



Global Business Tax Alert

Sharp Insights

In Mahindra and Mahindra Ltd* case, Supreme Court upholds Bombay High Court decision on cessation of loan liability as neither taxable u/s 28(iv) nor u/s 41(1) of the Act

**93 taxmann.com 32 (SC)*

Issue no: GBTA/09/2018

In this issue:

[Facts of the case](#)
[Rival contentions](#)
[Issue under consideration](#)
[Ruling of the Supreme Court](#)
[Conclusion](#)
[Do you know about Dbriefs?](#)
[Contacts](#)

Facts of the case

- Mahindra and Mahindra Limited (taxpayer/ respondent) had entered into an agreement with USA-based Kaiser Jeep Corporation (KJC) for purchase of dies, welding equipment and die models for an agreed sum.
- KJC supplied such tools and equipment through its subsidiary – Kaiser Jeep International Corporation (KJIC)
- KJC also agreed to provide loan for such procurement to the taxpayer at an interest of 6% p.a. and repayable after 10 years in instalments.
- Subsequently, the taxpayer was informed that American Motor Corporation (AMC) had taken over KJC and had agreed to waive the principal amount of loan.
- The taxpayer filed its return of income and showed the relevant sum waived by AMC as a “cessation of liability” and did not offer the same to tax.
- The Income Tax Officer (ITO) after perusing the return concluded that, with the waiver of the loan, the credit represented an income and not a liability and held that the said sum was taxable under section 28(iv) of the Act.
- Commissioner of Income tax Appeals (CIT (A)) upheld the position adopted by the ITO with certain modifications. The taxpayer and the Revenue, both aggrieved by the decision of the CIT (A), preferred an appeal with the Tribunal. The Tribunal set-aside the order passed by the CIT (A) and decided the case in favour of the taxpayer.
- The High Court of Bombay confirmed the findings of the Tribunal in favour of the taxpayer. Accordingly, the Revenue appealed before the Supreme Court.

Rival contentions

- The Revenue contended that the amount was initially borrowed as a loan to fund the purchase of dies, tools, etc. for manufacture of jeeps by the taxpayer.
- The waiver of loan by AMC was done as a measure of compensation for certain losses including goodwill, the benefit of association, etc. The amount was credited by the taxpayer and then claimed as exemption from taxation being a ‘capital receipt’.
- The Revenue also contended that since the amount is waived off, it actually amounts to income, in the sense that an amount which ought to be paid by it, is now not required to be paid and accordingly, provisions of section 28(iv) and, alternatively section 41(1) ought to apply.
- The taxpayer contended that it was KJIC which had supplied the tools, dies, etc. whereas the loan was extended by KJC. Hence these transactions were independent transactions. The purchase of tooling was not a transaction for purchase of goods on credit in the ordinary course of business and it could neither be equated with unpaid purchase consideration to be liquidated over a period of time.
- The taxpayer further contended that the loan was shown as “Loans- Unsecured” in the balance sheet and the waiver was on the capital amount and is not in the nature of income.

Issue under consideration

Whether waiver of loan would be taxable under section 28(iv) or 41(1) of the Act?

Ruling of the Supreme Court

- The Supreme Court found no merit in the appeals filed by the Revenue.
- The Supreme Court analyzed the term loan; loan refers to borrowing something (especially a sum of cash) that needs to be repaid along with interest. It reiterated the well-settled principle that creditor or his successor may exercise their "Right of Waiver" unilaterally to absolve the debtor from his liability to repay. Waiver of loan by the creditor results in the debtor having extra cash in his hand. It is a 'receipt' in the hands of the debtor.
- Supreme Court was of the view that for section 28(iv) of the Act to be applicable, income must arise from business or profession and the benefit, which is received, has to be in some other form rather than in the shape of money. This very condition is not satisfied in the present case, as it was a matter of record that the sum that was received due to waiver of loan was by way of a cash receipt.
- The Supreme Court also observed that an interest of 6% p.a. was paid by the tax payer. However, no deduction was claimed under section 36(1)(iii) of the Act.
- The Supreme Court further observed that, purchase of equipment were capital assets and the purchase amount had not been debited, neither to the trading account, nor to the profit and loss account by the taxpayer. There is a difference between 'trading liability' and 'other liability'. Section 41(1) specifically talks of cessation of trading liability, whereas in the instant case, waiver of loan amounted to cessation of liability other than trading liability. As such, there was no force in the Revenue's argument and section 41(1) is not applicable in this case.

Conclusion

- Supreme Court concluded by holding that the appeals (*along with this appeal, there were some other connected appeals, having the same question of law*) were devoid of merits and deserve to be dismissed.
- As such, Supreme Court has decided the appeal in favor of the taxpayer and has held that section 28(iv) is not applicable in the present case, as the amount waived is receipt in the nature of cash/ money.
- Further, the Supreme Court has held that Section 41(1) is also not applicable in this case as waiver of loan does not amount to cessation of trading liability. Also, that the taxpayer has not claimed any deduction under section 36(1)(iii) of the Act qua the payment of interest in any previous year.

- The above judgement of the Supreme Court would help clarify the issue pertaining to taxability or otherwise of such loan waivers and should settle the prevalent controversy. This judgement would also help in clearing several pending litigations on this issue.

Do you know about Dbriefs?

Dbriefs are live webcasts that give valuable insights on important developments affecting your business. To register, visit the [Dbriefs](#) page



Download the report



Contacts

Ahmedabad

19th Floor, Shapath - V
SG Highway,
Ahmedabad – 380 015.
Tel: + 91 (079) 6682 7300
Fax: + 91 (079) 6682 7400

Coimbatore

Shanmugha Manram
41, Race Course,
Coimbatore
Tamil Nadu - 641018
Tel: + 91 (0422) 439 2801
Fax: +91 (0422) 222 3615

Kolkata

13th and 14th Floor,
Building – Omega
Bengal Intelligent Park
Block – EP & GP
Sector V, Salt Lake City,
Kolkata – 700091
Tel : + 91 (033) 6612 1000
Fax : + 91 (033) 6612 1001

Bangalore

19th Floor, 46 - Prestige Trade
Tower, Palace Road, High Grounds,
Bengaluru,
Karnataka – 560001.
Tel: + 91 (079) 6627 6000
Fax: +91 (080) 6627 6010

Delhi/Gurgaon

Building 10,
Tower B, 7th Floor,
DLF Cyber City,
Gurgaon 122 002
Tel : +91 (0124) 679 2000
Fax : + 91 (0124) 679 2012

Mumbai

Indiabulls Finance Centre,
Tower 3, 28th Floor,
Elphinstone Mill Compound,
Senapati Bapat Marg, Elphinstone
(W),
Mumbai – 400013
Tel: + 91 (022) 6185 4000
Fax: + 91 (022) 6185 4101

Chennai

No.52, Venkatanarayana Road,
7th Floor, ASV N Ramana Tower,
T-Nagar,
Chennai 600 017.
Tel: +91 (044) 6688 5000
Fax: +91 (044) 6688 5050

Hyderabad

KRB Towers, Plot No. 1-4,
Survey No. 65 to 67,
1st -3rd Floor
Madhapur, Serilingampally(M),
RR District, Hyderabad.
Tel: +91 (040) 6603 2600
Fax: +91 (040) 6603 2714

Pune

706, B-Wing, 7th Floor,
ICC Trade Tower,
Senapati Bapat Road,
Pune – 411 016.
Tel: + 91 (020) 6624 4600
Fax: +91 (020) 6624 4605



Deloitte makes an impact that matters

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

This material and the information contained herein prepared by Deloitte Touche Tohmatsu India LLP (DTTI LLP) is intended to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). This material contains information sourced from third party sites (external sites). DTTI LLP is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such external sites. None of DTTI LLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this material, rendering professional advice or services. This information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this material.

©2018 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited