

# FLASH ALERT

Direct tax

23 January 2024

## Waiver of loan not used for acquisition of fixed assets to be subject to tax under section 28(iv) since the benefit was not in nature of cash or money

- The Pune Tribunal in a recent judgement<sup>1</sup> held that the waiver of loan in a one-time settlement with banks was subject to tax under the provisions of section 28(iv) of the Income-tax Act, 1961 ('Act') since the benefit was not in nature of cash or money and the assessee was unable to provide evidence that the loan was utilized for acquisition of fixed assets



### Facts of the case

- The assessee had obtained a loan from various banks and it availed a waiver of loans from the banks to an extent of INR 32 crores in AY 2011-12
- The waiver of loan amounting to INR 13 crores was allowed and not subject to tax since the amount was used for acquisition of capital assets
- However, for the balance waiver amounting to INR 19 crores, the Assessing Officer ('AO') charged the waiver to tax since he believed that the same was utilized for working capital purposes
- On appeal by the assessee, CIT(A) held that the waiver was not subject to section 28(iv) as the benefit received was not in a form other than money and the waiver was not subject to section 41(1) as it was not a trading liability



### Findings of the Tribunal

- On appeal to the ITAT, waiver of loan amounting to INR 13 crores was not charged to tax as held by the AO
- The ITAT observed that the AO had asked for details regarding utilization of loans amounting to INR 19 crores and the assessee was unable to submit any evidence stating difficulties in gathering information for a dated assessment year
- The ITAT noted that the assessee had admitted that relief under section 28(iv) was not sanctioned in the BIFR scheme and the benefit of waiver is not in the form of cash or money. Further, assessee could not provide any evidence that loan was used for acquisition of fixed assets and therefore, the waiver of INR 19 crores was subject to tax under Section 28(iv)