



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"I" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

ITA no.4263/Mum./2008  
(Assessment Year : 2001-02)

Budhrani Finance Limited  
94, Maker Chambers-VI  
Nariman Point, Mumbai 400 021  
PAN - AAACB2504R

..... Appellant

v/s

Income Tax Officer  
Ward-3(1)(2), Aayakar Bhawan  
101, M.K. Road, Mumbai 400 020

..... Respondent

Assessee by : Smt. Vasanti Patel  
Revenue by : Shri Agnes P. Thomas

Date of Hearing - 25.04.2016

Date of Order - 29.04.2016

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Instant appeal of the assessee is directed against order dated 31<sup>st</sup> March 2008, passed by the learned Commissioner (Appeals)-27, Mumbai, for the assessment year 2001-02.

2. The assessee in this appeal has raised three grounds, out of which, the learned Authorised Representative did not press grounds no.2 and 3. Consequently, grounds no.2 and 3 are dismissed as "*not pressed*". Thus, the only ground which survives for adjudication is ground no.1, relating to disallowance of depreciation of ₹ 2,01,820.

3. Brief facts are, assessee a company had filed its return of income for the impugned assessment year on 23<sup>rd</sup> October 2001, declaring total loss of ₹ 8,09,88,377. Assessment in the case of assessee was completed under section 143(3) of the Act vide order dated 27<sup>th</sup> January 2004, determining the loss of ₹ 1,08,74,162. Subsequently, the Assessing Officer having reason to believe that income for the impugned assessment year has escaped assessment due to wrong adjustment of short term capital loss of ₹ 12,41,434, against long term capital gain, re-opened the assessment under section 147 of the Act and ultimately passed order under section 143(3) r/w section 147 of the Act on 24<sup>th</sup> November 2006, by treating the loss from share trading as speculative loss, hence, not to be adjusted against long term capital gain. While completing the assessment under section 143(3) r/w section 147 of the Act, the Assessing Officer also repeated the additions made in the original assessment order passed under section 143(3) including disallowance of depreciation of ₹ 2,01,820. Being aggrieved of the assessment order so passed, assessee preferred appeal before the learned Commissioner (Appeals).

4. The learned Commissioner (Appeals), while disposing off the appeal of the assessee, confirmed the disallowance of depreciation on leased asset on the reason that similar disallowance was upheld by his predecessor-in-office in the earlier assessment year.

5. Learned Authorised Representative submitted before us that self-same disallowance made in the original assessment completed under section 143(3), for the impugned assessment year was challenged before the Tribunal and the Tribunal, vide ITA no.380/Mum./2005, dated 24<sup>th</sup> February 2016, has restored the issue back to the file of the Assessing Officer following its earlier order. She, therefore, submitted that the issue may be restored back to the file of the Assessing Officer with similar direction.

6. Learned Departmental Representative ha no objection for restoring the issue back to the file of the Assessing Officer.

7. We have considered the submissions of the parties and perused the material available on record. Undisputedly, as found from the orders of the Departmental Authorities, disallowance of depreciation on leased assets was upheld by the learned Commissioner (Appeals) following the order passed by his predecessor-in-office on similar issue. However, as could be seen in the appeal preferred by the assessee against similar disallowance made in the original assessment order before the Tribunal, the Tribunal following its own order for earlier assessment years in assessee's own case decided the issue as under:—

*"3.2 We have gone through the orders of the lower authorities and the order of the Tribunal of the preceding years. It is noted by us that same issue was involved in the earlier years, which has been decided by the Tribunal by the aforesaid order in the following manner :-*

*"2. These are very old appeals and were lastly fixed for hearing on 29/4/2014. Ld. A.R was required to explain as to why these appeals were pending since long. It was informed by Ld. AR that the issue raised in the present appeals is regarding grant of depreciation in respect of leased assets and the issue was pending before Special Bench, therefore, these appeals were adjourned from time to time. He submitted that Special Bench in the case of Indus Ind Bank vs. ACIT, 135 ITD has rendered the decision, which was against the assessee. He submitted that subsequently, Hon'ble Supreme Court in the case of ICDS Vs. CIT, 350 ITR 527 (SC) has decided the issue in favour of the assessee. He also submitted that assessee has submitted various applications for admission of additional evidence and they are also to be considered while deciding the present appeals.*

*3. At the outset, it was submitted by him that the entire issue raised in the present appeals will have to be reconsidered as the benefit of decision of Hon'ble Supreme Court in the case of ICDS vs. CIT (supra) was not available when the assessments were made by the AO and appeals were decided by Ld. CIT(A). Upon hearing such submissions of A.R, it was considered necessary to bring all these facts on record, therefore, these appeals were adjourned to 1/5/2014 and Ld. AR was required to submit detailed submissions to bring out all these facts.*

*5. In this view of the situation, after hearing both the parties and considering the contents of aforementioned three letters, we consider it just and proper to restore all the issues raised in the present appeals to the file of AO for denovo consideration as per law after giving the assessee a reasonable opportunity of hearing and placing all relevant material which is required to dispose of these issues. With these directions we restore all the issues raised in the present appeals to the file of AO.*

*6. In the result, for statistical purposes, all the appeals filed by the assessee will be considered to be allowed in the manner aforesaid."*

*No distinction has been made out by the Id. DR on facts of this year. Thus, respectfully following the judgments of the Hon“ble co-ordinate bench, we send this issue back to the file of the AO to be decided afresh with the same directions as has been given by the Tribunal in the aforesaid order. The assessee is free to raise all legal and factual issues before the AO, for which adequate opportunity of hearing shall be granted to the assessee. Thus, this ground is treated as partly allowed for statistical purposes.”*

8. Undisputedly, in the impugned assessment order, the Assessing Officer has simply repeated the additions made in the original assessment which were not the subject matter of re-opening. Therefore, as the issue relating to disallowance of depreciation has been restored back to the file of the Assessing Officer in the appeal arising out of original assessment proceedings, as a consequence thereof, similar issue arising in the present appeal has to be restored back to the file of the Assessing Officer for deciding in terms with the direction of the Tribunal in original assessment proceedings. Thus, ground no.1, is allowed for statistical purposes.

9. In the result, appeal stands partly allowed for statistical purposes.

Order pronounced in the open Court on 29.04.2016

**Sd/-**  
**RAJESH KUMAR**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 29.04.2016**

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai