आयकर अपीलीय अधिकरण, दिल्ली पीठें, नई दिल्ली
INCOME TAX APPELLATE TRIBUNAL, DELHI
BENCHES, NEW DELHI

BENCH: A

BEFORE MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI M BALAGANESH, ACCOUNTANT MEMBER

ITA 4966/DEL/2026 (**निर्धारण वर्ष**/Assessment Year: **2022-23**)		
JINDAL INDIA POWER LIMITED HABITAT INDIA, C-3, QUTAB INSTITUTIONAL AREA, KATWARIA SARAI, DELHI-110016, DELHI	**Vs.**	**DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 13(1)** C.R. BUILDING, NEW DELHI NEW DELHI-110002, DELHI
अपीलार्थी Appellant		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee:		**AAACJ9902H**
अपीलार्थी द्वारा/Appellant represented by:		**Mr. Ajay Vohra, Sr. Adv, Mr. Rohit Jain, Adv, Ms. Aditi Garg, CA and Ms. Deepashree Rao, Adv**
प्रत्यर्थी द्वारा/Respondent represented by:		**Sh Zafarul Haque Tanweer,CIT DR**

सुनवाई की तारीख / Date of conclusion of hearing:	**02-Sep-2026**
घोषणा की तारीख / Date of pronouncement:	**09-Oct-2026**

आदेश / ORDER

PER SHRI M BALAGANESH, ACCOUNTANT MEMBER:

1. The appeal in ITA No.4966/Del/2026 for AY 2022-23, arises out of the order of the ld National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'ld. CIT(A)', in short] dated 16.03.2026 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.03.2024 by the Assessing Officer, Assessment Unit (hereinafter referred to as 'ld. AO').

2. The Ground Nos. 1 & 2 raised by the assessee were stated to be not pressed by the learned AR at the time of hearing. Accordingly, the same is hereby dismissed as not pressed.

www.taxcode.in

3. The only issue to be decided in this appeal is with regard to taxability of waiver of principal portion of the loan amount under section 56(2)(x) of the Act.

4. We have heard the rival submissions and perused the materials available on record. The assessee is engaged in the business of generation of thermal power and is substantially owned subsidiary of M/s Jindal India Powertech Limited. The assessee for the purpose of setting up thermal power plants (2X600 MW) in Orissa, India, had taken debt of around Rs 5500 crores approximately provided by consortium of 16 lenders, being banks and financial institutions and the balance amount of Rs 1500 crores was infused by way of equity / preference share allotment. This loan was taken in the financial year 2014-15. Until September 2016, the assessee was regular in servicing its debt obligations, but due to persistent losses on account of low capacity utilization of the thermal power plants, the assessee defaulted and the loan account was classified as Non-Performing Asset (NPA) with effect from 28-12-2016. In order to recover the outstanding debt comprising of both principal and accrued interest and in order to revive the company, the assessee and the lenders entered into a One-Time Settlement (OTS) to settle the outstanding dues vide Master Resolution Agreement (MRA) dated 29-05-2021. The copy of the Master Resolution Agreement is enclosed in pages 191 to 263 of the paper book. In this regard, it would be pertinent to reproduce the relevant extracts of the terms and conditions of the MRA which are as under:-

> "***WHEREAS:***
>
> *A. The Borrower is in the business of generation and supply of power and is currently operating a 1200 mega-watt thermal power project having two units of 600 mega-watt each, of subcritical technology near Derang Village, Angul District in the State of Odisha ("Project").*
>
> *B. The Borrower has outstanding secured financial assistance owed to the Lenders as set forth in* ***Schedule II ("Existing Financing Facilities")*** *hereto, on the terms and conditions contained in various loan agreements / facility*

agreements and other documents, agreements, instruments, letters etc., executed, inter alia, between the relevant Lenders and the Borrower and/or any other party, as the case may be ("Financing Facility Agreements") including without limitation the Existing Security Documents (as defined hereunder).

C. The Borrower has been facing financial difficulties mainly on account of sectoral issues due to which it has not been able to service its debt obligations under the Financing Facility Agreements and accordingly its debt servicing ability towards the Lenders has deteriorated resulting in a default in repayment of the loan obligations under the Financing Facility Agreements.

D. Thereafter, with a view to resolve the stress in the Borrower, the Borrower approached the Lenders with the Primary Proposal (as defined hereinbelow), vide letters dated 10 September 2020, 09 November 2020, 19 November 2020, 24 November 2020, 30 November 2020, 01 December 2020, 07 December 2020 and entered into various discussions with the Lenders, to settle the entire outstanding dues owed to the Lenders.

E. The Primary Proposal submitted by the Borrower was discussed and was in principal approved by the Lenders and communicated to the Borrower in the Lender's consortium meeting held on 10 December 2020 ("In-principal Approval").

F. As a part of the resolution terms under the Primary Proposal, the Borrower was required to deposit a security deposit of Indian Rupees One Hundred and Fifty Crores only (INR 150,00,00,000/-) ("Security Deposit") with the Lead Financial Institution within seven (7) days from the date of the In-principal Approval and immediately upon transfer of the Security Deposit by the Borrower to the Lead Financial Institution, the Lead Financial Institution was required to transfer the existing security deposit amount of Indian Rupees Fifty crores only (INR 50,00,00,000) which was provided in the form of a fixed deposit created by Lucky Holdings Private Limited ("LHPL") in the name of the Borrower and secured in favour of Lead Financial Institution ("Existing Security Deposit"), to the Borrower. Accordingly, the Security Deposit was deposited in the form of a fixed deposit with the Lead Financial Institution on 17 December 2020 in the terms of the Undertaking (as defined hereinunder) and subsequently the Existing Security Deposit has been released to the Borrower, which the Borrower has utilised for payment to LHPL.

G. Upon receipt of the Primary Proposal from the Borrower, the Lenders decided to conduct a 'swiss challenge' process, whereupon the Lenders invited bids from prospective bidders for assignment of the debt owed by the Borrower to the Lenders.

H. In furtherance of the decision to conduct the 'swiss challenge' process, the Lenders issued the newspaper advertisement dated 21 December 2020 inviting bids for assignment of the total outstanding debt owed by the Borrower

to the Lenders, and the bid document dated 24 December 2020 (as amended and supplemented from time to time) ("Bid Document").

I. However, since no bidder submitted any proposal pursuant to the Bid Document, the Lenders, in their consortium meeting held on 08 January 2021, identified the Borrower as the "successful bidder", subject to and in terms of the Letter of Intent dated 11 January 2021 ("Letter of Intent") issued by Lead Financial Institution, in terms of the Bid Document.

J. The Letter of Intent issued by the Lead Financial Institution inter alia provided that the Security Deposit made pursuant to the Undertaking was agreed to be considered as a 'Contract Performance Guarantee' (as defined hereunder) in terms of the Bid Document.

K. Now, that the Resolution Plan (as defined hereunder) has been finally approved by the Lenders and accordingly, the Parties are entering into this Agreement to set out the detailed terms and conditions agreed, inter alia, between the Parties for the implementation of the Resolution Plan, including but not limited to payment of the Resolution Amount (as defined hereunder) to the Lenders towards settlement of outstanding dues of the Lenders, etc."

"4 THE TERMS OF THE RESOLUTION PLAN

Subject to the terms hereof, the Parties have agreed to the following:

4.1 The Parties have, as a part of the Resolution Plan, agreed to settle the repayment of the Existing Financing Facilities and all outstanding dues in relation thereto with the Lenders, on the following terms and other terms and conditions provided in this Agreement:

4.1.1 the payment of an amount of Indian Rupees Two Thousand Four Hundred and Fifty Crores (INR 2450,00,00,000) (the "Resolution Amount") to the Lenders by the Borrower in the manner provided in Clause 8 of this Agreement, excluding the amount of Indian Rupees One Hundred and Fifty Crores only (INR 150,00,00,000/-) which has been cut back and appropriated by the Lenders from 1 November 2019 to 31 August 2020 ("Cut Back Amount");

4.1.2 transfer of 10% (Ten percent) equity shares of the Borrower held by the shareholders of the Borrower to the Lenders in the manner provided in Clause 4.5 of this Agreement; and

4.1.3 replacement by the Borrower of the NFB Facilities within four (4) years from the Effective Date.

As a part of the Resolution Plan, the Lenders have agreed for full and final settlement of the outstanding dues in relation to the Existing Financing

Facilities with the payment of the Resolution Amount as mentioned in Clause 4.1.1 and Clause 4.1.2 above along with the interest and charges stipulated in this Agreement and the replacement of the NFB Facilities as mentioned in Clause 4.1.3. Further, the Parties agree that, after the occurrence of the Final Settlement Date, the Lenders shall write off the balance amount of the outstanding monies payable by the Borrower, including interest, penal interest and all other charges payable under the Financing Facility Agreement, after deducting the payment of Resolution Amount as mentioned in Clause 4.1.1 and Clause 4.1.2 above along with the interest and charges stipulated in this Agreement.

4.2. The Parties hereby agree that the Financing Facility Agreements shall be in abeyance till the repayment of the Resolution Amount in terms of this Agreement or the occurrence of a Termination Event. However, the Final Settlement Date for the Existing Financing Facilities under the Financing Facility Agreements shall be deemed to be achieved and the entire dues of the Borrower shall be deemed to be settled only upon the Resolution Amount (including all interest), as required to be paid by the Borrower in terms and conditions of this Agreement, shall have been paid in full by the Borrower to the Lenders, 10% (Ten percent) equity shares of the Borrower held by the shareholders of the Borrower are validly transferred to the Lenders on fully diluted basis (i.e., valid transfer of such shares by the shareholders of the Borrower to the Lenders as per all Applicable Law, including completion of all procedure and steps with respect to effecting such transfer as per Applicable Law) and the NFB Facilities are replaced by the Borrower, in compliance of this Agreement. Upon compliance of the aforesaid term and conditions, in terms of the Resolution Documents, no further amount shall be payable by the Borrower and the Lenders shall not have any Claim or outstanding under the Financing Facility Agreements.

However, notwithstanding anything contained in this Agreement, in case of occurrence of Termination Event, the provisions of Clause 10.4.2 shall apply.

4.2.1 Repayment

The Resolution Amount payable by the Borrower to the Lenders towards settlement of the Existing Financing Facilities shall be paid by the Borrower on the dates and in the manner provided in Clause 8 below.

4.2.2. Interest

The Borrower and each of the Lenders agree that, (i) the interest shall accrue only on the Remaining Resolution Amount at a fixed interest rate of 9% (Nine percent) per annum for the amount payable to the Lenders except for the ECB Lenders; and (ii) the interest for the ECB Lenders shall accrue only on the Remaining Resolution Amount payable to such ECB Lenders at a fixed rate of 3M LIBOR +450 bps, starting from the date of repayment of the entire Upfront Amount for a period of four (4)

years and shall be paid by the Borrower on a monthly basis on last day of every month.

4.2.3. Additional Loans

(a) Working Capital Loan

The Parties agree that the Borrower shall have the right, without prior approval of/ intimation to the Lenders, to avail fresh working capital facility ("Working Capital Facility") from one or more banks, financial institutions, non-banking financing companies, companies or any other Person ("Working Capital Lenders") on such terms and conditions as agreed between the Borrower and such Working Capital Lenders, subject to a limit of INR 400,00,00,000/- (Indian Rupees Four Hundred Crore only), and to enter into financing documents for availing such Working Capital Facility and to create security for the Working Capital Facility as stipulated in Clause 4.2.4 below. However, it is hereby clarified that the payment of the Resolution Amount by the Borrower shall not be contingent on the arrangement of the Working Capital Facility by the Borrower.

Notwithstanding anything contained in this Agreement or any other Resolution Documents, the Borrower shall ensure that all Working Capital Lenders have executed the Deed of Adherence as provided under Schedule VI and the Lead Financial Institution shall upon receipt of the Deed of Adherence shall acknowledge the Working Capital Facility.

(b) FGD Loan

The Parties hereby agree that the Borrower shall have the right, without prior approval of/ intimation to the Lenders, to avail financial assistance for the FGD infrastructure ("FGD Facility") from one or more banks, financial institutions, companies or any other Person ("FGD Lenders") on such terms and conditions as mutually agreed between the Borrower and such FGD Hundred and Eighty Crore only), and to enter into financing documents for availing such FGD Facility and to create security for the FGD Facility as Lenders, subject to a limit of INR 480,00,00,000/- (Indian Rupees Four stipulated in Clause 4.2.4 below.

Notwithstanding anything contained in this Agreement or any other Resolution Documents, the Borrower shall ensure that all FGD Lenders have executed the Deed of Adherence as provided under Schedule VI and the Lead Financial Institution shall upon receipt of the Deed of Adherence shall acknowledge the FGD Facility.

(c) Promoter(s) Debt

The Parties hereby agree that the Borrower shall have the right, without prior approval of / intimation to the Lenders, to avail Promoter(s) Debt in accordance with the terms of this Agreement. In the event funds are issued by a Promoter Group Entity through either subscription of unsecured non-convertible debentures issued by the Borrower or providing unsecured loans to the Borrower or a mix of both, then such non-convertible debentures and / or loans:

(i) shall be considered subordinate to the Resolution Amount and the Existing Financing Facility (in case of Termination Event), as the case may be, to the extent that the principal outstanding amount of such Promoter(s) Debt shall be repaid and interest shall be paid, on a quarterly basis, only after meeting the Borrower's debt service obligations towards the Lenders for that quarter, capex and contingent liability, if any, on a quarterly basis and subject to creation of Debt Service Reserve, which may be due for immediately next quarter and in absence of a Termination Event, in accordance with the provisions mentioned under this Agreement and the TRA Agreement; and

(ii) shall carry a fixed interest of not more than 9% (nine percent) per annum.

4.2.4. Security

(a) The security interest already created under the Existing Security Documents to secure the repayment of Existing Financing Facilities together with all interest, costs, expenses and other monies whatsoever stipulated in this Agreement shall continue to be in full force in favour of the Security Agent and for the benefit of the Lenders, including ECB Lenders and the NFB Lenders, except to the extent modified hereunder:

(i) a first ranking pari passu charge by way of mortgage and charge over all the immoveable properties of the Borrower (including mortgage of leasehold rights in case of leasehold land, if any) and assets of the Project, both present and future;

(ii) a first ranking pari passu charge on all movable fixed assets of the Borrower, both present and future, including but not limited to plant and machinery, machinery spares, tools, spares and accessories of the Project;

(iii) a first charge by way of assignment of all Project contracts including off-take contracts, documents, insurance policies relating to the power plant, rights, titles, permits / approvals, clearances and all benefits incidental thereto;

(iv) a first charge on all Current Assets of the Borrower including the Current Assets of the Project, both present and future till the time the Borrower avails the Working Capital Facility; and a second charge on all the Current Assets of the Borrower including the Current Assets of the Project, both present and future from the time the Borrower avails the Working Capital Facility;

(v) a first charge on the Trust and Retention Account and all sub-accounts thereunder till the time Borrower avails the Working Capital Facility; and a second charge on the Trust and Retention Account and all sub- accounts (except of Debt Service Reserve Account) thereunder from the time the Borrower avails the Working Capital Facility. However, it is clarified that on occurrence of Termination Event, all the monies kept in the Trust and Retention Account and all sub accounts thereunder shall be appropriated on such terms and conditions as mentioned in the TRA Agreement;

(vi) Pledge of 73.59% (seventy three decimal five nine percent) equity shares of the Borrower and 66% (sixty six percent) preference shares of the Borrower held by the Promoter Group Entity/ JIPL in favour of the Security Holders in the same proportion as existed prior to invocation of pledge i.e. 51% (fifty one percent) of the total equity share capital and 51% (fifty one percent) of the total preference share capital of the Borrower shall be pledged in favour of the Security Agent; 15% (fifteen percent) of the total equity share capital and 15% (fifteen percent) of the total preference share capital of the Borrower shall be pledged in favour of Punjab National Bank; and 7.59% of Demat Pledged Equity Shares shall continue to be pledged exclusively in favour of Bank of Baroda;

(vii) An exclusive first charge on the Debt Service Reserve Account created in terms of the TRA Account and all the monies kept thereunder in terms of this Agreement and the TRA Agreement.

(b) The charge/ assignment / pledge stipulated above shall be shared on a pari passu basis inter se the Lenders except the pledge of shares which shall be shared as noted in sub-clause (vi) of Clause 4.2.4(a) above;

(c) The subsisting mortgages/charges/securities over the immovable and movable assets of the Borrower shall continue to be in full force and effect for the benefit of the Lenders except to the extent amended / modified by this Agreement. The pledge stipulated under sub-clause (vi) of Clause 4.2.4(a) shall be created and perfected simultaneously to the transfer of the Demat however that in any condition, the stipulated pledge should be perfected not Invoked Equity Shares and Physical Invoked Preference Shares, provided later than seven (7) Business Days from the date on which (i) the Demat Invoked Equity Shares are credited into the depository participant account of the Pledgor; and

(ii) the Physical Invoked Preference Shares are transferred by the Security Agent / Lenders to the Pledgor to enable the Pledgor to re- pledge those shares.

Further, it is clarified that the security created under the Existing Security Documents is only being modified, to the extent appliable, by the terms of this Agreement. The Parties however agree that, in case of occurrence and declaration of a Termination Event, the provisions of Clause 10.4.2 shall apply.

(d) Permitted Security Interest

(i) Working Capital Lenders

The Lenders hereby agree to cede in favour of Working Capital Lenders, including any new lenders providing non fund based facilities: (A) first charge on the Current Assets of the Borrower mentioned in sub-clause (iv) of Clause 4.2.4(a); (B) first charge on the Trust and Retention Account and sub-accounts thereunder mentioned in sub-clause (v) of Clause 4.2.4(a); and (C) second charge on reciprocal basis with the Lenders on the fixed assets of the Borrower as mentioned in sub-clause (i), (ii) and (iii) of Clause 4.2.4(a). In this regard, it is agreed by the Borrower, that the Borrower shall share a prior intimation with the Lead Financial Institution and shall submit to the Lead Financial Institution the Deed of Adherence executed by such Working Capital Lender(s) before creating such charge in favour of the Working Capital Lenders.

(ii) FGD Lenders

The charge stipulated in sub-clauses (i), (ii) and (iii) of Clause 4.2.4(a) above shall be shared by the Lenders on a pari passu basis with the FGD Lenders. In this regard, it is agreed by the Borrower, that the Borrower shall share a prior intimation with the Lead Financial Institution and shall submit to the Lead Financial Institution the Deed of Adherence executed by such FGD Lenders before creating such charge in favour of the FGD Lenders.

4.2.5. Notwithstanding anything to the contrary contained in the Financing Facility Agreements, Resolution Documents or any agreement, as per the agreed Resolution Plan, there shall be no corporate guarantee or personal guarantee provided to the Lenders and the Lenders shall not have the right to recompense.

4.3 . Withdrawal/ Abeyance of Ongoing Proceedings

4.3.1. The Lenders shall:

(a) finalise the drafts of the petitions/consent terms (as applicable for various forums), along with the Borrower (wherever applicable), for

www.taxcode.in

withdrawal/ keeping in abeyance of all the pending legal proceedings including under the Insolvency and Bankruptcy Code 2016 and recovery proceedings and winding- up proceedings under the Act or the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 or under any other statute (including as listed in Schedule IV hereto), from all the courts / authorities / tribunals (including those sub-judice before National Company Law Tribunal, Debt Recovery Tribunal), filed by all or any of the Lenders against the Borrower and Pledgor, and all other Persons, in relation to the Existing Financing Facilities ("Lenders' Existing Legal Proceedings") prior to the expiry of the due date for the payment of the entire Upfront Amount. Further, it is clarified that the Borrower shall also sign such petitions/consent terms (as applicable for various forum) along with Lenders, as may be required in terms of the Applicable Law;

(b) file the petitions/consent terms (as applicable for various forums) along with the Borrower, as may be required under the Applicable Law, with the appropriate courts/tribunals and authorities for withdrawal/ keeping in abeyance of all Lenders' Existing Legal Proceedings immediately and in any event within one (1) week from the date of receipt of the entire Upfront Amount;

(c) take necessary actions, within one (1) week from the date of receipt of the entire Upfront Amount, to ensure that all pending Lenders' Existing Legal Proceedings are withdrawn (with respect to Lenders' Existing Legal Proceedings pending before National Company Law Tribunal and other forums except Debt Recovery Tribunal)/ suspended (with respect to the Lenders' Existing Legal Proceedings pending before Debt Recovery Tribunal) and complete all procedures for the same along with the Borrower, to the satisfaction of the Borrower. To this extent, it is clarified that the Lenders shall not be responsible for any procedural delay not attributable to itself; and

(d) Without prejudice to the above, ICICI Bank Limited and Canara Bank shall file the appropriate applications to withdraw their petitions pending before National Company Law Tribunal, Principal Bench against the Borrower immediately and in any event within one (1) week from the date of receipt of the entire Upfront Amount and shall take all necessary actions to ensure that such proceedings are withdrawn immediately and complete all procedures for the same, to the satisfaction of the Borrower.

4.3.2. The Borrower shall:

(a) finalise the drafts of the petitions for withdrawal/ keeping in abeyance of all the pending legal proceedings from all the courts / authorities / tribunals (including those sub-judice before High Court of

Delhi), filed by the Borrower against any or all of the Lenders, in relation to the Existing Financing Facilities ("Borrower's Existing Legal Proceedings") prior to the expiry of the due date for the payment of the entire Upfront Amount;

(b) file the petitions/applications under the Applicable Law, with the appropriate courts/tribunals and authorities for withdrawal/ keeping in abeyance of all Borrower's Existing Legal Proceedings immediately and in any event within one (1) week from the date of payment of the entire Upfront Amount; and

(c) take necessary actions, within one (1) week from the date of payment of the entire Upfront Amount, to ensure that all pending Borrower's Existing Legal Proceedings are withdrawn (with respect to Borrower's Legal Proceedings for the same along with the Lenders, to the satisfaction of the Lenders. To this pending before High Court of Delhi)/ suspended and complete all procedures extent, it is clarified that the Borrower shall not be responsible for any procedural delay not attributable to itself.

4.3.3. Further, it is clarified that all the cost, expense, fee or any other amount incurred in compliance of this Clause 4.3 shall be borne by the Borrower, as may be mutually agreed between the Lenders and the Borrower.

4.4 Transfer of Invoked Shares

The Lenders and the Security Agent hereby agree, as a part of the Resolution Plan, to transfer the Demat Invoked Equity Shares and Physical Invoked Preference Shares to JIPL, immediately and in any event not later than seven (7) days upon the receipt of the entire Upfront Amount, as per procedure under Applicable Law, including but not limited to delivery of the following documents to JIPL:

4.4.1 Signed and undated delivery instruction slips in relation to thirty crore eighty nine lakh forty thousand nine hundred forty one (30,89,40,941) of the Demat Invoked Equity Shares beneficially held by the Security Agent (on behalf of the Lenders) constituting 51% (fifty one percent) of the total equity share capital of the Borrower;

4.4.2 Original share certificates and signed share transfer forms in relation to forty-seven crore ninety-one lakh twenty-five thousand nine hundred (47,91,25,900) of the Physical Invoked Preference Shares beneficially held by the Security Agent (on behalf of the Lenders) constituting 51% (fifty one percent) of the total preference share capital of the Borrower;

4.4.3 Signed and undated delivery instruction slips in relation to nine crore eight lakh sixty- four thousand nine hundred eighty-two (9,08,64,982) of the Demat Invoked Equity Shares beneficially held by Punjab National Bank (as an individual Lender) constituting 15% (fifteen percent) of the total equity share capital of the Borrower; and

4.4.4 Share certificates and share transfer forms in relation to fourteen crore eight lakh seventy-one thousand five hundred (14,08,71,500) of the Physical Invoked Preference Shares beneficially held by Punjab National Bank (as an individual Lender) constituting 15% (fifteen percent) of the total preference share capital of the Borrower.

4.5 Transfer of 10% Equity to the Lenders

As a part of the Resolution Plan, the Borrower agrees that, after the payment of last instalment of the Resolution Amount by the Borrower to the Lenders and replacement of the NFB Facilities, JIPL shall transfer 10% (Ten percent) of the equity shares of the Borrower, on fully diluted basis, calculated as on the date on which the entire Resolution Amount along with interest stands paid to the Lenders (as per each Lender's share percentage mentioned in Schedule II hereto), out of the equity shares of the Borrower pledged with the Lenders, within 10 (ten) Business Days from the date of release of pledge over such equity shares by the Lenders, to the satisfaction of the Lenders. Further, the Borrower and JIPL also agree that such transfer of 10% (Ten percent) equity shares of the Borrower which are to be transferred to the Lenders, on fully diluted basis, shall be free from all Encumbrances whatsoever.

If at any time, any Lender decides to sell, in full or in part, the equity shares of the Borrower and exit, such Lender shall first offer the equity shares for sale to the JIPL on right of first refusal ("RoFR") basis. Upon receipt of an offer of RoFR from the Lenders, JIPL shall communicate their decision on acceptance or rejection of such offer within 15 (Fifteen) days ("Acceptance Date") from the date on which such offer was received from the relevant Lender. The Parties agree that JIPL shall exercise its RoFR (i.e., complete the purchase of the relevant equity shares from the relevant Lender) within 30 (Thirty) days from the Acceptance Date, unless otherwise agreed between JIPL and such relevant Lender. In the event the offer of the Lender is not acceptable or the decision is not communicated to the relevant Lender within 15 (Fifteen) days by JIPL, then, the Lender may approach outside buyers for the sale of such equity shares of the Borrower, however, the Lender shall not be permitted to sell the equity shares of the Borrower to an outside party at a price lower than the price at which it was offered by them to JIPL.

4.6 TRA Agreement

4.6.1 The Parties hereby agree that a Trust and Retention Account Agreement shall be executed by the Borrower, the Designated Account Bank, Lead Financial Institution and the TRA Agent. All revenues of the Project and other funds of the Borrower shall be deposited in the TRA Account and shall be utilised as per the waterfall mechanism provided below and as provided in detail in the TRA Agreement.

(a) Firstly, to meet statutory dues of the Borrower;

(b) Secondly, to meet the operational expenses of the Borrower as approved in the Approved Budget;

(c) Thirdly, to meet the interest to be paid to the Lenders as per the terms of this Agreement and to the Working Capital Lender and the FGD Lenders on a monthly basis;

(d) Fourthly, to meet the instalments of the principal outstanding amounts to the Lenders as per the terms of this Agreement and the Repayment Schedule and to the FGD Lenders and to meet monies payable to the Working Capital Lenders in case of reduction of drawing power of the Borrower and consequent reduction in limits under the Working Capital Facility, on a quarterly basis; and

(e) Fifthly, to create a debt service reserve, out of the Project cash flows, for an amount of INR 70,00,00,000 (Indian Rupees Seventy Crores) upfront at the time of payment of the entire Upfront Amount; which shall be increased to INR 82,00,00,000 (Indian Rupees Eighty Two Crores) by the expiry of two (2) years from the date of payment of entire Upfront Amount; and further increased to INR 123,00,00,000 (Indian Rupees One Hundred and Twenty Three Crores) by the expiry of three (3) years from the date of payment of the entire Upfront Amount ("Debt Service Reserve"). Notwithstanding any other provisions of this Agreement or any other Resolution Documents, it is further clarified that the Debt Service Reserve shall only be created for the benefit of the Lenders and shall not be used for the payment of any other indebtedness (actual or contingent) of the Borrower;

After meeting the obligations mentioned in (a), (b), (c), (d) and (e) above on a quarterly basis, the balance available, shall,

(f) Sixthly, to meet capex creditors/contingent liabilities of the Borrower, if any, as decided in the Approved Budget and and as mutually agreed by the Borrower and the Lenders (prior to the infusion of the Working Capital Facility by the Borrower) and as mutually agreed between the Borrower, the Lenders and the Working Capital Lenders (after the infusion of the Working Capital Facility), respectively; and

(g) Lastly, to meet interest and repayment obligations in relation to the debt availed by the Borrower from group companies (including Promoter(s) Debt) on quarterly basis, provided the debt service reserve in relation to the debt payable to the Lenders, along with interest thereon for the immediately next quarter is created and maintained by the Borrower and in compliance with the terms and conditions of the TRA Agreement.

4.6.2 Appointment of TRA Agent

The Parties hereby agree as follows:

(i) Till the induction of the Working Capital Lenders, the Borrower and the Lenders shall mutually appoint a reputed Third Party as the TRA Agent to act as the agent of the Lenders in connection with the TRA Agreement and shall authorize the TRA Agent to exercise such rights, powers, authorities and discretion as are specifically delegated to the TRA Agent by the terms of the TRA Agreement together with all such rights, powers, authorities and discretion as are reasonably incidental hereto; and

(ii) After the induction of the Working Capital Lenders, the Working Capital Lenders shall appoint/replace a reputed Third Party as the TRA Agent to act as the agent of the Lenders, Working Capital Lenders and the FGD Lenders in connection with the TRA Agreement and shall authorize the TRA Agent to exercise such rights, powers, authorities and discretion as are specifically delegated to the TRA Agent by the terms of the TRA Agreement together with all such rights, powers, authorities and discretion as are reasonably incidental hereto.

The TRA Agent shall act as per the terms of the TRA Agreement.

4.7 NFB Facilities

The Parties agree that the NFB Facilities availed by the Borrower shall be replaced by the Borrower within four (4) years from the Effective Date. However, notwithstanding anything contained in this Agreement or any other Resolution Documents, in case prior to replacement of the NFB Facilities, any of the NFB Facilities is invoked or devolved, then the Borrower shall pay to the NFB Lenders, an amount which shall be equivalent to the amount of NFB Facilities being invoked or devolved, as the case may be, plus interest calculated as per the respective NFB Lenders' interest rate card, applicable as on the date on which such NFB Facility was invoked or devolved, within 15 (Fifteen) days from such date on which the respective NFB

Facilities were invoked or devolved, as the case may."

www.taxcode.in

5. The negotiated resolution plan has set out in the MRA provided for settlement of the outstanding loan amount (both principal and interest) on mutually agreed commercially negotiated terms involving, inter alia,

(i) payment of settlement amount of Rs 2450 crores ;

(ii) transfer of 10% equity shares of the assessee by the parent entity to the lenders on a fully diluted basis ;

(iii) replacement of non fund based facilities by the assessee and

(iv) compliance of other conditions set out therein.

6. The aforesaid conditional settlement terms mentioned in the MRA provided for strict adherence to the terms of the resolution plan and clearly provided that it shall be open to the lenders to terminate the MRA in case of default in meeting any of the conditions relating to the payment and discharge of obligations stated therein. Accordingly, in terms of the settlement arrived at, against total outstanding of Rs. 9431.49 crores, the bankers / lenders were entitled to receive resolution amount of Rs. 2450 crores and 10% equity in the assessee company. Moreover, the assessee was bound to discharge other obligations as set out in the MRA. In the books of the assessee, since Rs. 2450 crores was to be paid against total outstanding of principal, an amount of Rs. 6981,49,07,871 out of Rs. 9431.49 crores was recognized as waiver by the lenders / financial institutions, which essentially comprised of two components with principal of Rs. 2767,85,93,088 and interest of Rs. 4213,63,14,783 as under:-

Particulars	**Principal**	**Unpaid Interest**	**Total Payable**
Outstanding amount (A)	Rs.5217,85,93,088	Rs.4213,63,14,783	Rs.9431,49,07,871
Settlement of loan as per MRA (B)	Rs.2450,00,00,000	-	Rs.2450,00,00,000
Waiver by lenders [A - B]	**Rs.2767,85,93,088**	**Rs.4213,63,14,783**	**Rs.6981,49,07,871**

7. In the financial statements of the assessee, the aforementioned waiver of Rs 6981,49,07,871 was recognized and reflected by the assessee company for the year ending 31-03-2022 as an "Exceptional Item" by crediting to profit and loss account. In the computation of income, the assessee reduced the amount of waiver on loan (both principal and interest component) aggregating to Rs 6981,49,07,871 from the taxable income.

8. The learned AO made an addition of Rs 2767,85,93,088 under section 56(2)(x) of the Act being principal component of the waiver by holding that such waiver represented receipt of cash in terms of the said section. While doing so, the learned AO examined the applicability of provisions of section 28(iv) and section 41(1) of the Act and ruled out the applicability of the same to the subject mentioned transaction of waiver of principal amount of loan and accrued interest. The discussions in this regard are enclosed in Pages 9 to 17 of the assessment order. The learned AO however heavily relied on the decision of the Hon'ble Supreme Court in the case of CIT vs Mahindra and Mahindra Ltd reported in 404 ITR 1(SC) in support of his contentions to rule out the applicability of provisions of section 28(iv) and section 41(1) of the Act and parallely used the very same decision for applying the provisions of section 56(2)(x) of the Act. This action of the learned AO was upheld by the learned CITA. The learned CITA also placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs T V Sundaram Iyengar & Sons Ltd reported in 222 ITR 344 (SC).

9. At the outset, we find that the principal amount of loan in respect of which waiver was allowed, was availed towards acquisition of capital asset and hence waiver thereof, constitute a waiver on capital account in the hands of the assessee and hence not liable to be taxed. It is clearly a capital account transaction.

10. From the aforesaid undisputed facts, we find that the MRA nowhere provided for receipt of any amount from the lenders during the year under consideration. Now the moot point that arises for our consideration is as to whether the provisions of section 56(2)(x) of the Act per se could at all be invoked when there was no receipt of money by the assessee. Waiver of loan as part of OTS merely results in the assessee being discharged of meeting a monetary liability. Undisputedly, waiver of loan does not result in receipt of any amount. Infact, waiver, by its very nature, is antithesis of actual receipt of money. It would be relevant to reproduce the provisions of section 56(2)(x) of the Act :-

> ***"Income from other sources.***
>
> ***56.*** *(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in* section 14*, items A to E.*
>
> *(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—*
>
> *(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—*
>
> *(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;*
>
> *(b) any immovable property,—*
>
> *……..*
>
> *(c) any property, other than immovable property,—*
>
> *……..*
>
> ***Provided*** *that this clause shall not apply to any sum of money or any property received—*
>
> *(I) from any relative; or*

(II) on the occasion of the marriage of the individual; or

(III) under a will or by way of inheritance; or

(IV) in contemplation of death of the payer or donor, as the case may be; or

(V) from any local authority as defined in the Explanation to clause (20) of section 10*; or*

(VI) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10*; or*

(VII) from or by any trust or institution registered under section 12A *or* section 12AA *or* section 12AB*; or*

(VIII) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10*; or*

(IX) by way of transaction not regarded as transfer under clause (i) or clause (iv) or clause (v) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) [30]*[or clause (viiac) or clause (viiad) or clause (viiae) or clause (viiaf)] of* section 47*; or*

(X) from an individual by a trust created or established solely for the benefit of relative of the individual;

(XI) from such class of persons and subject to such conditions, as may be prescribed[31]*;*

[32]*[(XII) by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, for any illness related to COVID-19 subject to such conditions, as the Central Government may, by notification in the Official Gazette, specify in this behalf;*

(XIII) by a member of the family of a deceased person,—

(A) from the employer of the deceased person; or

(B) from any other person or persons to the extent that such sum or aggregate of such sums does not exceed ten lakh rupees,

where the cause of death of such person is illness related to COVID-19 and the payment is—

(i) received within twelve months from the date of death of such person; and

(ii) subject to such other conditions, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Explanation.—For the purposes of clauses (XII) and (XIII) of this proviso, "family", in relation to an individual, shall have the same meaning as assigned to it in Explanation 1 to clause (5) of section 10*:]*

[33]*[**Provided further** that clauses (VI) and (VII) of the first proviso shall not apply where any sum of money or any property has been received by any person referred to in sub-section (3) of* section 13*.]*

[34]*[Explanation.—For the purposes of this clause,—*

(a) the expressions "assessable", "fair market value", "jewellery", "relative" and "stamp duty value" shall have the same meanings as respectively assigned to them in the Explanation to clause (vii); and

(b) the expression "property" shall have the same meaning as assigned to it in clause (d) of the Explanation to clause (vii) and shall include virtual digital asset;"

10.1. It is not in dispute that there is absolutely no receipt of money during the year under consideration by the assessee pursuant to waiver of loan under OTS. The provisions of section 56(2)(x) of the Act clearly mandate receipt of money by the assessee during the year under consideration. In the absence of actual receipt of any money, the provisions of section 56(2)(x) of the Act could not all be invoked.

11. It is pertinent to note that waiver of loan was not 'without consideration'. In the instant case, the lenders had agreed to waive the balance loan upon the assessee fulfilling the conditions prescribed under Clause 4.1 of the MRA i.e. s payment of Rs 2450 crores, transfer of 10% equity and replacement of non-fund based facilities. All these conditions constitute clearly involve consideration. Since the transactions had taken place 'with consideration', the provisions of section 56(2)(x)(a) of the Act could not be applied at all.

12. We find that reliance was rightly placed by the Learned AR on the coordinate bench decision of Mumbai Tribunal in the case of ACIT vs Infinite

Buildcon Pvt Ltd in ITA No. 2241/Mum/2021 for AY 2018-19 dated 20-9-2022 in support of his contentions. The questions before the Mumbai Tribunal are reproduced hereunder:-

> *"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs 2,15,21,467 made u/s 28(iv) of the Act being the value of benefit arising from business of the assessee without appreciating the facts of the case and the decision of Hon'ble Supreme Court in the case of CIT vs T.V. Sundaram Iyengar & Sons Ltd. [1996] 6 SCC 294 / 88 Taxman 429.*
>
> *2. On the facts and circumstances of the case, having held that the benefit was in money form and not in kind, and having co-terminus power as the assessing officer, has erred in not treating the waived off unsecured loan as income under section 56(2)(x) of the Act."*

12.1. The facts relating to the aforesaid dispute as narrated in the order of Mumbai Tribunal referred supra are as under:-

> *"5. The facts relating to the issue are that the Assessing Officer noticed that the assessee has written back certain loans received by it to the tune of Rs. 265 lakhs and credited the same directly to the capital reserve account i.e. the above said amount was not routed through the profit and loss account. The assessee explained that it had received loan of Rs. 22.50 crores from M/s. Uttam Galva Metallics Ltd. on 27.6.2014 relevant to A.Y. 2015-16. During the year under consideration it was agreed that the above said loan was to be assigned to Mr. Sunil Dalal for a sum of Rs. 20 crores and the remaining amount of Rs.2.50 crores was waived of. Accordingly, the assessee transferred the above said amount Rs. 2.50 crores to the "Capital Reserve" account, since it was a capital receipt. The assessee had also taken loan of Rs. 15 lakhs from M/s. V. Raheja Design Construction Pvt. Ltd. on 8.10.2014 relevant to A.Y. 2015-16. During the year under consideration it was agreed by the parties that the above said loan need not be paid by the assessee, i.e., the above said amount of Rs.15.00 lakhs was also waived of. Accordingly, the assessee transferred the above said sum of Rs. 15 lakhs also to the "Capital Reserve" account. In aggregate, the assessee has credited the Capital Reserve account with Rs. 2.65 crores during the year under consideration.*
>
> *6. The assessee claimed that the above said amount is not taxable under section 41(1) of the Act, since the above said amount was not claimed as expenditure in any of the years. It is pertinent to note that the interest payable on the above said loans was also waived of. The assessee had claimed interest expenditure in the earlier years and hence the assessee offered the unpaid*

amount out of interest expenditure as its income. The Assessing Officer noticed that the assessee claimed deduction of interest of Rs. 4,97,85,337/- in the earlier years. However, it has offered a sum of Rs. 4,48,06,804/- only as income during the year under consideration. Hence, the Assessing Officer assessed difference amount of Rs. 49,78,533/- under section 41(1) of the Act.

7. The Assessing Officer further took the view that the loan waiver amount of Rs.2.65 crores is in the nature of benefit accrued to the assessee during the course of carrying on of the business and accordingly held that the same is assessable as income of assessee under section 28(iv) of the Act. Since the AO had assessed Rs.49,79,533/- u/s 41(1) of the Act, he assessed the difference amount of Rs.2,15,21,467/- Rs.49,78,533/-) u/s 28(iv) of the Act. (Rs.2,65,00,000/- (less)

8. During the appellate proceedings, the Ld CIT(A) noticed that the amount of Rs. 49,78,533/- assessed u/s 41(1) of the Act actually represents TDS deducted from interest provision and remitted by the assessee to the credit of the government on behalf of the lender i.e. the above said amount has already been paid by the assessee, meaning there, the said TDS amount should be treated as having already been paid to the assessee. Hence the question of waiver of the same does not arise. Hence the assessee has correctly offered interest amount of 4,48,06,804 as its income. Hence, learned CIT(A) deleted the addition of Rs. 49,78,533/- made under section 41(1) of the Act. We notice that the Revenue has also accepted the same and hence did not challenge this decision of Ld CIT(A).

9. With regard to the amount of Rs. 2,15,21,467/- assessed under section 28(iv) of the Act, learned CIT(A) deleted the addition following the decision rendered by Hon'ble Supreme Court in the case of Mahindra & Mahindra Ltd. (261 ITR 501), wherein it was held that the provisions of section 28(iv) shall apply only in respect of benefit or perquisite received in kind. It was further held by Hon'ble Supreme Court that waiver of loan is in respect of money transaction and therefore would not be in nature of any benefit or perquisite as construed in section 28(iv) of the Act. Accordingly learned CIT(A) deleted the addition of Rs.21,15,21,467/-. The Revenue is aggrieved on the decision so re rendered by learned CIT(A).”

12.2. We find that the Mumbai Tribunal disposed of the questions raised hereinabove by observing as under:-

“12. We notice that the Ld CIT(A) has followed the decision rendered by Hon'ble Supreme Court in the case of Mahindra & Mahindra (supra) in arriving at the conclusion that the provisions of sec.28(iv) will not aply to waiver of loan. The Learned AR also placed reliance on the decision rendered by the Coordinate Bench in the case of ACIT Vs. Sunil B. Dalal (ITA No. 2239/Mum/2021 dated 12.7.2022), wherein the Tribunal has held that the

provisions of section 28(iv) of the Act will not apply to waiver of loan and in this regard the Tribunal has also taken support of the decision rendered by Hon'ble Supreme Court in the case of Mahindra & Mahindra Ltd. (supra).

13. We notice that, in the grounds of appeal, the Revenue has taken support of the decision rendered by Hon'ble Supreme Court in the case of T.V.Sundaram Iyengar & Sons Ltd. (supra) in order to contend that the loan taken by the assessee was for the purpose of carrying on of the financing business and hence the decision rendered by Hon'ble Supreme Court in the case of Mahindra & Mahindra Ltd. (supra) will not apply. We notice that the decision has been rendered by Hon'ble Supreme Court in the case of T.V. Sundaram Iyengar & Sons Ltd. (supra) on a different set of facts, i.e. in the case before Hon'ble Supreme Court, the assessee had received deposits from its customers (Debtors) in the course of carrying on of its business and the said deposits was written off in the books of account on the reasoning that there was no claim from debtors. Since the deposits were received during the course of carrying on regular trading activities, the Hon'ble Supreme court held that the write off amount available in the said debtors account is assessable as income. In the instant case, the assessee has received loan from certain parties for the purpose of using it in the business of lending of money. The lenders are not the customers of the assessee. There should not be any dispute that the loan transaction is a capital account trasaction. Hence waiver of loan cannot take the colour of trading transactions as per the decision rendered by Hon'ble Supreme court in the case of Mahindra & Mahindra Ltd (supra). Accordingly in our view the decision rendered by Hon'ble Supreme Court in the case of T.V. Sundaram Iyengar & Sons Ltd. (supra) cannot be applied to the facts of the present case.

14. The Next ground urged by the Revenue is an alternative proposition raised by the AO, i.e., it is the contention of the AO that the learned CIT(A) should have held that the impugned amount should have been assessed an income of the assessee under section 56(2)(x) of the Act. The AO has raised this alternative contention on the ground that the power of learned CIT(A) is co-terminus with the power of the Assessing Officer.

15. We have heard the parties on this issue and perused the record. There is no dispute with regard to the fact that the power of learned CIT(A) is coterminus with the power of the Assessing Officer. However the question is whether the Assessing Officer can compel the learned CIT(A) to exercise that power, when the learned CIT(A) has only addressed the ground urged before him, that too when such contention of the assessee is debatable one. Further, if the Ld CIT(A) is intending to examine the issue from different angle, then the natural justice would warrant that he should put the same before the assessee seeking his explanations. Nothing of that sort has happened. In our view, it is the prerogative of appellate authority to examine the issue from different angle after affording adequate opportunity to the assessee. Before us, no authority was cited that the AO in support his ground that the Ld CIT(A) ought to have

examined the issue from different angle. Accordingly, we do not find any merit in the alternative ground raised by the AO.

16. Be that as it may, we notice that the provisions of section 56(2)(x) of the Act are attracted when any person "receives" any sum of money without consideration from any other person during a particular year. The contention of learned AR is that the assessee had received the loan in 2014 relevant to A.Y. 2015-16 and it has not received any money during the year under consideration i.e. A.Y. 2018-19. The Ld A.R submitted that, by applying strict rule of construction, provisions of section 56(2)(x) cannot invoked in AY 2018-19, when the assessee has not received any sum of money during that year. He further submitted that the assessee has only got waiver of loan, which was received in the earlier years and such waiver does not result in fresh receipt of any money.

17. The Learned DR, on the contrary, submitted that the character of the loan has changed during the year under consideration from loan funds to own funds and hence it should be construed that the assessee has received money during the year under consideration.

18. We have heard the parties on this issue. There is no dispute with regard to the fact that the assessee had received loans in the year 2014 i.e., the money has been received in the year relevant to AY 2015-16. There is no further receipt of any money from the lender during the year under consideration. The amount of Rs. 2.65 crores credited by the assessee to Capital Reserve account represents "waiver of loan" made during this year. The loan itself was received by the assessee in the earlier years. In our considered view, 'waiver of the loan' cannot be equated with the 'actual receipt of money' contemplated under section 56(2)(x) of the Act. Accordingly, we find merit in the contentions of the learned AR that the provisions of section 56(2)(x) of the Act are not attracted since there is no receipt of money during the year under consideration. Accordingly, we reject the ground urged by the Revenue.

19. In the result, the appeal filed by the Revenue is dismissed."

13. We find that the coordinate bench of Chandigarh Tribunal in the case of Jai Pal Gaba vs ITO reported in 108 taxman.com 494 had considered the issue in dispute from all angles as under:-

***"13.** To proper adjudicate the issue, we will consider the applicability of sections 28(iv), 41(1) and 56(2)(vi) of the Act separately. The relevant part of the provisions of section 28(iv) is reproduced as under:—*

Section 28(iv) and its applicability in the instant case:

"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"

14. *The Ld. Counsel for the assessee has submitted that the language of the section is very much clear which prescribes that such value of any benefit or perquisite must arise from business or profession. That taking of loans is not regular business of the assessee. That except in money lending business, such waiver of loan cannot be treated as income arising from business.*

Whereas the Ld. DR has relied on the findings of the Ld. CIT(A) to state that it constitutes a benefit to the assessee and that the assessee has become richer by the said amount and, hence, the said amount squarely falls within the purview of section 28(iv) of the Act.

15. *We have considered the rival submissions. The very language of the section speaks about the value of any benefit or perquisite arising from business or exercise of a profession. Now considering the facts and circumstances of the case, though, the loan was taken for the purpose of business but the same was never taken in the course of business or to say that the loan sourced was not linked to the trading receipts or the like. Similarly the waiver of the loan amount was not in the course of business or in exercise of a profession. A part of the amount was waived by the bank in a one-time settlement because there were little chances of recovery of the entire amount. This one-time settlement was not done as part of the business activity of the assessee, rather, the transaction of the loan and waiver was a separate transaction. Under the circumstances, the waiver of part of the loan amount cannot be said to be a benefit or perquisite arising from business or profession to the assessee.*

'Section 41 (1) and its applicability in the instant case:

Properties chargeable to tax —

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

(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits

and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

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

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

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

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

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

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

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

***16.** The Ld. counsel for the assessee has submitted that not only from reading of above provision but also as settled by law by Courts, Section 41(1) of the Act comes into operation on the following conditions:—*

(1) The assessee had incurred a trading liability and;

www.taxcode.in

(2) This trading liability has been allowed as deduction in an earlier year (s) and;

(3) Later on, such liability has either been remitted or has ceased to exist.

17. *The Ld. Counsel for the assessee has submitted that in the instant case, no such trading liability had been remitted or ceased to exist, hence, the provisions of section 41(1) do not have any application.*

18. *The Ld. DR, on the other hand, has relied on the findings of the CIT(A) and has submitted that the aforesaid waiver of the working capital loan is a remission of liability and, hence, the same was taxable under the provisions of section 41(1) of the Act.*

19. *After considering the rival submissions, we find force in the submissions of the Ld. Counsel for the assessee. As per section 41(1) of the Act, the assessee must have taken an allowance or deduction in earlier assessment year in respect of loss, expenditure or trading liability which has been remitted or ceased to exist in the relevant year to constitute the same as taxable income of the assessee. The loan in question though was taken by the assessee for the purpose of business/trading activity, however, in our view, the same was not out of the trading activity of the assessee. The liability of loan was not created or incurred in the course of business, rather, it was an independent loan transaction of the assessee with the bank and the assessee was not involved in any business activity with the bank. As submitted by the Ld. Counsel for the assessee, the assessee was not in a business of taking/lending of the loan and, hence, the amount of loan received by the assessee for the business of hosiery was not part of the trading activity of the assessee. Though, grant of loan on interest may be the part of banking business of the Lender Bank, but to take loan is not the business activity of the assessee. So far as the assessee is concerned, the loan in question was not the trading liability of the assessee and, hence, the bank has not waived any loss/expenditure of trading liability of the assessee. What has been waived is a part of the loan amount in one-time settlement as the loan asset has been declared as NPA and there were little chances of the recovery of the loan. Moreover, the assessee did not take any benefit in the shape of allowance or deduction in earlier years of such principal loan amount which has been waived. Under the circumstances, the provisions of Section 41(1) of the Act are not applicable to the facts and circumstances of the case.*

Section 56(2)(vi) of Act 1 and its applicability in the instant case.

Income from other sources :

"56 (2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

** ** **

(vi) where any sum of money, the aggregate value of which exceeds fifty thousand rupees, is received without consideration, by an individual or a Hindu undivided family, in any previous year from any person or persons on or after the 1st day of April, 2006 but before the 1st day of October, 2009, the whole of the aggregate value of such sum"

20. *The Ld. Counsel for the assessee in this respect has submitted that the invoking of provisions of section 56(2)(vi) is wrong since the substance of the provisions inserted by Taxation Laws (Amendment) Act, 2006 w.e.f 01.04.2007, is for the governance of gift transactions without consideration with a limit of Rs. 50,000/-. In spite of the applicability of the provisions of sec. 68, section 56(2)(vi) was introduced with the objective to curb the mal-practice being followed by the assessees to bring their own undisclosed income to the economic system through other persons without paying due taxes there on. That initially, in 2004, section 56(2)(v) was brought as a measure to plug revenue leakages. That in case in hand, where there is waiver of loan from Bank, it cannot be said that purpose for which such provision was brought to statute book is being attained by taxing this sum. Even that section 56(2)(vi) is applicable only on Individuals and HUFs and not applicable on other persons as defined in sec. 2(31) of Income-tax Act, 1961. That in the case in hand, the assessee is sole proprietor, whereas, in some other cases assessee may be partnership firm, body corporate or some other person. By virtue of provisions of this section, the assessee who is a person other than Individual and HUF cannot be brought to tax net. That this discriminatory treatment to tax Individuals and HUFs for waiver of loan is not correct interpretation of the provisions contained in the Statute.*

21. *The Ld. DR, on the other hand, has submitted that the assessee is an individual, hence the assessee clearly falls under the provisions of section 56(2)(vi) of the Act. That the assessee was under loan liability to the bank and that the waiver of remission of the liability of the part of the loan amount constitutes receipt in the hands of the assessee, which as per the provisions of section 56(2)(vi) is liable to the taxed as 'income from other sources'.*

22. *We have considered the rival submissions. The argument of the Ld. counsel is that the assessee cannot be discriminated as an individual vis-à-vis partnership firm or a company, as the provisions of section 56(2)(vi) are applicable only on individual and HUF and that in the facts and circumstances of the case the loan was originally taken by firm and had the assessee not taken over the firm and the loan liability as such, the provisions of section 56(2)(vi) would not have been applicable on the firm. We are not convinced with the*

above argument of the Ld. Counsel for the assessee. The provisions of the fiscal Statue are to be strictly interpreted. If a particular provision has been made applicable to a particular class of people or assessees that has to be applied accordingly.

So far as the argument of the Ld. Counsel for the assessee that waiver of loan does not constitute a receipt, we are again not in agreement with the Ld. Counsel for the assessee regarding this contention also. Simply to say that the waiver of the loan amount does not constitute a receipt, in our view, will not be appropriate as it may lead to absurd, confusing and unintended interpretation. In our view, if the donor gives to a donee certain amount directly or indirectly it does not make a difference. To elaborate further, if the donor firstly, give some amount as a loan and then waive of or relinquish the right to recover the said amount, then, in our view, on the date of such remission or relinquishment, the nature of such loan changes from loan to receipt/gift. Any other interpretation given in this respect may be exploited to come out of and defeat the purpose of section 56(2)(vi) of the Act.

***23.** However, the moot point which remains under consideration is that if the loan waiver received by the assessee was not a benefit or perquisite under the provisions of section 28(iv) of the Act and neither the same was remission or cessation of business or trading liability u/s 41(1) of the Act, can the same be termed as a receipt and taxed as 'income from other sources' under the provisions of section 56(2)(vi) of the Act. A perusal of the above reproduced provisions of section 56(2)(vi) of the Act reveals that the amount received by the individual or HUF should be 'without consideration'*

Now, we have to see whether the part of the loan amount waived was 'without consideration' or not. Admittedly, the loan was advanced by the banker for a consideration of interest. Advancement of loan cannot be said to be without consideration. However, later on due to losses, the loan become NPA. The bank, after considering the remote possibility of recovery of the said loan, thought it prudent to go for one time settlement with the loanee. Thereafter, the terms and conditions were settled and as per the terms and conditions, in the event of the loanee paying an amount of Rs. 140 lacs immediately, out of which Rs. 125 lacs to be deposited in third party account, which would be acceptable on the approval of the one-time settlement and execution of 'compromise agreement' at the cost of the loanee, the remaining of the loan was agreed to be waived/sacrificed by the bank. It was not a simple case of waiver without consideration, rather, the consideration of the waiver was the condition of depositing immediately the remaining part of the loan i.e. Rs. 140 lacs and performance of certain other formalities as per the agreement. It is not just a case where the bank has simply waived or remitted the loan amount, rather the bank to secure payment of Rs. 140 lacs, which otherwise the bank was feeling difficult to recover, was the consideration for settlement of the loan account. Hence, the amount received by the assessee as waiver or remission of loan amount cannot be said to be without consideration. Hence, in our view, the provisions of section 56(2)(vi) are not applicable to the case in hand.

24. *In view of the above discussion, neither the remission of the aforesaid amount in the facts and circumstances of the case is taxable as 'business income' or as 'income from other sources'. Moreover, it is not a case where other party/banker out of his free will had decided to give some benefit to the assessee, rather, the settlement was arrived at by the bank out of compulsion. The other party in this case is a nationalized bank, hence, it cannot be said that the waiver was a sham transaction or a colourful device to give benefit to the assessee. Under the circumstances, though the assessee has got some benefit by way of waiver of the principal amount but the same cannot be termed as income of the assessee exigible to tax. However, it is made clear that our observations made above are in the peculiar facts and circumstances of this case and, hence, cannot be simply applied in each and every type of waiver of the loan amount.*

25. *Now, coming to the reliance placed on various case laws in this case. The thrust of arguments of the Departments is that if the loan is for a trading activity then the waiver of the loan will be a trading receipt exigible to tax and if the loan is for capital assets, the waiver of the loan will tantamount to capital receipt. Though both the parties have cited various decisions of various courts of law, however, the base decision which has been relied upon by both the parties is the decision of the Hon'ble Supreme Court in the case of case of 'T.V. Sundram Iyengar & Sons Ltd. (supra) The facts of the said case were that the deposits were taken by the assessee during the course of trade from customers and adjustments were made against these deposits in the course of trade. The unclaimed surplus retained by the assessee was treated as trade receipt. After considering the fact and various case laws the Hon'ble Supreme Court concluded as under;—*

> *"The principle laid down by Atkinson, J. applies in full force to the facts if this case. If a common sense view if the matter is taken, the assessee, because of the trading operation, had become richer by the amount which if transferred to its profit and loss account. The moneys had arisen out if ordinary trading transactions. Although the amounts received originally was not of income nature, the amounts remained with the assessee for a long period unclaimed by the trade parties. By lapse of long time, the claim of the deposit became time barred and the amount attained a totally different quality. It became a definite trade surplus. Atkinson, J. pointed out that in Tattersall's case no trading asset was created. Mere change of method of book-keeping had taken place. But, where a new asset came into being automatically by operation of law, common sense demanded that the amount should be entered in the profit and loss account for the year and be treated income. In other words, the principle appears to be that of an amount is received in course of trading transaction, even though it is not taxable in the year of receipt as being of revenue character, the amount changes its character when the amount becomes the assessee's won money because of limitation or by any other statutory or contractual right. When such a thing happens, common sense demands that the amount should be treated as income of the assessee.*

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

26. *So the conclusion arrived at by the Hon'ble Supreme Court was that since the amount received by the assessee was deposits from the customers, not being in the nature of security deposits, in the course of his business which later on was transferred by the assessee to its profit and loss account, the Hon'ble Supreme Court held that even though the deposits were treated as capital receipts, the same had become trading receipts on transfer of the same into profit and loss account of the assessee. What is relevant in this respect is that receipts were received by the assessee in the course of its business or to say trading operations and the assessee by way of transfer of the said amount into the profit and loss account had become richer by that amount and the said amount has been retained by the assessee in its business.*

However, in the case before us, the loan amount was never received by the assessee in the course of business but from the bank as a loan for carrying on or to say for the purpose of business. There is a clear difference between the term 'in the Course of business' and 'for the purpose of business'. Though, the banker was in the business of lending money and receiving interest but to take loan on interest was not the business of the assessee. The business of the assessee admittedly was the 'hosiery business'. The said loan amount was not a trading receipt received from the customers or from the parties with whom the assessee was in business activity. Even on waiver of the loan amount out of the settlement under compulsive circumstances, neither the assessee had become richer nor it can be said that the said amount was retained by the assessee in the business as his own money. The underlined transaction was not an integral part of the business activity of the assessee. It is a case where the assessee had taken loan, part of the loan was used for capital assets in the shape of machinery etc. and the other part of the loan amount was used for trading assets/activities. The bank in this case while arriving at one time settlement did consider as to which part of the loan amount was used by the assessee for capital assets and which part of the loan amount was used for trading activity. The purpose of the loan, so far as the bank is concerned, was to get interest income on the loan advanced, though, for the security of the loan or otherwise the bank had given the loan for specific purposes, i.e. for capital assets or for trading activity separately. However, since the motive for settlement was recovery of the Non-Performing assets, hence, the bank clubbed and taken into consideration the entire defaulting amount against the assessee and settled for

a receipt of certain sum out of the total amount outstanding against the assessee. Under the circumstances, for the purpose of waiver or settlement, it was irrelevant for the bank whether the loan was on account of trading activity or capital assets of the assessee. An example in this respect can be given of a partnership firm where the partners contribute capital. From whatever source they contribute the capital i.e. either by taking loan from bank or out of their own assets, is immaterial so far as the utility/usage of the said capital by the partnership firm is concerned. Out of the total capital contribution, the partnership firm may use part of such capital towards capital assets and part of the said amount towards trading activity. However, any income or loss in the business of one partnership firm has no relevancy with the source of capital contributed by the partners. Similar is the case with the company. In the present case also, whether the assessee had earned profit or incurred losses in the business activity, it has no relevancy so far as the source of capital is concerned which, in fact, was a loan from the bank on interest. Since the assessee was running into losses, hence the waiver of part of the loan in a settlement, is towards the capital receipt of the assessee and cannot be said to be out of business activity nor the same can be said to be in the nature of trading receipts. In view of this, we do not find any justification on the part of the lower authorities in taxing the amount or part of the loan amount waived in one time settlement by the bank. The addition made by the Assessing officer and confirmed by the Ld. CIT(A) is accordingly ordered to be deleted.

In the result, the appeal of the assessee is, hereby, allowed."

14. We find that the provisions of section 56(2)(vi) of the Act which has been considered in the aforesaid decision is pari materia with provisions of section 56(2)(x)(a) of the Act. The aforesaid decision had clearly explained the fact situation as to under what circumstances the judgement of Hon'ble Supreme Court in the case of T V Sundaram Iyengar &Sons Ltd would apply. Such fact situation is conspicuously absent in the present case. Hence the reliance placed on the said judgement by the lower authorities and by the learned DR before us is misplaced and does not advance the case of the revenue. The said decision has also clearly explained the provisions of section 56(2)(vi) of the Act and had held that waiver of loan subject to certain conditions would not amount to transaction carried out 'without consideration' and it does not amount to 'receipt of any money during the previous year'. Hence the provisions of section 56(2)(vi) of the Act could not be applied at all.

As stated earlier, the said provisions are pari materia with section 56(2)(x)(a) of the Act and hence the ratio laid down thereon would squarely apply to the facts of the instant case before us also. Further we find that the Explanatory Memorandum to Finance Bill 2017 while introducing section 56(2)(x) of the Act very clearly stipulate that there should be receipt of sum of money or property on or after 1-4-2017 in order to apply to apply section 56(2)(x) of the Act. At the cost of repetition, we would like to state that waiver of loan by the lenders cannot by any stretch of imagination be construed as a receipt of sum of money by the assessee herein.

15. We are in agreement with the arguments advanced by the learned AR that section 56(2)(x)(a) of the Act is a deeming provision which seeks to bring to tax in the hands of the recipient, any sum of money received without consideration. The mischief provision embodied in section 56(2)(x)(a) of the Act which was earlier incorporated as section 56(2)(vii) of the Act was introduced as a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts, particularly after abolition of the Gift Tax Act. In this regard, the Hon'ble Finance Minister's Speech while introducing the Finance (No. 2) Bill, 2004 and the Memorandum explaining the Finance Bill 2009, 2010 and 2017 are pertinent to be reproduced hereunder to understand the intention of the legislature. The relevant extract of the Hon'ble Finance Minister's Speech while presenting the Budget 2004-05 is under:-

> *"……*
>
> *102. Hon'ble Members are aware that I abolished the gift tax in 1997. That decision remains, but a loophole requires to be plugged to prevent money laundering. Accordingly, purported gifts from unrelated persons, above the threshold limit of Rs 25,000, will now be taxed as income. Gifts received from blood relations, lineal ascendants and lineal descendants, and gifts received on certain occasion like marriage will continue to be totally exempt."*

15.1. The Memorandum explaining the provisions of Finance Bill, 2010 in the context of erstwhile section 56(2)(vii) of the Act is extracted hereunder:-

> *"**Taxation of certain transactions without consideration or for inadequate consideration***
>
> *Under the existing provisions of section 56(2)(vii), any sum of money or any property in kind which is received without consideration or for inadequate consideration (in excess of the prescribed limit of Rs. 50,000/-) by an individual or an HUF is chargeable to income tax in the hands of recipient under the head income from other sources. However, receipts from relatives or on the occasion of marriage or under a will are outside the scope of this provision.*
>
> *The existing definition of property for the purposes of section 66(2)(vii) includes immovable property being land or building or both, shares and securities, jewellery, archeological collection, drawings, paintings, sculpture or any work of art.*
>
> *A. These are anti-abuse provisions which are currently applicable only if an individual or an HUF is the recipient. Therefore, transfer of shares of a company to a firm or a company, instead of an individual or an HUF, without consideration or at a price lower than the fair market value does not attract the anti-abuse provision*
>
> *In order to prevent the practice of transferring unlisted shares at prices much below their fair market value, it is proposed to amend section 56 to also include within its ambit transactions undertaken in shares of a company (not being a company in which public are substantially interested) either for inadequate consideration or without consideration where the recipient is a firm or a company (not being a company in which public are substantially interested). Section 2(18) provides the definition of a company in which the public are substantially interested.*
>
> *It is also proposed to exclude the transactions undertaken for business reorganization, amalgamation and demerger which are not regarded as transfer under clauses (via), (vic), (vicb), (vid) and (vii) of section 47 of the Act.*
>
> *Consequential amendments are proposed in*
>
> > *(1) section 2(24), to include the value of such shares in the definition of income:*
> >
> > *(ii) section 49, to provide that the cost of acquisition of such shares will be the value which has been taken into account and has been subjected to tax under the provisions of section 56 (2).*
>
> *These amendments are proposed to take effect from 1st June 2010 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.*

B. The provisions of section 56(2)(vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts, particularly after abolition of the Gift Tax Act. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income. It is, therefore, proposed to amend the definition of property so as to provide that section 56(2)(vii) will have application to the 'property' which is in the nature of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient.

C. In several cases of immovable property transactions, there is a time gap between the booking of a property and the receipt of such property on registration, which results in a taxable differential. It is, therefore, proposed to amend clause (vii) of section 56(2) so as to provide that it would apply only if the immovable property is received without any consideration and to remove the stipulation regarding transactions involving cases of inadequate consideration in respect of immovable property.

These amendments are proposed to take effect retrospectively from 1st October, 2009 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years.

D. It is proposed to amend the definition of 'property' as provided under section 56 so as to include transactions in respect of 'bullion'.

This amendment is proposed to take effect from 1st June, 2010 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

E. It is proposed to amend section 142A(1) to allow the Assessing Officer to make a reference to the Valuation Officer for an estimate of the value of property for the purposes of section 56(2).

This amendment is proposed to take effect from 1st July, 2010."

15.2. The Memorandum explaining the provisions of Finance Bill, 2017 while introducing the provisions of section 56(2)(x) of the Act to cover every person and enlarge the definition of 'property' endorsing the same legislative intent is extracted hereunder:-

"C Widening scope of Income from other sources

Under the existing provisions of section 56(2)(vii), any sum of money or any property which is received without consideration or for inadequate consideration (in excess of the specified limit of Rs. 50,000) by an individual or Hindu undivided family is chargeable to income-tax in the hands of the resident

under the head "Income from other sources" subject to certain exceptions Further, receipt of certain shares by a firm or a company in which the public are not substantially interested is also chargeable to income-tax in case such receipt is in excess of Rs. 50,000 and is received without consideration or for inadequate consideration.

The existing definition of property for the purpose of this section includes immovable property, jewellery, shares, paintings etc. These anti-abuse provisions are currently applicable only in case of individual or HUF and firm or company in certain cases Therefore, receipt of sum of money or property without consideration or for inadequate consideration does not attract these anti-abuse provisions in cases of other assessees.

In order to prevent the practice of receiving the sum of money or the property without consideration or for inadequate consideration, it is proposed to insert a new clause (x) in sub-section (2) of section 56 so as to provide that receipt of the sum of money or the property by any person without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources". It is also proposed to widen the scope of existing exceptions by including the receipt by certain trusts or institutions and receipt by way of certain transfers not regarded as transfer under section 47.

Consequential amendment is also proposed in section 49 for determination of cost of acquisition.

These amendments will take effect from 1st April, 2017 and the said receipt of sum of money or property on or after 1st April, 2017 shall be chargeable to tax in accordance with the provisions of proposed clause (x) of sub-section (2) of section 56.

[Clauses 25 & 29]"

16. The learned DR filed his written submissions on the impugned issue as under:-

"12. Section 56(2)(x) was inserted by the Finance Act, 2017 with effect from 01.04.2017. The Memorandum Explaining the Provisions of the Finance Bill, 2017 records that it was introduced to widen the pre-existing provisions in clauses (vii) and (viia) of section 56(2) which had applied only to individuals/Hindu undivided families and to firms/closely-held companies so as to make the charge applicable to any person. The provision is thus a deeming charge of the widest amplitude, and once its ingredients are satisfied the levy follows.

13. The assessee's contention that the Objects and the Memorandum show the amendment to be "merely" anti-abuse is, with respect, factually and legally

incorrect. First, the Hon'ble Finance Minister's Budget Speech, 2017 introduced this very measure under the express head "Additional Revenue Mobilisation (ARM) and Anti-abuse Measures", the declared object was therefore revenue mobilisation as much as the prevention of abuse. Secondly, and decisively, by the same Finance Act, 2017 Parliament simultaneously amended the very definition of "income" in section 2(24) by inserting sub-clause (xviia): "any sum of money or value of property referred to in clause (x) of sub-section (2) of section 56." Widening the statutory definition of income itself is a revenue and base-widening exercise, not a narrow anti-abuse plug. The legislative object was thus dual, revenue mobilisation and the widening of the scope of income, and not "merely" anti-abuse as contended.

14. It follows that the assessee's repeated plea that the waiver "does not qualify as income" is contrary to the express definition enacted by the Legislature: section 2(24)(xviia) statutorily deems any sum chargeable under section 56(2)(x) to be "income." Being a deeming and charging provision cast in plain and mandatory terms, section 56(2)(x) read with section 2(24)(xviia) must be given effect according to its language; an object recited in the Memorandum cannot be used to cut down the plain words of the enacted provision, and the statutory fiction must be carried to its logical conclusion.

C.5 The charge is not confined to "bogus" or non-genuine transactions

15. The assessee's core submission that section 56(2)(x) applies only to bogus or non- genuine transactions has no foundation in the statute. The definition of "income" in section 2(24) is an inclusive definition opening with the words "income includes", and is of the widest amplitude; it must be given its natural and grammatical meaning, and even a receipt not falling within any enumerated sub-clause of section 2(24) may nonetheless constitute income: CIT v. G.R. Karthikeyan, 201 ITR 866 (SC); Union of India v. A. Sanyasi Rao, 219 ITR 330 (SC). There is nothing in the language of section 2(24) or of section 56(2)(x) that confines the charge to sham or disguised transactions.

16. Further, section 56(2)(x) itself enumerates the only exclusions the Legislature intended the exceptions in its provisos (receipts from a relative, on the occasion of marriage, under a will or by inheritance, from or by specified trusts/persons, and the like). A genuine commercial receipt falling outside those enumerated exceptions is not, for that reason, taken outside the charge; the provision carries no implied exception for "genuine" transactions. Had the Legislature intended to confine the charge to bogus transactions it would have said so; instead it cast the charge upon "any sum of money" received without consideration by "any person."

17. This is borne out by Premal P. Pandya v. Dy. CIT, [2026] 186 taxmann.com 640 (Ahd- Trib) (Assessment Year 2022-23), where the very same arguments that section 56(2)(x) is an anti-abuse provision confined to disguised gifts/gratuitous transfers and does not reach a genuine statutory receipt were advanced and rejected. There, a wholly genuine statutory reward was held to be taxable income; the Tribunal held that the inclusive definition of income

widens rather than limits the net, that a receipt need not fall within any specific sub-clause of section 2(24) to be income, and that the anti-abuse origin of the provision does not exempt a genuine receipt from tax. Applying the same reasoning, the OTS loan-waiver is a genuine receipt of a sum of money not falling within any enumerated exception and is squarely within the charge; the "only bogus transactions" argument has no statutory footing.

C.6 The waiver of principal was "without consideration"

18. Under the MRA, the conditions and obligations attached only to the settlement amount of Rs. 24,50,00,00,000. The balance principal of Rs. 27,67,85,93,088 was unilaterally relinquished by the lenders; no consideration whatsoever flowed from the assessee in respect of that relinquishment. Indeed, the MRA records that upon compliance with the stipulated terms "no further amount shall be payable by the Borrower," confirming that the sum of Rs. 27,67,85,93,088 was given up without consideration. The assessee's own books (Notes 34 and 36 to the audited accounts) reflect the amount as an "Exceptional Item," i.e., an accretion arising in the year of waiver.

C.7 Absence of any Swiss Challenge or competitive price-discovery process reinforces that the waiver was "without consideration"

19. A settlement is shown to rest upon consideration reflecting fair value only where the price at which the debt is discharged has been tested against the market. In the resolution of stressed and non-performing assets, the recognised mechanism for such testing is the "Swiss Challenge", a transparent, competitive price-discovery process whereby, once a proposal (here, the promoters' One-Time Settlement offer) is received, the same is put to open challenge so that third parties may submit higher or better offers, the original proponent being given a right to match the best competing offer. Such a process ensures that the amount at which a debt is settled represents an arm's-length, market-tested consideration, and is not an amount surrendered to a borrower or connected party at an undervalue. The need for transparency and competitive price-discovery in the resolution of stressed assets is recognised in the regulatory framework governing lenders, all the more so where, as here, the settlement is offered by the promoters of the borrower.

20. On the record, the settlement was a bilaterally negotiated arrangement offered by the promoters of the assessee and accepted by the lenders under the MRA. The record discloses no Swiss Challenge, no auction, no invitation of competing offers, and no other competitive price-discovery process in respect of the debt or of the amount waived. The settlement figure of Rs. 24,50,00,00,000 was therefore never market-tested, and the waived balance of Rs. 27,67,85,93,088 does not represent a price discovered through, or a consideration flowing from, any arm's-length competitive process. In the absence of such market-testing and the burden being on the assessee to establish that the sum given up was supported by consideration the relinquishment of Rs. 27,67,85,93,088 can only be regarded as a gratuitous benefit conferred upon the assessee, that is, a sum of money received "without

consideration" within the meaning of section 56(2)(x). The assessee cannot, on the one hand, characterise the transaction as a fully-priced arm's-length commercial bargain while, on the other, having eschewed the very Swiss Challenge mechanism that alone would have established a market-tested consideration for the amount surrendered."

17. From the conjoint reading of the Hon'ble Finance Minister's Speech while presenting the Budget, Explanatory Memorandum to the Finance Bill 2009, 2010 and 2017 amending the provisions of section 56(2)(vi) , 56(2)(vii) and 56(2)(x) of the Act as it stood at the relevant point of time, it is very clear that the said sections were not at all intended to apply to legitimate bonafide transactions, including, inter alia, business transaction of restructuring of debt, where the debt of a company is restructured after commercial negotiations and due consensus is achieved between the parties, involving reputed banking and financial institutions.

18. We find that the coordinate bench of Mumbai Tribunal in the case of Chandrakant H Shah vs ITO reported in 124 ITD 177 had taken a similar view by holding that granting of interest free unsecured loan cannot be construed as a transaction without consideration so as to apply the provisions of section 56(2)(v) of the Act. The relevant operative portion of the said order is reproduced hereunder:-

***"11.2** Now we would look into the objectives of the provisions of section 56(2)(v) of the Act and the provisions itself. For this purpose, we consider it pertinent to reproduce the Speech of the Hon'ble Finance Minister while introducing these provisions as under:*

> *"102. Hon'ble Ministers are aware that I abolished the Gift Tax in 1997. That decision remains, but a loophole requires to be plugged to prevent money laundering. Accordingly, purported gifts from unrelated persons above the threshold amount of Rs. 25,000 will now be taxed as income. Gift received from blood relations, lineal ascendant and lineal descendants, and gifts received on certain occasion like marriage will be totally exempted."*

Provisions of section 56(2)(v) , as applicable at the relevant point of time, are also reproduced as under:

"(v) where any sum of money exceeding twenty-five thousand rupees is received without consideration by an individual or a Hindu undivided family from any person on or after 1-9-2004, the whole of such sum:

***Provided** that this clause shall not apply to any sum of money received—*

.....

***11.4** From the perusal of the Hon'ble Finance Minister's Speech, as reproduced hereinabove, it is apparent that this provision has been brought on statute to fill up the vacuum created by abolition of the Gift Tax Act, 1958, in 1997. If we go to the background, then, it could be found that there was a practice of bogus foreign gifts, which started with the Government offering immunity for such gifts as part of Disclosure Schemes, however, the said practice of bogus gifts continued even after the Amnesty Scheme expired. It is also true that in the present materialistic society only relatives are likely to make real gifts out of natural love and affection though in the exceptional cases friends and distinct relatives can also make gifts. It is also true that money laundering, generally, may take place more by way of gifts than by any other means like loans because the person adopting such means, may legally be forced to actually repay the same, if the lender proceeds to do so no person would like to adopt such risky medium unless both entities are very closely related and controlled by same group. The Finance Minister has also emphasized on the fact of a loophole existing due to abolition of the Gift Tax Act, 1958, and, thereafter, words 'money laundering' have been used in his speech, hence, the intention is only to prevent money laundering by way of bogus gifts. The Hon'ble Finance Minister has made this intention clear by referring to the Gift Tax Act, 1958, and by adding exception for gift received from relatives on the occasion of marriage etc. It is also noteworthy that like gift tax, the basic exemption limit has also been prescribed in the section and various exceptions provided in section 56(2)(v) of the Act which were also existing in the like fashion in the erstwhile Gift Tax Act, 1958, and this fact also leads to a conclusion that only bogus gifts are also brought to tax under this provision. We also find that 3 more exceptions have been added subsequently and though, these cannot be characterized as of the nature of gift as is understood generally. However, generally, the amounts given by such institution are essentially of the nature of gift income to the beneficiaries because the said sum are generally subsidies, charities, grants or other welfare payments under the schemes of State/Central Government. If, for a moment, it is assumed that such institutions also give loan without interest or at concessional rate of interest, then, such exceptions further support the case of the assessee that the loans are not covered within the provisions of section 56(2)(v).*

***11.5** Thus, in view of above discussion, we are of the view that this provision applies to the transactions where undisclosed/unaccounted income of a person is brought in his hand by way of purported gifts. Accordingly, the loan*

transaction is not covered under this section and, therefore, we delete this addition.

.....

11.7 *From a perusal of the provisions of section 2(xii) it is apparent that a transfer without consideration in money or money's worth attracts the charge of gift tax and under aforesaid clauses of section 64 transfer without adequate consideration, attracts the applicability of these provisions. Thus, in such provisions, consideration has been used in a narrow sense as compared to the general contract law and where, there exist consideration in a transaction as per such general law and if such consideration cannot be converted into money or money's worth, then, such transfer would not attract the charging provisions of Gift Tax Act, 1958 or Income-tax Act, 1961. For example, transfer of property in consideration of promise of marriage by the transferee is a valid consideration under general contract law but since such promise cannot be converted into money or money's worth, hence, this transaction cannot be subjected to gift tax. In this regard, we may refer to the Hon'ble Bombay High Court in the case of I. Chatterji v. CGT* [1990] 185 ITR 610 *held so, i.e., a promise of marriage, although it may be a valid consideration in law under the Contract Act but it could not be considered as consideration in money or money's worth as various considerations could go into a promise of marriage. Similarly, the term "adequate consideration" as per general law, is relevant only to determine the free will of the parties and a contract would be void only if there is no free will/consent. However, this has been modified in the provisions of section 64, as stated above, so as to govern such provisions and tax the income in the hands of the transferee to the extent of inadequacy. It is, however, important to note that in section 56(2)(v), the term 'consideration' is neither prefixed by the word "adequate" nor it is suffixed by the words "money or money's worth", hence, if in any transaction there exists consideration as per the provisions of the Indian Contract Act, 1872, such transaction would not come into the ambit of this section. This legal position leads us to have a look at the provisions of the Indian Contract Act, 1872. Under the provisions of that Act, a person can make a proposal to the other for his acceptance and when such proposal is accepted, such proposal becomes a promise. The person making the proposal is called 'promisor' and the person accepting the proposal is called 'promisee'. If these aspects are analysed in the context of the present case, then there could be two situations No. 1, the assessee would have made the proposal to the lenders to buy the flat provided they give a loan without interest to him and the lenders accept this proposal of the assessee, hence, the assessee becomes a promisor and the lenders become promisee and No. 2 the lenders may offer to sell the flat to the assessee and the assessee accepts the same subject to the condition that interest-free loan would be given by the lenders to the assessee to purchase the flat. In this situation, lenders are promisors and the assessee is the promisee. Now, we have to look the provisions of section 2(d) of the Indian Contract Act, 1872, which defines the term "consideration" as under:*

> *"When at the desire of the promisor, the promisee himself or through any other person has done or abstained from doing or does or abstains from doning or promises to do or to abstain from doing something, such act or abstinence or promise is called 'consideration' for the promise."*

Thus, this section defines what is consideration for a promise i.e., it is an act or forbearance or promise done or given at the request of the promisor by the promisee or any other person. The basic purpose of the doctrine of consideration is to put some legal limits on the enforceability of agreements and to establish which promises should be legally enforceable but, in the present case, we are not saddled with this issue as none of the parties has disputed the validity of contract. The term 'consideration' has one more connotation, i.e., something of value must be a subject-matter of term between the promisor and promisee. In this regard, following paras at pages 67 and 68 of the 12th Edition of the Book Pollock & Mulla on Indian Contract and Specific Relief are relevant:

Consideration is defined as:

> *"A valuable consideration in the sense of the law, may consist either in some right, interest, profit or benefit accruing to the party or some for-bearance, detriment, loss or responsibility given, suffered or undertaken by the other.*

This definition requires that something of value must be given, and that this can either be a benefit to the promisor or some detriment to the promisee. The Supreme Court compared this definition with section 2(d) of this Act, and approved as being practically the same. It held that the word 'valuable' was implied in our law, and could be negative or positive.

Another definition approved extensively is the one given by Sir Frederick Pollock.

> *An act or abstinence of the party, or the promise thereof is the price for which the promise of the other's bought, and the promise thus given for value is enforceable.*

This definition emphasizes the notion of bargain upon which the English Law of Contract may be said to be based, and has been approved by the House of Lords and found considerable favour with extra-judicial writers though it may not give help in determining whether consideration exists in a given set of facts. So it is the price of a promise, a return or quid pro quo for a promise made.

Promise and consideration

> *The benefit or detriment relates to each promise looks at separately, as is indicated in the definition in section 2(d). The promisee who seeks to enforce the promise (or under the Indian law, some other person) must have given something of value (detriment to himself or benefit to the*

promisor) at the request of the promisor. Law is therefore concerned with consideration for a promise and not a consideration for contract."

.....

11.15 *Thus, the ratio of these decisions go to show that the term "consideration" in legal sense, is some what different from what is generally understood and the revenue's decision is based on general understanding and, therefore, the same is not correct in law as evident from the ratio of these decisions. In this regard, we can cite a number of examples but for the sake of brevity, we may refer to the situation of creation of trust for carrying out charitable activity and vesting of immovable/movable properties therein for which there is no apparent benefit to the persons creating such trust but if such persons do not fulfil their promise, then, such persons can be sued to perform their obligation meaning thereby that creation of trust is with consideration.*

11.16 *Thus, in view of above discussion, we hold that the said transaction meets all the requirements of general law which is only to be looked into while invoking provisions of section 56(2)(v) of the Act and, therefore, in our view it is a transaction having a consideration and, therefore, the same does not fall within the ambit of the provisions of section 56(2)(v) of the Act for this reason also.*

.....

14. *In the end, we would like to emphasise on the fact that several commercial considerations prevail in the business world for entering into business transactions of various types and as observed by the Hon'ble Bombay High Court in the case of Keshub Mahindra (supra) if the revenue Authorities tax such transactions in this manner, then, the conduct of business would become impossible. It is also pertinent to mention here that '0' per cent interest loan or interest free loan have been institutionalized where the manufacturing companies or marketing companies compensate the financing companies who give money to the customers interest free to buy the products and these types of loan result into a vibrant economy benefiting all concerned and if the view taken by the Revenue Authorities is accepted then, all such transactions can be taxed as income under section 56(2)(v) of the Act which cannot be the intention of the legislature, hence, in our view, the interpretation of section 56(2)(v) made by the Revenue Authorities is not at all valid and justified. Accordingly, we hold that a transaction of loan can be without interest and a transaction of loan implies an agreement to repay the money i.e. borrowed which also gives reply to the revenue's query regarding existence of the obligation to repay the money at the time of taking of such loan.*

15. *Thus, in view of above discussion, we accept ground No. 3 of the assessee and direct the Assessing Officer to delete the addition in toto.*

18.1. We find that this decision of Mumbai Tribunal has been approved by the Hon'ble Bombay High Court in Income Tax Appeal No. 3154 of 2009 dated 6.9.2010 .

19. Further we find that the coordinate bench of Mumbai Tribunal in the case of ACIT vs Subodh Menon reported in 175 ITD 449 in the context of application of provisions of section 56(2)(vii) of the Act had observed as under:-

> ***"17****. We further observe that provisions of section 56(2)(vii) does not apply to bona fide business transaction. As explained hereinabove, shares were issued by the company to comply with a covenant in the loan agreement with State Bank of India which required the promoters to increase the total net worth of the company to Rs. 150 crores by 31 March, 2010. Therefore, the shares were issued by the company for a bona fide reason and as a matter of business exigency. Circular No.1/2011 dated 6 April, 2011 issued by the CBDT explaining the provision of section 56(2)(vii) specifically states that the section was inserted as a counter evasion mechanism to prevent money laundering of unaccounted income. In paragraph 13.4 thereof where it is stated that "the intention was not to tax transactions carried out in the normal course of business or trade, the profit of which are taxable under the specific head of income".*
>
> ***18****. In the instant case, the transaction of issue of shares was carried out to comply with a covenant in the loan agreement with the bank to fund the acquisition of the business by the subsidiary in USA, therefore, such a bona fide business transaction cannot be taxed under section 56(2)(vii) of the Act especially when there is not even a whisper about money laundering by the AO in the assessment order. Further, we observe that the consideration for the shares was received through banking channel. This object behind introduction of section 56(2)(vii) should be borne in mind. In this regard, reliance may be placed on the Judgment of Supreme Court in the case of K P Varghese v. ITO [1981] 7 Taxman 13/131 ITR 597 wherein the Apex Court at Page 609 in the context of section 52(2) of the Act held as under:*
>
> > *"The object and purpose of sub-section (2), as explicated from the speech of the Finance Minister, was not to strike at honest and bona fide transactions where the consideration for the transfer was correctly disclosed by the assessee but to bring within the net of taxation those transactions where the consideration in respect of the transfer was shown at a lesser figure than that actually received by the assessee, so that they do not escape the charge of tax on capital gains by understatement of the consideration. This was real object and purpose of the enactment of sub-section (2) and the interpretation of this sub-*

section must fall in line with the advancement of that object and purpose. We must, therefore, accept as the underlying assumption of sub-section (2) that there is understatement of consideration in respect of the transfer and sub-section (2) applies only where the actual consideration received by the assessee is not disclosed and the consideration declared in respect of the transfer is shown at a lesser figure than that actually received."

***19**. In view of the above, the provisions of section 56(2)(vii)cannot be applied to transaction under consideration."*

20. The main argument of the learned DR before us was that on plain reading of section 56(2)(x)(a) of the Act, the said provisions get attracted to the facts of the instant case , which provides that where any person receives, in any previous year, any sum of money without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum shall be chargeable to tax under the head "income from other sources". The learned DR vehemently submitted that all the ingredients of the section 56(2)(x) of the Act are satisfied in the instant case. We are unable to comprehend ourselves to accept to this proposition of the learned DR for the following reasons:-

a) There is absolutely no receipt of money during the previous year by the assessee.
b) The waiver of loan cannot be construed as receipt of money.
c) The money is mandated to be received on or after 1.4.2017 as per the Explanatory Memorandum to the Finance Bill 2017 while introducing the provisions of section 56(2)(x) of the Act. The receipt of money during the previous year is conspicuously absent in the instant case.
d) The receipt of money , if any, should be without consideration. In the instant case, the assessee had got the benefit of waiver of loan pursuant to one time settlement. Once there is settlement on mutually agreed terms, the transaction cannot be construed as one carried out

'without consideration'. Hence the crucial ingredient of section 56(2)(x) of the Act that 'receipt of money without consideration' is not satisfied at all in the instant case.

e) There is not even a whisper of allegation levelled by the revenue on the assessee that assessee had carried out transaction of money laundering by obtaining the waiver of loan from the consortium of 16 banks and financial institutions. We find that the transaction between the assessee and the reputed bankers has been carried out on an arm's length basis having regard to the commercial realities, financial position of the assessee and probability of recovery of outstanding dues. It is pertinent to emphasize, that the consortium of lenders, prior to entering into settlement with the assessee , decided to conduct "Swiss challenge" process, and accordingly, issued newspaper advertisement dated 21-12-2020, inviting bids from prospective bidders for assignment of the total outstanding debt owed by the assessee to the banks. Since no bidder submitted any proposal pursuant to the bid document, the banks identified the assessee as 'successful bidder' and only after such unsuccessful attempt to transfer the debts, they entered into commercial negotiations to settle the outstanding dues. The said transaction between the assessee and the lenders is undisputedly a genuine business / commercial arrangement involving restructuring of debt and cannot be regarded as any counter evasion mechanism so as to fall foul of the provisions of section 56(2)(x) of the Act.

20.1. In view of the aforesaid observations, it could be safely concluded that the pre-requisites of application of provisions of section 56(2)(x) of the Act are not fulfilled in the instant case.

21. Finally, we find that the lower authorities and the learned DR before us had placed heavy reliance on the decision of Hon'ble Supreme Court in the

case of Mahindra and Mahindra Ltd reported in 404 ITR 1 (SC). The revenue had placed heavy reliance on the observations made by the Hon'ble Supreme Court in para 11 and 13 of its order which is reproduced hereunder:-

> ***"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.*
>
> ***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.*

21.1. But it is pertinent to understand the fact as to under what circumstances and while answering which question, the Hon'ble Supreme Court had made these observations. It is trite law that the judgement of the Hon'ble Supreme Court need to be understood basis the questions raised before the Hon'ble Court. Reliance in this regard is placed on the celebrated decision of the Hon'ble Supreme Court in the case of Sun Engineering Works reported in 198 ITR 297 (SC). In the case of Mahindra and Mahindra Ltd, the questions that were posed before the Hon'ble Supreme Court was with regard to taxability of amount waived by the creditor emanating out of capital account transaction by

treating it as a benefit or perquisite under section 28(iv) of the Act or as cessation of liability under section 41(1) of the Act. The Hon'ble Supreme Court while addressing these questions had made the relevant observations in para 11 and 13 which are reproduced supra and ultimately held in para 17 as under:-

> ***"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.*

21.2. In our considered opinion, the ratio decidendi of a judgement is required to be understood in the light of questions raised before the Hon'ble Court. The aforesaid ratio decidendi in Mahindra & Mahindra was with regard to taxability under section 28(iv) or 41(1) of the Act. The same cannot be extended to section 56(2)(x) of the Act. Infact the Hon'ble Supreme Court never had an occasion to apply the provisions of section 56(2) of the Act at all in Mahindra & Mahindra Ltd referred supra. Hence in our considered opinion, the reliance placed by the revenue on the observations of Mahindra & Mahindra Para 11 and 13 referred supra are totally misconceived and not relevant for the facts on record in the instant case and hence we hold that the said reliance is totally misplaced.

21.3. Further we find that the provisions of section 28(iv) of the Act had been amended with effect from 1-4-2024 onwards which reads as under:-

> *"Section 28(iv) from 1.4.2024 - the value of any benefit or perquisite arising from business or the exercise of a profession, whether –*
>
> *(a) Convertible into money or not; or*
>
> *(b) In cash or in kind or partly in cash and partly in kind;*

21.4. Pursuant to this amendment in section 28(iv) of the Act from 1-4-2024, no corresponding amendment in section 56(2)(x) of the Act was proposed by the legislature in its wisdom. Hence remission / waiver of loan was sought to be taxed only under section 28(iv) of the Act fro 1-4-2024 onwards. While this is so, then how the same could be sought to be taxed under section 56(2)(x) of the Act. Hence it is very clear that it was never the intention of the legislature to bring to tax the waiver of loan under section 56(2)(x) of the Act. Accordingly, it could be safely concluded that on a plain reading of the provisions of the Act and by purposive interpretation of the provisions of the Act and reading the same holistically, the impugned transaction of waiver of loan amount on a capital account transaction, could not be brought to tax under section 56(2)(x) of the Act at all in the instant case. Accordingly, the Ground No. 3 raised by the assessee is hereby allowed.

22. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 09-Oct-2026.

-Sd/-	-Sd/-
MAHAVIR SINGH	**M BALAGANESH**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Delhi
Dated: 09/10/2026
AK Keot

Copy to:

1	**JINDAL INDIA POWER LIMITED,** **HABITAT INDIA, C-3, QUTAB** **INSTITUTIONAL AREA, KATWARIA SARAI,** **DELHI-110016,** **DELHI**
2	**DEPUTY COMMISSIONER OF INCOME TAX,** **CIRCLE 13(1),** **C.R. BUILDING, NEW DELHI,** **NEW DELHI-110002, DELHI**

3	THE PCIT / CIT,
4	THE D.R., ITAT, DELHI BENCH
5	GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR /
SR. PRIVATE SECRETARY
I.T.A.T., DELHI

निष्पक्ष सुलभ
सत्वर न्याय ॥
IMPARTIAL, EASY AND
SPEEDY JUSTICE
INCOME TAX APPELLATE TRIBUNAL