

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL , 'D' BENCH, CHENNAI**  
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.2934/CHNY/2017

निर्धारण वर्ष / Assessment Year: 2013-14

**The Asst. Commissioner of  
Income Tax,**  
Corporate Circle 4(1),  
Chennai – 34.

Vs **M/s. Mercantile Ventures Limited,**  
Old No.36-40, New No.73,  
South India House, Armenian Street,  
Chennai – 600 001.

**PAN: AAICM 6095N**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

**C.O. No. 43/CHNY/2018**

[in ITA No.2934/CHNY/2017, Assessment Year 2013-14]

**M/s. Mercantile Ventures Limited,**  
88,Mount Road,  
Guindy,  
Chennai – 600032.

Vs **The Asst. Commissioner of Income Tax,**  
Corporate Circle 4(1),  
Chennai – 34..

**PAN: AAICM 6095N**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by

: Shri AR.V. Sreenivasan, Addl.CIT

निर्धारिती की ओर से /Assessee by

: Shri R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of hearing

: 27.10.2020

घोषणा की तारीख /Date of Pronouncement

: 27.10.2020

**आदेश / O R D E R**

**PER MAHAVIR SINGH, VP:**

This appeal of Revenue in ITA No.2934/CHNY/2017 and Cross  
Objection by the Assessee in CO No.43/CHNY/2018, are arising out of

the order of CIT(A)-8, Chennai, in ITA No. 23/16-17 dated 19.09.2017. The Assessment was framed by Asst. Commissioner of Income Tax, Corporate Circle -4(1), Chennai for the A.Y. 2013-14 vide order dated 14.03.2016 passed under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. During the course of hearing before us, the learned Counsel for the assessee pointed out that the tax effect in this appeal is below Rs.50.00 lakhs. The learned Counsel for the assessee further submitted that in view of the CBDT Circular No.17/2019, dated 08.08.2019 brought out by the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, the appeal was not maintainable and be dismissed. The Ld. DR also agreed to the facts stated by the Ld.Counsel for the assessee.

3. We have heard the rival submissions through video conferencing and perused the material on record. We find from the records before us that the tax involved in the disputed issue is below Rs.50 lakhs and therefore, in view of the CBDT Circular No. 17/2019 dated 08.08.2019 no appeal should be filed by the Revenue before the Tribunal which has tax effect of Rs. 50.00 lakhs or less and this circular is also applicable

retrospectively to all pending appeals. Therefore, the appeal filed by the Revenue is dismissed.

4. Now coming to the CO.No.43/CHNY/2018 of assessee. The only issue in this cross objection of assessee is that as regards to the order of the CIT(A) confirming the principal amount of loan waived by the creditors is taxable u/s.28(iv) of the Act if not u/s.41(1) of the Act. For this assessee has raised following ground in its cross objection:-

*“1. The Commissioner of Income Tax (Appeals) erred in confirming the principal amount of loan waived by the creditors is taxable u/s.28(iv) if not under section 41(1)”*

5. Brief facts are that the assessee company was known as MCC Finance Limited engaged in the business of hire purchase, leasing, etc. MCC Finance Limited was ordered to be wound up by the Hon'ble Madras High Court on 21.08.2000 and finally winding up order was passed on 03.08.2001. Subsequently, a scheme of arrangement and revival of the company was approved by the Hon'ble Madras High Court vide its order dated 18.10.2012 and in pursuance of this order of Hon'ble High Court, the Board was reconstituted on 15.11.2012. The business of the assessee company was that of immovable properties mainly. The assessee's accounting period was from 15.11.2012 to 31.03.2013 for the relevant assessment year 2013-14. The assessee company earned

income by way of interest and dividend during this period. The name of the assessee company was changed from MCC Finance Limited to Mercantile Ventures Limited w.e.f. 27.03.2013. The assessee company had claimed an amount of Rs.337.11 lakhs on write back of amounts due to creditors as capital receipts in computation of income filed with the return of income. The AO while framing assessment u/s.143(3) of the Act vide order dated 14.03.2016 noted that the scheme approved by Hon'ble High Court of Madras, the assessee company would issue either convertible bonds or equity shares to the extent of 40% of balance due and the remaining 60% was written off. According to the AO, the surplus on write back of liabilities claimed by assessee as capital receipt is not as per law and he hold that these creditors were related to business carried on by the assessee company during earlier years. According to him, any write off on account of business liabilities should be treated as revenue receipt and hence taxable. Aggrieved against this finding of the AO, assessee preferred appeal before CIT(A).

6. The CIT(A) was not sure whether this is to be assessed u/s.41(1) of the Act or u/s.28(iv) of the Act. The CIT(A) also noted that the assessee company has voluntarily taken this income in its books of account while computing book profit but claimed the same as exempt

being capital receipt while computing income under normal provisions. The CIT(A) also noted that in the absence of specific details of the creditors, the AO has not been able to pinpoint the liabilities of the assessee and he observed that the extinguished credits are business receipts u/s.28(iv) of the Act. He noted that the earlier creditor amounts were allowed into the joint business of the assessee and assessee has acquired some assets out of business profits earned over the years. According to him, it does not mean that the creditors amounts now extinguished relates to assets of the company and not to the regular business conducted. He observed that assessee has neither given the list of creditors nor the users of the respective creditor amounts by the company in those specific years. In the absence of the same, the CIT(A) held that these receipts are business receipts taxable u/s.28(iv) of the Act. However, he practically has not taxed the receipts u/s.41(1) of the Act.

7. Now before us, the Ld.Counsel for the assessee stated that as per the scheme of arrangement with the creditors approved by the Hon'ble High Court of Madras, offers were made to them for exercising option either to choose convertible bonds to the extent of 40% of the balance due or equity shares of Rs.10 each at a premium of Rs.15 per

share for the total outstanding amount. In term of this, in respect of creditors the convertible bonds were allotted in regard to the amount of Rs.337.11 lakhs and after allotment of convertible bonds, this amount was written back in the accounts as surplus. He stated that the assessee's case neither falls u/s.41(1) of the Act because there is no cessation of liabilities nor these are business receipts taxable u/s.28(iv) of the Act. The Ld.Counsel for the assessee in support of the above argument placed various decisions which are cited in the order of the CIT(A). When a question was put to Ld.Counsel for the assessee, whether the nexus can be proved on the amounts write off as surplus and further whether the 60% were charged to accounts or not. To prove the claim that the entire amount of Rs.337.11 lakhs written back represents capital receipt, the assessee has to prove that the relevant funds borrowed were used to create assets on lease which were accounted as fixed assets in the balance sheet. However, the Ld.Counsel for the assessee fairly agreed that this issue can be remitted back with open direction to decide afresh to the AO. The Ld.DR, Shri AR.V.Sreenivasan, Addl.CIT fairly agreed that this matter can be restored back to the file of the AO as discussed above.

8. After hearing rival contentions through video conferencing and going through the facts of the case, we are of the view that the only issue left before us is whether this is a business receipts of write back chargeable to tax u/s.28(iv) of the Act or not. As the assessee is unable to prove the nexus and has not filed the details in regard to creditors nor the users of the respective creditors, we are in agreement with the consent of both the parties that the matter may go back to the file of the AO for fresh adjudication. Needless to say, the assessee will file all the details before the AO. Therefore, this cross objection of the assessee is allowed for statistical purposes.

9. In the result, the appeal of the Revenue is dismissed and the cross objection of the assessee is allowed for statistical purposes.

Order pronounced in the court on 27<sup>th</sup> October, 2020 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य /Accountant Member

Sd/-

(महावीर सिंह )

(Mahavir Singh)

उपाध्यक्ष /Vice President

चेन्नई/Chennai,

दिनांक/Dated, the 27<sup>th</sup> October, 2020.

**RSR**

xआदेश की प्रतिलिपि अग्रेषित/Copy to:

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|-------------------------|-------------------------|------------------------------|
| 1. निर्धारिती /Assessee | 2. राजस्व/Revenue       | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT      | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF             |