

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.1932/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. India Cements Capital Ltd Dhun Building, No. 827, Anna Salai, Chennai – 600 002.	बनाम/ Vs.	ACIT Corporate Circle – 2(2), Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACA-3071-C		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ITA No.1626/Mds/2012
(निर्धारण वर्ष / Assessment Year: 2006-07)

ACIT Company Circle II(3), Chennai.	बनाम/ Vs.	M/s. India Cements Capital and Finance Ltd Dhun Building, No. 827, Anna Salai, Chennai – 600 002.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACA-3071-C		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ITA No.3081/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2009-10)

DCIT Corporate Circle -3(2) Chennai – 600 034.	बनाम / Vs.	M/s. Unique Receivable Management Pvt. Ltd No. 827, Dhun Building, Anna Salai Chennai – 600 002.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AABCC-8603-K		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Assessee by	:	Shri R. Vijayaraghavan (Advocate) – Ld. AR
प्रत्यर्थीकी ओरसे/Revenue by	:	Shri Guru Bashyam (CIT) –Ld. DR

सुनवाईकी तारीख/Date of Hearing	:	18-04-2022
घोषणाकी तारीख /Date of Pronouncement	:	20-05-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee as well as by revenue has common issues. First, we take up revenue's appeal for Assessment Year 2006-07, ITA No.1626/Mds/2012 which has come up for hearing pursuant to the directions of Hon'ble High Court of Madras in assessee's appeal TCA No.588 of 2017 order dated 07.12.2017 as follows: -

3. The present appeal arose out of an order passed by the Income Tax Appellate Tribunal, by which, the Revenue's appeal was allowed and the deletion of addition made on account of cessation of bank liability to the extent of Rs.46.05 Crores, as ordered by the Commissioner of Income Tax (Appeals) vide order dated 25.5.2012, was set aside and the order passed by the Assessing Officer dated 13.12.2011 was affirmed.

4. The short issue, which falls for consideration, is as to whether the Tribunal had independently considered the correctness of the order passed by the Commissioner of Income Tax (Appeals) holding that there was a reduction on the liability in the hands of the assessee and the liability was on the transferee - the Special Purpose Vehicle (SPV), which is evident from Clause 5 of the agreement entered into between the parties. Thus, on a consideration of the terms and conditions stipulated in the tripartite agreement, the Commissioner of Income Tax (Appeals) held that there was no liability in the hands of the assessee, because the liability had been transferred to the SPV.

5. The reason for considering this issue arose on account of an earlier order passed by the Income Tax Appellate Tribunal in ITA.871/Mds/2011 dated 03.4.2012 in the assessee's own case. The said appeal was filed by the assessee relevant to the same assessment year namely 2006-07 challenging an order passed under Section 263 of the said Act dated 16.3.2011. In the said order, in paragraph 13, the Tribunal made the following observation, which is as hereunder:

"Therefore, it is clear that prima facie, there is a remission of liability in favour of the assessee company. This paramount issue ought to have been examined by the Assessing Authority in the assessment order."

The above observation made by the Tribunal ultimately led to the impugned order, which has been passed by the Tribunal.

6. The Commissioner of Income Tax (Appeals) was satisfied with the assessee's contention and had allowed the appeal. Thus, it is to be seen as to whether the finding rendered by the Commissioner of Income Tax (Appeals) was just and proper. Paragraph 7 of the impugned order has dealt with the said issue in the following lines:

"In our opinion, since there is a categorical finding of the Tribunal that there was a cessation/ remission of liability under Section 41(1) of the Act on earlier occasion confirming the order of the learned Commissioner of Income Tax passed under Section 263 of the Act, wherein the learned Commissioner of

Income Tax directed the Assessing Officer to verify from the assessment records whether interest/depreciation/hire charges or any other expenditure related to bank liability has been claimed and allowed by the Assessing Officer in the earlier years and if 'yes', the taxability of the remission of bank liability should be examined by the Assessing Officer under relevant provisions of the Act. The learned Assessing Officer, consequent to this, examined the issue and observed that there is remission of bank liability accrued to the assessee at Rs.46.05 Crores. Contrary to this, learned Commissioner of Income Tax (Appeals) observed that there was no cessation of liability in the hands of the assessee and it was only in the hands of URMP (SPV) and if any cessation is to be considered in the hands of URMP, we are not in a position to uphold the argument of the learned authorized representative as held by the Tribunal on earlier occasion. There is a remission of liability in favour of assessee company and the liability payable to the bank has been reduced to Rs.43 Crores and it has to be brought to tax in the hands of assessee only under Section 41(1) of the Act. Accordingly, the ground raised by the Revenue is allowed."

7. From the above extracted paragraph, it is evident that the Tribunal, after noting the finding rendered by the Assessing Officer, observed that the Commissioner of Income Tax (Appeals) held that there was no cessation of liability in the hands of the assessee and it was only in the hands of the SPV and that if any cessation is to be considered, it has to be in the hands of the SPV. However, the Tribunal, while holding that the said finding of the Commissioner of Income Tax (Appeals) is not proper, did not render an independent finding, but was rather guided by the finding rendered by it in its earlier order dated 03.4.2012 referred above.

8. On a reading of paragraph 13 of the earlier order, which we have extracted above, we find that the Tribunal did not render a final finding, but it was of the prima facie view that there is a remission of liability in favour of the assessee company and that this is the paramount issue, which the Assessing Officer has to examine. Thus, the Assessing Officer, having examined and held against the assessee, which decision was reversed by the Commissioner of Income Tax (Appeals), the Tribunal should consider as to whether the Commissioner of Income Tax (Appeals) was justified in rendering a finding to the effect that there was reduction on the liability in the hands of the assessee. However, the Tribunal did not do so, but was solely guided by the observations made by it in the earlier order. We are of the considered view that as the earlier order was of the prima facie view, the Tribunal is required to consider independently as to whether the finding rendered by the Commissioner of Income Tax (Appeals) is proper or not and that the matter should be remanded to the Tribunal for a fresh consideration.

9. Accordingly, the above tax case appeal is allowed, the impugned order is set aside and the matter is remanded to the Tribunal for a fresh consideration uninfluenced by the observations made in paragraph 13 of the earlier order passed by the Tribunal dated 03.4.2012. Since we have remanded the matter for a fresh consideration, it is open to both parties to raise all factual and legal contentions before the Tribunal. No costs.

It is evident that the matter has been remanded back to the Tribunal for fresh consideration uninfluenced by the observations made in Para-13 of

earlier order passed by the Tribunal on 03.04.2012. Before us, it is open for both the parties to raise all factual and legal contentions. Accordingly, we proceed to adjudicate the appeal as per the directions of Hon'ble Court.

2. This appeal arises out of the order of learned Commissioner of Income Tax (Appeals)-III, Chennai [CIT(A)] dated 25.05.2012 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s 143(3) r.w.s. 263 of the Act on 13.12.2011. The grounds taken by the revenue read as under: -

1. The Order of the learned Commissioner of Income Tax(Appeals) is contrary to the Law and facts of the case.
2. The learned CIT(A) has erred in deleting the addition made on account of cessation of bank liability to the extent of Rs.46.05 crores;
 - 2.1 The learned CIT(A) ought to have appreciated the fact that the clause 3 of page 5 of the agreement clearly stipulates that due of the First Part (SPV) amounting to Rs. 89.05 crores to the banks were crystalized at Rs. 43.00 crores.
 - 2.2 It is submitted that the bank loan is utilised for acquiring the stock on hire. As the assessee was in the business of hire purchase transactions and the income arising out of the said asset and the waiver on account of the acquisition of the said asset also to be treated as income u/s 41(1).
 - 2.3 The learned CIT(A) ought to have appreciated the fact that in the notes on accounts, the assessee has stated the erstwhile subsidiary namely Unique Receivables Management P Ltd became a company under the same management on 26.06.2006 following change in the composition of Board of Directors. Hence it was merely a book transfer and the beneficiary is the assessee company.
 - 2.4 It is submitted that the decision of the Supreme Court in the case of M/s T.V. Sundaram Iyengar & Sons (222 ITR 344) is applicable to the facts of the case since in this case the bank loan has been waived and the amount was also received in the course of trading transactions and the character of the amount changes when it becomes assessee's own money.
 - 2.5 It is submitted that the decision of Madras High Court relied upon by the CIT(A) in the case of Iskraemeco Regent Ltd. reported in 331 ITR 317 has not become final and appeal before Supreme Court has been filed.

Evidently, the sole grievance of the revenue is deletion of addition made u/s 41(1) on account of cessation of liability for Rs.46.05 Crores.

3. The Ld. CIT-DR advanced arguments and submitted that the liability was crystalized at lesser amount and it was a case of remission/

cessation of trading liability u/s 41(1). The Ld. CIT-DR placed reliance on various decisions, the copies of which have been placed on record. The Ld. AR, on the other hand, submitted that in terms of Tripartite Agreement, there was no remission of liability in the hands of the assessee. The provisions of Sec.41(1) or 28(iv) had no application to the case of the assessee.

Having heard rival submissions and after due consideration of material facts including case laws as cited before us, our adjudication would be as given in succeeding paragraphs.

Assessment Proceedings

4.1 The assessee being resident corporate assessee is stated to be engaged in the business of Hire Purchase, Leasing, Bill discounting, Money changing and forex advisory services. The original assessment as framed by Ld. AO was subjected to revision u/s 263 on 16.03.2011 wherein Ld. AO was directed to verify the taxability of remissions of bank liability to the extent of Rs.46.05 Crores under the relevant provisions of the Act including Section 41(1).

4.2 The material facts as noted in Tribunal order dated 11.08.2016 are that the assessee assigned its receivables and bank liabilities to a special purpose vehicle (SPV) i.e., M/s Unique Receivable Management Private Ltd. (URMPL) under tripartite agreement dated 28.06.2006 which was between the assessee, URMPL and consortium of 12banks who had advanced finances to assessee company. The bank had first and prior charge on the receivables of the assessee. During revision proceedings u/s 263, the appropriate authority noted that the total receivable as per accounts were Rs.93.45 Crores whereas bank liabilities were Rs.89.86 Crores. The differential amount of Rs.3.59

Crores was shown as receivable in the books of accounts but Ld. AO did not consider whether this differential amount of Rs.3.59 Crores would be in the nature of income or not. It was also observed that though receivables assigned by the assessee to URMPL were Rs.89.86 Crores, however, URMPL was to make payment of Rs.43 Crores only to the consortium of banks, resulting into remission of liability in the hands of the assessee. The Ld. AO failed to consider this aspect of the matter. Accordingly, the assessment was set-aside with a direction to Ld. AO to redo the assessment. Though the assessee challenged the revisional jurisdiction, however, it was held by the bench that the assessment order was very cryptic and there was no discussion regarding certain vital issues arising from the assessment. Accordingly, the revision was upheld vide order dated 03.04.2012. In para-13 of this order, the bench observed that the clauses in tripartite agreement would show that the liability to the consortium banks has been crystallized at Rs.43 Crores and the said amount of Rs.43 Crores was paid over to the bank. The liabilities of the assessee company towards the banks stood fully discharged and settled. The banks did not have any option for legal proceedings against the assessee or the special purpose vehicle. Therefore, it was clear that prima-facie there was a remission of liability in favor of the assessee company. This paramount issue ought to have been examined by Ld. AO in the assessment order.

4.3 Pursuant to revision order u/s 263, the assessment was reframed by Ld. AO u/s 143(3) r.w.s. 263 on 13.12.2011. The assessee submitted that the issue of remission has to be considered in the books of Special Purpose Vehicle (SPV) to which the bank liability was transferred at book value of Rs.89.86 Crores. As per the terms of Tripartite agreement, any

amount collected from the related receivables transferred which is in excess of the net accepted liability should be passed on to the bank. Therefore, there was no reduction of liability since whatever amount was to be collected from the client, the same was to be passed on to the bank to the extent of outstanding liability of Rs.89.86 Crores. If the liability was valued at Rs.43 Crores the corresponding asset should also be valued at Rs.43 Crores and there is no benefit accruing on account of one-time settlement with the bank. In the alternative, loan given by the bank was in capital field and therefore any waiver could not be considered as income either u/s 41(1) or 28(iv). The amount of Rs.43 Crores was nothing but minimum guaranteed amount to be paid to the bank and the bank agreeing to accept whatever additional amount was recovered out of receivables.

4.4 However, the Ld. AO, after considering the vital terms of the agreement, noted that as per Clause-3, the dues of Rs.89.05 Crores were crystalized and fixed at Rs.43 Crores. As per Clause-18, the assessee agreed to sell all their receivables to the SPV. On the basis of above, Ld. AO held that there was remission of liability to the extent of Rs.46.05 Crores since the dues of Rs.89.05 Crores were crystalized at Rs.43 Crores.

Appellate Proceedings

5.1 The Ld. CIT(A) noted that the assessee hived-off hire purchase and leasing business to SPV and assigned corresponding receivables together with the connected bank liabilities to the SPV at book value. The same was under tripartite agreement which was effective from 01.10.2005. As per the terms, the receivable of Rs.93.45 Crores together with bank liability of Rs.89.86 Crores were transferred to SPV. As per

Clause 5(d), whatever was received by SPV from the receivables would be first adjusted against Rs.43 Crores as paid by SPV and any amount recovered over and above that amount would also be passed on to the banks. Therefore, there was no waiver of liability towards the banks but only payment in excess of Rs.43 Crores was agreed to be deferred to match with the recovery amount. The assessee reduced both the assets and liabilities at the value at which they were appearing in the books of account. The difference between the transfer price of assets being the book-value and their WDV as per Income tax Act to the extent of Rs.7.03 Crores was already offered as Short-Term Capital Gain. Further, SPV reflected the same values in their books. Accordingly, there was no waiver or benefit to the assessee as alleged by Ld. AO.

5.2 Another line of argument was that the Bank loans as received by the assessee was utilized for acquiring the capital assets which were given on hire purchase or leasing. Further, Sec.28(iv) would have no applicability in case of monetary benefits accruing. The same could also not be added u/s 41(1) since the loans were not allowed as deduction in any of the earlier years. The bank liability for Rs.89.86 Crores consist only of the principal portion of the loan and had no element of interest in it. Therefore, even if it was to be considered as waiver, it would be in capital field as per the decision of Hon'ble High Court of Madras in **Iskraemeco Regent Ltd. (331 ITR 317)** which has distinguished the case law of Hon'ble Supreme court in the case of **T.V.Sundaram Iyengar & Sons (222 ITR 344)**.

5.3 Alternatively, the receivables of Rs.93.45 Crores have been liquidated at Rs.46.59 Crores (Rs.43 Crores of Bank Liability+ Rs.3.59 Crores receivable by the assessee) and therefore, the balance amount

of Rs.46.86Crores was to be treated as bad-debts or businessloss which should be allowed as deduction.

5.4 The Ld. CIT(A) noted that as per the terms of agreement, the Bank liabilities of Rs.89.05 Crores were crystalized at Rs.43 Crores. It was clear that the fund-based activities of the assessee together with all the receivables and bank liabilities were transferred to SPV. Accordingly, the assessee did not have any assets or bank liabilities relating to the fund-based activities in the book. Therefore, these was no reduction in the liability in the hands of the assessee as alleged by Ld. AO. The liabilities stood transferred to SPV and it was the responsibility of SPV to repay the bank liabilities. Further, any amount collected by SPV over and above the amount of Rs.43 Crores, was also to be paid to the banks. Thus, there was no waiver of loan or remission of bank liability in the hands of the assessee. It was not the case of Ld. AO that the agreement was not genuine. Regarding alternative contention that the waiver would be in capital field, it was held by Ld. CIT(A) that the loans were used to acquire capital assets which were given on hire / lease to customers. This was confirmed by the fact that the hire purchase and leasing transactions were hypothecated against bank liability and both were transferred together to SPV. In such a case, the ratio of decision of Hon'ble High Court of Madras in **IskraemecoRegent Ltd. (supra)** was applicable to assessee's case. Therefore, the waiver, if any, would be in capital field. Regarding taxability u/s 28(iv), these transactions were loan transactions and would not come within the purview of Sec.2(24). The decision of Hon'ble Delhi High court in **CIT V/s Tosha International Ltd. (331 ITR 440)** would support the said proposition. Therefore, the impugned additions could not be sustained either u/s 41(1) or u/s 28(iv)

and the same were to be deleted. The Ld. CIT(A) also concurred with another alternative submissions of the assessee that it had received Rs.46.59 Crores against receivables of Rs.93.45 Crores and therefore, the balance amount of Rs.46.86 Crores would be bad-debts or business loss written-off which would be allowable as deduction. Accordingly, the appeal was allowed on various facets against which the revenue is in further appeal before us.

Our findings and Adjudication

6. We find that the material facts are not in dispute. As per the terms of Tripartite Agreement, the assessee hived-off hire purchase and leasing business to SPV and assigned corresponding receivables together with the connected bank liabilities to the SPV at book value. Pertinently, the assessee transferred the receivable of Rs.93.45 Crores together with bank liability of Rs.89.86 Crores at Book Value. The excess amount as received by the assessee over and above WDV of the asset has been offered as well as accepted as Short-Term Capital Gain. Though the Bank Liabilities were crystalized at Rs.43 Crores, however, SPV was obligated to repay any amount received by it over and above Rs.43 Crores. Therefore, it would not be correct to say that the bank liabilities were ultimately settled at Rs.43 Crores and the balance amount was waived-off. Therefore, the provisions of Sec.41(1) could not be held to be applicable in such a case in the hands of the assessee.

7. Another undisputed fact is that the Bank Loans were utilized to acquire the capital assets and any waiver thereof would be in capital field and could not be brought to tax u/s 28(iv) as per the decision of Hon'ble High Court of Madras in **Iskraemeco Regent Ltd. (331 ITR 317)**. In this decision, it has been held by Hon'ble Court that Sec.28(iv) would

have no application to any transaction which involves money. Similar ratio has been laid down by Hon'ble Supreme Court in **CIT V/s Mahindra & Mahindra Ltd. (404 ITR 1)**. In this decision, it was held by Hon'ble Supreme Court that waiver of loan by the creditor is neither taxable as perquisite u/s 28(iv) nor taxable as remission / cessation of liability u/s 41(1) of the Act. Further, Sec.28(iv) would not apply to waiver of loan since the waiver could not be termed as income u/s 2(24). The cited decision of Hon'ble High Court of Madras has already distinguished the case law of Hon'ble Supreme court in the case of **T.V.Sundaram Iyengar & Sons (222 ITR 344)** since the said decision would apply in case of trading transactions which is not the case here. The decision in **CIT V/s Ramaniyam Homes (P) Ltd. (22.04.2016)**, as referred to by Id. CIT-DR, has already been reversed by Hon'ble Supreme Court in the case of **CIT V/s Mahindra & Mahindra Ltd. (404 ITR 1)**.

8. The last aspect of the matter is that the receivables of Rs.93.45 Crores have been liquidated at Rs.46.59 Crores (Rs.43 Crores of Bank Liability + Rs.3.59 Crores receivable by the assessee) and therefore, the balance amount of Rs.46.86 Crores was to be treated as bad-debts or business loss which would clearly be allowable as deduction to the assessee.

9. Therefore, on the facts and circumstances of the case, we are of the considered opinion that Ld. CIT(A) has capture the issue in correct perspective. The conclusion drawn in the impugned order are based on binding judicial precedents. Therefore, finding no reason to interfere in the same, we dismiss the appeal of the revenue.

10. The appeal stand dismissed in terms of our above order.

Assessee's Appeal ITA No.1932/Chny/2018, AY 2009-10

11. This appeal arises out of the order of learned Commissioner of Income Tax (Appeals)-9, Chennai [CIT(A)] dated 12.05.2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s 143(3) r.w.s. 147 of the Act on 13.02.2015. The grounds taken by the assessee read as under: -

1. The order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and the circumstances of the case.
2. The Commissioner of Income Tax (Appeals) erred in holding that the sum of Rs.3,81,98,688/-being the principal amount of loan waived by bank of Ceylon should be assessed either u/s 41(1) or Sec 28(iv).
3. The Commissioner of Income Tax (Appeals) erred in not specifying the section under which the amount is taxable.
4. Without prejudice the CIT(A) ought to have appreciated that the amount due to Bank Of Ceylon was only Rs.57,76,189 only and not Rs.3,81,98,688/-
5. The Commissioner of Income Tax (Appeals) ought to have appreciated that waiver of monitory loan cannot be taxed under Section 41(1) or Section 28 (iv).

As evident, the assessee is aggrieved by confirmation of addition of Rs.381.98 Lacs.

12. The registry has noted a delay of 292 days in the appeal, the condonation of which has been sought by the assessee on the strength of affidavit of director of the assessee company. It has been submitted that when the impugned order was passed, the Tribunal had held that there was waiver or reduction of loan which included loan taken from Bank of Ceylon which was to be taxed in AY 2006-07. Accordingly, there was no question of addition in this year. Therefore, the appeal was not filed. However, subsequently, Hon'ble High Court of Madras restored the matter back to the file of Tribunal for fresh consideration and accordingly the issue of amount due to consortium of banks including Bank of Ceylon was to be decided afresh which necessitated filing of the appeal. Though Ld. DR opposed the condonation of delay, however,

considering the stated factual background, we condone the delay and admit the appeal for adjudication on merits.

13. The assessment of this year was reopened vide notice u/s 148 dated 17.03.2014 in view of the fact that Bank of Ceylon claimed bad-debts of Rs.381.98 Lacs which was due from the assessee. However, the said amount was not admitted by the assessee in the return of Income. During the course of assessment proceedings, the assessee submitted that the liability due to Bank of Ceylon stood transferred to SPV in AY 2006-07 as per Tripartite agreement and therefore, no income was shown in the books in this year. However, Ld. AO added the amount of Rs.381.98 Lacs to the income of the assessee.

14. During appellate proceedings, the assessee reiterated that the Bank liability stood transferred to SPV and therefore, the issue of waiver should have been considered in the hands of URMPL. However, Ld. CIT(A), noticing that the Tribunal in AY 2006-07 had already confirmed the remission of liability as income in the hands of the assessee, rejected the plea of the assessee. Regarding assessee's submissions that the addition of Rs.46.05 Crores as made in AY 2006-07 already included this amount of Rs.381.98 Lacs, Ld. AO was directed to verify the same and delete the addition if the plea was found correct else the addition u/s 41(1) would stand confirmed as per the decision of Tribunal. Aggrieved, the assessee is in further appeal before us.

15. As noted in appeal for AY 2006-07, the bank liabilities of the assessee stood completely transferred to SPV and the addition u/s 41(1) was made in that year. The Ld. CIT(A) deleted the same which we have confirmed. Therefore, the issue on merits has been decided in favor of the assessee. Also, there is no outstanding balance of Bank of Ceylon in

the books of the assessee in this year. Therefore, modifying the directions of Ld. CIT(A), we direct Ld. AO to delete the impugned additions. The appeal stand allowed.

Revenue's appeal in ITA No.3081/Chny/2021, AY 2009-10

16. This appeal has been filed by the revenue in the case of SPV i.e., URMPL for AY 2009-10. The appeal arises out of the order of learned Commissioner of Income Tax (Appeals)-11, Chennai [CIT(A)] dated 29.08.2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s 143(3) r.w.s. 147 of the Act on 12.02.2015. The grounds taken by the revenue read as under: -

1. The order of the learned CIT(A) is erroneous in law and opposed to the facts and circumstances of the case.

2.1 The learned CIT(A) erred in allowing the appeal of the assessee by deleting the bad debt written off by Ceylon Bank Limited of Rs.3,81,98,688/- during the FY 2009-10 without considering the fact: that the assessee company is Special Purpose Vehicle company appointed to manage the receivables and liabilities of M/s. India Cement Capitals and Finance Limited.

2.2 The Id. CIT(A) ought to have seen that by a tripartite agreement dated 28.6.2006, the assessee company has taken over the receivables and liabilities of M/s.India Cements Capital and Finance Limited and hence the bad debt of M/s. India Cements written off by M/s.Ceylon Bank should be taxed in the hands of assessee company u/s 41(1) or u/s 28(iv) in the line of the decision of the Hon'ble Madras High Court in the case of QT Vs. M/s. Ramaniyam Homes Private Limited reported in 384 ITR 530(Mad).

2.3 The Id. CIT(A) failed to conclude whether the sum of bad debt written off by Ceylon Bank amounting to Rs.3,81,98,688/- has been included in the disallowance of Rs.46.05 Crores in the assessment of M/s. India Cements Capital and Finance Limited for AY 2006-07 which is now confirmed by Hon'ble Tribunal.

2.4 It is humbly submitted that present appeal is filed to keep the issue alive as the decision of the Tribunal in the case of M/s. India Cements Capital and Finance Limited relied on by the learned CIT(A) has not attained finality.

17. The case of the assessee SPV was reopened vide notice u/s 148 on 26.03.2014. The same stem from the same reasoning i.e., Ceylon Bank Ltd. claimed Bad-debts of Rs.381.98 Lacs which were due from India Cement Capital Ltd. However, that assessee did not admit the income u/s 41(1) and they submitted that the receivables were already transferred to assessee SPV during AY 2006-07 under tripartite

agreement. To tax the same u/s 41(1) in the hands of SPV, the case of the assessee SPV was reopened and an assessment was framed wherein the amount was added u/s 41(1). The Ld. CIT(A) deleted the same in view of the fact that this amount was already added in the hands of India Cement Capital Ltd. which stood confirmed by learned first appellate authority. Therefore, the addition in the hands of the SPV was to be deleted. Aggrieved, the revenue is in further appeal before us.

18. The Ld. AR submitted that though the amount would now be taxable in the hands of this assessee, however, the amount payable to Bank of Ceylon was much lower and therefore, the matter may be restored back to Ld. AO to verify the correct figures, re-adjudicate the issue and arrive at correct computations. Concurring with the same, we restore the matter back to the file of Ld. AO to appreciate the correct figures and recompute assessee's income in accordance with law. The appeal stand allowed for statistical purposes.

Conclusion

19. The revenue's appeal for AY 2006-07 ITA No.1626/Mds/2012 stand dismissed whereas the appeal for AY 2009-10 ITA No.3081/Chny/2017 stands allowed for statistical purposes. The appeal of the assessee for AY 2009-10 ITA No.1932/Chny/2018 stand allowed.

Order pronounced on 20th May, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 20-05-2022

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF