IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
SHRI C.M. GARG : JUDICIAL MEMBER

ITA nos. 1357/Del/2005 (Asstt. Yr. 2001-02)
4235/Del/2011 (Asstt. Yr. 2003-04)
4206/Del/2011 (Asstt.Yr: 2004-05)
13/Del/2012 (Asstt. Yr: 2005-06)

GE Money Financial Services Pvt. Ltd., 401, 402, 4th Floor, Aggarwal Millenium Tower, E-1,2,3, Netaji Subhash Place, Pitampura, New Delhi.
PAN: AAACC 0642 F

Vs. ACIT Circle 12(1), New Delhi.

AND

ITA no. 5854/Del/2011 (Asstt. Yr: 2005-06)

ACIT Circle 12(1), New Delhi. (Appellant)

Vs. GE Money Financial Services Pvt. Ltd., New Delhi. (Respondent)

Assessee by : Shri Balbir Singh Sr. Adv. &
Shri Gautam Swrup Adv.
Shri Rubal Maini Adv.

Department by : Shri A.K. Saroha CIT(DR)

Date of hearing : 04/08/2016.
Date of order : 29/08/2016.

O R D E R

PER S.V. MEHROTRA, A.M:

Brief facts of the case are that the assessee company was incorporated in India as a public limited company on 11.2.1994 under the Companies Act, 1956. It was duly registered as a non-banking finance company (NBFC)

with the Reserve Bank of India (RBI) in pursuance of section 45(1A) of the RBI Act, 1934. The assessee was engaged in the business of consumer and auto finance. Since the issues involved in these appeals are common, therefore, we proceed to decide the captioned appeals by this composite order.

ITA no. 1357/Del/2005 (Assessee's appeal AY 2001-02):

2. For the year under consideration the assessee filed return of income declaring a total income of Rs. 16,92,20,842/-, which was revised to Rs. 16,48,70,741/- as per the submissions of ld. counsel. The assessment was completed at a total income of Rs. 34,64,81,251/-, after making, inter alia, following additions/ disallowances:

- Depreciation on leased assets disallowed	Rs. 6967067
- Interest on sticky loans not provided	Rs. 20706434
- Provision for doubtful assets	Rs. 14358118
- Bad debts disallowed	Rs. 134623050

3. The assessee preferred appeal before the ld. CIT(A), who partly allowed the assessee's appeal. Being aggrieved, the assessee is in appeal before us and has taken following grounds of appeal.

> "*1. That on the facts and in circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals)-XV, New Delhi [hereinafter referred to as 'CIT(A)'J has erred in confirming the action of the Assessing Officer [hereinafter referred to as 'A. 0'] in holding that the transactions relating to lease of vehicles are in fact financing transactions and thereby sustaining a disallowance of depreciation on leased vehicles (net of principal recovery) of Rs.69,67,067/- claimed under*

section 32 of the Income-tax Act, 1961 ('hereinafter referred to as Act').

2. That on the facts and in the circumstances of the case and in law, the CIT(A) has erred in sustaining an addition of Rs.2,07,06,434/- on account of interest on sticky loans and advances.

2.1 Without prejudice to appellant's rights and contention, on the facts and in the circumstances of the case and in law the CIT(A) had erred in not allowing the appellants claim for deduction of RS.51 ,79,610/- towards income on sticky loans taxed earlier by the A.O on mercantile basis in A.Y 1998-99 & 2000-01.

3. That on the facts and in the circumstances of the case and in law, the CIT(A) has erred in sustaining a disallowance of RS.1 ,43,58,118/- towards provision for doubtful debts made by the appellant in pursuance with mandatory prudential norms issued by Reserve Bank of India.

4. That on the facts and in the circumstances of the case and in law, the CIT(A) has erred in sustaining a disallowance of Rs.13,46,23,0501- towards claim for bad debts written-off by the appellant in its books of account.

4.1 That on the facts and in the circumstances of the case and in law, the A.O and CIT(A) has erred in holding that under the amended provisions of the Act as applicable to A.Y under appeal even after writing-off a debt, the appellant had to prove that the debt had become bad.

5. That on the facts and in the circumstances of the case and in law, the CIT(A) has erred in sustaining a levy of Rs. 7,38,937/- towards interest charged u/s 234-0 of the Act in the Assessment Order, without taking into cognizance the fact that

no refund for the year under appeal was received by the appellant nor any order u/s 143(1) of the Act, pursuant to which such refund is alleged to have been determined, has been received by/served on the appellant prior to completion of assessment or appellate proceedings.

6. Without prejudice to Ground No.5, the appellant submits that the interest of Rs.7,28,937/- as charged by the A.O in the assessment order has been erron Qusly computed in a? much as Section 2340 of the Act was inserted w.e.f 1.6.2003 and accordingly, interest under said section is to be charged in respect of refunds granted after 1.6.2003 and from the period beginning from 1.6.2003.

7. That on the facts and in the circumstances of the case and in law, the CIT(A) has erred in sustaining withdrawal of interest u/s 244A of the Act amounting to Rs. 84,95,766/-.

8. That on the facts and in the circumstances of the case and in law, the CIT(A) has erred in sustaining levy of interest u/s 234C of the Act without appreciating the fact that there was no shortfall in the payment of advance tax instalments vis- a-vis the returned income and consequently no interest could be levied under Section 234C of the Act.

9. That on the facts and in the circumstances of the case, the CIT(A) has erred in sustaining levy of interest u/s 2348 of the Act, as computed in the assessment order".

4. Brief facts apropos ground no. 1 are that in course of assessment proceedings, the assessee company was asked by AO to furnish the details of vehicles leased out by the assessee company, on which depreciation was claimed. The assessee company submitted invoices, lease agreement and registration certificate for leased vehicles along with legal submissions of allowability of claim of depreciation to the assessee company. The AO

required the assessee to explain as to why the depreciation on the leased vehicles should not be disallowed since the vehicles were registered in the name of the respective lessees and also the lease transaction was in effect a finance transaction. The assessee relied on the decision of Hon'ble Supreme Court in the case of Maharashtra Apex Cooperation Ltd. 254 ITR 98, wherein the lessor was held to be eligible for investment allowance and extra shift depreciation. Further reliance was placed by the assessee on the decision of Shaan Finance 231 ITR 308 (SC) and Development Credit Bank Vs. Prakash Industries Ltd. of the Hon'ble Bombay High Court. Further, the assessee also relied on CBDT Circular no. 2/01 dated 9.2.2001 issued by CBDT. The AO examined the lease agreement and for the following reasons concluded that assessee company had entered into a finance arrangement under the guise of lease agreement:

(a) Vehicles were directly delivered to the lessees.
(b) Lessee bore the insurance
(c) The lessee holds the warranty
(d) The lessee retained right to the exclusion of even the lessor
(e) The repairs were to be carried out at the sole expenses of the lessee.
(f) Sale invoice was raised in the name of lessor only on name sake basis and in effect the goods at the expiry of the period were never acquired by the lessor and entire terms of the agreement were pointing to the only fact that the lessor was more bothered about his lease rentals and not as the owner of the asset.

4.1. The AO relied on the decision of Hon'ble Supreme Court in the case of Sundaram Finance Ltd. Vs. State of Kerala 1966 AIR SC 1178, wherein it was held that when a person desiring to purchase goods and not having

sufficient money on hand, borrows the amount needed from a third person, irrespective of the recital in the document, the transaction will unquestionably be a loan transaction. It was further held that the true effect of a transaction may be determined from the terms of the agreement considered in the light of the surrounding circumstances.

4.2. The AO noted the facts as obtaining in the case of Sundaram Finance Ltd (supra), and pointed out that in that case, Sundaram Finance (the company), had ostensibly entered into a hire purchase agreement with the customer in relation to the motor vehicle which was purchased by the customer from the dealer, was registered in his name and on his request, the company had paid the consideration to the dealer. In order to enable the company to enter into a hire purchase agreement with the customer, he had issued a sale letter in favour of the company. The transaction was, accordingly, formalized as a as a hire purchase transaction which attracted sales-tax on account of a deeming clause in the relevant sales tax including transfer of goods on hire purchase in the definition of sale. The Hon'ble Supreme Court, on the basis of surrounding circumstances held that in substance it was a financing transaction i.e. granting of loan by the company to the customers on the hypothecation of vehicles with the company. Since this category of transaction was specifically excluded from the definition of sale, the Supreme Court discharged the company from the liability of sales-tax.

4.3. Invoking the same analogy to the facts of the present case, the AO pointed out that in the present case also there was no real sale to the lessor. Only paper work was created by issuing invoice to the lessor. It was just like a sale letter issued by the customer to the finance company in the case of

Sundaram Finance Ltd. (supra) and this sale invoice in effect was issued to enable the lessor to formalize the transaction as a lease transaction.

4.4. The AO also relied on the decision in the case of Damodar Valley Corporation Vs. State of Bihar 12 STC 102 SC. The AO pointed out that true tests have been laid down in this case for determining whether an agreement is a contract of hire or whether it is a contract of purchase under a system of deferred payments of the purchase price:

(i) Whether there is any binding obligation on the hirer to purchase the goods.

(ii) Whether there is a right reserved to the hirer to return the good at any time during the subsistence of the contract.

4.5. He pointed out that in the present case, after entering into a sale, called lease agreement, the lessee comes under a binding obligation to pay the entire amount of fixed lease rent comprising the amount of acquisition cost paid by the lessor as well as interest return. Further, it was not in lessee's domain to terminate the lease; return the goods and stop the payment of rentals during the subsistence of the contract.

4.6. He further referred to the decision in the case of Mysore Minerals Vs. CIT 239 ITR 775 SC, wherein the technical ownership under the Transfer of Property Act and the Registration Act was dispensed with and the concept of real ownership was adhered to in the context of depreciation.

4.7. He further pointed out that it was a glaring case of the form disguising the substance and, therefore, veil must be lifted. On this count, he relied on following decisions:

- Juggilal Kamalapat Vs. CIT 73 ITR 702 SC
- CIT Vs. Durga Prasad More 82 ITR 540
- McDowell & Co. Vs. Commercial Tax Officer 148 ITR 154 SC
- Sumati Dayal Vs. CIT 214 ITR 801

4.8. He also referred to international accounting standard-17 and the guidance note on accounting for lease published by ICAI to bring home his point that the terms of agreement and the surrounding circumstances were such which clearly showed that it was a financing lease and not a normal lease.

4.9. The AO also referred to the decision relied by assessee of Hon'ble Single Judge of Bombay High Court in the case of Development Credit Bank Ltd. Vs. Prakash Industries Ltd. in stay no. 3196/98 dated 16.9.1998 as confirmed by Division Bench decision dated 28.1.1999. He gave detailed reasons in the assessment order distinguishing the facts of this decision vis a vis the facts obtaining in assessee's case.

4.10. He pointed out that in the present case only constructive delivery was given to assessee and the assets were in possession of the lessee and were directly delivered to the lessee. He, therefore, disallowed the assessee's claim of depreciation amounting to Rs. 5,11,67,660/-. However, allowed principal recovery of Rs. 4,42,00,593/- and, therefore, determined the addition of Rs. 69,67,067/-.

4.11. Before ld. CIT(A) the assessee had advanced detailed submissions. However, ld. CIT(A) upheld the AO's finding that it was a financing lease for the following reasons:

(a) The vehicle was registered in the name of the user and, therefore, the presumption was that the vehicle owner was the user. From this he concluded that it was a financing arrangement.

(b) Motor Vehicle Act defines owner in the case of a lessee as the person who is in possession of the vehicle under the lease agreement. He pointed out that the assessee was not having possession of the vehicle ever. The assessee was simply financing the vehicles and charging interest on the loan amount.

4.12. Ld. CIT(A) referred to the decision of Hon'ble Supreme Court in the case of McDowell and pointed out that the probable cause for making this financing arrangement in the guise of lease was to take advantage of tax benefit available through the depreciation route. He, accordingly, held that it was not a leasing transaction.

4.13. Ld. CIT(A) did not accept the assessee's contention that once the AO had agreed to treat the vehicles as belonging to the assessee in the wealth tax assessment, the AO could not take a different point in the income-tax assessment. He relied on the decision of Hon'ble Supreme Court in the case of Durga Prasad More 82 ITR 540, wherein, it has been, inter alia, held that principle of res-judicata and rule of estoppel does not apply to the income-tax proceedings.

4.14. Ld. CIT(A) also considered Instruction no. 1978 issued by the CBDT on 31.12.1999, relied upon by assessee, and pointed out that this instruction talk about the nature of warranty given by the lessor of the leased assets; the liability of the lessee in respect of damage of asset; liability to pay tax in

connection with the transaction; and variation in rate of lease rent to depreciation on the asset in the hands of lessor.

4.15. He pointed out that on all these points lessor had shifted the responsibility to lessee and the rate of depreciation also linked to the lease rent. He, accordingly, held that the vehicles were under a financing arrangement and not under a lease arrangement.

5. Ld. Sr. counsel Shri Balbir Singh, appearing for the assessee, submitted that this issue stands settled in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of ICDS, which has been followed by AO in the appeal effect proceedings of the assessee for AY 2000-01 and 2002-03. He pointed out that Tribunal had remanded the matter to the file of AO in AY 2000-01 and 2002-03 to find out whether the terms of agreement in the case of ICDS were identical to the terms of agreement in the assessee's case and to find out if lessees had claimed depreciation or not. He pointed out that AO after comparing the agreement in the present case with the agreement entered in the case of ICDS concluded that the same were identical and, therefore, allowed the assessee's claim.

6. Ld. CIT(DR) submitted that for each assessment year separately agreement is to be examined. He submitted that it is a question of fact whether it is a case of operating lease or finance lease.

7. We have considered the submissions of both the parties and have perused the record of the case. The main plank of ld. Sr. counsel's submission is that in AY 2000-01 and 2002-03, this issue was remanded to AO by Tribunal for examining the terms of agreement as obtaining in the case of ICDS Ltd. Vs. CIT 350 ITR 527 and after examining both the

agreements the AO allowed the claim of assessee. The Tribunal while deciding this issue for AY 2000-01 and 2002-03, inter alia, observed as under:

> *"6. Brief' facts apropos ground no. 2 are that in the course of assessment proceedings, the assessee company was asked /0 furnish the details of vehicles leased out by the assessee company on which depreciation was claimed. The assessee submitted sample invoice, lease agreement and registration certificate for leased cars along with legal submissions of allowability of claim of depreciation t0 the assessee company. The AO denied the assessee's claim for the following reasons:*
>
> *1. the lease transaction in effect was a finance transaction;*
>
> *2. vehicles were registered in the name of respective lessees:*
>
> *3. the vehicles were directly delivered to the lessee and the lessee bore the insurance and held the warranty and rejoined the right to use to the exclusion of the lessor;*
>
> *4. repairs 'were to be carried out at the sole expense of" the lessee;*
>
> *5. the sale invoice was raised in the name of the lessor only for name sake basis and in effect the goods at the expiry of the period were never acquired by the lessor and the entire terms 0f the agreement were pointing to the only fact that the lessor was more bothered about his lease rentals and not as the owner of asset;*
>
> *6. there was no real sale to the lessor;*

> *7. the terms of agreement clearly granted the benefits and the liabilities to the lessee which were normally the benefits and the liabilities of the owner. This clearly demonstrated that in sum and substance the ownership remained with the lessee and was not passed on to the lessor by issue of sale invoice in favour of the lessor from the seller.*

6.1 He, accordingly, held that the lease transactions were in effect finance transactions and, therefore, denied the claim of depreciation to assessee.

7. Ld. CIT(A) upheld the AO's action.

8. At the outset Id. Counsel for the assessee submitted that now this issue is squarely covered by the decision of Hon'ble Supreme Court in the case of ICDS Ltd. vs. CIT in Civil No. 3282/2008, wherein the Hon'ble Supreme Court after examining relevant clauses of the lease agreement held that ownership remained with the lessor and, therefore, it was entitled to depreciation. Ld. Counsel has filed a detailed analysis of the decision in the case of ICDS Ltd. and its applicability to assessee's case.

8.1 We have considered the rival submissions and have perused the record of the case.

8.2 Hon'ble Supreme Court in the case of ICDS Ltd., after examining various covenants of agreement, concluded that ownership belonged to the lessor. We have gone through the analysis furnished by assessee and also through the lease agreement entered into by assessee with various borrowers. We find that the covenants are not identical to the agreement as was under consideration in ICDS Ltd. by Hon'ble Supreme Court. Further, we find that Hon'ble Supreme Court also took into consideration the fact recorded by Tribunal that lessee had not claimed any depreciation which finding is not recorded by

AO in the present case. Therefore, it is necessary that the terms of lease agreement be examined afresh in the light of decision of Hon'ble Supreme Court and also a specific finding is recorded by AO regarding claim of depreciation by lessees. We, therefore, restore this issue to the file of AO to decide the same denovo in view of the decision of Hon'ble Supreme Court in the case of ICDS Ltd.

8.3 In the result, this ground is allowed for statistical purposes.

7.1. The assessee had also filed MA being MA 81 &82/Del/2013 pointing out therein that the Tribunal was not justified in restoring the matter to the file of AO which was rejected by the Tribunal vie its order dated 13.1.2014. Accordingly, in consequence to Tribunal's order the AO has passed the order for both the assessment years in AY 2000-01 and 2002-03. In AY 2000-01 the AO u/s 143(3)/254 dated 31.3.2015 has observed as under:

"5. <u>Depreciation on leased vehicles</u>:

In the final assessment order dated 03/03/2003 for the captioned A Y, a disallowance of Rs. 89,94,734/- was made on account of Depreciation on leased vehicles (net off principal recovery in lease rentals), Aggrieved with the same, the assessee preferred appeal before the CIT(A) and consequently before the Tribunal and the Tribunal restored back the matter to file of the AO for fresh adjudication.

In this regard, vide notice u/s 142(1) of the Act, the assessee, was asked to furnish necessary documents/ details to substantiate its claim. III response to the same assessee filed detailed submission dated 23/02/2015 for A Y 2000-0 I which is reproduced below:

1.1 A brief synopsis of the comparison between lease agreements in assessee's case and in the case of ICDS

(supra) is enclosed as Annexure B. Following are the noteworthy similarities between ICDS and the assessee which were also noted by the Hon'ble Supreme Court at para 22 of its order:

"1. The assessee was the exclusive owner of the vehicle at all points of time:

2. If the lessee committed a default, the assessee, was empowered to repossess the vehicle (and not merely recover money from the customer);

3. At the conclusion of the lease period, the lessee was obliged to return (he vehicle to the assessee;

4. The assessee had the right of inspection of the vehicle at all times. "

1,2. Further, we also invite your attention to the following clauses in the agreement which evidence the fact of ownership and use by the assessee. (Copy of the agreement is enclosed as Annexure C)

Clause XIX -Miscellaneous

"(a) The Lessee agrees that at no time during the terms of this agreement will it attempt, or cause to capitalize, any products/vehicles on Lessee's Balance Sheet, and Lessee and Lessor hereby agree that the ownership of the products/vehicles during the term of this agreement shall be vested, at all times, in the Lessor.

(b)….. .

(c) ..... All Products/Vehicles shall at ((1/ limes remain personal properly of Lessor regardless of the degree of its annexation to any real property and shall not by reason of any installation, in or affixation to, real or personal property become a part thereof Th1lS, from the above it may be stated that for all practical purposes the Lessor i.e. the assessee is the owner of the Vehicles.

CIause II of the Agreement :

On perusal 0/ clause 1I of the Agreement, it may be observed that the Lessee's right to use the asset shall commence on the Lease Commencement Date subject to payment of lease rentals to the Lessor.

Clause V and VII of the Agreement

- The Lessor has the right to inspect the vehicles as and when it may be deemed as necessary and as and when required by the Lessor.

- The Lessor has the right to enter upon the premises for the purpose of confirming is existence, condition and propel' maintenance.

- Lessee is obligated to provide, 0/1 annual basis, a certificate, signed by an authorised officer of the lessee detailing depreciation eligibility of the vehicles, working condition of the vehicles and whether the vehicles ore in physical possession and under control of the lessee

Your' good self may kindly note that only the owner of the vehicles could inspect the same at any point of time. Further, given the conduct of the parties and the reporting requirements of the lessee, it can be inferred that Lessor is the owner a/the vehicles and has leased them to lessee for limited purpose for use only. Accordingly, it may be seen that the Lessor i.e. assessee is exercising control over the assets during the lease period.

Clause VI and XIII of the Agreement

Clause VI:

- Lessee agrees that the Products/ Vehicles will be used by Lessee solely in the conduct oj its business and in a

manner complying with all applicable laws, rules and regulations.

- Lessee shall not assign, mortgage, sublet or hypothecate any Products/ Vehicles or the interest of lessee hereunder, nor shall lessee remove any products/ vehicles location specified on the applicable schedule without the prior written consent of the lessor. ":

- Lessee will keep the Products/ Vehicles free and clear of all liens gut encumbrances other than those which result front acts of Lessor.

On perusal of clause VI of the Agreement, it may be seen that the Lessee cannot assign, mortgage, sublet or hypothecate any vehicles nor the same can be removed j/'OI1l the location specified in the agreement without the prior written consent of the Lessor. Further, Lessee is under obligation to keep the products free and clear of 01/ liens and encumbrances other than those which result j/'OI71 acts of Lessor.

Clause XIII:

Lessor may, without the consent of Lessee, assign this Agreement or any Schedule. Lessee agrees that if Lessee receives written notice of an assignment front Lessor, Lessee will pay all rent and all other amounts payable under any assigned Products/ Vehicles Schedule to such assignee or as instructed by Lessor.

In terms of clause XIII, the Lessor may, without the consent of the Lessee, assign the agreement in the name % third party. In view thereof, Lessor may charge or delegate to any person any of its rights under the agreement and any person to whom such rights are delegated shall be entitled to the full benefit of the rights of lessor under this agreement.

Clause XII of the Agreement

On perusal of the said clauses of the Agreement, Your Goodself may find that in case of default in payment of the lease rental or any other default committed by the Lessee in terms of the agreement, the Lessor may enter any premises of the Lessee/or the purpose of retaking possession and removal of the Vehicle.

From the above it may be noted that the assessee is the true owner of the vehicle given on lease and the Lessee has only limited user rights subject to payment of Lease Rentals.

From perusal of the above mentioned clauses of the Agreement, If IS apparent that assessee, being the Lessor, is the owner o(the vehicles and thus, satisfies the test of ownership laid down in section 32 of the Act. It is submitted that the assessee has given assets on lease in the normal course of its business and thus, being the owner of the assets, the assessee is entitled to claim depreciation on . such leased vehicles.

In view o(the above, the case of the assessee is squarely covered by the decision of Hon'ble Supreme Court in the case of ICDS (supra) as is evident front the similarity in terms of the decision of the Supreme Court and the facts of the assessee as briefly referred herein as well. (Refer also Attachment 01 Annexure B)

Remand direction (2) to be examined - Claim of depreciation by the Lessee:

1.3 It is submitted that even in the even! that the Lessee might have wrongly claimed depreciation on leased assets, this should not prejudice the right of the owner i.e. the Lessor to claim depreciation. Without prejudice, we are providing sample copy of declarations from Lessee not having claimed depreciations.

Our Request

In view of the aforesaid submission, the assessee requests your office 10 take the submission on records and allow (he claim of depreciation on leased vehicles on account of the following:

The terms of agreement entered into between GEMFSL and its Lessees are similar 10 agreement between ICDS and its Lessees;

The depreciation on leased vehicles has not been claimed by the Lessees as evidenced by the declaration enclosed as Annexure D;

On perusal of the order passed by the ITAT, it has been observed that the ITA T has remanded back the matter to check (I) Covenants of the agreement; and (2) Claim of depreciation by lessees. The issue of depreciation on leased vehicles of the assessee was principally accepted by the ITA T and the same was remanded back to check these two facts.

As submitted above by the assessee and as observed, the terms and conditions governing the agreement in the case of ICDS Ltd and the assessee are similar. Copy of the agreement was also placed on record. The Synopsis submitted by the assessee highlighted the comparison of the terms of agreement if ICDS and the assessee. The same is reproduced below:

Particulars (Clauses)	*ICDS Ltd.*	*SC Decision*	*GEMFSL*	*Lease agreement/ Other documents supporting*
Nature o business	*NBFC (Leasing)*	*Para 2*	*NBFC (Leasing)*	
Purchase of vehicles	*Vehicles purchased by ICDS from the manufactures*	*Para 2*	*Vehicles purchased by GE from the manufacturer/ supp*	*Clause 1(b)*
Lease to customers	*ICVDS, as a part of its business, leased out the vehicles to its customers and thereafter had no physical affiliation with the vehicles*	*Para 2*	*GEMFSL, as a part of its bu leased out the vehicles customers and thereafter h physical affiliation with vehicles*	*Clause I and V*
Registration under Motor	*Lessee registered as owners of vehicles in*	*Part 2*	*Lessee registered as own vehicles in the certifica*	*Copy of Motor Vehicle*

Vehicles Act, 1988	*the certificate of registration issued under th Motor Vehicles Act*		*registration issued under Motor Vehicles Act.*	*Registration Certificate*
Payment of lease rent	*The lessee shall be obligated to pay rent to the lessor at the address mentioned by the Lessor or as otherwise as directed*	*Para 22, clause (2)*	*The lessee shall be obliga pay rent to the lessor a address mentioned by the or as otherwise as directed*	*Clause II*
Ownership	*Lessor was the sole and exclusive owner of the vehicle at all points of time*	*Para 22, clause (4)*	*The sole ownership of vehicles, for all intent and purposes vested in the Lessor at all times during the term of the agreement*	*Clause XIX*
Default	*Lessor empowered to repossess the vehicle where lessee committed a default (and not merely recover money from the customer)*	*Para 22, clause (18)*	*Lessor empowered to repossess the vehicle, where lessee committed a default, in addition to liquidated damages*	*Clause XII*
Inspection of vehicles	*Lessor had the right of inspection of the vehicle at all times*	*Para 22, clause (9)*	*Lessor allowed to inspect any vehicle as and when required by the Lessor*	*Clause V*
Termination/ Expiration of the lease agreement	*At the conclusion of lease period, the lessee was obliged to return the vehicle to the Lessor in good working condition*	*Para 22, clause (19)*	*Lessee to return the vehicles to lessor at the expiration or termination of agreement in a proper working condition*	*Clause XI*
Assignment	*Lessee shall have no right, title or interest to mortgage, hypothecate and sell the same*	*Para 22, clause (4)*	*Lessee shall not assign, mortgage, sublet or hypothecate any products/ vehicles, or the interest of lessee hereunder without prior consent of lessor. Lessee will keep products/ vehicles free and clear of all liens and encumbrances other than those which result from acts of lessor*	*Clause VI*

Further, the assessee has submitted sample copies of declaration from the Lessees where they have confirmed that no depreciation has been claimed by them.

I have considered the submission and plea of the assessee and found that during the year under consideration, the assessee company has claimed depreciation on vehicles given

on lease and on examination of submission filed by the assessee, it is observed that the Lessee had not claimed depreciation on the leased vehicles and the instant case fall under the ambit of the decision of Supreme Court in the case of ICDS Ltd. vs. Commissioner of Income Tax in (2013) 350 ITR 527(SC) wherein it was held that in case of vehicles given on lease, the Lessor is the owner of the vehicles and has used the vehicles for the purpose of business and hence, is eligible to claim depreciation. Keeping in view of the facts of the case and relying on the decision of Supreme Court in the case of ICDS Ltd. VS. Commissioner or Income Tax. the Lessor is entitled for claim of depreciation of vehicles which are given on lease. Hence, the net amount of Rs. 89,94.734 (2,69,60,383 less recovered 1.79,65,649) on account of depreciation on leased vehicles are allowed accordingly".

7.2. Similarly for AY 2002-03, the AO has passed identical order.

The department has not pointed out any variation in the terms of agreement for the year under consideration and, therefore, respectfully following the decision of Hon'ble supreme Court in the case of ICDS Ltd. (supra), the assessee's claim of depreciation is allowed. Ground is allowed.

8. Brief facts apropos ground no. 2 are that in response to AO's query assessee company had furnished details of income on account of interest on sticky loans and advances, which had not been recognized by it for the assessment year in question following prudential norms prescribed by the RBI. The AO did not accept this claim primarily on the ground that the Companies Act, 1956, section 209, w.e.f. 15.6.1988, made it obligatory for all companies to maintain their accounts on accrual basis and according to the double entry system of accounting. He pointed out that in the audited accounts prepared as per Companies Act, 1956, the income on sticky loans

was provided and recognized as income. However, subsequently, the entry was reversed on the close of accounting year and income on the claimed sticky loans was not recognized. He concluded that mercantile system was not being followed as far as interest income was concerned. Following his order for AY 1998-99, upheld by ld. CIT(A), the AO made addition of Rs. 2,07,06,434/-.

8.1. Ld. CIT(A) relying on the decision of Hon'ble Bombay High Court in the case of Banque Nationale De Paris (1999) 237 ITR 518, held that assessee could not be allowed the claim of deduction on account of interest on sticky loans. He pointed out that so long as the loan was still patent and the assessee was following the mercantile system of accounting, the assessee must submit to tax on account of interest accrued/ due on sticky loans. He pointed out that the loans had not become bad and assessee still hoped to recover it.

9. Ld. counsel for the assessee pointed out that this issue has been settled by the decision of the ITAT in assessee's own case for AY 2000-01, 2002-03 and 2003-04. He further pointed out that order for AY 2003-04 has been confirmed by the High Court.

10. Having heard both the parties, we find that this issue has been considered by the Tribunal vide ITA nos. 3476/Del/07 for AY 2000-01, wherein the Tribunal vide its order dated 21.6.2013 dismissed the revenue's appeal on this issue observing in paras 16.1 to 17.1 as under:

> *"16.1 We have considered the submissions of both the parties and have perused the record of the case.*

17. The assessee had not recognized the interest income on sticky loans keeping in view the mandatory guidelines of RBI in regard to NBFC. Under the mercantile system of accounting an income accrues when there is reasonable certainty for realising any receipts or revenue. Hypothetical income cannot be taken into account. In respect of sticky loans and advances, the income is recognized when interest is actually collected. Merely on the basis of accrual it cannot be recognized in the absence of any certainty of its collection. The Hon'ble Supreme Court in the case of UCO Bank vs. CIT, 237 ITR 891 has held as under:

> *"The circular of October 9, 1984, also serves another practical purpose of laying down a uniform test for the assessing authority to decide whether the interest income which is transferred to the suspense account is, in fact, arising in respect of a doubtful or "sticky" loan. This is done by providing that non-receipt of interest for the first three years will not be treated s interest on a doubtful loan. But if after three years the payment of interest is not received, from the fourth year onwards it will be treated as interest on a doubtful loan and will be added to the income only when it is actually received. There is no inconsistency or contradiction between the circular so issued and section 145 of the Income-tax Act. In fact, the circular clarifies the way in which these amounts are to be treated under the accounting practice followed by the lender. The circular, therefore, cannot be treated as contrary to sec. 145 of the Income- tax Act or illegal in any form. It is meant for a uniform administration of law by all the income-tax authorities in a specific situation and is, therefore, validly issued uls119 of the Income-*

tax Act. As such, the circular would be binding on the Department. "

17.1 Respectfully following the decision of Hon'ble Supreme Court we confirm the order of Id. CIT(A).

10.1. Respectfully following the order of the Tribunal in assessee's own case for AY 2000-01, we allow the assessee's claim. Ground is allowed.

11. Ground no. 3: Brief facts are that the assessee had made provision for doubtful debts of Rs. 1,43,58,118/-. The assessee's explanation was that it was a non-banking finance company registered with RBI and was, therefore, bound by the provisions of NBFC Prudential Norms (Reserve Bank) Directions, 1998, issued by RBI. Accordingly, assessee had made provision for doubtful debts at the specified percentage based on the classification of such assets viz. sub-standard, doubtful and loss assets. AO treating it as a contingent liability disallowed the assessee's claim.

11.1. Ld. CIT(A) upheld the AO's action further observing that the provision for doubtful debts was not a crystallized expense.

12. Ld. counsel for the assessee fairly conceded that this issue is covered against the assessee by the decision of Hon'ble Supreme Court in the case of Southern Technologies Vs. JCIT 320 ITR 577.

13. We have considered the submissions of both the parties and considered the material available on record. Facts are not disputed. Hon'ble Supreme Court in the case of Southern Technologies (supra) has held as under:

"The Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998, are only disclosure norms: they have nothing to do with the computation of total taxable income under the Income-tax Act, 1961, or with accounting treatment. The Directions only lay down the manner of presentation of NPA (non-performing assets) in the balance sheet of a non- banking financial company. The object of the Directions that non-banking financial companies have to accept the concept of "income" evolved by the Reserve Bank of India after deducting provision against non-performing assets is only disclosure and provisioning and such treatment is confined to presentation/disclosure and has nothing to do with computation of taxable income under the Income-tax Act. Provision for non-performing assets in terms of the Directions of the Reserve Bank of India does not constitute "expense" on the basis of which deduction can be claimed by the non-banking financial companies under section 36(1)(vii) of the Act.

The basis of every business is that anticipated losses must be taken into account but expected income need not be taken note of This is the basis of the Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998, as it is closer to the reality of cash liquidity that prevents non-banking financial companies from collapse.

13.1. Respectfully following the decision of Hon'ble Supreme Court, this ground is dismissed.

14. Ground no. 4: Brief facts apropos ground no. 4 are that in the P&L A/c the assessee had claimed bad debts amounting to Rs. 13,46,23,050/-. The AO has observed that vide submissions filed on 16.3.2004 the AR had submitted part details of bad debts but failed to establish whether these amounts had actually become bad and irrecoverable. He further observed that no details were also furnished regarding the transactions to which they

pertained to, neither the nature of transaction was disclosed on which this claim was made.

14.1. After considering various case laws, the AO concluded that assessee company had not been able to establish that the amounts had actually become irrecoverable and they had been written off only subsequent to turning the amounts bad. The assessee also failed to furnish the nature of the debt entries. He, accordingly, disallowed the assessee's claim of Rs. 13,46,23,050/-.

14.2. Ld. CIT(A) upheld the AO's claim.

15. Ld. counsel submitted that the loans have been written off is not disputed by the department. He relied on the decision of Hon'ble Supreme Court in the case of TRF Ltd. Vs. CIT 323 ITR 397, wherein the Hon'ble Apex Court has held as under:

> *"The position of law is well settled. After April 9, 1989 it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the debt is written off as irrecoverable in the accounts of the assessee*"

16. Ld. CIT(DR) submitted that the ingredients laid down u/s 36(2) have not been examined by AO as details were not furnished. In this regard he referred to page 9 of assessment order, wherein the AO has specifically noted that details were not furnished by assessee. Ld. CIT(DR) further submitted that facts are not clear as to whether it was a trading debt or not and whether taken as income in earlier year. He, therefore, submitted that the matter should be restored to the file of AO and assessee be directed to file details.

17. We have considered the submissions of both the parties and have perused the record of the case. Hon'ble Supreme Court in the case of TRF Ltd. has clearly observed that it is not necessary for the assessee to establish that the debt income had become irrecoverable in the accounts of the assessee. In that case the issue under consideration was whether the bad debt had actually been written off or not and in that context Hon'ble Supreme Court delivered the judgment. But that does not imply that the assessee can claim the bad debt even without complying with the provisions of section 36(2), which, inter alia, clearly mandates that no such deduction shall be allowed unless such or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof was written off or of an earlier previous year or represents money lent in the ordinary course of the business of banking or money lending which is carried on by the assessee.

17.1. Since the assessee had not furnished the details before the AO, therefore, we restore this matter to the file of AO to examine the basic ingredients of section 36(2) whether fulfilled or not. There is no dispute that debt has been written off. Further, we may clarify that AO will not go into the issue whether the debt had become irrecoverable or not in view of the decision of Hon'ble Supreme Court in TRF Ltd. (supra). With these observations, the issue is set aside to the file of AO. Ground is allowed for statistical purposes.

18. Ground nos. 5 & 6: The AO after determining the total income directed for charging interest, inter alia, u/s 234D. Ld. CIT(A) confirmed the AO's action.

19. Ld. Sr. counsel for the assessee pointed out that no refund was given to assessee as is mentioned in the grounds of appeal also and, therefore, there was no question of any interest being chargeable u/s 234D from assessee.

20. Having heard both the parties, we restore this matter to the file of AO to verify whether any refund was granted to assessee or not and, if, no refund was granted to assessee then no interest can be charged u/s 234D. Ground is allowed for statistical purposes.

21. Ground no. 7: The withdrawal of interest u/s 244A as sustained by ld. CIT(A) revolves upon the fact whether any refund was at all was granted to assessee or not. We, therefore, restore this issue also to the file of AO for verification whether any refund was granted to assessee or not.

22. Ground nos. 8 & 9: Charging of interest u/s 234B and 234C are consequential in nature. The AO shall recalculate the charging of interest under the aforesaid sections, if any, while giving effect to appellate order.

23. In the result, ITA no. 1357/Del/2005 is partly allowed for statistical purposes.

ITA no. 4235/Del/2011 (Assessee's appeal for AY 2003-04):

24. This appeal, preferred by the assessee, arises out of CIT(A)-IX, New Delhi's order dated 29.6.2011in appeal no. TR-10/10-11, relating to AY 2003-04.

25. The assessee has raised following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the order passed by the Hon'ble CIT(A) is erroneous and bad in law to the extent the same confirms the additional disallowances/ interest levied in the assessment order dated March 24, 2006 passed under section 143(3) of the Act, by the Additional Commissioner of Income Tax, Range 12, New Delhi ('Assessing Officer').

2 On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in law by confirming the disallowance of depreciation on leased vehicles amounting to Rs.15,16,13,983/- by holding that the Appellant is not the beneficial owner of leased vehicles.

3 On the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming disallowance of the Appellant's claim for bad debts of RS.1,41,77,018/- written off in the books of account.

4 On the facts and in the circumstances of the case and in law, Hon'ble CIT(A) has erred in confirming levy of interest under section 234B of the Act on the Appellant."

26. Ground no. 1 is general in nature and requires no adjudication.

27. Ground no. 2: For the reasons given by us while adjudicating assessee's appeal for AY 2001-02, we allow the claim of the assessee and delete the disallowance of depreciation on leased vehicles made by the AO.

28. Ground no. 3: While adjudicating assessee's appeal for AY 2001-02, we have restored this issue to the file of AO for verification of assessee's claim. For the same reasons herein also the issue is restored to the file of AO in terms of our observation on this issue in AY 2001-02.

29. Ground no. 4: Charging of interest u/s 234B is consequential. The AO shall recalculate the charging of interest u/s 234B, if any, while giving effect to appellate order.

ITA no. 4206/Del/2011 (Assessee's appeal for AY 2004-05):

30. This appeal, preferred by the assessee, arises out of CIT(A)-IX, New Delhi's order dated 29.06.2011 in appeal no. TR-13/10-11, relating to AY 2004-05.

31. Grounds of appeal raised are as under:

> *"1. On the facts and circumstances of the case and in law, the order passed by the Hon'ble CIT(A) is erroneous and bad in law to the extent the same confirms the additional disallowances/ interest levied in the assessment order dated December 29, 2006 passed under section 143(3) of the Act, by the Deputy Commissioner of Income Tax, Circle 12(1), New Delhi ('Assessing Officer).*
>
> *2 On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in law by confirming the disallowance of depreciation on leased vehicles amounting to Rs.8,81,32,120/- by holding that the Appellant is not the beneficial owner of leased vehicles.*
>
> *3 On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in rejecting claim of RS.57,38,100/- & Rs.1 ,55,26,824/- towards interest on sticky loans for 1998-99 and 2001-02 respectively on loans and advances written off during the year appeal.*
>
> *4 On the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the disallowance of loss amounting to Rs.29,03,32,647/- incurred by the Appellant*

on sale of delinquent loan portfolio representing money lent in the ordinary course of business, by alleging the same to be a capital loss.

5. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming levy of interest under section 234D of the Act on the appellant."

32. Ground no. 1 is general in nature and requires no adjudication.

33. Ground no. 2: For the reasons given by us while adjudicating assessee's appeal for AY 2001-02, we allow the claim of the assessee and delete the disallowance of depreciation on leased vehicles made by the AO.

34. Ground no. 3: At the time of hearing ld. counsel did not press this ground as no disallowance pertain to current year. Hence ground no. 3 stands rejected being not pressed.

35. Ground no. 4: The assessee had claimed loss on sale of loan portfolio of Rs. 29,03,32,647/-. The AO, treating this as a capital loss, required the assessee to explain why this loss should be allowed. The assessee submitted that the loans sold were part of its current asset and the loss on sale of loan portfolio was a trading loss allowable as revenue loss. The AO did not accept the assessee's contention observing that section 37 provides that any expenditure, not being expenditure of capital nature, laid out or expended wholly and exclusively for the purposes of business, is allowable as deduction in computation of income chargeable under the head profits and gains of business or profession, incurred in relation to the business, were allowable. However, the loss on sale portfolio was clearly a capital loss and, therefore not allowable. He disallowed the assessee's claim.

35.1. Before ld. CIT(A) the assessee submitted that taking a commercially prudent decision, it had sold certain portfolio of loans granted to various customers mainly comprising of non-performing assets (NPAS), which were delinquent accounts, to the third parties, who were willing to take these NPAS at certain discounted value. The loans were sold without recourse obligations through outright sale. This sale of loan portfolio made in due course of business resulted in a loss of Rs. 29,03,32,647/-, which was claimed in P&L A/c. The said loss on sale of loan portfolio was calculated as the difference between total of outstanding amount minus the sale value realized. It was further pointed out that this activity of the assessee was in line with the objects stated in its memorandum of association. The assessee contended that the debts/ loans under consideration were trade debts/ receivables. The payment receivable by the assessee from customers had directly arisen from such business. Accordingly, any profit or loss arising on sale of some of these delinquent trade debts / receivables would essentially be a trading profit or loss arising during ordinary course of assessee's business. The assessee relied on following decisions:

- CIT Vs. Gillanders Arbuthnot & Co. Ltd. 195 ITR 331 (Chennai)
- Jrcon International Ltd. Vs. DCIT 74 ITD 117 (Del.)

35.2. The assessee further pointed out that the impugned loss on sale of loan portfolio was in the nature of bad debt, written off and, accordingly, allowable u/s 36(1)(vii) of the Act read with section 36(2) of the Act. The assessee pointed out that all the conditions in respect of 36(1)(vii) read with section 36(2) are fulfilled.

35.3. Ld. CIT(A) did not accept the assessee's contention regarding allowability under the provisions of section 36(1)(vii) read with section

36(2), inter alia, observing that the amount of deduction claimed by the assessee was never credited to the P&L A/c in any of the earlier years. He further observed that assessee was not in the business of buying and selling of loan portfolio and, accordingly, the loss could not be said to have been incurred in ordinary course of business of the assessee. He, therefore, upheld the AO's stand that it was a capital loss.

36. Ld. Sr. counsel submitted that admittedly loans were shown under the head current assets and were not capital assets. He pointed out that the nature of asset is relevant.

36.1. Ld. counsel relied on the decision of ITAT in the case of DCIT Vs. Maruti Countrywide Auto Financial Services Pvt. Ltd. ITA no. 5894/Del/2013. Ld. counsel submitted that if there is a direct loss on sale of loan portfolio, then it is allowable and there is no dispute on that count. Further, if the loan has been repossessed then also it is allowable which is not disputed. He submitted that as regards delinquent asset this was a commercially prudent policy adopted to mitigate the business loss.

37. Ld. CIT(DR) submitted that the conditions laid down u/s 36(2)(i) are not fulfilled. He referred to section 36(2)(i) and pointed out that the said section, inter alia, covers money lent in the ordinary course of the business of banking or money lending which is carried on by the assessee. However, in the present case the assessee is NBFC, which is different from money lending.

37.1. Ld. CIT(DR) submitted that the ordinary course of the business, as contemplated u/s 36(2), does not include right to receive money, which has been sold in the present case. It is capital in nature. He submitted that in the

present case assessee was financing indirectly the asset. The loss incurred by assessee is not in ordinary course of business. He further submitted that the decision in the case of Maruti Countrywide Auto Financial Services Pvt. Ltd. (supra), relied upon by ld. counsel for the assessee is not applicable to the present set of facts, because in that case the facts were entirely different as the assessee had repossessed the assets. The same cannot be equated with this kind of third person intervention.

38. We have considered the rival submissions and have perused the record of the case. The assessee was engaged in the business of consumer and auto finance. Accordingly, in course of its business it financed the consumer goods and automobiles. Thus, the debtors were created in ordinary course of business and there was out flow of money from assessee's coffers. It is well accepted commercial fact that realization of loan is one of the most difficult task faced by any money lender. Therefore, entrepreneurs consider various avenues for realization of their dues. Under such circumstances those who are in a position to realize non-performing assets take over loans from entrepreneurs. It is well settled commercial practice to invest in stressed assets which is presently gaining momentum on account of upsurge in NPAS in business and financial institutions. High profile fund managers are finding lot of business prospectus in acquiring non-performing portfolio at considerable discounts. Thus, fund managers are, therefore, investing in the stressed assets space. The government has also eased norms in this regard. Thus, selling of delinquent loan portfolio was purely a commercial prudent decision taken by assessee in line with the prevailing business practice in order to minimize its business loss. This was a case of outright sale without recourse obligations. The assessee was NBFC and, therefore, the financing

was done in ordinary course of business and the loans under current assets acquired more or less the same character as of stock-in-trade and, accordingly, constituted trade debts/ receivables. It is not disputed that amount received on sale of delinquent assets had been adjusted against the outstanding balances and only net amount had been claimed as deduction. Thus, receipts also got accounted for in profit & loss account. Therefore, it was primarily a trading loss arising during the ordinary course of assessee's business. Further, we find that different clauses of memorandum of association reads as under:-

> "*6.4 It was submitted that the aforesaid activity of the Appellant is in line with the objects stated in its Memorandum of Association ("MOA"). It was explained that Clause III of the MOA lists down the main and incidental/ancillary Objects for which the Appellant Company has been formed. The following relevant Clauses of the MOA were also reproduced for Ld. AO's ready reference*:-
>
> *"1. To carry on and undertake the business as financers to provide finance for purchase of all types of consumer durables, office plant and equipment, vehicles (including commercial vehicles, automobiles, four wheelers, two wheelers). chattels, hospital equipments, home appliances, industrial plant and equipment, machinery by way of (but not limited to) lease and hire purchase finance.*
>
> *2. ……*
>
> *3. …….*
>
> *4. ……*
>
> *5. …….*

6. To negotiate loans, to draw, accept, endorse, discount buy, sell and deal in bill of exchange, promissory notes, bonds, debentures, coupons and other instruments and securities

38.1. Therefore, this activity was in line with the main objects of assessee also.

38.2. Now coming to the submissions of ld. CIT(DR) that assessee had primarily sold right to receive money. This plea of ld. CIT(DR) has to be considered keeping in view the entire conspectus of the assessee's business. This cannot be considered in isolation de hors of the nature of assessee's business. Ld. counsel has rightly pointed out that had there been direct loss or repossession of assets then the loss would have been allowed. Therefore, on the same footing loss arising out of sale of delinquent assets portfolio also is to be allowed. Admittedly, assessee had right to receive money from its debtors on account of financing of assets. This right had accrued in favour of assessee in ordinary course of business and not on capital account. Further, we are in agreement with ld. counsel for the assessee that the conditions laid down u/s 36(1)(vii) read with section 36(2)(i) are also fulfilled because of following reasons:

- The debt or loan was in respect of a business which was carried on by the assessee in the relevant accounting year;
- The debt represented money lent in the ordinary course of the business, which was akin to money lending;
- The amount was written off as irrecoverable in the accounts of the assessee for that accounting year in which the claim for deduction was made for the first time.

38.3. In view of above discussion this ground is allowed.

39. Ground no. 5: Ld. counsel for the assessee pointed out that no refund was given to assessee and, therefore, there was no question of any interest being charged u/s 234D from assessee. On identical facts, in AY 2001-02 we have restored this issue to the file of AO for verification. For the very same reasons herein also we restore this issue to the file of AO to verify whether any refund was granted to assessee or not and if no refund was granted to assessee then no interest can be charged u/s 234D. Ground is allowed for statistical purposes.

40. In the result, ITA no. 4206/Del/2011 stands partly allowed.

ITA no. 13/Del/2012 (Assessee's appeal for AY 2005-06):

41. This appeal, preferred by the assessee, arises out of CIT(A)-VIII, New Delhi's order dated 31.10.2011 in appeal no. TR-579/08-09, relating to AY 2005-06.

42. Grounds of appeal raised are as under:

> *"On the facts and circumstances of the case and in law, the order passed by the Hon'ble CIT(A) is erroneous and bad in law to the extent the same confirms the additions! disallowances! interest levied in the assessment order dated December 23, 2008 under section 143(3) of the Act, by the Deputy Commissioner of Income Tax, Circle 12(1), New Delhi ('Assessing Officer').*
>
> *2 On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the disallowance towards depreciation of Rs.5,31,54,609 claimed by the Appellant u/s 32 of the Act on vehicles leased out to customers,*

by holding that the Appellant is not the beneficial owner of these vehicles.

3 On the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the disallowance of loss amounting to Rs.7,15,09,081 incurred by the Appellant on sale of delinquent loan portfolio representing money lent in the ordinary course of business, by alleging the same to be in nature of capital loss.

4 On the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in not directing the Assessing Officer to process the revised Return of Income filed by the Appellant for captioned year on March 20, 2007 by holding that the Appellant did not press this ground before his office.

5 On the facts and in the circumstances of the case and in law, Hon'ble CIT(A) has erred in confirming levy of interest under section 234B and 234D of the Act on the Appellant".

43. Ground no. 1: Ground no. 1 is general in nature and requires no adjudication.

44. Ground no. 2: The issue relating to disallowance of depreciation of leased assets has been dealt by us in detail while adjudicating assessee's appeal for AY 2001-02. For the detailed reasons given by us in AY 2001-02, we allow the claim of the assessee and delete the disallowance of depreciation on leased vehicles made by the AO. Ground is allowed.

45. Ground no. 3: The issue relating to assessee's claim of loss on sale of loan portfolio has been dealt by us in detail while adjudicating assessee's appeal for AY 2004-05. For the detailed reasons given by us in AY 2004-05,

the assessee's of loss on sale of loan portfolio is allowed. Ground is allowed.

46. Ground no. 4: Ld. counsel for the assessee referred to para 11 of CIT(A)'s order, wherein ld. CIT(A) has observed as under:

> *"In ground no. 10 (sic. Correct ground is no. 9), the appellant has raised the issue of non-processing of revised return of income filed by the appellant company on 20.03.2007. However, in the course of hearing the ld. counsels have not pressed the ground and the same is accordingly, dismissed*".

46.1. Ld. counsel submitted that this ground was actually pressed before ld. CIT(A) and, therefore, the matter may be restored back to his file for adjudication.

47. Having heard both the parties, keeping in view the submissions advanced by ld. Sr. counsel for the assessee, we restore this matter to the file of ld. CIT(A) for adjudicating the same. Ground is allowed for statistical purposes.

48. Ground no. 5: Ld. counsel for the assessee pointed out that no refund was given to assessee and, therefore, there was no question of any interest being charged u/s 234D from assessee. On identical facts, in AY 2001-02 we have restored this issue to the file of AO for verification. For the very same reasons herein also we restore this issue to the file of AO to verify whether any refund was granted to assessee or not and if no refund was

granted to assessee then no interest can be charged u/s 234D. Ground is allowed for statistical purposes.

ITA no. 5854/Del/2012 (Revenue's appeal for AY 2005-06):

49. This appeal, preferred by the revenue, arises out of CIT(A)-VIII, New Delhi's order dated 31.10.2011 in appeal no. TR-579/08-09, relating to AY 2005-06.

50. Grounds of appeal raised are as under:

> *"1. Whether Ld. CIT(A) was correct on facts and circumstances of the case and in law in deleting the addition of Rs. 7,61,11,049/- on account of interest on sticky loans.*
>
> *2. Whether Ld. CIT(A) was correct on facts and circumstances of the case and in law in allowing the depreciation of Rs. 6,12,373/- not capitalized in the tax block, claimed by assessee in revised computation.*
>
> *3. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.*"

51. Ground no. 1: The issue relating to interest on sticky loans has been dealt by us in detail while adjudicating assessee's appeal for AY 2001-02. For the detailed reasons given by us in AY 2001-02, we uphold the action of ld. CIT(A) in deleting the addition made on account of interest on sticky loans. Ground is dismissed.

52. Ground no. 2: Brief facts apropos ground no. 2 are that during the course of assessment, the assessee vide letter dated 21.12.2008 filed a revised computation of income, inter alia, claiming depreciation of Rs.

6,12,373/- not capitalized in the tax block. The assessee explained that in FY 2006-07 relevant to AY 2007-08, it had capitalized certain fixed assets in the books of a/c, which were purchased and put to use in the year ended 31.3.2005 and 31.3.2006. In the tax audit report for the year ended 31.3.2007, the opening WDV had been adjusted by the depreciation, which pertained to AY 2005-06 and AY 2006-07 on the aforesaid fixed assets. The AO disallowed the assessee's claim in view of his findings with respect to disallowance of depreciation on leased vehicles. Ld. CIT(A) allowed the assessee's appeal observing in para 8.3 as under:

> *"8.3 I have carefully considered the submissions made on behalf of the appellant company and the findings recorded by the Id. AO. On consideration, I find that AO was not justified in denying the claim of the AO on the ground that the same was made in connection with leased assets. As per Annexure-10 and Annexure-9 of the paper book, it is clear that during the FY relevant to AY under consideration, the appellant company had purchased plant and machinery of Rs. 513016/-, furniture and fixtures of Rs. 52630/- and computers of Rs. 1498164/-. The depreciation of Rs. 612373/- has been claimed on the aforesaid assets. In view of the aforesaid, the AO is directed to allow depreciation to the appellant company as the same pertains to the assets purchased, owned and used by the appellant for the purposes of business during the FY relevant to the AY under consideration*."

53. Having heard both the parties we do not find any reason to interfere with the findings recorded by ld. CIT(A), because AO wrongly held that depreciation was being claimed on leased assets, whereas depreciation had been claimed as per the fixed assets mentioned in ld. CIT(A)'s order. These

findings have not at all been controverted by department. Accordingly, order of ld. CIT(A) on the issue in question is upheld. Ground is rejected.

54. Ground no. 3 is general in nature and requires no adjudication.

55. In the result, revenue's appeal is dismissed.

56. In the result, ITA no. 1357/Del/2005 is partly allowed. ITA no. 4235/Del/2011 is allowed for statistical purposes. ITA no. 4206/Del/2011 is partly allowed. ITA no. 13/Del/2012 is allowed for statistical purposes. ITA no. 5854/Del/2012 is dismissed.

Order pronouncement in open court on 29/08/2016.

Sd/- Sd/-

(C.M. GARG) (S.V. MEHROTRA)
JUDICIAL MEMBER ACCOUNTANT MEMBER
Dated: 29/08/2016.
MP
Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.