

## Surplus arising from assignment of loan to third party is not taxable u/s 41(1)

**Summary – The Mumbai ITAT in a recent case of Cable Corporation of India Ltd., (the Assessee) held that surplus arising from assignment of loan to third party is not taxable u/s 41(1)**

### Facts

- The assessee-company was engaged in the business of manufacturing and sales of cables. During the year, the assessee borrowed interest free loan of Rs. 12 crores to be repaid in a period of 100 years. The said loan was utilised for the purchase of shares by the assessee. Thereafter, a tripartite agreement was entered by assessee whereby the obligation of repaying the loan of Rs. 12 crores was assigned to a third party at a discounted present value of Rs. 0.36 crores. The resultant difference of Rs. 11.64 crores was credited by the assessee to the profit and loss account as 'gain on assignment of loan obligation under the head income from other sources' and this was considered as a capital receipt in the hands of the assessee and therefore not offered to tax.
- The Assessing Officer observed that the lender had accepted the arrangement of assignment and the third party had started paying the instalment to lender as per the tripartite agreement. Thus, the liability of the assessee was ceased/extinguished, thus, the provision of section 41(1) were applicable to this case. The assessing officer taxed the resultant benefit of Rs. 11.6 crores in the hands of the assessee as it was a cessation of liability which was a trading surplus and had to be taxed.
- On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer.
- On the assessee's appeal to the Tribunal:

### Held

- The ITAT stated that the issue in the present case is whether the surplus Rs. 11.64 crores resulting from the assignment of loan under tripartite agreement is a revenue receipt liable to tax or a capital receipt as claimed by the assessee.
- Considering the facts of the case of the assessee, the surplus resulting from the assignment of loan is not resulting from trading operation and therefore, not to be treated as revenue receipt. The provisions of section 41(1) are not applicable to the said surplus as the basic conditions as envisaged in section 41(1) are not fulfilled. The surplus resulting from assignment of loan is a capital receipt not liable to be taxed either under section 28(iv) or under section 41(1).
- Further, the surplus resulting from assignment of loan at present value of future liability is not cessation or extinguishment of liability as the loan is to be repaid by the third party and, therefore, cannot be brought to tax in the hands of the assessee. The assessee has assigned the loan by paying the present value of future liability and the surplus is not taxable as it is not cessation or

extinguishment of liability. Therefore, the ITAT set aside the order of the Commissioner (Appeals) and directed the Assessing Officer to delete the addition of Rs. 11.64 crores.