/s Gillette to the said bank to guarantee credit facilities extended by the said bank to LWIL;

- (ii) United States Dollar equivalent to Indian Rupees 21,459,307.00 (Rupees twenty million four hundred fifty nine thousand three hundred and seven only) to be paid to Standard Chartered Grindlays Bank in full and final settlement of the amounts owing at Closing to the said Bank by LWIL;*
- (iii) United States Dollar equivalent to Indian Rupees 100,000,000, (Rupees one hundred million only) to be paid to Canara Bank in full and final settlement of the amounts owing at closing to the said Bank by LWIL;*
- (iv) United States Dollar equivalent to Indian Rupees 19,940,701 (Rupees nineteen million nine hundred forty thousand seven hundred only) towards settlement of claims made by LWIL against supplies made by M/s. Gillette; and*
- (v) The balance amount, if any, shall be credited to LWIL's account maintained with Bank of America, New Delhi."*
- (c) M/s Gillette shall previous year to Ms. Pooja Jain, at Closing, a sum of USD 1,000,000, by way of compensation."*

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30. In pursuant to the aforesaid terms of the agreement a total sum of Rs. 120,08,40,830.47/- was remitted by M/s Gillette Company USA, in the manner discussed above. A copy of master agreement dated 26.3.2002 has been made available at page nos. 417 to 426 of paper book Volume 2.

The claim of the assessee remained that remittance of Rs.118.09 crores and waiver of loan of Rs.3.40 crores by M/s Gillette Company USA, constitute capital receipt. The AO did not agree and concluded that the remittance of Rs.118.09 crores is a revenue receipt since the same is in the nature of subsidy or grant- in- aid and the waiver of loan is income of the assessee company, since the loan had been utilized for working capital purpose. The amount of remittance of Rs.118.09 crores consisted of (a) Rs.108.49 crores remitted by M/s Gillette company USA, and proportionately directed for the benefit of 3 banks and (b) Rs.11.58 crores was remitted by M/s Gillette Company USA and credited to the bank account of the assessee. The Ld. CIT (A) held that both the aforesaid sums cannot be held to be subsidy. In his view the subsidy is only in connection with the payment of incentives which are granted by the government and not by a private individual. In this regard he has taken strength from the decision of Hon'ble Supreme Court in the case of Sh. Ambika Mills Ltd. Vs. Textile Labour Association, 1972 SC- 2 GGX 648. In this regard he has also relied upon the decision of Hon'ble

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Delhi High Court in the case of Handicrafts and Handloom Export Corporation of India Vs. Cit 140 ITR 532 (Del) holding that there is a basic difference in grant made by the Government or from public generally to the assessee in a particular line of business but in a case where private party agreeing to make good the loss incurred by an assessee on account of mutual relationship that subsidized between them it was held that such payments by private party are in the nature of voluntary payment and do not stem from any business circumstances and hence, cannot be termed as “subsidy.” We find that there is no scope of any debate on the finding of the Ld. CIT (A) that the amount remitted was not subsidy. The Ld. CIT (A) has also tried to distinguish the decision of Hon’ble Supreme Court in the case of Sahney Steel and Press Works Ltd. Vs. CIT, 228 ITR 253 (SC) and rightly so, that the decision relied upon by the AO is not applicable since in the present case no subsidy was received by the assessee. In the present case except the amount to the extent of Rs.11.58 crores, the remitted amount have not been received by the assessee and was directly appropriated for the 3 Banks. The undisputed fact also remained that M/s Gillette Company USA had provided primary security in the shape of corporate guarantee for the grant of loan to the assessee company and the amount had been paid to the bankers for discharge of such corporate guarantee directly. Only dispute remained that

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as to whether the remittance was in respect of any interest held by the assessee. The fact that the amount had been paid to the bank for discharge of the stated corporate guarantee itself suggests that the sum remitted was not in the nature of profit but a capital receipt. There is no material to support the finding of the AO that the amount was paid to improve the financial position of the assessee company by discharging its liabilities and enabling the assessee to earn income. We find that the amount of Rs.108.49 crores was remitted by Gillette Company USA, directly to the bankers as per the master agreement amended and to discharge its own liability. As we have discussed above about the master agreement and have reproduced relevant clause of the agreement hereinabove in the previous paragraphs, there is nothing to suggest that the amount Rs.108.49 crores was remitted to the assessee to improve the financial position of the assessee company by discharging liability and enabling the assessee to earn income. Thus such finding of the AO is contrary to the material on record. The AO has further held that the sum has been received as a result of breach of contract hence it was a revenue receipt. No such fact is emerging from the record of the present case that the amount in question was remitted due to breach of contract between M/s Gillette Company USA, and the assessee company. The remittance was made in furtherance to fulfillment of the contract with

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Bank of America with M/s Gillette Company USA. The sum paid was also not in the nature of compensation because there was no obligation on M/s Gillette Company USA, under any contract to compensate the assessee. Under these facts we do not find infirmity in the decision of the first appellate authority in treating the amount of Rs.108.49 crores out of an aggregate addition of Rs.118.49 crores made by the AO as capital receipt and hence not chargeable to tax. In this regard we also find support from the decisions relied upon by the Ld. AR in the cases of Smartalk (P) Ltd. Vs. ITO (Supra) and CIT Vs. General Electrodes and Equipment Ltd. (Supra) wherein under almost identical circumstances addition made has been deleted. In the case of Smartalk (P) Ltd. before ITAT Bombay Bench, the assessee had received certain loan from a foreign bank. The shares were transferred subject to fulfilling guarantee obligation of the transferee. The amount of loan paid by shareholder to discharge guarantee obligation was not assessable as income or as remission of liability or as benefit derived from business, held the Tribunal. Likewise in the case of General Electrodes and Equipments Ltd. before Hon'ble Bombay High Court, collaboration agreement between assessee Co. arranged through foreign bank for bank guarantee for Rs.10 lakhs to enable assessee to obtain loan of like amount from an Indian Bank. Subsequently foreign Co. paid Rs.5 lakhs to foreign

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bank in part extinction of liability. ITO held that payment was in course of carrying on of assessee's business and assessable as income. The Tribunal held that the payment was made by foreign Co. to foreign bank and not to assessee, the payment amounted to discharge foreign Co.'s liability, foreign Co. was to be released of all financial obligations in relation to affairs of assessee, benefit obtained by the assessee was not in the course of carrying on of business and thus value of benefit was not assessable as income. The Hon'ble High Court dismissed the appeal preferred by the revenue against the order of the Tribunal. Almost similar facts of the case before us in the present case are these as the assessee Co. was incurring losses and was unable to pay of the loans it had obtained from the bankers, the Gillette Co. U.S.A. considered it prudent to satisfy its own liability as a guarantor for the loans. It was only in such circumstances, Gillette Co. U.S.A. remitted the sum to discharge of its own liability and hence it is not correct that the assessee Co. obtained any subsidy or grants in aid or compensation as a result of remittance of a sum to the banks. The Delhi Bench of the Tribunal in the case of DCIT Vs. Lurgi India Ltd. (Supra) relied upon by the Ld. AR has held that the receipt of Rs.13.00 crores by an assessee as a non-refundable grant from its parent company was a capital receipt, despite the fact that the payment was made to compensate the assessee for trading loss

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since it did not stem from any business consideration. The finding of the Ld. CIT (A) on the issue is thus upheld.

The decisions relied upon by the Ld. DR are having distinguishable facts, hence are not helpful to the revenue. In the case of S.B. Sugar Mills Ltd. Vs. CIT (Supra) the assessee was paid for relinquishment of his interest in the property out of a mutual settlements and the receipt was held assessable. In the present case before us assessee has not been paid due to its relinquishment of interest in the business or otherwise. In the case of KettleWell Bullen & Co. Vs. CIT (Supra) it was held that what the assessee was paid was to compensate it for loss of a capital asset and was not, therefore, in the nature of a revenue receipt. In the present case before us amount remitted was not compensation. In the case of S.Kumar Tyres Manufacturing Co. Ltd. Vs. DCIT (Supra) the compensation was received consequent to premature termination of agreement which was held revenue receipt liable to be assessed as such. In the case of CIT Vs. Indonippon Chemicals Co. Ltd. (Supra) it was held that being the final authority on question of fact, the Tribunal was bound to consider all the evidence and the arguments raised by the parties. Similar view has been expressed in the cases of Srinivasa Pitti & Sons Vs. CIT (Supra) and CIT Vs. H.H. Maharani Sethu Parvati Bai (Supra). In the case of CIT Vs. Nova Promoters & Finlease (P)

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Ltd. (Supra) The Hon'ble Delhi High Court has been pleased to hold that the Tribunal ought to have seen the modus operandi behind the entry provider. In the case of CIT Vs. Chuharmal Manghandas (Supra) the issue was regarding change in the constitution of firm on the death of the partner and the inclusion of his wife. In the case of Raghunarain Rice Mills Vs. CIT (Supra) the issue raised was allowability of business expenditure in the case of payments amounted to settlement of the contract otherwise than of actual delivery within the meaning of Explanation -2 to Section 24 of the Indian Income Tax Act 1922. In the case of Delhi Stock Exchange Association Ltd. Vs. CIT (Supra) the question was where the admission fees received by the company from the members and the authorized assistants were taxable in the hands of the company. In the case of Mrs. Sheila Kaushish Vs. CIT (Supra) the issue was regarding annual value of warehouse based on standard rent. In the case of Karanpura development Co. Ltd. Vs. CIT (Supra) the issue was as to whether Salami received from sublessee was income or capital. In the case of Bombay Oil Industries Ltd. Vs. DCIT (Supra) the issue was as to whether on facts it was cleared that entire transaction was given a facade of sale/purchase wherein no actual transfer of funds took place. In the case of CIT Vs. G.R. Kartikeyan (Supra) the issue was taxability of prize received in car race for testing skill and endurance. Similar view has been expressed by

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the Hon'ble High Court of Delhi in the case of CIT Vs. Avinash Pasricha (Supra). In the case of CIT Vs. Smt. Shanti Meattley (Supra) the issue was the taxability of payments received by wife and children under agreement to live apart from husband. We however, find that the ratio laid down by the Hon'ble Jurisdictional High Court of Delhi in the case of Logitronics (P) Ltd. Vs. CIT and Ors. (Supra) is applicable in the present case. In that case it was held by the Hon'ble High Court that if a loan was taken for acquiring a capital asset, waiver thereof would not amount to any income assessable to tax. On the other hand, if the loan was for trading purpose and was treated as such from the very beginning in the books of account waiver thereof may result in income more so when it was transferred to the profit or loss account. We find that the Ld. CIT (A) in the present case has decided the taxability of the amount remitted by Gillette Co. USA keeping in mind as to whether those amount has been transferred to the profit or loss account of the assessee or not.

Ground nos. 1 & 2 of the appeal preferred by the revenue are accordingly rejected.

31. We also do not find infirmity in the finding of the Ld. CIT (A) regarding sustaining the addition of Rs.9.58 crores questioned by the assessee before us. The Ld. CIT (A) has sustained this addition out of the

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addition of Rs.118.09 crores on the basis that M/s Gillette Company USA, had paid the said amount to the credit of the assessee's account. The contention of the assessee questioning the addition in ground nos. 1, 1.1 & 1.2 of the appeal preferred by it remained that the Ld. CIT (A) while sustaining the addition has failed to appreciate the claim of the assessee that the said sum was not in the nature of the income as it did not arise in the course of carrying on its business hence, cannot be taxed u/s 28 (1) (iv) of the Act. It was also contended that the sum received is beyond the scope of Section 5 of the IT Act. There is no dispute that an amount of Rs.11.58 crores out of Rs.118.09 crores was credited to the bank account of the assessee. Since the assessee had already credited a sum of Rs.1.99 crores to its profit and loss account, and offered to tax, the Ld. CIT (A) restricted the addition to Rs.9.58 crores. Since the amount was credited to the bank account of the assessee hence, in absence of any contrary and satisfactory explanation by the assessee, we are of the view that Ld. CIT (A) has rightly treated this amount as income of the assessee. The same is upheld. The ground nos. 1, 1.1 & 1.2 of the appeal of the assessee are thus rejected

Issue no. 3 (Ground nos. 2, 2.1 & 2.2 (Assessee))

32. We have already discussed the relevant facts relating to the issue herein above in previous paragraphs. In brief the AO did not agree with the

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explanation of the assessee that the waiver of loan of Rs.3.34 crores by M/s Gillette Company USA, constitutes capital receipt and he made addition of this amount of Rs.3.34 crores in the income of the assessee. The Ld. CIT (A) has upheld this action of the AO with this observation that although originally the amount was received as a capital receipt in the shape of loan however, since the assessee now does not have to repay the sum received, it charges the character of the receipt to revenue receipt. In this regard the Ld. CIT (A) has placed reliance on the decision of Hon'ble Supreme Court in the case of CIT Vs. Karam Chand Thapar 1996 222 ITR 112 (SC) holding that subsequent event must be as such that a different quality is imprinted on the receipt. The Ld. CIT (A) accordingly held that the act of waiver of loan is a subsequent event, which imprints a different quality on receipt. The Ld. CIT (A) held that the decision of Hon'ble Delhi High Court in the case of CIT Vs. Phool Chand Jiwan Ram 131 ITR 37 (Del) relied upon by the Ld. AR is inapplicable to the facts of the present case as in the present case waiver has not been made for discharging its own liability by Gillette Company USA.

33. The Ld. AR reiterated the submissions of assessee made before the authorities below on the issue. He submitted that the waiver was by the holding company of the shareholder, hence Section 41 (1) of the Act is inapplicable irrespective of the manner of the utilization of the loan. He

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submitted that the authorities below have erred in holding that the sum was utilized for the purpose of business. He submitted that the amount was not transferred in the profit and loss account of the assessee. He placed reliance on the following decisions:

- a. CIT Vs. Phool Chand Jiwan Ram 131 ITR 37 (Del)
- b. CIT Vs. Jagatjit Industries Ltd. ITA No. 364 of 2007 (Del. H.C.)
- c. Mahindra & Mahindra Mills Ltd. Vs. CIT 261 ITR 501 (Bom)
- d. DCIT Vs. Tosha International Ltd. 167 Taxmann 187 (Del)(SLP-Dismissed)
- e. CIT Vs. Jindal Equipments Leasing and Consultancy Services Ltd. 37 DTR 172 (Del)

34. The Ld. AR while concluding his arguments submitted that decision of Hon'ble Delhi High Court in the case of Jagatjit Industries Ltd. (Supra) is fully applicable in the present case.

35. The Ld. DR on the other hand tried to justify the orders of the authorities below on the issue. He placed reliance on the decision of Hon'ble Delhi High Court in the case of Logitronics P. Ltd. Vs. CIT & Ors. 333 ITR 386 (Del)

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36. Having gone through the decisions relied upon by the parties especially the decision of Hon'ble Jurisdictional High Court of Delhi, in the case of CIT Vs. Jagatjit Industries Ltd. (Supra) we find that the facts in the case of Jagatjit Industries Ltd. (Supra) are more or less similar to the facts of the present assessee before us. In that case the issue was as to whether 21% of the said gain should be treated as revenue receipt because of the reason that 21% of the capital was to be utilized for general corporate uses. The Hon'ble High Court observed that undisputedly the entire money collected in foreign exchange represented share capital. Even use of the share capital raised i.e. how this money is to be utilized, would be of no consequence. Even if money is raised by issuance of equity share domestically, the money thus collected as share capital is treated as share capital receipt. Obviously, for setting up or for expansion of business, part of the said share capital raised can be utilized for acquiring assets and from other part, the other expenses can be made treating the same as working capital. It was held by the Hon'ble High Court that merely because the part of the share capital is used as working capital that has never been treated as revenue receipt, the same cannot be treated as revenue receipt. The Hon'ble High Court has been pleased to affirm the order of the Tribunal holding that relevant consideration would be to see the source of funds under which it was held

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and not the ultimate utilization of the funds. Similar view has been expressed by the Hon'ble Bombay High Court in the case of Mahendra & Mahendra Ltd. Vs. CIT (Supra). There the loan was granted by foreign company and interest on loan was deducted u/s 36 of the Act. The principal amount of loan was subsequently waived. It was held that the amount is not assessable u/s 28 (iv) of the Act. It was not remission of liability, hence amount was not assessable u/s 41 (1) of the Act. The assessee had paid interest at 6% over a period of 10 years on Rs.57,74,064/-. In respect of that interest, the assessee never got deduction u/s 36 (1) (iii) or Section 37. It was held that 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 absence of that Section 41 (1) of the Act was not applicable. Secondly, even assuming that the assessee had got deduction on loans Section 41 (1) was not applicable because such deduction was not in respect of loss, expenditure or trading liability. Lastly, it was held that the tooling constitutes capital assets and not stock in trade, therefore, Section 41 (1) of the Act was not applicable. Likewise the ratio laid down by the Hon'ble Delhi High Court in the case of Logitronics P. Ltd. Vs. CIT & Ors (Supra) relied upon by the Ld. DR is fully applicable in the present case before us. In that case the Hon'ble High Court has been pleased to hold that

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if a loan was taken for acquiring a capital asset, waiver thereof would not amount to any income exigible to tax. On the other hand, if the loan was for trading purpose and was treated as such from the very beginning in the books of account the waiver thereof may result in income more so when it was transferred to the profit and loss accounts, held the Hon'ble High Court. While holding so the Hon'ble Delhi High Court has been pleased to refer several decisions including the decision of Hon'ble Supreme Court in the case of CIT Vs. Karam Chand Thapar (Supra) relied upon by the Ld. CIT (A) in the present case. We thus reach to the conclusion that unless it is examined in the present case as to what was the purpose of taking the loan amount which was waived, the taxability of the waived amount as income can not be adjudicated upon. Since this material aspect of the facts has remained to be examined by the authorities below before holding the waived amount as income exigible to tax, we to meet the end of justice, while setting aside the orders of the authorities below remand the matter to the file of the A.O. with direction to adjudicate upon the issue afresh in view of the decision of the Hon'ble Delhi High Court in the case of Logitronics P. Ltd. Vs. CIT and Others (Supra) as discussed above after affording proper opportunity of being heard to the assessee. In result the ground nos. 2, 2.1 &

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2.2 are allowed for statistical purpose. The issue involved therein is now to be decided by the AO.

37. Consequently appeal preferred by the revenue is dismissed and that preferred by the assessee is partly allowed.

The order pronounced in the open court on 21/09/2012.

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

*A.K.Verma

Copy of order forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By Order

Deputy Registrar, ITAT