



आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

BEFORE MS.ASTHA CHANDRA, JUDICIAL MEMBER
AND
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.2371/PUN/2025

निर्धारण वर्ष / Assessment Year: 2014-15

Mithi Software Technologies Private Limited, 101, Mayfair Court, Nachiket Park, Baner Road, Pune – 411045.	V s	The Income Tax Officer, Ward-14(3), Pune.
PAN: AABCM9352P		
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Nikhil Pathak
Revenue by	Shri Ambarnath Khule – JCIT(through virtual)
Date of hearing	24/11/2025
Date of pronouncement	12/01/2026

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee against the order of Id.Addl./Joint Commissioner of Income Tax(Appeal), Agra passed under section 250 of the Income Tax Act, 1961 for the A.Y.2014-15 dated 25.08.2025 emanating from the assessment order u/s.143(3) of



the Income Tax Act, 1961 dated 30.12.2016. The Assessee has raised the following grounds of appeal :

“On the facts and circumstances of the case and in law the learned Commissioner of Income Tax(Appeals) has erred :

Ground No.1 :

In upholding the addition of Rs.75,00,000 being waiver of non-convertible debentures on grounds that it is a revenue receipt taxable u/s.28(iv)/41(1) of the Income-tax Act, 1961.

- i. the debentures were capital borrowings from SIDBI Venture Capital Ltd and utilized for financing the business structure and not for trading activity*
- ii. the waiver of such capital liability does not give rise to taxable income*
- iii. the learned CIT(A) has not clearly specified the exact section under which the addition is sustained, indicating uncertainty by invoking both section 28(iv) and 41(1) simultaneously, which are mutually exclusive in nature.*
- iv. The addition sustained by the CIT(A) is not justified, based on mere presumptions and surmises, and therefore needs to be deleted.*

Ground No.2 :

In confirming the AO's action of not allowing set-off of brought forward business loss of Rs 1,09,60,556 and unabsorbed depreciation of Rs.1,03,38,647, though duly declared in the RETURN OF INCOME, available and claimed as per law u/s 72 and 32(2). The appellant pleads that the denial of such set-off is contrary to the provisions of the Act and principles of natural justice and ought to be allowed.

Ground No.3 :

The appellant pleads for directions allowing the appeal and craves leave to, add to, alter, amend, modify or withdraw any or all grounds of appeal.”

**Findings & Analysis :**

2. We have heard both the parties and perused the records. In this case, as per assessment order, Assessee is a Company. It had e-filed Return of Income for A.Y.2014-15 on 24.09.2014 declaring total income at Rs.NIL, after claiming loss of Rs.51,01,433/-. Assessee's case was selected for scrutiny. During the scrutiny proceedings, Assessing Officer observed that debenture holders of the Assessee-Company had waived off their right in debenture payable of Rs.75 lakhs. Assessee treated it as capital receipt. The Assessing Officer disagreed with submission of assessee. The relevant paragraph 3.2 and 3.3 of the Assessment Order are reproduced here as under :

“3.2 It was brought to the attention of the assessee, that if the debentures were issued for capital transaction such as acquisition of assets then the debt waived by the debenture holders is capital receipt not subject to tax. The assessee was given numerous opportunities to prove that the funds received through issue of debentures in the year 2004 are actually utilized for acquiring capital assets & none of the expenses were debited to Profit & Loss account.

3.3 However the assessee has failed to submit any documentary evidence to prove that the funds received through issue of debentures were actually utilized for acquiring capital assets. Hence, the waiver of debenture debt by the debenture holders is treated as revenue receipt &



added to the Returned Income. Penalty proceedings are being initiated u/s 271(1)(c) for furnishing inaccurate particulars of income.”

2.1 Thus, Assessing Officer made an addition of Rs.75 lakhs without referring to any section. Aggrieved by the same, Assessee filed appeal before the Id.CIT(A). Ld.CIT(A) confirmed the addition stating that Assessee failed to discharge its onus that borrowed funds were utilized for creation of capital structure. Therefore, Id.CIT(A) held that waiver is taxable under section 28(iv) or Section 41(1) of the Act.

2.2 Thus, even the Id.CIT(A) was not sure about the applicability of the section.

2.3 Aggrieved by the order of the Id.CIT(A), Assessee filed appeal before this Tribunal.

2.4 Thus, the question before us is whether the waiver of debentures of Rs.75 lakhs is taxable or not! Admittedly, debentures of Rs.75 lakhs were issued to SIDBI Venture Capital Limited during F.Y.2004-05. Assessee explained that it was a long term borrowing duly reflected in balance sheet. Ld.AR relied on the decision of Hon'ble Supreme Court in the decision of CIT Vs. Mahindra &



Mahindra Ltd., in [2018] 404 ITR 1 (SC) order dated 24.04.2018.

Ld.AR also relied on the following decisions :

- *I.G. Petrochemicals Ltd., [2023] 155 taxmann.com 45(Karnataka)*
- *DCIT Vs. Ramani Exports [2023] 153 taxmann.com 465 (Mumbai Tribunal)*
- *ITAT Pune Bench decision in Seco Tools India Private Limited Vs. Addl.CIT in ITA No.445/PUN/2020*

3. The ld.AR submitted that in all the above decisions, the decision of Hon'ble Supreme Court(supra) in the case CIT Vs. Mahindra & Mahindra Ltd., has been followed.

4. On a specific query raised by Bench, ld.AR specifically submitted no interest pertaining to debentures of Rs.75 lakhs have been debited to Profit and Loss Account in any of the years. This fact pleaded by ld.AR has not been rebutted by ld.Departmental Representative(ld.DR) for the Revenue.

5. Hon'ble Supreme Court in the decision of CIT Vs. Mahindra & Mahindra Ltd., has held as under :

“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.

14. *Another important issue which arises is the applicability of the Section 41 (1) of the IT Act. The said provision is re-produced as under:*

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

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



profession in respect of which the allowance or deduction has been made is in existence in that year or not; or.....”

15. On a perusal of the said provision, it is evident that it is a sine qua non that there should be an allowance or deduction claimed by the assessee in any assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. Then, subsequently, during any previous year, if the creditor remits or waives any such liability, then the assessee is liable to pay tax under Section 41 of the IT Act. The objective behind this Section is simple. It is made to ensure that the assessee does not get away with a double benefit once by way of deduction and another by not being taxed on the benefit received by him in the later year with reference to deduction allowed earlier in case of remission of such liability. It is undisputed fact that the Respondent had been paying interest at 6 % per annum to the KJC as per the contract but the assessee never claimed deduction for payment of interest under Section 36 (1) (iii) of the IT Act. In the case at hand, learned CIT (A) relied upon Section 41 (1) of the IT Act and held that the Respondent had received amortization benefit. Amortization is an accounting term that refers to the process of allocating the cost of an asset over a period of time, hence, it is nothing else than depreciation. Depreciation is a reduction in the value of an asset over time, in particular, to wear and tear. Therefore, the deduction claimed by the Respondent in previous assessment years was due to the deprecation of the machine and not on the interest paid by it.



16. Moreover, the purchase effected from the Kaiser Jeep Corporation is in respect of plant, machinery and tooling equipments which are capital assets of the Respondent. It is important to note that the said purchase amount had not been debited to the trading account or to the profit or loss account in any of the assessment years. Here, we deem it proper to mention that there is difference between 'trading liability' and 'other liability'. Section 41 (1) of the IT Act particularly deals with the remission of trading liability. Whereas in the instant case, waiver of loan amounts to cessation of liability other than trading liability. Hence, we find no force in the argument of the Revenue that the case of the Respondent would fall under Section 41 (1) of the IT Act.

17. To sum up, we are not inclined to interfere with the judgment and order passed by the High court in view of the following reasons:

- (a) Section 28(iv) of the IT Act does not apply on the present case since the receipts of Rs 57,74,064/- are in the nature of cash or money.*
- (b) Section 41(1) of the IT Act does not apply since waiver of loan does not amount to cessation of trading liability. It is a matter of record that the Respondent has not claimed any deduction under Section 36 (1) (iii) of the IT Act qua the payment of interest in any previous year.*



18. In view of above discussion, we are of the considered view that these appeals are devoid of merits and deserve to be dismissed. Accordingly, the appeals are dismissed. All the other connected appeals are disposed off accordingly, leaving parties to bear their own cost. ”

5.1 Thus, Hon’ble Supreme Court held that Section 28(iv) does not apply on the receipts which are in the nature of money.

6. In the present case, Assessee had borrowed loan of Rs.75 lakhs. Therefore, respectfully following Hon’ble Supreme Court’s decision(supra), Hon’ble Karnataka High Court(supra) and ITAT Mumbai, we hold that Section 28(iv) of the Act, is not applicable in the case of the Assessee. Hence, no addition can be made u/s.28(iv) of Rs.75 lakhs.

7. As far as applicability of Section 41(1) is concerned, the ld.AR specifically submitted that no interest was debited to profit and loss account. Ld.DR for the Revenue has not rebutted this fact. Neither the Assessing Officer, nor the ld.CIT(A) has brought on record any evidence to prove that any of the interest pertaining to Rs.75 lakhs was debited to profit and loss account. Therefore, respectfully following Hon’ble Supreme Court(supra), we hold that no addition can be made u/s.41(1) of Rs.75 lakhs.



7.1 Accordingly, we direct Id.Assessing Officer(AO) to delete the addition of Rs.75 lakhs.

7.2 Accordingly, Ground No.1 raised by the assessee is allowed.

Ground No.2

8. Ld.AR for the Assessee pleaded that Assessing Officer has not allowed set-off of brought forward business loss and unabsorbed depreciation. Ld.AR filed a Chart as under :

<i>Sr No</i>	<i>Assessment Year</i>	<i>Date of Filing</i>	<i>Loss From Business</i>	<i>Loss From Depreciation</i>
1	2006-2007	28.11.2006	4,539,159	9,299,377
2	2007-2008	Nil	Nil	Nil
3	2008-2009	29.09.2008	640,332	217,097
4	2009-2010	21.09.2009	1,045,984	404,611
5	2010-2011	Nil	Nil	Nil
9	2011-2012	13.09.2011	Nil	58,221
6	2012-2013	Nil	Nil	Nil
7	2013-2014	Nil	Nil	Nil
9	2014-2015	Nil	4,742,081	359,352
	<i>Total loss Carried Forward to Future years</i>		10,967,556	10,338,658

9. The Assessing Officer made an addition of Rs.75 lakhs to the returned income of Rs.NIL and determined the total income at Rs.24,05,570/-. Assessing Officer has not uttered a single word regarding not allowing carry forward of losses, set-off of losses and



carried forward of unabsorbed depreciation. This ground was raised before Id.CIT(A). However, Id.CIT(A) merely brushed aside the ground stating that assessee has not furnished credible proof. We failed to understand what kind of credible proof Id.CIT(A) was looking for. This is sheer lack of application of mind by Id.CIT(A). In the assessment order in the very first sentence, Assessing Officer has admitted that Assessee had claimed loss of Rs.51,01,433/-. On perusal of the Return of Income filed by Assessee, it is distinctly evident that there was a loss to be carried forward as per Schedule CFL of the Return of Income. Also, Schedule-UD of Return of Income gives the unabsorbed depreciation. Once these facts are on record, there was reason for denying the carried forward of losses and unabsorbed depreciation. In these facts and circumstances of the case, we direct the Id.Assessing Officer to allow the carried forward of losses and unabsorbed depreciation claimed by Assessee in the Return of Income. Accordingly, Ground No.2 raised by the assessee is allowed.

10. Ground No.3 is general in nature and does not need any adjudication, hence, dismissed.



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

Order pronounced in the open Court on 12th January, 2026.

Sd/-
ASTHA CHANDRA
JUDICIAL MEMBER

Sd/-
Dr.DIPAK P. RIPOTE
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 12 Jan, 2026/ SGR

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

/ / TRUE COPY / /

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.