

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री महावीर सिंह, उपाध्यक्ष
एवं श्री एम बाला गणेश, लेखा सदस्य

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.2608/Chny/2014

निर्धारण वर्ष /Assessment year :2011-12

The Deputy Commissioner of
Income Tax,
Company Circle VI(3),
Aayakar Bhavan, New Block,
121,Room No.706,
M G Road, Chennai 600 034.

(अपीलार्थी/Appellant)

Vs. M/s.Sicagen India Ltd.,
4th floor,SPIC House,
88,Anna Salai,
Chennai 600 032.

[PAN AAKCS 5770 J]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr.Sinnivasa Rao,C.I.T, D.R
: Mr.S.Sridhar,Advocate

सुनवाई की तारीख/Date of Hearing

: 24.02.2020

घोषणा की तारीख /Date of Pronouncement

: 28.02.2020

आदेश / ORDER

PER M. BALAGANESH, ACCOUNTANT MEMBER:

The Revenue filed this appeal against the order of the
Commissioner of Income Tax (Appeals)-VI, Chennai in ITA

No.1744/13-14/A-VI, dated 30.07.2014 for the assessment year 2011-12.

2. The only effective issue to be decided in this appeal is as to whether the Id.CIT(A) was justified in allowing capital loss claimed by the assessee on the debts in the sum of ₹.56,48,55,180/- in the facts and circumstances of the case.

3. The brief facts of the issue are that the assessee is engaged in the business of marketing of building materials, commercial vehicles, boat building, travels, speciality chemicals and manufacturing of drums and barrels. The assessee had filed its return of income of ₹.31,80,06,380/-. The facts as recorded in the assessment order, the assessee company sold 6749 shares of SDB Cisco India Ltd., which were obtained by the assessee from M/s.Sical Logistics Ltd., under demerger scheme approved by the Hon'ble Madras High Court vide its order dated 20.12.2007. Pursuant of the share purchase agreement dated 04.03.2010, the assessee sold 6749 shares on 09.08.2010 to M/s.Innovative salary services and payroll advisory Pvt Ltd., for a total consideration of ₹.94,65,83202/-. On this sale of shares, the

assessee derived a long term capital gains of ₹.84,59,77,432/-, which was admittedly offered to tax in the return of income. The assessee also sold immovable property at Pattinamarudur and derived a long term capital gains of Rs.107,35,200/-. Hence, the total long term capital gains disclosed by the assessee in the return of income was ₹.85,67,12,637/-. The assessee also had certain capital loss of ₹.56,48,52,180/- on sale of debts due from certain debtors. This capital loss was sought to be set off by the assessee with the long term capital gains.

4. The assessee company entered into an agreement assigning the debts to M/s.Golden Star Asset Consultants (P) Ltd., Chennai and accordingly, assigned the debts worth ₹.57,01,55,180/- due from debtors to M/s.Golden Star Asset Consultants (P) Ltd., for a sum of ₹.53 lakhs. By this process, the assessee incurred capital loss of ₹.56,48,52,180/-. In response to a query raised by the A.O with regard to allowability of the aforesaid capital loss, the assessee company submitted the documents like demerger scheme approved by the Hon'ble Madras High Court, balance sheet of M/s.Sical Logistics Ltd. as on

30.09.2006(being the date of demerger). Pursuant to the demerger, with effect from 01.10.2006, certain divisions of M/s.Sical Logistics Ltd., were transferred to the assessee company and accordingly, all the assets & liabilities of transferred undertaking were transferred to the assessee at the values appearing in the books of account of M/s.Sical Logistics Ltd., As a result of this, the loans and advances to the tune of ₹.24,728.67 lakhs got vested with the assessee. The aforesaid loans and advances admittedly included Inter corporate deposits (ICDs) and other loans and advances given to the following five parties to the tune of ₹.57 crores.

Name of companies	Amounts in crores	Purpose
Automobile Products of India (APP)	39.18	ICD-Inter Corporate Deposit
Mac Clothing	1.13	ICD
Sical ships	3.88	ICD
Profad	1.82	ICD
MCC Finance	10.99	ICD & loans and advances
	57.00	

5. The assessee submitted before the A.O that it had come under severe pressure from shareholders, Auditors, Bankers to mark the market value of these advances. Accordingly, it was forced to assign the amounts due from the aforesaid five parties to an independent asset reconstruction company i.e. M/s.Golden Star Asset Consultants (P) Ltd. Out of the aforesaid five parties, the loss claimed by the assessee with regard to Mac Clothing, Sical Ships, Profad amounting to ₹.1.13 crores, 3.88 crores and ₹.1.82 crores respectively are not disputed by the Revenue before us.

6. With regard to ICD amount due from M/s.Automobile Products of India Ltd. (API) in the sum of ₹.39.18 crores, the assessee submitted that the said company was sick company and was not able to service any debts; that the said company had disposed of all its assets in earlier years, thereby leaving no assets to its creditors; that the Asset Construction company felt that it could generate some small upside in the transaction provided the advance is assigned to it at a fractional price. Accordingly, the assessee company thought it fit to assign these advances in favour of M/s.Golden Star Asset Consultants (P) Ltd.,

and was able to get rid of these advances from its books and present a true and fair view of its accounts to its share holders.

6.1 With regard to ICD and loans and advances figure due from M/s.MCC Finance Ltd. amounting to ₹.10.99 crores, the assessee submitted that the said company was in winding up at the time of signing of assignment agreement and all efforts of recovery of amount from the said company were in vain. The assessee submitted that by assigning the recoverability of the said dues to an independent specialist i.e. M/s.Golden Star Asset Consultants (P) Ltd., considerable time of management, which is valuable would be saved and the management of the assessee company would be able to focus on their own business rather than pursue legal cases and recovery of old advances.

7. A copy of aforesaid two Assignment Agreements were submitted before the Ld.A.O. The Ld.A.O observed that one Mr.Rajamani, Director of M/s.Golden Star Asset Consultants (P) Ltd., along with Mr.P.L.Palaniappan were appointed as the First Director of the said company, which was incorporated on 26th December, 2008 with the main activity of the business being

recovery of debts. In effect, the said company is basically asset re-construction company incorporated for recovery of debts. Mr.Rajamani, director of the assignee company was examined on oath by the Id.A.O during the course of assessment proceedings u/s.131 of the Act. Mr.Rajamani in his statement stated that he was working in SPIC Ltd. for more than 30 years and knows most of the executives in the group. Hence, he started the company along with Mr.P.L.Palaniappan for collection of corporate debts. When specifically asked by the Ld.A.O about the collections made so far, out of these debts, Mr.Rajamani stated that the shares were allotted by M/s.MCC Finance Ltd. worth ₹.10.99 crores and ₹.25 crores in lieu of debts outstanding to the assessee company and M/s.Express Carriers Pvt Ltd respectively on 27.03.2013. When asked whether the said recovery of debt in the form of allotment of shares had been offered to tax as a business income for assessment year 2013-14, he replied that no such income was admitted in the returns filed for A.Y 2013-14. On a question as to how the assigned debts were treated in the books of accounts of M/s.Golden Star Asset Consultants (P) Ltd., it was stated by Mr.Rajamani that the amount of ₹.53 lakhs paid to the assessee

company was shown under loans and advances on the asset side of the balance sheet, but the assigned loans were not reflected in the books of account. With regard to another question, whether the assignee company i.e. M/s.Golden Star Asset Consultants (P) Ltd., has any experience in collecting and recovering the debts. Mr.Rajamani stated that the said company has no experience.

8. With regard to amounts due from API, the Id.A.O called for information u/s.133(6) of the Act from API. In response thereto, API vide its letter dated 06.02.2014 submitted that the assessee company had lent ₹.39.18 crores to API during the period when API was under the purview of Board for industrial and Financial reconstruction (BIFR). Subsequently, pursuant to demerger API, the promoters of API got changed through takeover code regulations duly approved by SEBI and as such, the old liabilities standing in the books of API were assumed/taken over by the earlier promoters, namely M/s.South India Travels P Ltd. Accordingly, API replied that they had not shown claims payable to Sicagen India Ltd., i.e. assessee company in their books. API had further replied before the Ld.A.O that the assignee company i.e. M/s.Golden Star Asset Consultants (P) Ltd., had been advised

to prefer their claims with M/s.South India Travels P Ltd., and not them.

9. Similarly information was called for u/s.133(6) of the Act by the Id.A.O from M/s.MCC Finance Ltd., to understand the present position of the debts payable to the assessee company. In response thereto, M/s.MCC Finance Ltd., submitted that pursuant to the order of the Hon'ble Madras High Court in the matter of scheme of arrangement and revival of M/s.MCC Finance Ltd., the said company had requested the assessee company for exercising option with regard to dues of ₹.10.99 crores, which is as under:-

"a) 3 year Zero Interest bonds for 40% of the amount outstanding at the time of winding up including intrest upto June 2000 will be allotted to the Creditors or their authorized nominess, in full settlement of their dues. Scuh bonds shall be redeemable at the end of the third year or in lieu of such redemption at the option of the creditor, be convertible into equity shares of R.10 each at par.

OR

b) The equity shares of ₹.10/- each a a premium of ₹.15/- per share will be allotted to the creditors or their authorized nominees for the amount outstanding at the time of winding up including interest upto June 2000 in full settlement of the dues.

The creditors shall exercise either of the above options within thirty days of the sanction of the scheme by this Hon'ble Court, Upon such exercise of option by the creditors, the Board of Directors of the company shall, act accordingly to give effect to the same.

Pursuant to this option given by M/s.MCC Finance Ltd., the assessee company had written a letter to M/s.MCC Finance Ltd., nominating M/s.Golden Star Asset Consultants (P) Ltd., i.e. the assignee company for allocation of equity shares in its favour to the extent eligible for an amount of ₹.10.99 crores.

10. In view of the aforesaid facts, the A.O observed that:

a)The amount paid by M/s.Golden Star Asset Consultants (P) Ltd., to the assessee company were only shown as loans and advances in the asset side of the balance sheet without acknowledging the debts it had purchased from the assessee company pursuant to the assignment agreement. In other words, the Id.A.O observed that name of the debtor company were not brought into the books of accounts of the assignee company, which means that assignee has not taken over the rights allegedly extinguished by the assessee company.

b) When M/s.MCC Finance Ltd., allotted shares in lieu of outstanding debts to an extent of Rs.10.99 crores, the said assignee company i.e. M/s.Golden Star Asset Consultants (P) Ltd., did not admit any profit on account of this transaction in their income tax returns to the tune of ₹.10,70,70,000/- which is worked out as under:-

Value of Shares allotted	10,90,00,000
LESS Cost based for assignment of debt	<u>19,30,000</u>
Profit derived in F.Y 2012-13	<u>10,70,70,000</u>

The A.O observed that the assignee company's business was to purchase the assigned debt, then the difference in value between cost paid for purchase of those debts and recovery made thereon should have been disclosed as business profits in the year of recovery i.e. in A.Y 2013-14. However, the assignee company, neither disclosed the fact of allotment of shares in its books of accounts nor had admitted any profit on allotment of shares in their returns of income. Accordingly, the Id.A.O concluded that so called assignee company had no intention to take over the assigned debts from the assessee company. Accordingly, he concluded that the said transaction cannot be construed as a

valid transfer i.e. extinguishment of rights within the meaning of Section 2(47) of the Act. The Id. A.O further held since it is not a property transfer, the capital loss claimed by the assessee on alleged assignment of debts to a third party is not allowable for set off against the long term capital gains derived by the assessee.

11. The Id. A.O further observed that API had been sent out of the purview of BIFR on 23.02.2004 itself. Hence, API is no longer a sick company as alleged by the assessee before us. Hence, the contention of the assessee that debt was not recoverable from API could not be accepted and based on this, the Id.A.O concluded that the assignment of such debt in favour of M/s.Golden Star Asset Consultants (P) Ltd., was done only with sole intention of reducing the capital gains tax by the assessee. Moreover the Id.A.O also placed reliance on the reply given by API u/s.133(6) of the Act wherein they had categorically stated that they did not owe any money to the assessee company and that the debt had already been taken over by their earlier promoters, M/s.South India Travels P Ltd., The Id. AO even cross verified these facts from the annual reports published by the API

from A.Ys 2008-09 to 2012-13. Based on the perusal of the balance sheets of API for the aforesaid periods, the Ld.A.O concluded that if the assignment of debts were genuine, then the assignee company taking over the debt would have definitely done due diligence to verify the claim of the assignor. Based on this, he observed that this clearly shows that so called assignment of debts to a third party as submitted by the assessee was only a mutual arrangement to arrive at bogus capital loss for consequential set off with long term capital gains. Accordingly, the Id.AO concluded that the assessee has misrepresented the facts and did not reveal the true nature of transactions that took place between API and assessee company.

12. With regard to debts recoverable from M/s.MCC Finance Ltd., the A.O observed that assessee company was well aware of the fact that the debtor company had filed a scheme of arrangement before the Hon'ble Madras High Court and had decided to liquidate the liability by allotment of shares with a face value of ₹.10 at premium of ₹.15 per share for the outstanding amounts against the assessee company. In these circumstances, he observed that it is not known how the debt had become

irrecoverable to assign the same to the third party i.e. M/s. Golden Star Asset Consultants (P) Ltd. The Ld. AO also observed that Mr. Rajamani, who is a founder director of M/s. Golden Star Asset Consultants (P) Ltd., was also a director in the assessee company at some point of time. He observed that sequence of events of retirement of Mr. Rajamani from the assessee company, floating a new company for recovering debts and joining as a director of company i.e. M/s. MCC Finance Ltd., is not a matter of co-existence, but appears to be pre-planned strategy adopted by the assessee company. The Ld. A.O further observed that being fully aware that debt owed by M/s. MCC Finance Ltd., was going to be discharged in the form of shares, it is not understood as to how the same could be assigned to a third party for a paltry sum. Accordingly he concluded that the entire exercise of assigned loans to the third party was a dishonest and fraudulent motive on the part of assessee-company to arrive at a bogus capital loss. Based on the aforesaid facts, the Ld. AO concluded that the entire agreement entered into with M/s. Golden Star Asset Consultants (P) Ltd., was a clandestine arrangement and needs to be concluded as a sham transaction with a fraudulent motive to

evade capital gains tax on sale of shares and sale of property. With these observations, the Ld.A.O disallowed the entire capital loss on sale of debts claimed by the assessee to the tune of ₹.56,48,55,180/-.

13. The learned CIT(A) granted relief to the assessee by observing as under:-

"5.2.2. Having gone through the various submissions and paper books filed with me, I shall now go into the adjudication of these grounds raised. I have perused the copy of agreement of assignment of debts, the statement recorded by the AO under section 131 of the IT Act from Shri M. Rajamani, Director of M/s Golden Star Assets Consultants Pvt. Ltd. on 07.02.2014 and 03.02.2014 and also perused the valuation report dt. 20.08.2010 prepared by M/s Banyan Consultancy Services Pvt. Ltd., in respect of valuation of the debts as on 20.08.2010. The assessee company has assigned debts (ICDs) during the assessment year which are no doubt a capital asset u/s 2(14) of the Act. I have perused the agreement of assignment of debts entered by the appellant on 09.09.2010 and 25.03.2011 with M/s Golden star assets consultants Pvt. Ltd. The company has executed a valid assignment deeds duly entered between two parties and evidenced by necessary Board resolutions. The agreement of assignment of debts dt. 09.09.2010 and 25.03.2011 also show that the valid consideration was passed vide cheque No. 173684 of Rs. 50,00,000/- and Cheque No.173688 of Rs. 3,00,000/- between the parties and the rights contained in these debts has been effectively transferred within the definition of section 2(47) of the IT Act. As per the section 18(d) of the registration Act 1908, the registration of movable property is not mandatory. It is only optional. There is also no doubt that M/s. Golden Star Asset Consultants P Ltd. has recorded these transactions in its books and hence the transfer is complete in all respects. The Board of Directors of the assessee company in the meeting held on 12.08.2010 and 22.03.2011 have authorized the Managing Director of the company for assignment of the debts due from the various companies for a consideration of Rs.50,00,000/- and Rs.3,00,000/- respectively to M/s Golden Star Assets Consultants Pvt. Ltd., as the debts were outstanding for a long period of time. Regarding the quality of the debts assigned by assessing company

and the basis of fixation of the sale price of the debts, the AR of the appellant vide his submission dt. 03.07.2014 filed detailed submission (extracts taken from valuation report) as

"A brief history of each of the debts assigned and the circumstances under which the debts became bad. The list of advances which were assigned during the AY 2011-12 was as follows:

Automobile Products of India Ltd (API)	Rs.39.18crores
MAC Clothing Ltd	Rs.1.13 crores
Sical Ships Ltd	Rs.3.88 crores
Profad Ltd	Rs. 1.82 crores
MCC Finance Ltd	Rs.10.99 crores

Facts relating to API:

Automobile Products of India Limited was a company producing the famous "Lambretta" scooter brand. It went into BIFR during 1992 and during this period N/S. South India Corporation Agencies Limited (Sical) advances money via ICD route to the extent of Rs.39.18 Crores towards the revival of the company. Sical had given this money to API in order to revive API and as under the belief, that upon the revival of API, its money's would be recovered in entirety. API had valuable property at Bhandup, Mumbai at that time. Within few years in 1999-2005 API'S properties were sold and liquidated and funds had to be used to settle a certain corporate guarantee. Sical continued to hold these balances in its books and in between the name was changed to Sical Logistics Limited. In 2007-08, Sical Logistics Ltd did a demerger under the auspices of the High court of Madras and during the demerger these assets were transferred to Sicagen India Limited under Court order. Sicagen India Limited then followed up its balances with API and API was in discussion with them. In the meantime Sicagen India Limited came under pressure from various share holders and sold the asset to N/s. Golden Star Asset Consultants P. Ltd. Hence the loan at the time it was granted was given by Sical Logistics was a good one but subsequently the advance became bad owing to change in business circumstances. We also enclose the extract from the valuation report for your reference.

a. AUTOMOBILE PRODUCTS OF INDIA LTD.

Valuation of Advances given by Sicagen India Ltd to Automobile Products of India Ltd.

Recoverable value/replacement value/book value	
Fixed Asset	6,093,503
Current Assets,	6,667,226

Loans & Advances		
Current liabilities & provisions	21,927,517	12,760,729
Adjusted unsecured loans	466,373,433	488,300,960
Percentage of assets available as against loans		0.026

Loans given by Sicagen India Ltd to Automobile Products of India Ltd amounts to Rs.39,18,00,000/-.

The above table shows the percentage of assets available as against loan at 2.6%.

Based on this percentage we may say that the loan can be valued at Rs.1,02,38,877/-.

However as the process involved in debt collection is long drawn and may involve heavy collection cost the advance is valued at 50% of the same.

*This works out to Rs.1,02,38,877*50% which is 51,19,438/-*

MCC Finance Limited

M/s. MCC Finance Limited was a company dealing in share services and NBFC activities. N/s. Sical Logistics Ltd (earlier South India Corporation Agencies Limited) had lent money via ICD to MCC Finance Ltd during 1995-2000 at various dates as MCC Finance Ltd went into liquidation and went into the hands of liquidator. During 2000-2008, MCC slowly started to settle in public deposit dues, tax arrears and other secured debts. There was huge doubt on how it would address its unsecured debts. M/s. Sicagen India Limited received these advances from N/s. South India Corporation Agencies Limited / M/s. Sical Logistics Limited in 2007-08 via demerger approved by Honourable High Court of Madras. After trying to recover dues for 3 years, M/s. Sicagen India Limited sold these assets to Golden Star Asset Consultants Pvt Ltd in AY 2011- 2012. The relevant extract from the valuation report is also enclosed.

e. MCC FINANCE LIMITED

We are unable to access any Registrar of Companies Filings as the company is under liquidation. We have however certain court orders and press cuttings to show that MCC Finance Ltd has taken enormous steps to repay its creditors. However the assets of MCC

Finance Ltd are insufficient to repay the depositors and the promoters have resorted to selling lands/assets in their personal capacity as well as in companies which belonged to the group to settle the depositors of MCC Finance Ltd. Also the following is the scheme submitted by the company in 2004 which details that public deposits of upto 3 lacs will be settled upto 65% deposits exceeding 3 lacs will be settled at 50% and further deposits will be settled at 25%.

We feel that since Sicagen India Ltd has got a claim which will rank below public deposits it will not get the same treatment and assurances of the promoters of MCC Finance Ltd. It is not within contemplation that the promoters will bring in their personal funds to repay amounts other than public deposit which itself they have repaid only partially.

Hence we can only give a valuation of 5% of the value of advances given by Sicagen India Ltd which comes to around Rs.11 crores comes to Rs.55 lacs. However as the company is in liquidation and the process of winding up and making representations before the liquidator is cumbersome we have to give a 50% discount to this value. Hence we believe that a value of 27.5 lacs shall be fair.

Sical Ships Limited

Sicagen India Limited had lent moneys to Sical Ships Limited to the extent of Rs.388 crores among other amounts during 2001-2005. Sical Ships Limited was a very good shipping company and had tremendous business during 1990's. During the year 2003 the company went into liquidation and the business of Sical Ships Ltd collapsed. These advances given by Sical Logistics Limited were transferred to Sica gen India Limited at the time of demerger and Sicagen India Limited pursued claims with Official Liquidator. But the list of unsecured debts were too many and included leasing dues to foreign chartering companies and fuel dues to various companies. There was great uncertainty on the realisability of these debts and Sicagen India Limited felt that it was better to dispose this advance rather than collect these debts. A brief extract from valuation report is enclosed.

d. SICAL SHIPS LIMITED:

The next set of advances that have to be valued are those relating to Sical Ships Ltd.

We have gone through the Ministry of Company affairs website and other publications which show that Sical Ships Ltd is under compulsory liquidation scheme and not under voluntary liquidation scheme. The Company's CIN number is U63012TN1988LC015422. There are also no balance sheets prepared as on date as the company is under winding up. However a copy of the court order dated 10th December 2001 in the matter of MCC Finance Ltd (In liquidation) versus Reserve bank of India (A copy of which is

attached to this report) clearly states in Para 9 the financial position of Sical Ships Ltd.

Para 9 is as follows:

It is further stated that the capital and reserve of the second respondent company (Sical ships ltd) which stood at Rs.3388.25 lakhs as on 31-3-1996 has been completely eroded and the company has negative networth of Rs. 4962.03 lakhs. All fixed assets of the second respondent company except vehicles acquired under hire- purchase agreement amounting to Rs.23.85 lakhs are mortgaged with ICICI Ltd, a financial institution as security for various loans received by the company amounting to Rs,4236.26 lakhs on 31 -3-2001. The cash and balance position has worsened since 31-3-2001.

From the above it can be clearly made out that there is no residual value for unsecured lenders. Hence a notional value of 1% can be given.

Advances given Rs.388,00,000.

1% of above is Rs.3,88,000

MAC Clothing Limited & Profad Limited

The total advances given to MAC Clothing Limited & Profad Ltd were Rs.2.95 crores. These advances were given to MAC Clothing & Profad during 1990s by Sical Logistics Limited. It was transferred to Sicagen India Limited during 2007-08 via demerger. At the time of grant of ICD, Profad was a viable advertising company & MAC Clothing was doing some viable garment business Both these business went into difficulty. Profad 2002 end / 2003 went into liquidation and these assets were sold to Golden Star Assets Consultants Pvt Ltd at agreed consideration. The relevant extract of valuation report is enclosed.

b. MAC CLOTHING LTD

Valuation of Advances given by Sicagen India Lid to MAC Clothing Ltd Recoverable value/replacement value/book value

Based on last drawn estimates of accounts

Fixed Asset		400,000
Current Assets, Loans & Advances	25,000 ----	25,000
Current liabilities & provisions	5,618 ..	425,000 5,618
Net asset value		419,382
Total liabilities of Mac Clothing Ltd.		13,875,000 419,832

Realisable value to lenders		
Percentage vale of lenders		0.030

Loans given by Sicagen IndIa Ltd to Mac Clothing Ltd amounts to Rs.1,13,00,000/-

The above table shows the percentage of assets available as against loan at 3.0%.

Based on this percentage we may say that the loan can be valued at Rs. 3,41,550/-.

However as the process involved in debt collection is long drawn and may involve heavy collection cost the advance is valued at 50% of the same.

*This works out to Rs.3,41,550*50% which is Rs,1,70,775/-*

c. PROFAD LIMITED

Valuation of Advances given by Sicagen India. Ltd to Profad Limited

Recoverable value/replacement value/book value

Based on last drawn estimates of accounts

Fixed Asset- Almost fully depreciate	5,000,000 ----	1,000,000 5,000,000
Current Assets, Loans & Advances		6,000,000
Net asset value		6,000,000
Total secured liabilities of Profad		18,800,000 6,000,000
Realisable value to lenders		
Percentage vale of lenders		0.319

Loans given by Sicagen India Ltd to Profad Rs.1,82,00,000.

The above table shows that the net asset value available is insufficient to meet the secured liabilities. Hence unsecured creditors are not eligible for funds.

Hence these advances are valued at a notional value of 1%.

1% o.Rs.182,00,000 comes to Rs. 1,80,000."

The total market value of the debts determined by the valuer was Rs.1,13,58,210/-. The market value of the debts as on 20.08.2010 arrived,by the valuer was based on the net worth of the companies to whom the loans were given by Sicagen India Limited in the earlier periods and a probable cost of collection involved in the collection of debts. None of the companies to whom the loans were given by the assessee company have denied the existence of the outstanding debts due to the appellant company and none of the companies have also denied the existence of the adverse circumstances leading to the outstanding debts. In response to question nos. 7 & 8 of the statement under section 131 of IT Act recorded by the AO on 03.02.2014, Shri M. Rajamani, Director of the M/s Golden Star Asset Consultants Pvt. Ltd., has categorically confirmed the assignment of debts to the company in which he is a Director and also the value of the assigned price. The relevant questions put by the AD and answers given by the S ri M Rajamani are reproduced herewith for the proper appreciation of the case

"Q. No. 7: With regard to debts assigned to your company by M/s Sicagn India Ltd., your company has paid Rs. 53 lakhs for these debts. How is valuation made? Please give details.

Ans: On the discussion with assigner company (i.e MIs Sicagen India Ltd.,) the valuation was 1 to 2% of total debts.

Q. No. 8: What is the rationale for making valuation?

Ans: Since the collection risk was more, we have bargained to get the debts assigned for 1% of the value."

Shri M.Rajamani also explained before AC the existence of the debts by the companies, the quality of the debts and the existence of the legal rights for collection of the debts possessed by M/s Golden Star Assets Consultants Pvt. Ltd., and the efforts made to recover the debts. Further, Shri M. Rajamani in reply to Question no.16 to the statement recorded under section 131 of the IT Act on 03.02.2014 stated that he has agreed to the computation of the business income in the hands of the company for the AY 2013-14 on the transactions done by M/s Golden Star Assets Consultants Pvt. Ltd. with M/s MCC Finance Limited for the AY 2013-14. The actual collection of the debts due from M/s MCC Finance Limited by M/s Golden Star Assets Consultants Pvt. Ltd., happened after one year from the date of assignment.

Now coming to the issue of M/s. Golden Star Asset Consultants P Ltd not showing the debts in its books at full value and only at

purchase price, I find that the Joint Commissioner of Income Tax,, company Range—VI vide his letter in C.No /C.R.VI/INFORMATION/2014-15, dt.09.05.2014 forwarded the information to Deputy commissioner of Income Tax, Company Circle — 11(2), who is assessing the case of M/s Golden Star Assets Consultants Pvt. Ltd., Chennai to the effect that M/s Golden Star Assets Consultants Pvt. Ltd. had not shown the business profit of Rs.10,70,70,000/- for the A.Y. 2013-14 in its Income Tax return filed with the department. Also merely because M/s. Golden Star Asset Consultants P Ltd has not accounted an allotment of shares in respect of debt by MCC in A.Y 2013-14, does not affect the transfer of debt in the hands of the assessee in A.Y. 2011-12. It is not correct to take events that have taken place after the date of assignment and evaluate wheter a proper transfer has happened on the date of assignment. Also the fact that the company has shown these debts in preous year as good and recoverable does not in any way affect the capital loss sustained by the company on has demerger from M/s. Sical Logistics Ltd. under High Court order. It has tried to collect these debts but has decided to sell the same during the AY 2011-12 after having come under pressure from various share holders. Only during the AY 2011-12 has the company assigned the debts to debt collecting company and has realized consideration and suffered a capital loss. This is not affected by the assessment of management in previous years that the debt was good and recoverable.

Now coming to the issue of unregistered assignment agreement, I have gone through the explanation given by the assessee clearly stating that registration of movables is optional as per Registration Act 1908. Therefore, it is incorrect on the part of the AO to say that the document is not valid as t has not been registered. As regards the M/s API Ltd. issue, it is clear from examination of records that M/s API Ltd. has confirmed that it has borrowed money from Sical Logistics Ltd. from whom this debt was transferred to the assessee. Mi's API Ltd has also confirmed that there has been a change of promoters and that all old liabilities were transferred to the earner promoters namely M/s South India Travels P Ltd. This clearly confirms that there existed adbt owed by M,/s API Ltd. to M/s Sical Logistics Ltd. and subsequently to the assessee. Also the financial health of M/s API Ltd. at the time of transfer of debt was not satisfactory and even though the company has come out of BIFR, it appears to be suffering from financial hardship. It is also seen from various submissions made by the assessee that the change in promoters of M/s API Ltd. has happened after the date of assignment. On the date of assignment, there is no doubt that this debt was owed by M/s API Ltd and subsequently transferred to old promoters. Therefore, it

can be concluded that the AO has brought on record, facts pertaining to change of promoter which are events occurring after the date of assignment, to arrive at conclusions as on the date of assignment, which is erroneous. The fact that Balance sheets of M/s API Ltd. did not reflect the liability towards the assessee is not relevant in judging if there existed a valid debt in the books of the assessee.

As regards the issue pertaining to M/s MCC Finance Ltd., the view taken by the AC that the arrangement between the assessee, M/s. Golden Star Asset Consultants P Ltd and M/s MCC Finance Ltd. appears premeditated is incorrect. Mr. Rajamani, a Director of MIs. Golden Star Asset Consultants P Ltd. has acquired the debt payable by M/s MCC Finance Ltd. from the assessee when M/s MCC Finance Ltd. was under liquidation during AY 2011-12. It is a clearly understood fact that when a company is under liquidation it is under the control of Official Liquidator and not the Board of Directors. Further, M/s MCC Finance Ltd. came out of liquidation by order of Madras High Court dated 09.11.2012 and Mr. Rajamani became a Director in M/s MCC Finance Ltd. on 15.11.2012. Mr. Rajamani, upon becoming a Director signed the share certificates which were allotted to M/s. Golden Star Asset Consultants Pvt Ltd. I do not find anything wrong in a lender of a company namely M/S. Golden Star Asset Consultants P Ltd., proposing a Director to the Board of its borrower. These events are all much after the date of assignment and cannot be used to judge the transaction as on the date of assignment which was in A.Y 2011-12.

A regards the transaction M/s.Golden Star Asset Consultants P Ltd., it can be observed that the assignment agreement has been validly entered into, duly supported by Board resolutions of a listed company. It can also be seen that a valuation report prepared by an expert has not been considered by the AO. Further, valid consideration has passed between the parties for the purchase of debts. Mr. Rajamarof M/s. Goen Star Asset Consultants P Ltd. possesses knowledge and relationships of various executives connected with the debtor companies. He is also aware of the transactions surrounding the debts. Merely because he has not incurred sufficient administrative cost or legal cost, it cannot be said that the arrangement is clandestine.

I do not find the ratio of the decision rendered by Honourable ITAT PUNE 'A' BENCH dt. 06.05.2013 in the case M/s GKN Sinter Metals Ltd. relied upon by the AO to be of any assistance to the facts connected to the case in hand. The above case deals with an assignment of trading debts and the subsequent write off as revenue loss. The Honourable ITAT PUNE 'A' BENCH in that case decided the issue at Para 20.6 of the order on the basis of the facts that the assignor had undertaken to collect the debts on behalf of the assignee and has remitted the same periodically. The

purchase consideration involved in the transaction with assignee company was Rs.1/- being nominal price. The Honourable ITAT PUNE 'A' BENCH came to conclusion about the colorable devise adopted by M/s GKN Sinter metals Pvt. Ltd., on the ground that the same was done to compensate Mahindra and Mahindra for the surrender of the 51% share holding. In the present case, the assignee is collecting the entire debts from the parties and no amount is being paid to the assessee company i.e assignor, over and above the purchase consideration. The transactions entered by the appellant company with M/s Golden Star Assets Consultants Pvt. Ltd., are at arm's length. The quality of the debts being outstanding over long period were also not disputed. The facts of the present case are not identical to the facts in the case of M/s GKN Sinter Metals Limited. The facts of M/s GKN Sinter Metals Ltd. decided by Honourable ITAT PUNE 'A' BENCH cited (supra) have no bearing on the assessee's case. On the other hand, I find that the facts of the assessee's case are identical to facts contained in a decision of the Ahmedabad Tribunal in the case of M/s Torrent Pharmaceuticals Ltd Vs ACIT in ITA No.333 and 346/AHD/2006. Here, the Tribunal has allowed capital loss oi sale of debts to an asset collection company.

To sun up, I find the transactions between the assessee and M/s. Golden Star Asset Consultants P Ltd relating to assignment of debts to be a valid transaction done at arm's length which has resulted in capital loss occurring from transfer of capital asset within the frame work of law. Therefore, there is no need to pierce the corporate veil and go beyond the circumstances and facts that existed on the date of assignment. The decisions relied on by revenue viz. Mc Dowell & Co Vs CTO, CIT Vs. A. Raman & Co. and CIT Vs. B.M. Karwar do not have any bearing on the assessee's case as the transaction entered into by the assessee is not in the nature of tax avoidance or colorable devise.

The Madras High Court, in the case of M. V. Valliappan v ITO [170 ITR 238] has held that the decision of the Supreme Court in the case of Mc Dowell Ltd., Vs CTO [154 ITR 148] cannot be read as laying down that every attempt at tax planning is illegitimate and must be ignored or that every transaction or arrangement which is perfectly permissible under law which has the effect of reducing the tax burden of the assessee must be looked upon with disfavor. In my opinion, if a transaction is otherwise genuine and is conducted within the four corners of law and the transaction is not proved to be sham or bogus or where the transaction is not preordained then the said transaction cannot be termed as tax avoidance measure merely because the incidence of tax is minimized in the hands of the parties.

The similar view is taken by the Honourable Gujarat High court in the case of Banuyan & Berry v CIT [222 ITR 831]. In this

judgement, the Gujarat High Court held that every action or inaction on the part of the tax payer which results in reduction in tax liability cannot be viewed with suspicion and be treated as a devise for avoidance of tax irrespective of legitimacy or genuineness of the act. The decision of the Supreme Court in the Mc Doweli's case has not affected the freedom of the citizen to act in a manner according to his requirements and his wishes in the matter of doing any trade activity or planning his affairs with circumspection, within the frame work of law, unless the same falls in the category of colorable devise or a dubious method of subterfuge clothed with apparent dignity. The Hon'ble Supreme Court in the case of Union of India Vs Azadi Bachao Andolan stated [263 ITR 706] after referring Mc Dowell & Co. case, has approved the decision of Madras High Court in the case of Mr. M.V. Valliappan Vs ITO [170 ITR 238].

Applying this ratio laid down in these decisions, I find that in the present case, the arrangement between the Appellant and M/s Golden Star Assets Consultants Pvt. Ltd., was perfectly legitimate and arrived at on the commercial considerations and on arm's length principle. On these facts, I do not find force in the AO's allegation that the assignment of debts was sham transaction, bogus transaction and was a colorable devise for tax evasion. Therefore, Ground nos. 2 to 10 dealing with the claim of Capital loss of Rs.56,48,55,180/- is allowed."

Aggrieved, the Revenue is in appeal before us.

14. We have heard the rival submissions and perused the material available on record. The primary facts stated herein above remain undisputed and hence, the same are not reiterated for the sake of brevity. At the outset, we find that the assignee company M/s.Golden Star Asset Consultants (P) Ltd., is a related party with the assessee company, in view of the fact that Mr.Rajamani was earlier director in assessee company and also a founder director in M/s.Golden Star Asset Consultants (P) Ltd. We

find that the loss arising on account of debts advanced to MAC Clothing Ltd., Sical Ships Ltd., and Profad Ltd. are not in dispute before us. The dispute is only with regard to the capital loss arising out of advance given to API and MCC Finance Ltd. The Ld. D.R. argued that assignee company had paid ₹.53 lakhs to the assessee company allegedly for acquiring the debts on assignment basis. While that is so, there is no reason for the assignee company to show the said payments under the head "loans and advances" in the asset side of the balance sheet. The Ld. D.R. argued that the correct way of reflecting the transaction would be reflecting the debts recoverable from API and MCC Finance Ltd., as sundry debtors in the balance sheet of assignee company. The Ld. A.R. further argued that with regard to MCC Finance Ltd., the assignee company was allotted shares worth ₹.10.99 crores at a premium of ₹.15 per share and hence, the assignee company had recovered the entire dues subsequently from MCC Finance Ltd., ought to have disclosed business income on such recovery. This was admittedly not done by assignee company as evident from the statement recorded from Mr. Rajamani on oath in the capacity of director of M/s. Golden

Star Asset Consultants (P) Ltd. By this process, the Ld. D.R. was trying to drive home the point that the assessee company on one hand had assigned debts worth ₹.57 crores for a paltry sum of ₹.53 lakhs in favour of assignee company and claimed capital loss thereon and correspondingly the assignee company also (being a related party) did not offer any business income in their income tax returns for subsequent years in the year of recovery of such debts. Accordingly, he argued that the entire transaction needs to be construed as sham with a malafide intention to evade payment of taxes on both the ends. In this regard, we are in agreement with the argument advanced by the Ld. A.R. that merely because the assignee company had not disclosed business income in their income tax returns for subsequent years in the year of recovery of debts, that would not prejudice the right of the assessee company to claim capital loss in the year of extinguishment of their right in favour of the assignee company. We hold that in case, if the assignee company had not offered the business income as stated by the Ld. D.R. in the subsequent years of recovery of debts, the Revenue should take action in the hands of assignee company for those respective years in the

manner known to law. That again, in our considered opinion, cannot come in the way of not accepting the stand of the assessee. To this extent, the argument of the Ld. DR is not accepted. The Ld. D.R. vehemently argued before us that the loans payable by API to the assessee company had been taken over by erstwhile promoters of API i.e. M/s.South India Travel Pvt Ltd., Hence, API as such, is not liable to make any payment to the assessee. This fact has been duly confirmed by them in response to notice under Section 133(6) of the Act directly before the Ld.A.O. in writing. In other words, the assessee should only recover the amounts from M/s.South India Travel Pvt Ltd., and not from API. The Ld. D.R. vehemently argued that while this is so, where is the need for the assessee to assign this particular debt in favour of M/s.Golden Star Asset Consultants (P) Ltd., for a paltry sum and incur capital loss thereon and consequently set off of the same with long term capital gains on sale of shares and property. To buttress this argument, the Ld. A.R. drew our attention to page-55 of the paper book containing submissions made before the Ld.CIT(A) wherein it was categorically submitted that the debt payable by API to the assessee was taken over by

M/s.South India Travel Pvt Ltd., only on 02.12.2011, which is beyond the assessment year under consideration.

15. The Ld. A.R argued that the assessee at the time of assignment of the debt to M/s.Golden Star Asset Consultants (P) Ltd., could not have envisaged or pre-empted subsequent assignment of debt by API in favour of M/s.South India Travel Pvt Ltd., Hence, the assessee's action of assignment of debt of API could not be found fault with. But we find from the order of the Ld.CIT(A) that no specific finding has been given by him with regard to this crucial fact of 02.12.2011 i.e. the date on which the debt was taken over by M/s.South India Travel Pvt Ltd., from API. We find that this requires factual verification by the Ld.A.O. by considering the various documents with supporting evidences, which triggered the transfer of debt from books of API to their erstwhile promoters, M/s.South India Travel Pvt Ltd.

16. The Ld. D.R. before us vehemently argued that valuation report furnished M/s.Banyan Consultancy Services, stating that debts recovery from API would not fetch its book value is to be ignored as such, in view of the fact that debt should have been recovered by th assessee only from M/s.South India Travel Pvt

Ltd. Accordingly, he argued that the valuation report relied upon by Ld. A.R. is completely faulty. We find that valuation report is issued by the concerned consultant on 20.08.2010 on which date, debt was recoverable was only from API and not from M/s.South India Travel Pvt Ltd. At the cost of repetition, the debt was taken over by erstwhile promoter of API i.e. M/s.South India Travel Pvt Ltd., only on 02.12.2011 which falls in assessment year 2012-13. Hence, this argument of the Ld. D.R. is dismissed. Hence, we deem it fit and appropriate, in the interest of justice and fair play, to remit this aspect of the issue to the file of Ld.A.O. for adjudication in the light of the aforesaid facts and crucial date of 02.12.2011 being the date of transfer of debts from API to M/s.South India Travel Pvt Ltd.

17. With regard to debts recoverable from MCC Finance Ltd., the Ld.A.O. took the view that this assignment was premediated as MCC Finance Ltd., allotted shares in lieu of the debt outstanding towards M/s.Golden Star Asset Consultants (P) Ltd., shortly after transfer. Also Mr.Rajamani was one of the Directors on the board of the assessee company became a Director in MCC Finance Ltd. This sequence of event of Mr.Rajamani leaving the

assessee company, floating a new company and joining the board of MCC Finance Ltd., appears to be a preplanned strategy adopted by the assessee, in order to arrive at bogus capital loss especially since the assignment was done at a paltry sum.

18. We find from the sequence of events narrated herein above, Mr.Rajamani became a Director of M/s.Golden Star Asset Consultants (P) Ltd., only on 15.11.2012 i.e. after the date of assignment of debt in favour of assignee company. It is an undisputed fact that MCC Finance Ltd., was under liquidation till November 2011 and there was no directors during liquidation and that the company was only managed by official liquidator. We find that learned CIT(A) had given a categorical finding in page-22 of his order that MCC Finance Ltd., came out of liquidation by an order of Madras High Court dated 09.11.2012, Mr.Rajamani became a director in MCC Finance Ltd., only on 15.11.2012. We find that Mr.Rajamani upon becoming a Director in MCC Finance Ltd., had signed the share certificates which were allotted to the assignee company M/s.Golden Star Asset Consultants (P) Ltd. It is normal practice that the lender company would propose a Director to the board of borrowing company. The borrowing

company in the instant case would be MCC Finance Ltd., pursuant to the assignment of debt. Hence, the event that had happened after the date of assignment of debt, cannot be used to judge the transaction, which had happened on the date of assignment in assessment year 2011-12. Accordingly, the argument of the Ld. D.R. is dismissed.

18. To sum up, the transactions in respect of assignment of debt recoverable from API, is remitted back to the file of A.O. and transactions in respect of debt recovery from MCC Finance Ltd., is decided in favour of the assessee. Accordingly, the grounds raised by the Revenue are disposed off in the aforesaid manner.

19. In the result, the appeal of Revenue is allowed for statistical purposes.

Order pronounced in the open court after conclusion of hearing on 28th February, 2020, at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष/Vice President

चेन्नई/Chennai

Sd/-

एम बाला गणेश)

(M. BALAGANESH)

लेखा सदस्य /Accountant Member

दिनांक/Dated: 28th February,2020.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |