

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.1514/Del/2023
[Assessment Year : 2015-16]**

Pelican Tobacco India Pvt.Ltd., 902-903, Padma tower-1, Rajendra Place, New Delhi-110008. PAN-AADCP9492K	vs	DCIT, Central Circle-7, New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri R.P.Mall, Advocate	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	20.07.2023	
Date of Pronouncement	18.08.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed u/s 143(3) of the Income Tax Act, 1961 (“the Act”) dated 17.03.2023 for the assessment year 2015-16.

2. The assessee has raised following grounds of appeal:-

1. *“That the learned CIT(A) has erred both in law and on fact in failing to appreciate that since the appellant has reflected the outstanding liability in its books of account and has acknowledged the liability and there is no evidence that such liability has ceased during the year, addition made by the learned AO of Rs. 7,02,059/- in respect of M/s Green Press Pvt. Ltd. by invoking the provisions of section 41(1) of the Act is unsustainable in law.*
2. *That the learned CIT(A) having found that addition made by the learned AO of Rs. 38,21,918/- by invoking the provisions of section 41(1) of the Act is not sustainable, he has erred in bringing to tax the said sum by invoking the provisions of section 28(iv) of the Act that*

too without issuing any notice to the appellant to invoke the provisions of section 28(iv) of the Act.

3. *That the learned CIT(A) has erred both in law and on fact in failing to appreciate that advance received from M/s Deserts Sands General Trading of Rs. 31,34,418/- and Rs. 6,87,500/- from M/s Gajpati Oversea which was shown as liability in the books of account is not in nature of benefit or perquisite within meaning of section 28(iv) of the Act and hence provisions of section 28(iv) of the Act would not get triggered.”*

2. Briefly stated facts of the case are that in this case, the assessee filed its return of income on 24.11.2016, declaring loss of INR 38,41,211/-. Subsequently, the case was selected for limited scrutiny through Computer Aided Scrutiny Selection (“CASS”). In response to the statutory notices, Ld. Ld. Authorized Representative (“AR”) of the assessee attended the proceedings. During the course of assessment proceedings, the assessee was asked to furnish the address and confirmation of creditors from credit amounting to INR 66,84,815/- was obtained in response thereto, only one creditor namely, M/s. Desert Sands General Trading LLC, Dubai filed its confirmation. However, the Assessing Officer (“AO”) had issued notice u/s 133(6) of the Act to the creditors but of no avail. Hence, the AO treated the sum of INR 58,35,246/- as cessation of liabilities u/s 41(1) of the Act and assessed the income of the assessee at INR 19,94,035/- after giving set off of loss of INR 38,41,211/-.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee. Thereby, he sustained the addition of INR 6,87,500/- from Gajpati Overseas and INR 31,34,418/- from Desert Sands General Trading.

4. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

5. Apropos to grounds of appeal, Ld. Counsel for the assessee reiterated the submissions as made in the brief note. For the sake of clarity, the brief note of the assessee is reproduced as under:-

“May it please your honours:

1. *In the captioned appeal filed by the assessee, in respect of the issues involved in the appeal, the assessee seeks to place reliance on the following judicial pronouncements:*

2. IN RESPECT OF ADDITION SUSTAINED U/S 41(1) OF THE ACT:

a. In the case of Commissioner of Income-tax v. Jain Exports (P.) Ltd [2013] 35 taxmann.com 540 (Delhi), wherein during scrutiny, Assessing Officer added amounts shown as credit balances of creditors, outstanding for several years under section 41(1). The Id. Commissioner (Appeals) confirmed addition only in respect of creditor 'E' as assessee could not prove genuineness of transaction, but deleted addition in respect of other creditors. On such facts it was held that as per section 41(1), cessation of liability may occur either by reason of it becoming unenforceable in law by creditor coupled with debtor's intention not to honour his liability, or by a contract between parties or by discharge of debt. It was also held that establishment of genuineness of transaction was required in year when liability had arisen and addition could not be made on such ground, treating it as cessation of trading liability, when assessee had acknowledged its liability successively over several years.

b. Principal Commissioner of Income-tax v. Batliboi Environmental Engineering Ltd. reported in [2022] 446 ITR 238 (Bombay)

5. As regards second question of law is concerned, it was argued by the Appellant- Revenue that since the Respondent-Assessee had around 25 creditors whose payments were outstanding for more than three years and some transactions which are eight to nine years old, the same were barred by the provisions of the Limitation Act, 1963 and, therefore, they will have to be treated as Assessee's income and to be added under section 41(1) of the Income- tax Act. This issue has been dealt with by both the Commissioner (Appeals) and the Tribunal relying upon the decision of the Gujarat High Court in the case of *CIT v. G.K. Patel & Co.* [2013] 29 taxmann.com 248/212 Taxman 384 and the decision of the Delhi High Court in the case of *CIT v. Jain Exports (P.) Ltd.* [2013] 35 taxmann.com 540/217 Taxman 54 (Mag.).

6. The Delhi High Court in the case of *Jain Exports (P.) Ltd.* (supra) has relied upon the decisions of the Supreme Court in the case of *Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay* AIR 1958 SC 328 and *CIT v. Sugauli Sugar Works (P) Ltd.* [1999] 102 Taxman 713/236 ITR 518. In *Sugauli Sugar Works (P.) Ltd.* (supra), the Supreme Court has referred to the decision of the Division Bench of this Court in the case of *Kohinoor Mills Co. Ltd. v. CIT* [1963] 49 ITR 578. The Delhi High Court, after following these decisions concluded that merely because the liability is barred by limitation, it does not cease to be a debt. This view is also taken by this Court in the case of *CIT v. Indian Rayon and Industries Ltd.* [2011] 336 ITR 479. Therefore, the submission made by the Appellant that because the liability is barred by the period of limitation the same would be treated as income

and added under section 41(1) of the Act cannot be accepted as no other decision contrary to the above is shown to us. Thus, the second question of law does not survive for consideration.

c. In the case of PCIT vs. Adani Agro (P.) Ltd reported in [2020] 118 taxmann.com 307 (Gujarat), it was held that merely because liability had remained outstanding for more than three years and same was not written back in profit and loss account, application of provisions of section 41(1) could not be made to consider such liability as income for year under consideration without there being any remission or cessation of liability.

3. IN RESPECT OF ADDITION MADE BY INVOKING SECTION 28(iv) OF THE ACT:

a. That in the case of Infrastructure Logistics (P.) Ltd. v. Joint Commissioner of Income-tax reported in [2022] 141 taxmann.com 24 (Panaji - Trib.), wherein the Assessee had received advances/deposits in preceding years from 6 parties, for providing handling services in connection with its business - As assessee explained its inability to submit confirmations of aforementioned parties, Assessing Officer was of view that same were in nature of benefit or perquisite within meaning of section 28(iv) and, accordingly, Assessing Officer made an addition under section 28(iv). On the aforesaid facts, the Hon'ble Tribunal has held as under:

"26. After having given a thoughtful consideration to the aforesaid contentions of the Ld. Authorized Representatives of both the parties in the backdrop of the orders of the lower authorities, we find substantial force in the claim of the Ld. AR that the invoking of provisions of section 28(iv) of the Act pre-supposes any benefit or perquisite whether convertible into

money or not, arising from business or the exercise of a profession. As observed by the Hon'ble Supreme Court in the case of Mahindra & Mahindra Ltd. (supra), for invoking the provisions of section 28(iv) of the Act, benefit received has to be in some form other than in shape of money. Observing, that as the waiver of loan for acquiring a capital asset in the case before them represented cash/money, the Hon'ble Apex Court in its aforesaid order had concluded that the provisions of section 28(iv) of the Act would not be applicable. For the sake of clarity the relevant observations of the Hon'ble Supreme Court are culled out as under: '(12) The first issue is the applicability of section 28(iv) of the IT Act in the present case. Before moving further, we deem it apposite to reproduce the relevant provision herein below:-

"28. Profits and gains of business or profession. The following income shall be chargeable to income-tax under the head "Profits and gains of business profession".

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

(13) On a plain reading of section 28 (iv) of the IT Act, prima facie, it appears that for the applicability of the said provision, the income which can be taxed shall arise from the business or profession. Also, in order to invoke the provision of section 28(iv) of the IT Act, the benefit which is received has to be in some other form rather than in the shape of money. In the present case, it is a matter of record that the amount of Rs. 57,74,064/- is having received as cash receipt due to the waiver of loan. Therefore, the very first condition of section 28(iv) of the IT Act which says any benefit or perquisite arising from the business shall be in the form of benefit or

perquisite other than in the shape of money, is not satisfied in the present case. Hence, in our view, in no circumstances, it can be said that the amount of Rs. 57,74,064/- can be taxed under the provisions of section 28(iv) of the IT Act.'

As in the case before us, it is the claim of the Revenue that the advances/deposits that were received by the assessee in the preceding years were no more payable, therefore, the same were to be held as its income u/s. 28(iv) of the Act. We are of a strong conviction that as the view taken by the AO, i.e., assessing of the alleged cessation of the assessee's liability qua the advances/deposits of Rs. 3,24,27,504/- as its income under sec. 28(iv), is not found to be in conformity with the judgment of the Hon'ble Supreme Court in the case of Mahindra & Mahindra Ltd. (supra), thus, the same cannot be sustained and is liable to be vacated on the said count itself. As stated by the Ld. AR, and rightly so, as cessation of a capital receipt of an amount by the assessee, i.e., deposits/advances for providing handling services that were received by the assessee in the normal course of its business in the preceding years, would undisputedly represent cash/money and is not in the nature of benefit or perquisite other than any shape of money, therefore, the provisions of section 28(iv) of the Act would not get triggered. We, thus, in terms of our aforesaid observations finding favour with the claim of the Ld. AR that the alleged cessation of the assessee's liability towards the aforementioned six parties qua the advances/deposits that were received from them for providing handling services in connection with its business would not fall within the realm of sec. 28(iv) of the Act, therefore, the addition of Rs. 3,24,27,504/- so made by the A.O by triggering the said statutory provision i.e. sec. 28(iv) of

the Act, cannot be sustained and is liable to be struck down on the said count itself."

b. Further in the case of Assistant Commissioner of Income-tax. v. Sunil B Dalal [2022] 145 taxmann.com 313 (Mumbai - Trib.), it has been held as under:

6. The first ground of appeal is with respect to the deletion of addition of Rs. 42,45,000/- by the learned CIT(A). Brief facts of the addition shows that assessee has received a loan of Rs. 1,40,00,000/- from M/s Singhi Associates on 11th November, 2011. This loan was repaid up to calendar year 2015 to the extent of Rs. 97,55,000/-. The balance amount of Rs. 42,55,000/- was outstanding. This amount was written back by the assessee as per mutual agreement during F.Y. 2017-18. The above loan amount was undisputedly did not carry any interest. The learned Assessing Officer asked the assessee to show cause why the above amount should not be taxed as revenue receipt during the year. The assessee submitted the copy of account of the lender, details of the receipt of the loan, partial repayment of the same, confirmation of loan by the lender. It was stated that the write off the amount of Rs. 42,50,000 cannot be charged under section 41(1) of the Act. Assessee contested that it was not a 'trading liability' but an unsecured loan on which no deduction is claimed and hence, not chargeable to tax under section 41(1) of the Act. It was also stated that Provisions of Section 28(iv) of the Act are also not applicable since the same is in the nature of cash or money. Assessee relied on the decision of Hon'ble Delhi High Court in case of Logitronics (P.) Ltd. v. CIT [2011] 9 taxmann.com 302/197 Taxman 394/333 ITR 386/240 CTR 20 (Delhi), Hon'ble Bombay High Court in case of CIT v. Softworks Computers (P.) Ltd. [2013] 35 taxmann.com 610/216 Taxman 219 (Mag.)/354 ITR 16. The

learned Assessing Officer rejected the contention of the assessee stating that the several judgments quoted do not apply to the facts of the case as the loan written back was taken for primary business activity of the assessee i.e. advancing to others for earning interest income. The learned Assessing Officer held that the amount of advance written back is a 'benefit' to the assessee arising from the business activity and is chargeable to tax under section 28(iv) of the Act. The learned Assessing Officer relied upon the decision of Hon'ble Bombay High Court in case of *Solid Containers Ltd. v. Dy. CIT* [2009] 178 Taxman 192/308 ITR 417/222 CTR 455 and decision of Hon'ble Supreme Court in case of *CIT v. T.V. Sundaram Iyengar & Sons Ltd.* [1996] 88 Taxman 429/222 ITR 344/136 CTR 444. Accordingly, addition of Rs. 42,45,000/- was made under section 28(iv) of the Act.

7. Assessee on appeal before the learned CIT(A) reiterated the submissions made before the learned Assessing Officer and relied upon the decision of Hon'ble Bombay High Court in case *Mahindra & Mahindra Ltd. v. CIT* [2003] 128 Taxman 394/261 ITR 501/182 CTR 34, which is affirmed by the Hon'ble Supreme Court. Assessee further relied on several decisions of co-ordinate Benches. Assessee also contested that the decision of Hon'ble Bombay High Court in case of *Solid Containers (supra)* does not apply to the facts. Learned CIT(A) held that there is waiver of unsecured loan, which is received in money, and waiver of unsecured loan is not a benefit for perquisite received in kind. The learned CIT(A) further followed the decision of Hon'ble Supreme Court in *Mahindra and Mahindra (supra)* (Supreme Court). The learned CIT(A) held that Hon'ble Supreme Court in *Mahindra and Mahindra (supra)* held that the Provisions of Section 28(iv) of the Act apply only in case where the benefit of perquisite is

received in kind and not in cash. He also noted that the undisputed fact is the waiver of unsecured loan, which is not received in kind, and section 28(iv) of the Act does not get attracted. Thus, the addition of Rs. 42,45,000/- was deleted.

8. *The learned Departmental Representative agitating the ground no. 1 submitted that the decision of the Hon'ble Bombay High Court in case of Solid Containers Ltd. (supra) squarely covered the issue as loan taken for business purposes is written back. Thus, the learned CIT(A) has wrongly deleted the above addition.*

9. *The learned Authorized Representative submitted that the issue is squarely covered by the decision of Hon'ble Supreme Court. He submitted that the Provision of section 28(iv) of the Act are applicable only when income is arising from business or profession and the benefit is received in some other form other than in the shape of money. He submitted that the benefit is firstly not arising from business as the same received from M/s Singhi and Associates is not used for business purposes, it was not carrying on any interest, further loan was not during the course of business. he further submitted that Id AO is incorrect in holding that it is a business loan. He submitted that this money was taken by assessee for augmenting capital and purchasing assets. It has no connection with business of the assessee as this money was not used for advancing further. Further, write back is of the money and not in kind. He further relied on the decision of Hon'ble Bombay High Court in case of Essar Shipping Ltd. v. CIT [2020] 117 taxmann.com 389/273 Taxman 49/426 ITR 220 and Pr. CIT v. SICOM Ltd. [2020] 116 taxmann.com 410/274 Taxman 58. He further relied on Plethora of judicial precedents of Hon'ble High Court and co-ordinate benches. With respect to the decision of Solid*

Containers Ltd. (supra), he submitted that Hon'ble High Court had held that the loan was for business purposes and a direct nexus between its business and trading liability whereas, in the present case, the loan was taken for the capital of the assessee. He further stated that there is no evidence that the above loan was used for the purpose of business of the assessee. Instead, the balance sheet of the assessee shows that his business assets are funded by his business loans. In any way, there is no nexus of the loan written back with business of assessee. Referring to the decision of the learned CIT(A), he submitted that the decision of the Hon'ble Supreme Court was followed by him, which cannot be found fault with. In the end, he submitted that the waiver of loan cannot be taxed under section 28(iv) of the Act as it is not for the purpose of business and further it is in form of cash.

10. *We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also perused plethora of judicial precedents relied up on by the ld AR in his written submission containing 26 pages as well as in case law paper book containing 132 pages. Facts are undisputedly admitted as narrated above. Succinctly, it shows assessee has borrowed interest free money from Singhi Associates of Rs. 1.40 Crores for his personal use. Before the commencement of previous year, assessee has repaid it to the extent of Rs. 97,50,000/-. The Amount outstanding of Rs. 42,50,000/- were written back by the assessee. AO taxed this write back u/s 28 (iv) of The Act.*

11. *Honourable Supreme court in Mahindra & Mahindra Ltd. (supra) has held as under:-*

"10. The term "loan" generally refers to borrowing something, especially a sum of cash that is to be paid back along with the

interest decided mutually by the parties. In other terms, the debtor is under a liability to pay back the principal amount along with the agreed rate of interest within a stipulated time.

11. It is a well-settled principle that creditor or his successor may exercise their "Right of Waiver" unilaterally to absolve the debtor from his liability to repay. After such exercise, the debtor is deemed to be absolved from the liability of repayment of loan subject to the conditions of waiver. The waiver may be a partly waiver i.e., waiver of part of the principal or interest repayable, or a complete waiver of both the loan as well as interest amounts. Hence, waiver of loan by the creditor results in the debtor having extra cash in his hand. It is receipt in the hands of the debtor/assessee. The short but cogent issue in the instant case arises whether waiver of loan by the creditor is taxable as a perquisite under section 28 (iv) of the IT Act or taxable as a remission of liability under section 41 (1) of the IT Act.

12. The first issue is the applicability of section 28 (iv) of the IT Act in the present case. Before moving further, we deem it apposite to reproduce the relevant provision herein below:-

28. Profits and gains of business or profession. The following income shall be chargeable to income-tax under the head "Profits and gains of business profession",-

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

13. On a plain reading of section 28 (iv) of the IT Act, prima facie, it appears that for the applicability of the said provision, the income which can be taxed shall arise from the business or profession. Also, in order to invoke the provision of section 28 (iv) of the IT Act, the benefit which is received has to

be in some other form rather than in the shape of money. In the present case, it is a matter of record that the amount of Rs. 57,74,064/- is having received as cash receipt due to the waiver of loan. Therefore, the very first condition of section 28 (iv) of the IT Act which says any benefit or perquisite arising from the business shall be in the form of benefit or perquisite other than in the shape of money, is not satisfied in the present case. Hence, in our view, in no circumstances, it can be said that the amount of Rs. 57,74,064/- can be taxed under the provisions of section 28 (iv) of the IT Act."

12. In the present case the addition has been made by the LD AO u/s 28 (iv) of The Act relying on the decision of Honourable Bombay High court in case of Solid Containers Ltd. (supra). We find that Id CIT (A) is justified in rejecting the argument of the ld AO for the reason that in that case was not at all on the issue of section 28 (iv) and thus Honourable High court did not have any occasion to consider that provision. In case of Mahindra & Mahindra (supra) honourable SC specifically considered that provision and held that in waiver of loan, as it is not in kind but in cash, section 28 (iv) does not apply.

13. Further subsequently Honourable Bombay High court in CIT v. Xylon Holdings (P) Ltd. [2012] 26 taxmann.com 333/211 Taxman 108 (Mag.) distinguishing Solid Containers Decision held as under :-

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

terms arrived at, the amount of loan taken was waived by the lender. The case of the assessee therein was that the loan was a capital receipt and has not been claimed as deduction from the taxable income in the earlier years and would not come within the purview of section 41(1) of the Act. However, this Court by placing reliance upon the decision of the Apex Court in the matter of *CIT v. T.V. Sundaram Iyengar & Sons Ltd.* [1996] 222 ITR 344/88 Taxman 429 held that the loan was received by the assessee for carrying on its business and therefore, not a loan taken for the purchase of capital assets. Consequently, the decision of this Court in the matter of *Mahindra & Mahindra Ltd.* (supra) was distinguished as in the said case the loan was taken for the purchase of capital assets and not for trading activities as in the case of *Solid Containers Ltd.* (supra). In view of the above, the decision of this Court in the matter of *Solid Containers Ltd.* (supra) will have no application to the facts of the present case and the matter stands covered by the decision of this Court in the matter of *Mahindra & Mahindra Ltd.* (supra). The alternative submission that the amount of loan written off would be taxable under section 28(iv) of the Act also came up for consideration before this Court in the matter of *Mahindra & Mahindra Ltd.* (supra) and it was held there in that section 28(iv) of the Act would apply only when a benefit or perquisite is received in kind and has no application where benefit is received in cash or money.

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

14. In view of this, we do not find any reason to disturb the appellate order of the Ld. CIT (A) on this issue. We confirm his findings that the write back of loan is not chargeable as business income u/s 28 (iv) of The Act. Accordingly, Ground No 1 of the appeal is dismissed.

c. Similarly in the case of Essar Shipping Ltd. vs. CIT reported in [2020] 117 taxmann.com 389 (Bombay), it was held that prime condition of section 28 (iv) is that any benefit or perquisite arising from business or profession shall be in form of benefit or perquisite other than in shape of money and since the waiver of loan would be construed to be cash receipt in hands of assessee and hence same could not be taxed under section 28(iv) of the Act. Same view has been taken in the case of Commissioner of Income-tax v. Arvind Securities (P.) Ltd. [2014] 52 taxmann.com 166 (Bombay).”

6. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below. He submitted that the assessee could not furnish confirmation from the creditors. It was incumbent upon the assessee to prove the existence of credit. In the absence of such credible evidence, AO had rightly made addition treating it as cessation of liability. However, the Ld.CIT(A) partly allowed the appeal and sustained the addition u/s 28 of the Act.

7. I have heard Ld. Authorized Representatives of the parties and perused the material available on record. Ld.CIT(A) partly allowed the appeal of the assessee. Ld.CIT(A) out of various creditors, sustained the addition of INR 7,02,059/- in respect of Green Press Pvt.Ltd., treating the same as cessation of liability. However, in respect of Gajpati Overseas, amounting to INR 6,87,500/- and Desert Sands General Trading amounting to INR 31,34,418/- confirmed

the addition u/s 28(iv) of the Act, For the sake of clarity, relevant contents of the order passed by Ld.CIT(A) are reproduced as under:-

4.1.10 *"In the following cases the purchases were made but the payment was subsequently made before the year under consideration:*

S.No.	Particulars	Opening Balance	Nature of Transaction	Receipt	Sales	Balance as on 31.03.15	Remark
1.	Green Press Pvt.Ltd.	-4,00,000	Purchases	11,02,059	-	7,02,059	Advance was given to sister concern and adjusted in 16-17
2.	Jay Kay Enterprises	1,26,000	Purchases	-	-	1,26,000	Payments made in 16-17
3.	R.K. Enterprises	92,316	Purchases	-	-	92,316	Payments made in 16-17
4.	Overnite Express Ltd.	-	Courier	4,487	3,578	906	Payments made in 16-17
5.	Kashyap & Company	-	Purchases	53,145	-	53,145	Payments made in 16-17
6.	Ved engineers & Packers	-	Corrugated Box	79,569	-	79,569	Payments made in 16-17

In the above mentioned transactions of purchases and expenses the payments have been made in FY 2016-17 as per the accounts filed during the course of appellate proceedings. These are the cases where the purchase/expenses were debited to the profit & loss account but payments have been made in the subsequent year. Therefore, there is no cessation of liability in these cases except in the case of Green Press Pvt Ltd. In view of the above, the addition made by the Assessing Officer in respect of above mentioned parties except Green Press Pvt Ltd u/s 41(1) of Income Tax Act is deleted. However, in the case of Green Press Pvt Ltd, the appellant did not provide any evidence that payment against these purchases have been made in the subsequent years. Therefore the purchases debited to P & L account amounting to Rs. 7,02,059 is a ceased liability and the addition for the same has been correctly made u/s 41(1) of the Income Tax Act and is therefore confirmed.

4.1.11 *In the following cases, advances received which were neither returned nor have goods been supplied against the advance.*

S.No.	Particulars	Opening Balance	Nature of Transaction	Receipt	Sales	Balance as on 31.03.15	Remark
1.	Gajpati Overseas	-	Advance for Sale	10,10,000	3,22,500	6,87,500	Amount o/s till date due to dispute
2.	Desert Sands General Trading	31,34,418	Advance	-	-	31,34,418	Advance, material not delivered due to dispute amount w/off.

In these two cases, the advances were received for which neither the goods have been supplied nor the advances were returned. In the first case of Gajpati Overseas an amount of Rs. 6,87,500/- is still outstanding and has not been returned yet. Similarly, in the second case of Desert Sands General Trading an amount of Rs. 31,34,418/- has been received during AY 2014-15 but the same has neither been returned nor the goods have been supplied to these parties. The appellant was asked to provide the details of correspondence made by these parties to claim their money. The appellant did not provide either the details of correspondence or any documents to support its contention of genuineness of these parties as well as the transactions. In the second case the appellant had filed a copy of account wherein the amount of Rs. 31,34,418/- has been return off on 01.04.2022. This is the ongoing current year and the return of this period has not been filed yet. There is no doubt that these liabilities have ceased to exist long back but it is noteworthy to mention that they were never debited to the profit & loss account of the appellant. Since these liabilities have not been debited to the profit & loss account, application of section 41(1) of Income Tax Act cannot be considered appropriate.

4.1.12 At this stage, Section 28(iv) of Income Tax Act is reproduced as under:

"Profits and gains of business or profession.

28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession".-

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

4.1.13 This is a case where the appellant has received advances during the course of business and neither returned them nor provided goods or services in lieu of such advances. These advances were ultimately retained by the appellant for its benefit and one of the advance from Desert Sands General Trading have even been written off during the current year. Therefore, the appellant derived a benefit arising from the business. Therefore, Section 28(iv) of Income Tax Act is applicable in the present case. In view of the above I am of the considered opinion that the advances amounting to Rs. 6,87,500/- from Gajpati Overseas and Rs. 31,34,418/- from Desert Sands General Trading are income of the appellant u/s 28(iv) of Income Tax Act and not u/s 41(1) of Income Tax Act. Accordingly, the addition amounting to Rs. 6,87,500/- from Gajpati Overseas and Rs. 31,34,418/- from Desert Sands General Trading is confirmed u/s 28(iv) of Income Tax Act. In view of the above discussion, Ground Nos. 1 & 2 of appeal are partly allowed.”

7.1. So far the question of cessation of liability in respect of Green Press Pvt. Ltd. is concerned, the assessee has placed reliance on various case laws by the more particularly judgement of Hon’ble Delhi High Court rendered in the case of **CIT vs Jain Exports (P.) Ltd. [2013] 35 taxmann.com 540 (Delhi)** and the judgment of Hon’ble Bombay High Court in the case of **PCIT vs Batliboi Environmental Engineering Ltd. [2022] 446 ITR 238 (Bombay)**. Therefore, the Hon’ble Bombay High Court held as under:-

5. “As regards second question of law is concerned, it was argued by the appellant-Revenue that since the respondent-assessee had around 25 creditors whose payments were outstanding for more than three years and some transactions which are eight to nine years old, the same were barred by the provisions of the Limitation Act, 1963 and, therefore, they will have be treated as the assessee's

income and to be added under section 41(1) of the Income-tax Act. This issue has been dealt with by both the Commissioner (Appeals) and the Tribunal relying upon the decision of the Gujarat High Court in the case of CIT v. G. K. Patel and Co. [2013] 212 Taxman 384 (Guj) and the decision of the Delhi High Court in the case of CIT v. Jain Exports Pvt. Ltd. [2013] 89 DTR 265 (Delhi).

The Delhi High Court in the case of Jain Exports Pvt. Ltd. has relied upon the decisions of the Supreme Court in the case of Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay, AIR 1958 SC 328 and CIT v. Sugauli Sugar Works (P.) Ltd. [1999] 236 ITR 518 (SC). In Sugauli Sugar Works (P.) Ltd. the Supreme Court has referred to the decision of the Division Bench of this court in the case of Kohinoor Mills Co. Ltd. v. CIT (1963) 49 ITR 578 (Bom). The Delhi High Court, after following these decisions concluded that merely because the liability is barred by limitation, it does not cease to be a debt. This view is also taken by this court in the case of CIT v. Indian Rayon and Industries Ltd. [2011] 336 TTR 479 (Bom). Therefore, the submission made by the appellant that because the liability is barred by the period of limitation the same would be treated as income and added under section 41(1) of the Act cannot be accepted as no other decision contrary to the above is shown to us. Thus, the second question of law does not survive for consideration.”

8. In the light of these binding precedents, I am of the considered view that the AO erred in making addition treating the cessation of liability and Ld.CIT(A) erred in applying the provision of section 28(iv) of the Act, thereby, modifying the assessment order. The grounds so raised by the assessee deserve to be allowed.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 18th August, 2023.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI