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THE NEWSLETTER

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INSIDE THIS ISSUE:

Rate of Contribution under Employees' State Insurance Act, 1948 Reduced

The Employees' State Insurance Contribution rate which had remained unchanged since 01.01.1997, has been reduced by the Ministry of Labour and Employment *vide* ***Notification F. No. S-38012/01/2016-SS-I*** *dated 13.06.2019* ("**Notification**"). The Notification amended the Employees' State Insurance (Central) Rules, 1950 ("**ESI Rules**") and thereby reduced the rate of contribution of both, the employer and the employee under the Employees' State Insurance Act, 1948 ("**ESI Act**"). ESI Act provides various benefits like medical, cash, disability, maternity and dependent benefits etc. to workers who are insured under the ESI Act. These benefits are provided out of the contributions made by the employers and the employees under the ESI Act. The total rate of contribution has been reduced from 6.5% to 4% wherein the employer's contribution has being reduced from 4.75% to 3.25% and employees' contribution has been reduced from 1.75% to 0.75%. The Notification and the reduced rates have come in effect from 01.07.2019. This move is expected to provide a substantial relief to workers thereby facilitating more enrollments of workers under the ESI Act resulting in expansion of work force in the formal sector. This will also reduce the financial liability of the employer ultimately leading to ease in doing the business. The said reduction in contribution rates is believed to be made for the welfare of the employees as well as the employers.

GST not Leviable on Winnings of 'Online Fantasy Gaming', Which is a Game of Skill

The High Court of Bombay in the matter of ***Gurdeep Singh Sachar vs. UOI*** *[(2019) 106 taxmann.com 290 (Bombay)]* held that online fantasy gaming is not a gambling service but is a game of skill. In the said case, the Petitioner filed a PIL against the Dream 11 fantasy Pvt. Ltd. (an online fantasy gaming platform) alleging that Dream 11 is engaged in illegal activities of gambling/betting/wagering which attract penal provisions of Public Gambling Act, 1867. The Petitioner also alleged that Dream 11 is evading payment of GST. The Hon'ble High Court of Bombay analyzed the services offered by the Dream 11 and referred to the judgment of Punjab and Haryana High Court in the case of ***Varun Gumber vs. Union Territory of Chandigarh and Ors***. *[2017 Cri. L. J. 3827]* and held *vide* an Order

dated 30.04.2019 that the activities of Dream 11 do not amount to 'gambling' or 'betting' or 'wagering'. With regard to evasion of GST, it was noted that Dream 11 charges 20% towards platform fees (on which GST is charged @ 18% under HSN 9984) and 80% is pooled in an escrow account which is ultimately distributed to the winners. The Hon'ble High Court observed that the amount pooled from the activities of gaming in the escrow account, is an 'actionable claim' as the same is to be distributed amongst the winning members as per the outcome of the game. As per Entry 6 of Schedule III of Central Goods and Services Act, 2017; actionable claim is considered neither as supply of goods nor supply of service and is thus clearly exempt from levy of GST. With regard to levy of GST on the platform fees, the High Court referred to HSN 998439 (other online content) which clearly covers a host of online games which are intended to be played on the Internet and involve payment by subscription, membership fee, pay-per-play or pay-per-view. It was observed that the said entry, however, excludes online gambling services. Since online fantasy sports gaming is not gambling, it was held that Dream 11 is not in error in paying applicable GST @ 18% under this entry for its online gaming activities.

Insurance Company to Pay 75% of Claim to Consumer for Deficiency in Service

The National Consumer Dispute Redressal Commission ("**Commission**") in the case of ***ICICI Prudential Life Insurance Co. Ltd. vs. Dattatrey Bhivsan Gujar*** *[Revision Petition No. 3858 of 2017 decided on 14.06.2019]* upheld the decision of both the District Consumer Dispute Redressal Forum, Raigad and State Consumer Dispute Redressal Commission, Maharashtra which directed ICICI Prudential Life Insurance Company Limited ("**ICICI**") to pay approximately Rs. 5 Lakhs to a customer who claimed medical reimbursement on account of deficiency in services. ICICI had argued that the complainant was required to disclose all information regarding the existing health conditions insured. Since the insured failed to disclose his diabetes the contract was breached and invalidated from the date ICICI came to know of the condition. The complainant had stated that at the time of taking the insurance policy, no test were conducted to determine pre-existing conditions and after 4 years of insurance coverage, the complainant was diagnosed with kidney ailments. The Commission referred to Section 45 of Insurance Act, 1938, which clearly states that the insurance policy is not be called in question on ground of mis-statement after expiry of 2 years from the date from which the insurance policy was effected. The case of ***Amlendu Sahu vs. Oriental Insurance Co. Ltd.*** *[11 (2010) CPJ 9 (SC)]* was referred to, where an insurance company was made to pay 75% of the insurance claim for trying to repudiate the insurance contract for technical reasons. Thus, since in the present case an illness was diagnosed after the elapse of a long period subsequent to taking the insurance policy, the complainant it entitled to receive 75% of claim amount from ICICI along 1 Lakh as cost towards other medical and legal expenses.

Writ Petition maintainable against private bodies performing public functions

The issue before the Hon'ble Madras High Court in the case of ***Jasmine Ebenezer Arthur vs. HDFC ERGO General Insurance Company Limited and Ors.*** *[W.P. 22234 of 2016]* was whether a writ petition is maintainable against a private body (an insurance company in the present case) i.e., whether a private body can be brought under the purview of Article 226. The Court *vide* Order dated 06.06.2019 answered in affirmative and observed that in today's world many socio-economic activities are required to be performed by the State, which results in the sharing of obligations of the State to other bodies, wherein the State retains a certain level of control over them. Consequently, private bodies try to acquire and exercise monopoly over activities which are basically government functions. In order to protect the fundamental rights of the citizens from the clutches of the legislature, executive, public and private agencies, the courts have to extend their power under Article 226 of the Constitution of India. The Court further observed since public monopoly is replace by private bodies engaged in public function, it becomes necessary that such private bodies are made accountable to judiciary with the judicial review. If any private body has a public duty imposed on it, the Court has jurisdiction to entertain the writ petition.

Clarification on Treatment of Sales Promotion Under GST

CBEC has issued ***Circular No. 105/24/2019-GST*** *dated 28.06.2019* in furtherance of earlier ***Circular No. 92/11/2019-GST*** *dated 07.03.2019*, clarifying various doubts regarding treatment of sales promotion schemes under GST as summarized below-

a) Post-sale discount given by supplier to dealer without any further obligation required at dealer's end – The discount will be related to the original supply of goods and it would not be included in the value of supply.

b) Additional discount/ post-sale incentive requiring dealer to do acts like undertaking special sales drive, advertisement campaign, exhibition etc. – This would be a separate transaction of supply of services by the dealer where the additional discount will be the consideration. The dealer (supplier) shall have to charge applicable GST on the value of the additional discount and the supplier of goods (recipient of services) can claim ITC of the GST charged by the dealer.

c) Additional discount is given by the supplier of goods to the dealer to offer a special reduced price to the customer to augment the sales volume – The additional discount would be added to the consideration payable by the customer for the purpose of arriving at value of supply, in the hands of the dealer. The customer would be eligible to claim ITC of the tax charged by the dealer.

d) Amount of ITC which can be availed in cases where supplier of goods issues credit notes for post sales discount – No reversal of ITC required for the tax already paid on post-sale discount received by the dealer as long as he pays the value of supply as reduced after adjusting

the amount of post-sale discount received plus the amount of original tax charged by the supplier .

RBI Issued Revised Prudential Framework for Resolution of Stressed Assets

The Reserve Bank of India ("**RBI**") issued a revised prudential framework for resolution of stressed assets on 07.06.2019 ("**Revised Circular**") in supersession of the previous circular issued by the RBI on Resolution of Stressed Assets dated 12.02.2019 which was struck down by the Hon'ble Supreme Court in the case of ***Dharani Sugars and Chemicals Ltd vs. Union of India & Ors.*** *[(2019) 5 SCC 480 decided on 02.04.2019]*. The Revised Circular applies to Scheduled Commercial Banks, All India Term Financial Institutions, Small Finance Banks, Systemically Important Non-Deposit taking Non-Banking Financial Companies and Deposit taking Non-Banking Financial Companies. However, the Revised Circular is not applicable to regional rural banks. The Revised Circular enumerates the following fundamental principles underlying the regulatory approach for resolution of stressed assets:

- All lenders must put in place board-approved policies for resolution of stressed assets
- It is expected that the lenders initiate the process of implementing a resolution plan ("RP") even before a default
- Lenders shall report credit information on all borrowers having aggregate exposure of Rs. 5 crore and above with them
- In cases where RP is to be implemented, all lenders shall enter into an inter-creditor agreement ("ICA")
- Lenders shall submit weekly report of instances of default by all borrowers with aggregate exposure of Rs. 5 crore and above
- ICA to provide rules for finalisation, implementation of RP for those with credit facilities from more than one lender.

Further, it is also significant that apart from the operation of the Revised Circular, the RBI has reserved its power to issue specific directions to banks/financial institutions to refer a defaulting borrower to the resolution process under Insolvency and Bankruptcy Code, 2016 in terms of Section 35AA of the Banking Regulation Act, 1849. The Revised Circular has differentiated itself from the position under previous circular since the Revised Circular has not prescribed mandatory insolvency on account of failure to implement a resolution plan in a time bound manner. At the same time the Revised Circular requires banks and financial institutions in India to act promptly for resolution of accounts in 'financial difficulty' while leaving the decision making for terms of resolution entirely in the hands of lenders or in the alternate risk making higher provisioning on their accounts. .

Set Off of Losses Against Deemed Income u/s 115BBE Prior to A.Y. 2017-18

Provisions of Section 1115BBE of the of the Income Tax Act, 1961 ("***Act***") were amended w.e.f. 01.04.2017 to provide that, where total income of an assessee includes any income referred to in section(s) 68/69/69A/69B/69C/69D of the Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provisions of the Act in computing the income u/s 115BBE(1) of the Act. The said amendment had brought uncertainty in

the assessment proceedings in relation to assessments prior to A.Y. 2017-18 where some of the Assessing Officers had allowed set off of losses against the additions made by them u/s 68/69/69A/69B/69C/69D while some had not allowed it. Thus, in order to remove any ambiguity of interpretation, the Board has issued a clarification *vide* ***Circular No. 11/2019*** *dated 19.06.2019* keeping in mind the legislative intent of Section 115BBE(2), since the term 'or set off of any loss' was specifically inserted only vide the Finance Act 2016, w.e.f. 1-4-2017**,** an assessee is entitled to claim set-off of loss against income determined under section 115BBE of the Act till the assessment year 2016-17.

Non-mandatory Contribution for Benefit of Employees also allowable as expenditure under IT Act

In the matter of ***PCIT vs. State Bank of India*** *(ITA 718/2017, Order dated 18.06.2019)***,** Hon'ble Bombay High Court ("**Court**") held that genuine contribution by an employer for the welfare and benefit of the employees, although not required under any law, shall be allowable as expenditure under the Income Tax Act, 1961 ("**IT Act**"). Facts of the case are such that Assessee made contribution to the medical benefit scheme specially envisaged for the retired employees of the assessee bank. As per section 40A(9) of the IT Act, no deduction shall be allowed in respect of contribution to any fund except where contribution is made for the purpose and to the extent provided under clause (iv), (iva) or (v) of section 36(1) of the IT Act or as required by or under any other law for the time being in force. The Court observed that the contribution made by the Assessee to medical benefit scheme neither falls under any of the above mentioned clauses of sub-section (1) of Section 36 of the IT Act, nor the same is governed by any other law for the time being in force. The Court further observed that the lower authorities had not doubted the genuineness of the Trust in which the contribution under consideration is made or that the contribution under consideration was not incurred wholly and exclusively for the benefit of employees. Thereafter, the Court perused the explanatory notes on the provisions contained in the Finance Act, 1984 to understand the legislative intent behind inserting sub-section (9) to section 40A of the IT Act and found that the very purpose of insertion of sub-section (9) was to restrict the claim of expenditure by the employers towards contribution to funds, trust, association of persons etc. which was wholly discretionary and did not impose any restriction or condition for spending such funds for intended use and had possibility of misdirecting or misuse of such funds after the employer claimed benefit by way of deduction thereof. In simple terms, this provision was not meant to hit genuine expenditure by an employer for the welfare and the benefit of the employees. Considering the intent of the legislature and thereafter relying on judgments of various high courts, the Court allowed the claim of the assessee bank in relation to contribution to medical benefit scheme on the ground of it being genuine.

KEY TAKE AWAYS

- CBDT *vide* ***Notification F.No.275/38/2017-IT(B)*** *dated 04.06.2019* has now extended the due date of filing of TDS statement in Form 24Q for financial year 2018-19 from 31.05.2019 to 30.06.2019 and the due date for issue of TDS certificate in Form 16 for financial year 2018-19 from 15.06.2019 to 10.07.2019.
- CBIC *vide* ***Notification No. 11/2019-Integrated Tax (Rate)*** *dated 29.01.2019* has exempted any supply of goods to an outgoing international tourists made by a retail outlets established in the departure area of international airports, beyond the immigration counters from payment of IGST along with cess w.e.f. 01.07.2019.
- CBIC *vide* ***Removal of Difficulty Order No. 6/2019-Central Tax*** *dated 28.06.2019*, has extended the due date for filing of first annual return in Form GSTR-9, Form GSTR-9A and reconciliation statement in Form GSTR-9C has been extended from 30.06.2019 to 31.08.2019.
- CBIC *vide* ***Notification No. 30/2019-Central Tax*** *dated 28.06.2019* has exempted suppliers supplying Online Information Database Access and Retrieval Services (OIDAR) from a place outside to a person in India, from filing Annual Return in form GSTR-9 and reconciliation statement in form GSTR-9C.
- Ministry of Corporate Affairs has brought about an amendment in ***Companies (Incorporation) 6th Amendment Rules, 2019*** *dated 07.06.2019* (effective from 15th August, 2019) by which application for incorporation of section 8 company will be now submitted in Form INC-32 (SPICe). Further, the power to grant license to Section 8 company will now rest with Central Registration Center (CRC) as opposed to Registrar of Companies (RoC).
- CBIC *vide* ***Notification No. 29/2019-Central Tax*** *dated 28.06.2019* has extended the due date for filing GSTR-3B by registered persons for each month from July, 2019 to September, 2019 till 20th day of the month succeeding such month.
- The Hon'ble High Court of Judicature at Bombay in the case of ***Hanumant vs. State of Maharashtra*** *[Criminal appeal no. 493 of 2019, decided on 26.06.2019]*, remanded the case back to Trial Court since no oath was administered to the interpreter that he would correctly and fully interpret the questions put to the witness in sign language.
- The Hon'ble High Court of Calcutta in the case of ***Dipak Kumar Das vs. Raghunath Maity and Ors***. *[C.O No. 1538 of 2019, decided on 14.06.2019]* held that the court ought not to interfere with the impugned order since provision of appeal under Section 22 of National Green Tribunal Act, 2010 is akin to that of second appeal.
- The Securities Appellate Tribunal (SAT) has passed an order in ***GRD Securities Ltd. vs. National Stock Exchange Ltd***. *[Appeal No. 285 of 2018, decided on 10.06.2019]* wherein it has been stated that the stock exchanges and their disciplinary authorities should not follow or implement SEBI's circulars mechanically without their own application of mind. Where circumstances so warrant, the stock exchanges may assign a penalty less than the threshold defined by SEBI's circulars.

KNOWLEDGE CENTRE

MCQs on Arbitration and Conciliation Act, 1996

1. Finality to arbitral awards within meaning of section 35 of the Arbitration and Conciliation Act, 1996 shall :
(a) not be binding on parties
(b) be binding on government authority
(c) be binding on first party only
(d) be binding on the parties and person claiming under them respectively.

2. For condonation of delay in making an application for setting aside the arbitral award
(a) section 34 of the Act is complete in itself
(b) section 5 of the Limitation Act, 1963 is applicable
(c) both (a) and (b)
(d) neither (a) nor (b)

3. An arbitral award may be set aside by the court if:
(a) the arbitral award is in conflict with the public policy of India
(b) the subject-matter of dispute is not capable of settlement by arbitration under the law for the time being in force
(c) both (a) and (b) are incorrect
(d) both (a) and (b) are correct

4. When the mandate of an arbitrator terminates:
(a) no other arbitrator shall be appointed
(b) a substituted arbitrator shall be appointed
(c) the matter shall be sent to the court
(d) the dispute shall remain undecided by the Arbitrators

5. A written statement of reasons for the challenge to the arbitral tribunal has to be sent within:
(a) 15 days of becoming aware of the constitution or the reasons
(b) 30 days of becoming aware of the constitution or the reasons
(c) 7 days of becoming aware of the constitution or the reasons
(d) 60 days of becoming aware of the constitution or the reasons

6. The Arbitrator in case of international commercial arbitration is appointed by:
(a) Parties themselves
(b) Attorney General of India
(c) Chief Justice of India
(d) both a and c

7. An arbitral award becomes enforceable when:
(a) the time for making an application for setting aside the arbitral award has expired and no such application has been made
(b) an application for setting aside the arbitral award has been refused
(c) either (a) or (b)
(d) neither (a) nor (b)

8. Which case held that the pendency of any arbitral proceeding is not a pre-condition in exercise of power by court and the court may grant interim relief before or during arbitral proceedings or at anytime after making of the arbitral award before it is enforced?
(a) Baby Arya vs. Delhi Vidyut Board [AIR 2002 Del 50]
(b) Globe Co-generation Power Ltd. vs. Shri Hirenyakeshi Sahkari Karkhana Niyamit, [AIR 2005 Kant 94]
(c) Narain Sahay Aggarwal vs. Santosh Rani, [(1997) 2 Arb LR 322]
(d) none of the above

9. Part I of the Arbitration and Conciliation Act, 1996 applies where:
(a) the place of arbitration is in India
(b) the place of arbitration is outside India, but is in Asia
(c) the place of arbitration is outside India, but is in Europe
(d) the place of arbitration is anywhere in the world

10. A plea questioning the jurisdiction of the arbitral tribunal:
(a) must be raised before or at the time of submission of statement of defence
(b) may be raised after the submission of the statement of defence
(c) can be raised at any time before the conclusion of arbitral proceedings
(d) can be raised at any time before the making of arbitral award

Answers: 1-(d), 2-(a), 3-(d), 4-(b), 5-(a), 6-(e), 7-(c), 8-(b), 9-(a), 10-(a)

EDITORIAL

WAIVER OF LOANS: ACCOUNTING TREATMENT AND TAX IMPLICATIONS

-By CA Nikky Jhamtani

Loans are taken by any person in order to fulfill their financial requirements. Such loans are used for the purpose of acquiring capital assets as well as working capital requirements of any enterprise. Though loans obtained are obviously required to be repaid but on certain occasions due to some financial crunch or on account of some negotiations between the parties, loans are waived by the financial creditor/operational creditor. Here in this Article, I will be discussing the accounting treatment of write back of waiver of loans and tax implications thereupon.

Accounting treatment of write-back of loan amount waived

In India, the accounting principles are governed by Indian GAAP, Accounting Standards (***"AS"***) and IND AS. The ICAI has also issued Guidance Notes on some topics for providing more clarity w.r.t. accounting. Moreover, ICAI has set-up an Expert Advisory Committee which provides its opinions on various accounting issues. On the basis of the said material which forms the basis of accounting in India, there are two possible accounting treatments which are discussed hereunder:

- **Write-back of the loan amount waived to Statement of Profit and Loss**

It is worthwhile to mention here that AS-30, Financial Instruments and Derivatives deals with the 'derecognition of a financial liability'. As per the said AS, derecognition of any financial liability shall be routed through Statement of P&L. Further, IND AS 109, 'Financial Instruments' also provides the same treatment as provided in AS 30 i.e. derecognition of any financial liability shall be routed through Statement of P&L. Also, the Expert Advisory Committee of the ICAI in its various opinions regarding waiver of loans has stated that waiver of loan should be credited to Statement of P&L. Thus, in light of the above discussion, one of the possible accounting treatment is that the write-back of loan amount on account of waiver is to be credited to the Statement of Profit and Loss.

- **Write-back of the loan amount waived to Capital Reserve**

Another possible accounting treatment for write-back of loan waived is to credit the same to Capital Reserve. In the 'Guidance Note on Terms Used in Financial Statements', Capital Reserve has been defined as a reserve of a corporate enterprise which is not available for distribution as dividend. Though as a reserve created from derecognition of a financial liability (waiver of loan) is not available for distribution of dividend but no special backing is available which prescribes that a loan which has been waived should be written back to capital reserve. Though AS 30 and IND AS 109 discussed above provide for writing back the loan waiver to Statement of P&L but logically as a loan is a balance sheet item i.e. a financial liability of a person, the benefit arising on account of reduction in the said liability is a kind of capital profit and not a revenue profit. Accordingly, the same can be credited to Capital Reserve.

Tax Implications as per the provisions of Income-tax Law

Taxability of loan waiver has been a matter of debate and the relevant provisions of the Income-tax Act, 1961 ("**Act**" for short) under normal income-tax computation provide as under:

- Section 28(iv) of the Act provides, inter alia, that the value of any benefit or perquisite arising from business, whether convertible into money or not, should be taxed as business income.
- Section 41(1) of the Act provides, inter alia, that if an allowance or deduction has been claimed by an assessee in respect of a trading liability and subsequently, obtains some benefit in respect of such trading liability by way of remission or cessation thereof in cash or in any other manner, such amount is deemed to be business income of the borrower.

As the waiver of a loan gives certain kind of a benefit to the borrower, income tax implications under the aforesaid provisions may arise on the same which are examined hereunder:

- **Section 28(iv)**

With respect to the said section, the question arises that whether the words 'value of any benefit or perquisite' also cover benefits in cash or money or whether the said words shall be restricted to any

benefit or perquisite in kind which could be valued. The said issue was discussed by the Gujarat High Court in the case of ***CIT v. Alchemic (P.) Ltd. [1981] 130 ITR 168*** wherein it was held that section 28(iv) does not apply to benefits in cash or money. Further, the said issue has been also settled by the Hon'ble Supreme Court (SC) in the recent judgment of ***Commissioner vs. Mahindra & Mahindra Ltd. [2018] 93 taxmann.com 32*** wherein it was categorically held that in order to invoke the provision of section 28(iv), the benefit which is received has to be in some other form rather than in the shape of money. As waiver of loan is a cash receipt, Section 28(iv) does not come into picture.

- **Section 41(1)**

The main controversy in relation to taxability of waiver of loans revolves around the provisions of Section 41(1). As stated above, Section 41(1) is attracted if any benefit arises from remission or cessation of a trading liability. The question that arises for consideration is that whether loan is a trading liability and waiver of the same will be chargeable to tax under the provisions of Section 41(1)? In this regard, it is pertinent to note that as per general accounting principles loan per se is a financial liability and not a trading liability. However, while determining the taxability of waiver of loans, various courts have taken divergent views. So, it is imperative to take reference from the said judicial precedents, the relevant extract of which is reproduced herein below for ready reference-

- The Hon'ble High Court of Bombay in the case of **Mahindra & Mahindra Ltd. v. CIT [2003] 261 ITR 501 (Bombay)** has held that as Toolings constituted capital asset and not stock-in-trade, section 41(1) was not applicable. The said principle laid down by the Bombay HC that loans received/or taken for purchase of capital assets does not constitute trading liability was upheld by the Hon'ble SC in **Commissioner *v.* Mahindra And Mahindra Ltd. [2018] 302 CTR 213** by observing that waiver of loans taken for capital assets amounts to cessation of liability other than trading liability.
- In **Logitronics (P.) Ltd. v. CIT [2011] 333 ITR 386**, the Hon'ble Delhi HC held that waiver definitely gives some benefit to the assessee. Whether it is to be treated as capital receipt or income chargeable to tax would depend upon the purpose for which the said loan was taken. If the loan was taken for acquiring a capital asset, waiver thereof would not amount to any income exigible to tax, but on the other hand, if the loan was taken for trading purpose and was treated as such from the very beginning in the books of account, the waiver thereof may result in the income, more so when it was transferred to the P&L account.
- In case of **Rollatainers Ltd. v. CIT [2011] 339 ITR 54,** the Delhi High Court by referring to the judgment of the Bombay HC in case of Mahindra & Mahindra (supra) held that waiver of term loans given by financial institutions cannot be treated as income in the hands of the assessee. It is only the writing off loans on cash credit account which was received for carrying out the day to day operations of the assessee which is to be treated as "income" in the hands of the assessee.

From the analysis of the aforesaid judicial precedents, it is apparent that law is settled in case of waiver of loans obtained for purchase of capital asset by the recent judgment of the Hon'ble SC in case of ***Mahindra & Mahindra (supra)*** and accordingly, no tax implications shall arise if loan amount waived was obtained and/or utilized for purchase of capital assets by an assessee. However, as far as the issue in relation to waiver of working capital loans is concerned, it is worthwhile to note that on micro examination of the above judicial precedents, it can be observed that High Courts in the cases of ***Logitronics (P.) Ltd. (supra) and Rollatainers Ltd. (supra)*** have apparently drawn an incorrect inference from the judgement of the Bombay HC in the case of ***Mahindra & Mahindra Ltd. (supra)*** as a loan per se is a financial liability and not a trading liability. The Delhi HC in the said judgments has laid down an altogether different principle of purpose test i.e. the purpose of obtaining the loan is to be considered for determining whether the respective loan is a trading liability or not. The same test was also applied by Hon'ble High Court of Bombay in its subsequent decision in the case of ***Solid Containers Ltd. v. DCIT (2009) 308 ITR 417***. In author's view, loan is a financial liability and not a trading liability, however, the aforesaid judgments have given a principle of purpose test in order to tax the remission of a loan which has been incorrectly inferred from the judgment of the Bombay HC in case of ***Mahindra & Mahindra (supra)***. Accordingly, until and unless the issue that whether a loan per se is a financial liability or a trading liability travels to the SC or is otherwise clarified, the taxability of waiver of loans taken to meet working capital requirements would remain a debatable issue and is subject to litigation.

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