

Loan Waiver – taxability thereof

1. If an amount is received in the course of business, though not initially revenue receipt (e.g. deposits or credits) the amount changes its character when it became assessee's own money because of limitation or by any statutory or contractual right. When such thing happens, the amount should be treated as assessee's income. Deposits received from customers are not claimed by them. Claimed barred by limitation. Unclaimed balances transferred to profit & loss account- amount so transferred is assessable as assessee's income. (*Sundaram Iyengar T.V And Sons 1996 – SC*)
2. In the *Solid Containers Ltd 2009 – Bom.* case, the assessee took a loan for business purpose which was written back and credited to reserves account based on the compromise arrived at in a suit proceeding. The assessing officer (AO) taxed the amount written back as income chargeable to tax u/s 41(1) of the Act. It may be noted that the loan was never debited to profit and loss (P&L) account as the debit entry would be against the principle of accounting and the loan amount under the Act in any circumstance would not have gone to reduce the taxable income of the borrowing assessee. The court applied the dictum of the apex court in the *T. V. Sundaram Iyengar & Sons Ltd* case and held that a sum which initially did not fall within the scope of the taxing provisions might become taxable subsequently when it becomes the assessee's own money.
3. Waiver of loan by bank is in respect of money transaction and therefore, would not be in the nature of any benefit or perquisite as construed u/s 28(iv) and hence loan amount waived could not be brought to tax under this section. Loans availed by assessee from banks were not in nature of trading liability but were in nature of capital liability, waiver of same is not taxable u/s 41(1) also. Reduction of liability availed by the assessee on the basis of One Time Settlement Scheme in respect of its outstanding term loans is not to be treated as taxable u/s 28(iv) or u/s 41(1). (*Accelerated Freez & Drying Co. Ltd. 2009 – Cochin ITAT*)
4. In the context of waiver of loan amount, what follows from the reading of the aforesaid judgment is that the answer would depend upon the purpose for which the said loan was taken. If the loan was taken for acquiring the capital asset, waiver thereof would not amount to any income exigible to tax. On the other hand, if this loan was for trading purpose and was treated as such from the very beginning in the books of account, as per *Sundaram Iyengar (T.V.) and Sons Ltd. (supra)*, the waiver thereof may result in the income more so when it was transferred to Profit and Loss account. (*Logitronics Pvt. Ltd 2011 – Delhi*)