

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "C", MUMBAI

Before Shri Rajesh Kumar, Accountant Member  
& Shri Amarjit Singh, Judicial Member

ITA No.7417/Mum/2010 & 7369/Mum/2012  
Assessment Years: 2000-01

Cable Corporation of India Limited Laxmi Building,6 ShoorjiVallabhdas Marg Ballard Estate Mumbai-400 001  PAN: AAACC2936J  (Assessee)	Vs.	DCIT, Circle-2(1) 5 <sup>th</sup> Floor, Aaykar Bhawan M.K.Road Mumbai-400 020  (Revenue)
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**Revenue By : Shri Awungshi Gimson**  
**Assessee By : Shri Percy Pardiwalla & Nishit Khatri**

<b>Date of Hearing :05.03.2019</b>	<b>Date of Pronouncement : 30.04.2019</b>
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**ORDER**

**Per Raiesh Kumar, Accountant Member**

1. The present appeals filed by the assessee are arising out of order of the Ld. Commissioner of Income-Tax (Appeals)-4 [hereinafter referred to as CIT(A)], Mumbai, in Appeal No.CIT(A)-4/DC.2(1)/IT-1/03-04 dated 17/08/2010 and order dated 03/09/2012 respectively.

**ITA No. 7417/Mum/2010.**

2. The grounds of the assessee raised are as under:

1. *The learned Commissioner of Income-tax (Appeals) erred in upholding the action of the learned Deputy Commissioner Income-tax (The Assessing Officer) in holding that the "Gain on Assignment of Loan Obligation" constitutes "income" chargeable to tax in the hands of*

*appellant. The appellant submits that the "Gain on Assignment of Loan Obligation" is capital receipt and not an income chargeable to tax,*

*2. The appellant submits that the following observations/findings of the learned Commissioner of Income tax (Appeals) are not at all relevant to the issue under consideration:-*

*(a) The sum of Rs,12.75 cores given by the appellant to Memoric Pictures Pvt, Ltd. (MPPL) as share application money was received back as loan to appellant;*

*(b) The treatment to the aforesaid transaction of loan, share application and assignment of loan in the books of the appellant, MPPL and Champions Pictures Pvt. Ltd. (CPPL);*

*(c) The appellant and the other companies have changed their accounting period under the Companies Act,*

*3. (a) The appellant submits that the learned Commissioner of Income tax (Appeals) failed to take note of the distinction between loan taken for the purpose of business and the business of buying and selling of loan.*

*(b) The appellant submits that the learned Commissioner of Income tax (Appeals) erred in holding that as MPPL and CPPL got merged with the appellant, it got the benefit of Rs, 11.64 Crores which was originally a loan and a capital transaction but due to influx of time the same changed its character.*

*(c) The appellant submits that the learned Commissioner of Income tax (Appeals) erred in relying on the decision of the Supreme Court in the case of CIT V T.V.Sunderam Iyanger & Sons Ltd. [222 ITR 344 (SC) as the said decision*

*was not applicable to the facts of the appellant's case, there being no benefit on account of any trading operation.*

*4. The appellant submits that the Assessing Officer be directed to treat the "Gain on Assignment of Loan Obligation" as a capital receipt and not as an income and to modify the assessment in accordance with the provisions of the Act.*

*5. Each of the above grounds of appeal are independent and without prejudice to each other.*

*6 The appellant craves liberty to add, to alter and /or amend the grounds of appeal as and when given.*

3. The facts in brief are that the assessee company is engaged in the business of manufacturing and sales of cables. During the year, the assessee filed the return of income on 29/11/2000 declaring a loss of Rs. 41,67,90,642/- which was processed u/s 143(1) of the I.T.Act on 13/12/2000 accepting the returned income. Thereafter, the case of the assessee was selected for scrutiny and statutory notices were duly issued and served upon the assessee. During the year, the assessee entered into an

agreement dated 17/11/1999 with Memoric Pictures Private Limited (hereinafter referred to as MPPL) whereby MPPL had agreed to advance an interest free loan of Rs. 12 crores to the assessee company. As per the said agreement, the assessee company was to repay the said loan amount to MPPL over a period of 100 years. The said loan was utilised for the purchase of shares by the assessee and was not used for its line of activity/business. Thereafter, the assessee entered into tripartite agreement dated 01/03/2000 entered into between the assessee company, MPPL and Champion Pictures Private Limited (hereinafter referred as CPPL) under which the obligation of repaying the above mentioned loan of Rs. 12 crores was assigned to CPPL 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". However, while computing the taxable income the assessee reduced the said amount from the taxable receipt on the ground that same constitute a capital receipt in the hands of the assessee and is not taxable. Thereafter during the course of assessment proceedings, the AO after noticing the said transactions issued show cause notices to the assessee as to why the profit on assignment of loan should not be added to the income of the assessee, which was replied by the assessee vide letter dated 21/11/2002 as under: -

*"Our client is not engaged in the business of buying and selling of loans and the aforesaid transactions was a one-time transaction. The difference arising on transfer of the obligations of repaying the loan cannot be treated as business receipt (there being no receipt at all) or profit arising out of business of the assessee company. Further, any*

amount, which is not a business receipt, cannot be taxed under the head "Profit and Gains of Business or Profession". We may further submit that:

- Our client received a sum of Rs. 12 crores as a loan. Receipt of money, as loan, can never be "income" in the hands of our client.
- Our client was able to obtain a "benefit" because CPPL agreed to repay the loan on behalf of our client and for obtaining this benefit our client was required to pay a sum of only Rs. 0.36 crores.  
The question is whether this benefit is "Income" and if so whether, it is taxable as "Profits and Gains from Business or profession" or as "Capital Gains" or as "Income from Other Sources".  
It is submitted that a "benefit" arising to a person is not "Income" unless the Act specifically so provide, e.g.
- In relation to salary income, "perquisites and benefits" are specifically provided to fall within the scope of the term "income" under section 17(2) and (3) of the Act.
- In relation to business income, "perquisites and benefit" are specifically provided to fall within the scope of the term "income" under section 28(iv) of the Act.

Since our client is not an individual who earns salary income, no portion of the benefit derived by it can be taxed as "Salaries

The "benefit" arising to our client did not arise from business. The transfer of the liability to repay the loan was not a transfer in the course of business. The difference arising on such transfer cannot be taxed as "Business income."

The sum of Rs. 12 crores was received by way of a loan and not as a "business receipt". The subsequent transactions of assignment of the loan does not change the character of the amount and turn the same into a "business receipt". This view is supported by the ruling in case of *Morely v Tattersall* (22 TC 51). (Copy of the decision is enclosed at pages 182 to 190)

Further, Section 41(1) of the Act reads as under:

- (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) ----- "

On perusal of the aforesaid section, it can be observed that where an assessee has:

- *Claimed as deduction in computing his taxable profits for any year, any loss, expenditure, or trading liability; or*
- *Has been allowed as deduction in computing his taxable profits for any year, any loss, expenditure, or trading liability and where the assessee has obtained any benefit by way of remission or cessation of such loss, expenditure, or trading liability then in such an event, the amount so claimed/allowed as deduction is chargeable to tax in the year of such remission/cession.*

*In the present case:*

- *Our client had taken a loan of R. 12 crores from MPPL which has been subsequently assigned to CPPL at a discounted present value*
- *Such loan is not in the nature of “loss”, “expenditure” or “trading liability”*
- *Our client has neither claimed nor has been allowed to claim any deduction in computing its taxable profits for any year in respect of such amount.*

*Therefore, the provisions of section 41(1) of the Act are not applicable to the instant case. Thus, no amount can be taxed in the hands of our client by virtue of section 41(1) of the Act.*

4. The Ld. AO after considering the submissions of the assessee was not convinced therewith for various reasons. The Ld. AO referred to decision of CIT vs Karthikeyan, 201 ITR 866(SC) wherein, it has been held that the word income is inclusive and also referred to various sub clauses to section 2(24) which according to AO widens the import of word “Income”. The AO relied on the decision of Supreme court in the case of CIT Vs Kadambande (1992) 195 ITR 877(SC) wherein the Hon’ble Supreme Court held that the word income does not include only the specific items as enumerated in the various sub-clauses but also all such receipts which can be described as income in its nature and general meaning. The idea behind providing inclusive definition in section 2(24) is not to limit its meaning but to wide its Act and thus the AO came to conclusion that the income/gain/surplus/benefit of any kind is to be brought to tax and accordingly Rs. 11.64 crores accrued to the assessee as a

result of assignment of loan has to brought to tax. The Ld. AO also referred to the provisions of Section 41(1) of the Act and held that since the loan was assigned to, M/s CPPL at discounted amount on Rs. 0.36 crores vide tripartite agreement between M/s MPPL, M/s CPPL and the assessee. M/s. CPPL accepted the liability after receiving Rs. 0.36 crores from the assessee and balance of Rs. 11.64 crores remained with the assessee company. The lender M/s MPPL had accepted arrangement of assignment the loan to CPPL and CPPL started paying the instalment to MPPL as per the said tripartite agreement. Thus the AO held that liability of the assessee company was ceased/extinguished the Ld. AO held that the provision of Section 41(1) are applicable to this case as the assessee has obtained benefit in respect of trading liability by way of cessation liability to the tune of Rs. 11.64 crores as the assessee during the course of his business borrowed funds to the tune of Rs. 12 crores and assigned the same to M/s CPPL for Rs. 0.36 crores thereby resultant benefit of Rs. 11.6 crores by cessation of liability is a trading surplus and has to be taxed .

5. The AO also further observed that the assessee himself has credited Rs. 11.64 crores to the P&L account as gain on assignment of loan under the head other income. The AO also brushed aside the contentions of the assessee that assessee has not claimed any deduction in the computing the taxable profits for any year in respect of such amount /loan. The Hon'ble Supreme Court decision in CIT vs T.V.Sundaram Iyengar & Sons Ltd. [(1996) 222 ITR 344 was heavily relied by the AO wherein Hon'ble Supreme court has held that if a common sense view of

the matter was taken, the assessee because of trading operation, had become richer by the amount which it transferred to its profit and loss account. The money had arisen out of trading transactions. The Court held that although the amounts received originally were not of income nature, but the amounts remained with the assessee for a longer period unclaimed by the trade parties. By lapse of time, the claim of deposit became time barred and it become a trade surplus. The AO also referred to CIT vs Aries Advertising Pvt. Ltd. 255 ITR 510 wherein the Madras High Court after relying on the decision of Hon'ble Apex Court in the case of CIT vs. T.V. Sundaram Iyengar & Sons Ltd. (Supra). Finally the Ld. AO relying on various decisions as stated above added Rs. 11.64 crores to the income of the assessee under the head profit and gains from business by framing assessment u/s 143(3) dated 23/03/2013.

6. In the appellate proceedings the Ld. CIT(A), after taking into account the contentions of the assessee, dismissed the appeal of the assessee by observing holding as under:

*13. I have carefully considered the facts of the case and the submissions of the appellant. During the course of hearing of appeal, some further information was also obtained from the assessee. It is seen that complete facts have not been brought on record either by the A.O. or by the assessee in its submissions. On the basis of information obtained during the course of hearing of appeal it is seen that on 27/7/99 the appellant company applied for 10 lakh equity shares of Rs.10 each at a premium of Rs.75/- per share and Rs.4,25,000/- optionally convertible non-cumulative redeemable 12% preference shares of Rs.100/- each aggregating to Rs.12.75 crore being 100% of the issues subscribed and paid up capital of M/s. MPPL. The appellant company made following payments to M/s. MPPL towards share application money*

<b>Date</b>	<b>Cheque No.</b>	<b>Amount (Rs.)</b>
19-11-1999	317385	11,00,000
19-11-1999	317386	11,00,000
19-11-1999	317387	11,00,000
19-11-1999	317388	11,00,000
19-11-1999	317389	11,00,000
19-11-1999	317390	11,00,000
19-11-1999	317391	11,00,000
19-11-1999	317392	11,00,000
19-11-1999	317393	11,00,000
19-11-1999	317394	10,00,000
19-11-1999	317395	75,00,000
22-11-1999	317396	11,00,000
	<i>Total</i>	<i>12,75,00,000</i>

14. On the same dates M/s. MPPL issued following cheques by way of loan to the appellant company:

<b>Date</b>	<b>Cheque No.</b>	<b>Amount (Rs.)</b>
19-11-1999	253410	11,00,000
19-11-1999 →	253411	11,00,000
19-11-1999	253412	11,00,000
19-11-1999	253413	11,00,000

19-11-1999	253414	11,00,000
19-11-1999	253415	11,00,000
19-11-1999	253416	11,00,000
19-11-1999	253417	11,00,000
19-11-1999	253418	11,00,000
19-11-1999	253419	10,00,000
19-11-1999	253420	10,00,000
	<i>Total</i>	12,00,00,000

15. *Within four months of the transactions the loan was assigned to M/s. CPPL by paying a sum of Rs.35,50,500/-. In the balance-sheet of M/s. CPPL the loan amount is shown at Rs.35,50,500/- and not Rs.12 crore. A perusal of the balance-sheet of M/s. MPPL for the F.Y. 2000-01 shows that the share application money of Rs.12.75 crore was returned back to the appellant company though the loan advance of Rs.12 crore continues to appear in the balance-sheet. Thus, the sum of Rs.12.75 crore given by the appellant company to M/s. MPPL as share application money was received back as loan on the same day. It is also informed by the appellant that M/s. MPPL and M/s. CPPL amalgamated with Cable Care Telecom Ltd. w.e.f. 30/6/2002. On 1/7/2002 Cable Care Telecom Ltd. amalgamated with the appellant company. The scheme of amalgamation was duly approved by the Hon'ble Mumbai High Court.*

16. *The transaction was shown in the books of account of the three companies KL the following manner:*

*In the books of Cable Corporation of India Ltd.:*

<i>Balance sheet as on</i>	<i>Manner of transaction</i>
<i>31/3/2000</i>	<i>a. The share application money of crore Rs.12.75 shown as advance for was allotment of shares head loans and under advances the</i>
	<i>b. Since the loan was discounted the loan amount of Rs.12 crore does not appear in the balance-sheet. However, gain on assignment of loan obligation amounting to Rs. 11, 64,50,000 is shown as other income.</i>
<i>30/9/2001</i>	<i>a. The share application money of crore Rs.12.75 shown as advance for was allotment of shares head 'loans and under advances.'</i>

*In the books of Memory Pictures P. Ltd.:*

<i>Balance sheet as on</i>	<i>Manner of transaction</i>
<i>30/6/2000</i>	<i>a. Share application money of Rs.12.75 crore is shown as part of share capital.</i>
	<i>b. Loan of Rs.12 crore is shown in the name of Champion Pictures P. Ltd. shown under the head 'loans and advances.</i>
<i>31/3/2001</i>	<i>a. The share application money of Rs.12.75 crore no longer appears in the balance-sheet.</i>
	<i>b. Loan to CPPL at Rs.11.96 crore appears under the head 'loans and advances.'</i>
<i>30/6/2002</i>	<i>a. Loan to CPPL at Rs.11,96 crore is shown under the head loans and advances.'</i>

*In the books of Champion Pictures P. Ltd.:*

<i>Balance sheet as on</i>	<i>Manner of transaction</i>
<i>31/3/2000</i>	<i>a. The discounted value of loan at Rs.35,29,427/-appears as part of unsecured loan. Note 2 to Schedule I states that the company has taken over the obligation towards repayment of interest free loan of Rs.12 crore from another company repayable over 100 years for a consideration of Rs.35,50,000/-. The said loan is reflected in the books of the company at the discounted present value at 13% p.a. which amounts to Rs.35,29,427/-. The difference between the consideration received of Rs.35,50,000/- and the above discounted value of Rs. 35,29, 427/- has been treated as a gain on takeover of the obligation of repayment of above loan to the company and has been credited to the profit and loss A/c.</i>
<i>31/3/2001</i>	<i>a. The unsecured loan is shown at Rs.31,75,445/-. The discounting charges of Rs.46,018/- were charged to the profit and loss A/c.</i>
<i>30/6/2002</i>	<i>The loan is shown Rs. 28,62, 186/- at discounting charges and the ,741/- were of Rs.86 profit and loss charged to the A/c.</i>

*It is also worth noting that all the three companies changed their accounting period several times between F.Y. 98-99 to F.Y. 2001-02.*

*17. In the facts and circumstances of the case I hold that the A.O. is justified in treating the loan of Rs,11,64,49,500/- as income of the assessee. I do not agree with the authorized representative that the loan was not received in course of business or that the assessee is not in the business of buying and selling loan. Obviously the assessee has obtained the loan for its business. It is abundantly clear that the assessee is not required to repay the loan as the loan was assigned CPPL for a sum of Rs.35.50 Lac. From the facts narrated above it is also abundantly clear that the assessee company was amalgamated with MPPL and CPPL within two years with the result that no one is to pay anyone. In other words the identity of payer and payee has disappeared. Accordingly it can be concluded that the assessee got the benefit of Rs.11.64 crore which was originally a loan and a capital*

*transaction but due to influx of time the same has changed its character. In the facts and circumstances of the case, this is required to be treated as income of the assessee in view of Supreme Court's decision in the case of CIT vs. T.V. Sundaram Iyengar & Sons Ltd. (222 ITR 344) wherein it was held that, if a commonsense view of the matter were taken, the assessee, because of the trading operation, had become richer by the amount which it transferred to its profit and loss account. The moneys had arisen out of ordinary trading actions. Although the amounts received originally were not of income the amounts remained with the assessee for a long period unclaimed by the trade parties. By lapse of time, the claim of the deposit became time-barred and the amount attained a totally different quality. It became a definite trade surplus. This ground of appeal is dismissed.*

7. The Ld. AR submitted before the bench that the assessee has taken a loan of Rs. 12 Crores from M/s MPPL vide agreement dated 17/11/1999 which was to be repaid over a period of 100 years. The ld AR submitted that the said loan was invested in the purchase of shares by referring to the copy of Balance Sheet as on 31<sup>st</sup> March, 2000 particularly Sch © "Loans & Advances" and a note was appended in Sch (9) to that effect that assessee had paid Rs. 12,75,00,000/- of the purchase of shares which has been shown under the head of "Loans & Advances " pending the allotment of shares. The assessee entered into a tripartite agreement dated 01/03/2000 between M/s CPPL and M/s MPPL whereunder the assessee has assigned the said loan to CPPL at present value of Rs. 0.36 crores and thus there is credit balance of Rs. 11.64 crores in the books of the assessee which was credited the profit and loss account but while filing the return of income the same was reduced on the ground that the same is not taxable at all on the ground that the same is not income of the assessee u/s 2(24) of the Act nor covered by the provision of section 41(1) of the Act.

8. The Ld. AR vehemently submitted before us that the provision of Section 41(1) of the Act was not applicable to the assessee as assessee has not claimed any allowance/ deductions in respect of the loan taken from M/s MPPL which is undisputed and uncontroverted fact. The Ld. AR submitted that it is pre-condition or sine quo non that there should be allowance/ deduction by the assessee in any AY in respect of said expenditure or trading liability in order to bring the impugned item of addition in the ambit of section 41(1) of the Act but that is not the case of the assessee. The Ld. AR submitted that in this case, the assessee has only taken a loan from M/s MPPL and there is no waiver of any loan by the said company. The loan was in fact assigned to third party M/S CPPL at net present value of the future liability which cannot be termed as waiver/extinguishments of loan in any case. The Ld. AR relied heavily on the decision of CIT Vs Mahindra & Mahindra Ltd. 404 ITR 001 (SC) and submitted that the order of the CIT(A ) is bad in law as it is against the provisions of Act and also contrary to ratio laid down by the Hon'ble Apex Court in the case of CIT vs Mahindra & Mahindra Limited (supra). The Ld. AR further submitted that in the present case the obligation to repay was taken over by the third company M/s CPPL and therefore, there is no question of cessation/extinguishment of any loan liability. The Ld. AR in defense of his arguments relied on decision of special bench in the case of Sulzer India Ltd Vs JCIT 2010 42 SOT 457(Mumbai Spl. bench). The Ld. AR submitted that in the said decision, the Hon'ble Special bench held that where under a scheme brought out by the State Government, if some dealer

opted to pay the future liability at discounted value at net present value immediately then it would be similar case of collecting the amount of net present value of future liability and therefore, such payment of net present value of future liability could not be regarded as remission or cessation of liability so as to attract the provision of section 41(1) of the Act where the dealers have collected the sale tax under deferred sales tax scheme which is provided by the State Government to incentivize the a section of the trade and industry. The said decision of the special bench of the tribunal was further affirmed by the Bombay High court as reported in 369 ITR 717(Bom). The Hon'ble apex court in the case of CIT Vs Balkrishna Industries Ltd. (2017) 88 taxmann.com 273(SC) , the decision of the Hon'ble Bombay in the case of CIT Vs Sulzer India Ltd 369 ITR 717 (Bom) was considered and accepted. The ld AR submitted that in the case of The Ld. AR also submitted that the loan was utilized for the purpose of investments in shares and not used in connection with the business activities of the assessee at all and therefore that can not fall under section 41(1) the said extinguishment/cessation of liability is in the nature of capital receipt and can not be brought to tax u/s 41(1) of the Act as the necessary conditions contained therein are not satisfied in the case of the assessee. The Ld. AR submitted that the decisions relied upon by the lower authorities in the case of CIT vs. T.V.Sunderam Iyengar & Sons limited 222 ITR 344 is clearly distinguished on facts as in the said case it has been held that if the assessee become the richer because of trading operation and the amount was transferred to P&L account then the said money

has arisen out of ordinary trading operation whereas in the present case the facts are completely different as the assessee has utilized the money for the purchases of shares and not for the trading purposes. Finally the Ld. AR prayed before the bench that in view of the ratio laid down by the hon'ble Supreme Court in the case of CIT Vs Mahindra & Mahindra Ltd (Supra) and various judicial forums, the order of CIT(A) may be set aside and the AO may be directed to delete the addition of Rs. 11.64 Cr.

9. The Ld. DR on the other hand relied heavily on the order of authorities below by submitting that the assessee has accrued a benefit / surplus of Rs. 11.64 crores following a tripartite agreement between the assessee, M/S MPPL and M/S CPPL whereunder M/S CPPL has undertaken the liability of Rs. 12.00 Cr to be repaid over 100 years at present value of Rs. 0.36 crores and therefore, it is a clear cut case of business benefit accruing in favour of the assessee. The Ld. DR further contended that the said loan was taken by the assessee for working capital purchases though the same was utilized for purchase of shares. Therefore, it would not change the character of the transaction. The Ld. DR relied on the decision of Solid containers Ltd. Vs DCIT 2009 187 taxmann 192 Bombay wherein it is held that value of any benefit arising from business or exercise of profession by way of extinguishment of the liability has to be taxed u/s 28 of the Act as it was directly arising out of business activity. The Ld. DR submitted that in this case the assessee has taken a loan for a business purposes which was written back during the year as a result of consent terms between the assessee and the

lender. The assessee claimed a said loan a capital receipt and not covered u/s 41(1) of the Act. The Tribunal following the decision of Hon'ble Apex Court in the case of T.V.Sunderam Iyengar & Sons Ltd upheld the order of AO by treating the same as business receipt taxable under section 28 of the Act and the said order of the Tribunal was upheld by the jurisdictional High Court. The Ld. DR further contended that the case of Solid containers Ltd vs DCIT (supra) has not been considered in the Mahindra & Mahindra Ltd. (Supra) by the Hon'ble Supreme Court. The Ld. DR also relied on the decision of Madras high Court in the case of CIT vs. Ramaniyam Homes (P) Ltd. (2016) 68 taxmann.com 289 (Madras) wherein it has been held that if the principal loan is waived off by the bank under one time settlement scheme , the same would constitute income falling under the head 28(iv) of the Act. The Ld. DR also relied on the case of Golden Tobacco Ltd. vs ACIT, ITA No. 9127/Mum/2004 AY 2001-02 dated 27/06/2018. Finally the Ld. DR submitted that since in this case the assessee has obtained benefit by way of extinguishment of loan taken from M/s MPPL as a result of assignment in favour of the M/S CPPL resulting into benefit of Rs. 11.64 crores which is obviously and definitely income of the assessee which has to be taxed under the provisions of section 41(1) of the Act. The ld. DR submitted that considering the various decisions of the jurisdictional High Court and coordinate benches, the order of CIT may be confirmed.

10. In the rebuttal, the Ld. AR submitted that the loan was utilized for purchase of shares and therefore the loan was

utilized for non business purposes and is beyond the ambit of section 41(1) of the Act. The Ld. AR also submitted that the benefit has accrued in the favor of the assessee has paid/discharged at present value of the future liability and the case of the assessee is clearly covered by the decision of Hon'ble Apex Court in the case of Mahindra and Mahindra Ltd (Supra). As a result of assignment of the loan , the lender will get the repayment of loan from third party instead of the assessee. So it is not cessation/extinguishment of liability as is squarely covered by the decision of special bench, Mumbai in the case Sulzer India Ltd Vs JCIT (Supra) which has upheld by Bombay High Court in the case of CIT Vs Sulzer India Ltd 369 ITR 717 (Bom) which was also referred to by the Apex Court in the case of CIT Vs Balkrishan Industries Ltd (2017) 88 taxmann.com273(SC). The Ld. A.R. contended that whereas the case of the Hon'ble Supreme Court in the case of Mahendra & Mahendra Ltd (supra) is applicable, the decisions of jurisdictional High Court or other forums can not be applied to the decide the assessee's case as rendered under different facts. Finally the Ld. AR prayed for the bench that in view of the binding decision of the Hon'ble Apex Court and various other judicial forums ,the order of CIT(A) may be set aside and the appeal of the assessee allowed.

11. We have heard rival submissions and perused the material available on record including the decisions relied by the rival parties and impugned order of CIT(A) under challenge before us. The undisputed facts are that the assessee has borrowed a sum of Rs. 12.00 crores from M/s MPPL to be repaid over a period of

100 years. Undisputably the amount was utilized for the purchase of shares and the amount invested was Rs. 12.75 Cr as is apparent from the Balance Sheet as at 31 st March, 2000. The assessee is in the line of manufacturing of cable and trading thereof and not in the purchase and sale of shares and securities. Therefore, it is apparent from the facts before us that the loan was utilized for the purpose of purchase of shares which is not a trading activity of the assessee. It is also undisputed that the liability of loan of Rs. 12 crores to be discharged over a period of 100 years was assigned to the third parties M/s CPPL by making a payment of Rs. 0.36 crores in terms of present value of the future liability and the surplus resulting from assignment of loan liability was credited to the Profit & Loss Account under the head income from other sources but while computing the total income, the said income was reduced from the income on the ground that the surplus of Rs. 11.64 crores represented the capital receipt and therefore not taxable. It is also true that both companies M/S MPPL and M/S CPPL were amalgamated with the assessee later on with all consequences. So the issue before us is whether the surplus Rs. 11.64 Cr resulting from the assignment of loan to M/S CPPL under tripartite agreement between the assessee, M/S MPPL and M/S CPPL is a revenue receipt liable to tax or a capital receipt as has been claimed by the assessee. Considering the facts of the case of the assessee, admittedly the loan of Rs. 12.00 Cr amount was utilized for purchase of shares and was not used for in relation to trading activity at all. The purchase of shares by the assessee is a non trading transaction and is of capital nature. The surplus resulting from the

assignment of loan as referred to above is not resulting from trading operation and therefore not to be treated as revenue receipt. The provisions of section 41(1) of the Act are not applicable to the said surplus as the basic conditions as envisaged in section 41(1) are not fulfilled. In other words, the assessee has not claimed it as deduction in the profit & loss account in the earlier or current year. In order to bring a allowance or deduction within the ambit of section 41(1) of the Act , it is necessary that a deduction/allowance is granted to the assessee. In the present case before us, it abundantly clear that the loan was utilized for the purpose of purchasing the shares which is not the business of the assessee and therefore the surplus arising from the assignment of loan can not be said to have arisen from the trading operation of the assessee. We have carefully perused decision of Hon'ble Apex court in the case of CIT Vs Mahindra & Mahindra Ltd (Supra). The Hon'ble Apex Court has held that waiver of loan taken for acquiring capital assets can not be brought to tax either under the provisions of section 28(iv) or under section 41(1) of the Act. The Hon'ble apex court held that it can not be brought to tax u/s 28(iv) because the benefit has to be in some other form than in the shape of money. Since the waiver represented cash/money, the provisions of section 28(iv) are not applicable. It was further held that waiver can also not be taxed u/s 41(1) of the Act as sine qua non for bring a receipt u/s 41(1) is that there has to be allowance or deduction claimed by the assessee in respect of loss, expenditure or trading liability incurred. In the instant case before us the loan was utilized for purchasing shares which is capital asset in

the business of the assessee and the surplus resulting from assignment of loan is a capital receipt not liable to be taxed either u/s 28(iv) or u/s 41(1) of the Act . In our considered view the case of the assessee is squarely covered ratio laid in the said decision by the Apex Court in the case of CIT Vs Mahindra & Mahindra Ltd (Supra). Accordingly the surplus arising from assignment of loan is not covered by the provisions of section 41(1) of the Act and consequently can not be brought to tax either u/s 28(iv) or u/s 41(1) of the Act. We further note that the surplus has resulted from the assignment of liability as the assessee has entered into tripartite agreement under which the loan was to be repaid by the third party in consideration of payment of net present value (NPV) of future liability. Thus 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 can not be brought to tax in the hands of the assessee. Similar issue has been decided by the special bench, Mumbai in the case Sulzer India Ltd Vs JCIT (Supra) which has upheld by Bombay High Court in the case of CIT Vs Sulzer India Ltd 369 ITR 717 (Bom).The view taken by the Bombay High Court has been affirmed by the Apex Court in the case of CIT Vs Balkrishan Industries Ltd (2017) 88 taxmann.com273(SC) wherein it has been surplus resulting from the payment of net present value of future liability is cessation/extinguishment of liability and therefore can not be taxed as trading receipt. The said decision was rendered in the context of surplus made by the assessee when it chose to pay the net present value of the liability which

was to be discharged after seven years is paid at present value of future liability under a scheme floated by the State Govt. Under the scheme the sales tax collected under deferred scheme to incentivize the industry was to be paid after certain years but the Govt came with another scheme offering the industry to pay the present value of that sales tax liability to be discharged in future. Applying the same analogy to the assessee case, we hold that 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. The decisions relied by the ld DR are also perused and found to be not applicable to the present case. Therefore in view of the above discussions and various decisions of the Hon'ble Apex court and Jurisdictional High Court , we are inclined to set aside the order of CIT(A) and direct the AO to delete the addition of Rs. 11.64 Cr.

The appeal of the assessee is allowed.

### **7369/Mum/2012**

The assessee has challenged in this appeal the confirmation of penalty by the ld CIT(A) as imposed by the ld AO u/s 271(1)(c) of the Act. Since we have allowed the appeal of the assessee deleting the addition in quantum appeal, therefore the penalty has no legs to stand and is ordered to be deleted.

In result both the appeals of the assessee are allowed.

Order pronounced in the open court on this day of 30.04. 2019

**Sd/-  
(Amarjit Singh)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated :30.04.2019

\* ***Thirumalesh, Sr.PS***

**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'C' Bench, ITAT, Mumbai

BY ORDER

(Assistant Registrar)  
Income Tax Appellate Tribunal, Mumbai