आयकर अपीलीय अधिकरण, **'बी' न्यायपीठ, चेन्नई।**

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री एन.आर.एस. गणेशन**,** न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.506/Mds/2016**
निर्धारण वर्ष **/Assessment Year: 2012-13**

M/s.Shriram City Union Finance Co. Ltd., No.4, Mookambika Complex, Lady Desika Road, Mylapore, Chennai-600 004. **[PAN: AAACS 7703 H]**	**Vs.**	The Dy. Commissioner of Income Tax, Corporate Circle-6(1), Aayakar Bhavan, New Block, 121, M.G.Road, 7th Floor, Chennai-600 034.
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

आयकर अपील सं./**ITA No.726/Mds/2016**
निर्धारण वर्ष **/Assessment Year: 2012-13**

The Dy. Commissioner of Income Tax, Corporate Circle-6(1), Aayakar Bhavan, New Block, 121, M.G.Road, 7th Floor, Chennai-600 034.	**Vs.**	M/s.Shriram City Union Finance Co. Ltd., No.4, Mookambika Complex, Lady Desikachary Road, Mylapore, Chennai-600 004. **[PAN: AAACS 7703 H]**
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Mr.Jairam Raipura, CIT
प्रत्यर्थी की ओर से /Respondent by	:	Mr.R.Sivaraman, Adv.
सुनवाई की तारीख/Date of Hearing	:	27.03.2017
घोषणा की तारीख /Date of Pronouncement	:	07.06.2017

आदेश / O R D E R

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

These cross appeals are filed by the Revenue as well as the assesee against the Order dated 24.09.2015 of Commissioner of Income Tax (Appeals)-15, Chennai, in ITA No.262/CIT(A)-15/14-15 for the AY 2012-13. For the sake of convenience both the appeals are clubbed and heard together and disposed off in common order as under:

ITA No.506/Mds/2016 AY 2012-13 (Assessee's Appeal):

Ground No.I is general in nature which does not require any specific adjudication.

2.0 Ground No.II.A(Sub-ground No.i to vi) is related to the transfer of a sum of the Rs.104,58,61,529/- to the statutory reserves account. In the profit & loss account the assessee debited a sum of Rs.104,58,61,529/- being 20% of the profit as statutory reserve and claimed as deduction. The A.O. asked the assessee as to why the same should not be disallowed and added back to the income for the following reasons:

i) It is only an application of income.
ii) RBI guidelines cannot override the Income Tax provisions.
iii) It does not partake the form of expenditure to be deducted.
iv) It is not claimed in the Profit and Loss account as expenditure.

The assessee explained that the transfer of the amount to statutory reserve was as per the mandatory requirement of Sec.45 IC, 45M and 45Q of the RBI Act. Because of the specific sections of the RBI mentioned above it has overriding power over the Income Tax Act. The AO after

examining the assessee's explanation disallowed the deduction claimed by the assessee amounting to Rs.104,58,61,529/- and added back to the income. The assessing officer explained the reasons in detail in the assessment order for making such disallowance in para No.2.3 which is extracted for the sake of convenience and clarity as under:

> *2.3 The submissions of the assessee has been duly considered but the same are not acceptable for the following reasons:*
>
> *i. For claiming any amount as deduction in the income computation statement, either it shall be an expenditure or income not accrued to the assessee. In the present case, the deduction claimed is not in connection with any expenditure incurred by the assessee company and is an income accrued to the assessee during the financial year under consideration. Hence, it cannot be allowed as deduction u/s.37 of the Income Tax Act.*
>
> *ii. Moreover, the amount remained on the liability side of the balance sheet and this amount is being utilized by the assessee for all its business purpose. There is no outgo of any cash or assets on account of this transfer.*
>
> *iii. The provisions of RBI to create a reserve are only a prudential effort to safeguard the interest of the shareholders of a NBFC company. It cannot be interpreted as an authorization to create a notional income and hence the same cannot be claimed as a deduction from the total income computed for income tax purpose.*
>
> *iv. Further, the assessee company has created statutory reserve for 20% of the profits. However, reserves are to be created only out of profit after tax by way of appropriation. Hence, the creation of statutory reserve is nothing but an application of income after the profit has been earned by the assessee company. And such profit needs to be taxed.*
>
> *v. For the same reason that this reserve is created out of the profits i.e after the income has reached the assessee, this allocation is actually only an application of income and not a diversion of income as claimed and hence is liable to tax. The Hon'ble Apex Court in the case of CIT Vs. Dalmia Cements Limited (237 ITR 617 (SC) & CIT Vs. Sitaldas Tirathdas (41 ITR 367) on explaining the meaning of "Diversion of income by overriding title" has held that*
>
> *"In our opinion, the true test is whether the amount sought to be deduction in truth, never reached the assessee as his income. Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Whereby obligation, income is diverted before it reaches the assessee, it is deductable but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment is merely an obligation to pay another a portion of one's own income, which has been received and is since appIied".*
>
> *Similarly, the Hon'ble Apex Court in the case of CIT Vs. Travancore Sugars & Chemicals Pvt. Ltd. (88 ITR 1) has held that -*
>
> *"It is thus clear that whereby the obligation income is diverted before reaches the assessee it is deductible. But where the income is required to be applied to*

discharge an obligation after such income reaches the assessee, it is merely a case of application of income to satisfy an obligation of payments and is therefore not deductable'

As seen from the above judgment, the creation of statutory reserve is nothing but the application of income by the assessee which is not deductible.

vi. *Further, the directive of RBI cannot override the statutory provisions of the Income Tax Act. The following case laws support this claim:*

The Honourable Madras High Court in the case of Tamil Nadu Power Finance and infrastructure Development Corporation Ltd., vs. JCIT (280 ITR 491) has held that -

"...merely because the Reserve Bank of India has directed the assessee to provide for non-performing assets, that direction cannot override the mandatory provisions of the Income Tax Act contained in section 36(1) (viia) which stipulate for deduction not exceeding 5 percent, of the total income only in respect of the provision for bad and doubtful debts which are predominantly revenue in nature or trade related and not for provision for non-performing assets which are of predominantly capital nature, and held that the A.O was right in disallowing the provision of Rs.30 lakhs debited in the profit and loss account of the assessee towards non-performing assets"

The Honourable Supreme Court in the case of Southern Technologies Ltd, Vs JCIT (320 ITR 577) has held -

"Before concluding on this point, we need to emphasize that the 1998 Directions has nothing to do with the accounting treatment or Taxability of "income" under the Income tax Act. The two viz., the Income Tax Act and the 1998 Directions operate in different fields.

RBI Directions 1998 have been issued under section 45JA of the RBI Act. Under that sections power is given to RBI to enact a regulatory framework involving prescription of prudential norms for NBFCs which are deposit taking to ensure that NBFCs function on sound and healthy lines. The primary object of the said 1998 Directions is prudence, transparency and disclosure. Section 45JA comes under Chapter 111-B which deals with provisions relating to financial institutions, and to no-banking institutions receiving deposits from the public. The said 1998 Directions touch various aspects such as income recognition; asset classification; provisioning, etc. As stated above, the basis of the 1998 Directions is that anticipated losses must be taken into account but expected income need not be taken note of. Therefore, these Directions ensure cash liquidity for NBFCs which are now required to state true and correct profits, without projecting inflated profits. Therefore, in our view, the RBI Directions 1998 deal only with presentation of NPA provisions in the balance sheet of an NBFC. It has nothing to do with computation or taxability of the provisions for NPA under the Income tax Act……..

At the outset, we may state that in essence the RBI Directions 1998 are prudential/provisioning norms issued by RBI under Chapter III-B of the RBI Act, 1934. These norms deal essentially with income recognition. They force the NBFCs to disclose the amount of NPA in their financial accounts. They force the NBFCs to reflect "true and correct" profits. By virtue of section 45Q an overriding effect is given to the Directions 1998 vis-à-vis recognition" principles in the Companies Act, 1956. These Directions constitute a code by itself. However, these Directions 1998 and the Income tax Act operate in different areas. These Directions cannot overrule the "permissible deductions" or "their exclusion" under the income, tax Act."

Hence disallowance of Rs.104,58,61,529/- is made from normal computation of this ground.

vii. *The submission's of the assessee w.r.t similar deduction from the book profits u/s.115JB is also not acceptable as Section 115JB stipulates that for computing the book profit the amount set aside as provision* made for meeting liabilities, other than ascertained liabilities has to be added. As the amount transferred to the 'Statutory Reserve Fund' of Rs.252,00,00,000/- is based on the RBI guidelines and

not an ascertained liability, it amounts to setting aside for meeting liabilities other than ascertained liabilities. Hence it loses it eligibility to be deducted from the book profit u/s.115JB. Hence, the amount required to be added for arriving at the Book Profit u/s.115 JB.

viii. Further, the disallowance made by the assessing officer for earlier years has been contested by the assessee and all such disallowance has been confirmed by the Hon'ble ITAT.

ix. In view of the above facts of the case and also respectfully following the Hon'ble ITAT's orders of the earlier years, it is hereby held that the amount transferred to the statutory reserve is not an allowable deduction and the same is added back to the total income of the assessee, both in the normal computation for taxation and also to the computation of Book Profit for taxation as per the provisions of section 115JB of Income tax Act.

x. Hence disallowance of Rs.68,60,00,000/- is made from computation of Book Profit u/s section 115JB of Income tax Act.

3.0 The assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the order of the AO following the order of ITAT in assessee's own case for the AY 2003-04 and dismissed the assessee's appeal. During the appeal hearing, the Ld.AR of the assessee fairly conceded that this Tribunal in the assessee's group concern M/s.Shriram Transport Finance Co. Ltd., for the AY 2012-13 in ITA No.454/Mds/2016 dismissed the assessee's appeal.

4.0 We heard the rival submissions and pursued the material placed before us.

The Ld.CIT(A) dismissed the appeal of the assessee on the same issue in the assessee's own case for the AY 2003-04 to 2009-10 following the order of this Tribunal. On the same facts, this Tribunal in the case of M/s.Shriram Transport Finance Co. Ltd., for the AY 2012-13 in ITA No.454/Mds/2016 dated 24.08.2016 also dismissed the assessee's appeal. For ready reference, we extract the relevant paragraphs of this Tribunal which reads as under:

"5. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee has transferred a sum of Rs.375,10,96,984/- to Reserve Fund as required under Section 45-IC of the Reserve Bank of India Act. The assessee claims that it is only an appropriation of funds by overriding title. This Tribunal examined the very same issue for assessment years 2003-04 to 2009-10 and found that the transfer of funds, as required under Section 45-IC of the Reserve Bank of India Act, is only an application of income, therefore, liable for taxation. In view of the decision of this Tribunal in the assessee's own case, for assessment years 2003-04 to 2009-10, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed."

5.0 Respectfully following the decision of Co-ordinate Bench in the assessee's own and the case cited (supra), we hold that the assessee's claim for deduction of Rs.104,58,61,529/- is not allowable and we do not find any reason to interfere with the orders of the lower authorities. Accordingly, we confirm the order of the Ld. CIT(A) and dismiss the appeal of the assessee.

6.0 Ground No.II-B (sub-ground i to iv) is related to the addition of interest u/s.234D of Income Tax Act for a sum of Rs.93,90,687/- .

During the assessment proceedings, the AO found that the assessee has claimed the deduction of Rs.93,90,687/- in the computation of income relating to the interest charged u/s.234D for the AYs 2004-05, 2006-07 and 2009-10. The A.O. disallowed the deduction claimed by the assessee as penal in nature and added the entire amount of Rs.93,90,687/- to the returned income.

7.0 Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) has dismissed the assessee's appeal.

stating that the refund received from the department is not similar to the loan taken from government for the purpose of business and the interest is not allowable u/s 36(1)(iii) as claimed by the assessee. The claim of deduction u/s.37 of the IT Act was also rejected by the Ld.CIT(A).

8.0 Aggrieved by the order of the Ld.CIT(A), the assessee filed the appeal before this Tribunal.

9.0 We heard the rival submissions and pursued the material placed before us.

On the similar facts in the assessee's group company, in the case of M/s.Shriram Transport Finance Co. Ltd., in ITA No.454/Mds/16 dated 24.08.2016 this Tribunal has dismissed the assessee's appeal in Para Nos.6-9 as under:

> *"9. We have considered the rival submissions on either side and perused the relevant material available on record. As rightly submitted by the Ld. D.R., interest is charged under Section 234D of the Act on the excess amount refunded to the assessee while processing a return under Section 143(1) of the Act. Even though it is an interest levied on the amount refunded to the assessee, in fact, it is an interest for delayed payment of tax. In other words, the amount refunded to the assessee while processing return under Section 143(1) of the Act was considered as non-payment of tax and interest was charged for the period in which the assessee was holding the amount. Therefore, the interest paid by the assessee cannot be construed as expenditure for earning the income or for business purpose. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the disallowance made by the Assessing Officer."*

10.0 Since the facts of the case are the same and no controvert decision has been brought to our notice, we hold that the interest charged on excess amount refunded to the assessee cannot be considered as expenditure for earning the income or for business purpose. Accordingly,

we confirm the disallowance made by the AO and uphold the order of the Ld.CIT(A). The assessee's appeal on this ground is dismissed.

11.0 Ground No.II-C (Sub ground I to iv) is related to the disallowance u/s.40(a)(ia) of Income Tax Act:

During the assessment proceedings, the AO found that the assessee has made the following payments without deduction of tax at source.

S.No.	*Reimbursement of incentive paid to*	*Amount (Rs.)*
1	*Under the head commission: Reimbursements of salary cost to Group companies*	*39,47,30,811*
2	*Under the head business promotion: Reimbursement of incentive paid*	*1,14,84,489*

The AO issued show cause notice as to why the addition should not be made u/s.40(a)(ia) of Income Tax Act for non-deduction of tax at source. The assessee submitted an explanation objecting the disallowance u/s.40(a)(ia). Not being convinced with the explanation furnished by the assessee, the AO made the disallowance u/s.40(a)(ia) of the I.T.Act..

12.0 Aggrieved by the order of the AO, the assessee went on appeal before the Ld.CIT(A).

The Ld.CIT(A) confirmed the addition made by the AO holding that the assessee has committed a default in not deducting the tax at source u/s.194C of Income Tax Act and the A.O has rightly made the addition u/s.40(a)(ia) of Income Tax Act. For ready reference, we reproduce the hereunder the relevant extract of the Ld.CIT(A) Order made available in 10.2 of the Ld.CIT(A) order which reads as under:

10.2 I have carefully considered the appellant's submissions and findings of the AO. The AR of the appellant failed to contradict the findings of the AO on the issue of liability of TDS provisions by filing necessary evidences before the undersigned. The liability of TDS provisions in respect of the amount under consideration was not disputed. Merely filing the grounds of appeal without filing evidences in support of its claim is not enough for allowing the grounds of appeal on this issue. On the other hand, the AO had clearly reasoned for making disallowance u/s.40(a)(ia) of the IT Act. I am fully in agreement with the view of the AO that no reimbursement of actual expenditure was involved in the transactions. No evidence was also furnished before undersigned to prove that the expenses incurred by the appellant are in relation to reimbursement of expenditure as claimed. I am also in agreement with the AO's contention that there was no definite basis for the apportionment of the expenditure incurred on employees of the sister concern adverted to supra and that, in fact, the amount received by the sister chit companies aforementioned amounted to contract receipts in their hands and more importantly the appellant's claim that the group companies made the TDS wherever applicable does not in any way affect the applicability of TDS provisions in the assessee's case, particularly when the instant appellant has claimed the same as expenditure as held in the case of M/s.Torque Pharmaceuticals cited supra. Further, the case laws relied upon by the AR is not relevant to the facts of the instant case as elaborately discussed in the assessment order, the operative parts of which are reproduced in the foregoing paragraphs and therefore not reiterated here again except to state that I concur with the AO's interpretation of the ratio of the said case laws. As such in the absence of TDS being made on the payments made to the appellant's sister concerns the appellant therefore shall be deemed to be an assessee in default u/s.201(1) of the Act in respect to such tax. Besides the amounts under consideration are also liable for the disallowance u/s.40(a)(ia) r.w.s. 194C of the IT Act. Therefore, the ground of appeal raised on this issue is dismissed.

13.0 During the appeal hearing, the Ld.AR argued that the entire salary incentive was paid before 31.03.2012 and hence the provisions of Sec.40(ia) does not attract in the assessee's case. The assessee relied on the decision of the Hon'ble Allahabad in the case of CIT v. Vector Shipping Pvt. Ltd. (357 ITR 642).

14.0 We heard the rival submissions and pursued the material placed before us.

The assessee has made the payments without deduction of tax at source to the extent of Rs.40.60 Cr as per the details given above. The assessee's argument that the amount was already paid before 31.03.2012 and hence the provisions of Sec.40(a)(ia) is not attracted is not tenable. This Tribunal has consistently followed that in case the assessee has deducted the tax at source but not remitted, or tax not deducted on the

payments which attract TDS, the disallowance u/s.40(a)(ia) attracts. This view is supported by the Hon'ble Culcutta High Court judgment in the case of Crescent Exports. In the case of the assessee, it has to deduct the tax at source but not deducted the TDS amount which required to be deducted u/s.194C of Income Tax Act. As per Sec.40(ia) of Income Tax Act ,in case of failure of the assessee to deduct the tax at source, such amount required to be brought to tax under section 40(a)(ia) of Income tax act. For ready reference, we extract relevant section of 40(a)(ia) of Income Tax Act which reads as under:

Amounts not deductible.

40. *Notwithstanding anything to the contrary in sections 30 to [31][38], the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—*

[32](a) in the case of any assessee—

(ia) any interest, commission or brokerage, [34][rent, royalty,] fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, [35][has not been paid on or before the due date specified in sub-section (1) of section 139 :]

*[36][**Provided** that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) ofsection 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.]*

Alternatively, the assessee has requested for disallowance 30% of the expenditure in view the amendment in Finance Act, 2014. The amendment has come into force w.e.f. 01.04.2015. The AY under consideration was 2012-13. Therefore, the amendment is not applicable

in the case of the assessee. Accordingly, we hold that the Ld.CIT(A) has rightly confirmed the addition and the same is upheld. The assessee's appeal on this ground is dismissed.

15.0 Ground No.II-D(Sub-ground No.i toiv) is related to the disallowance of expenditure u/s.14A of Income Tax Act: The assessee has received a sum of Rs. 5,96,66,887/- as dividend and disallowed a sum of Rs.65,80,317/- towards the expenditure relating to the dividend income. The assessing officer further disallowed a sum of Rs.5,32,500/- by applying Rule 8D of Income Tax Act.

16.0 Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) allowed partial relief.

The Ld.CIT(A) directed the AO to exclude the investments made by the assessee in subsidiary companies and the disallowance is restricted to the investment made other than subsidiary companies. The Ld.CIT(A) also relied on the decision this Tribunal in the case of EIH Associate Hotels Ltd. v. DCIT in ITA No.1503/Mds/2012 & L&T infrastructure development projects v. ITO in ITA No.226/Mds/2013 AY 2007-08.

17.0 Aggrieved by the order of the Ld.CIT(A) the assessee is on appeal before us.

Appearing for the assessee, the Ld.AR argued that the company has disallowed a sum of Rs. 65,80,317/- towards the expenses relating to the exempt income. The disallowance as per Rule 8D worked out to Rs.71,12,850/- and the difference amount of Rs.5,32,500/- was added by the AO. The AO has not given any finding in the Assessment Order that

the disallowance made by the assessee was insufficient. As per the provisions of Sec.14A of Income Tax Act, the AO can resort to apply the method of disallowance under Rule 8D of Income Tax Act only, if the AO is not satisfied with the correctness of the disallowance made by the assessee. The assessee relied on the decisions of CIT v. Taikisha Engineering Pvt. Ltd. (299 Taxman 143). On the other hand the Ld.DR relied on the orders of lower authorities.

18.0 We heard the rival submissions and perused the material placed before us.

In this case, the assessee has disallowed a sum of Rs.65,85,317/- as expenditure relatable to the dividend income (exempted income) received by the assessee u/s.14A of the IT Act. On perusal of the Assessment Order, the AO has not recorded any satisfaction with regard to insufficiency of disallowance made by the assessee. As per the provisions of Sec.14A of IT Act, the AO can resort to disallow the expenditure by applying Rule 8D of IT Act only in the following conditions:

(i)The assessee has not made any disallowance of expenditure relating to the exempted income or

(ii)The assessee has disallowed the expenditure but the AO is not satisfied with the correctness of the claim of the assessee in respect of such expenditure

18.1 From the provisions of the IT Act, it is clear that the satisfaction of the AO regarding the correctness of the disallowance made by the assessee required to be recorded for application of Rule 8D of IT Act. In

the instant case, the assessee has made the disallowance but the AO has not recorded that the disallowance made by the assessee is insufficient. Therefore, in the absence of any finding of the AO, the disallowance made u/s.14A is not correct and no disallowance is called for u/s.14A. Accordingly, we delete the addition made by the AO and set-aside the orders of the lower authorities. The appeal of the assessee is allowed on this ground.

19.0 The next issue is related to the Credit of TDS of Rs.90,39,289/-:

The AO has given the short credit of Rs.90,39,289/- and did not given any reason for giving such short credit. The assessee went on appeal before the CIT(A) and the Ld.CIT(A) directed the AO to reconcile the TDS Certificate, Form-26AS and allow due credit for the taxes paid/collected.

20.0 We heard the rival submissions and perused the material placed before us.

The assessee has claimed the credit for TDS which was not allowed by the AO without assigning any reason. It is the obligation of the AO to allow the credit for the taxes paid by the assessee whether by self-assessment tax, advance tax, TCS & TDS. We cannot appreciate the action of the AO for not giving credit for the TDS without assigning any reason. We direct the AO to reconcile the Form-26AS and allow the credit for the TDS amount, at the earliest. This ground of the appeal is allowed.

21.0 Ground No.III(A): is related to the addition of Rs.68,60,00,000/- u/s.115 JB of IT Act. The assessee claimed the deduction of Rs.68,60,00,000/- being the amount transferred to statutory Reserve account for computing the profits as per companies act and in the computation of book profit u/s 115JB of I.T.Act. The AO disallowed the amount of Rs.68,60,00,000/- and made the addition u/s.115JB stating that there is no provision in the Income tax act to make such adjustment. The Ld.CIT(A) confirmed the disallowance made by the AO.

22.0 Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

23.0 We heard the rival submissions and perused the material placed before us.

This issue is covered against the assessee on identical facts in the case of M/s.Shriram Transport Finance Co. Ltd., in ITA No.454/Mds/2016 dated 24.08.2016, which was discussed in this order in Ground No. II(A). Following the decision of this Tribunal, this issue is decided against the assessee and confirm the order of the Ld.CIT(A). In the result, the appeal of the assessee on this ground is dismissed.

ITA No.726/Mds/2016 AY 2012-13 (Departmental appeal):

1.The order of the Learned CIT(A) is contrary to law and facts of the case.

2. The Ld CIT (A) erred deleting the Addition of provision of bad debts of Rs.26,41,01,000/- -

2.1 The Ld CIT(A) erred in deleting the addition on account of Royalty paid amounting to Rs.5,65,94,842/-

2.1 The Learned CIT(A) erred in directing the AO to delete the addition made of Rs.5,32,000/- u/s.14A.

2.2. The Ld.CIT(A) fails to appreciate 'that the decision of the Honourable ITAT relied upon Learned CIT(A) in the assessee's sister concern case, for the assessment years 2010-11 & 2011-12 order has not become final and the department has preferred appeal before the Honourable High Court of Madras u/s.260A.

2.2 The Ld CIT(A) erred in deleting the addition on account of Royalty paid amount, eventhough Royalty was paid for use of copy right which as per the provisions of Sec 32(i) Explanation (amended w.e.f 01/04/1966) in an intangible asset.

2.3 The Ld.CIT erred in deleting the addition on account of Royalty paid amount, eventhough, in earlier years department appeals pending before High Court.

2.4 The Ld.CIT(A) erred in deleting the ESOP expenses for Rs.1,92,82,201/-.

2.5 The Ld.CIT (A) fails to appreciate that ESOP expenses only going to increase the share capital of the company and should be treated as capital expenditure.

2.6 The Ld.CIT(A) fails to appreciate that CIT(A)'s order relied upon the ITAT's order in the issue of ESOP expenses for the assessment year - has not been accepted and an appeal has been filed before the Madras High Court.

3.For these and other grounds that may be adduced at the time of hearing. It is prayed that the order of the Learned CIT(A) may be set aside and that of the Assessing Officer restored.

23.0 Ground No.1&3 are general in nature which does not require specific adjudication.

24.0 Ground No.2 is related to the addition of Rs.26,41,01,000/- relating to the provisions for bad debts. As per the P& L account the assessee debited the Provisions and write off as under:

Provision for NPA	2,641.01 Lacs
Bad debts written off	14,248.80 lacs
	16,881.81 lacs.

24.1 During the assessment proceedings, the AO found that the assessee claimed provision for non-performing assets amounting to Rs.2,641.01 lakhs as deduction. The assessee submitted before the AO that the assessee is maintaining separate books of accounts to comply with the requirement to claim as bad debts under the income tax act and separate set of books of account under the Companies Act. The assessable income

of the company is computed on the basis of the Income Tax books and for arriving at the financials to comply with The Companies Act separate books are maintained. The assessee submitted before the AO that this method of maintaining the two separate books was approved by the Appellate Authorities in the earlier years and the Hon'ble ITAT also decided the issue in favour of the assessee and held that the income has to be computed on the basis of income tax books in ITA No.725/Mds/2010 dated 16.12.2010 for the AY 2006-07. Not being convinced with the explanation of the assessee, the AO disallowed the sum of Rs.2641.01 lakhs stating that the appeal is pending before the Hon'ble jurisdictional High court and it was only a mere provision which is not allowable expenditure. For the sake of convenience and clarity, we extract the relevant paragraphs of the Assessment Order made available in the Page No.15 & 16 of the Assessment Order as under:

4.2 The above submissions of the assessee has been duly considered but the same is not acceptable for the following reasons:

As per accounts prepared as per Company Law as on 31.03.2012, the provisions and write off in the Schedule — 20 are as under:

Provision for Non performing Assets	*- Rs.2,641.01 Lakhs*
Bad debts written off	*- Rs.14,248.80 Lakhs.*
Total	*Rs.16,889.01 lakhs*

However, as per the accounts prepared for the purpose of Income tax the assessee claimed Rs.168,89,81,781/- as bad debts written off but no adjustments have been made in the computation. Though as per the statutory books the bad debts written off were only Rs.14,248.80 lakhs, the assessee has claimed Rs.16,889.01 lakhs in the Income Tax accounts. The amount of Rs.2,641.01 lakhs which was shown as provision in the statutory books was taken as written off for the purpose of Income-tax. There cannot be provision for the purpose of statutory books and actual write off for Income tax purpose. If the amount is written off, it should be same in both the accounts. Hence, one can fairly conclude that there no actual write off took place in the accounts to the extent of Rs.2,641.01 lakhs and the same is debited only towards provision for non-performing asset. As per sec. 36(1)(vii) bad debts actually written off is only to be allowed as deduction.

The condition precedent for allowing bad debts under Section 36(1)(vii) is that the debt has to be written off in the respective accounts as irrecoverable. These accounts are not written off in the branch accounts on the ground that it may jeopardize the recovery proceedings and hence are seen to be retained in the accounts prepared as per company law. Writing off in the final accounts prepared for income tax purpose is therefore not tantamount to write off. As per Sec. 36(1) (vii), only bad debts actually written off can be allowed as a deduction. As the amount of Rs.2,641.01 lakhs is only a provision, the same is not allowable as bad debt as the same is not actually written off in the books of accounts.

24.2 The AO also relied on the Hon'ble Madras High Court decision in, Commissioner of Income-tax.*v.*Micromax Systems (P.) Ltd. [2005] 148 Taxman 486 (Madras) and also Hon'ble Apex Court decision in the case of Southern Technologies Ltd.v.Joint Commissioner of Income-tax , Coimbatore reported in [2010] 187 TAXMAN 346 (SC).

25.0 Aggrieved by the Order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) allowed the assessee's appeal following the order of this tribunal for the A.Y.2009-10 in assessee's own case. The relevant paragraph of the Ld.CIT(A) order in para No. No.6.2 is extracted as under:

6.2. I have carefully considered the appellant's submissions. The learned Authorised Representative filed copy of the ITAT Order for Assessment Year 2009-10 and I have perused the same. While deleting the addition made towards bad debts for the assessment year 2009-10 the Honourable ITAT has extracted paras from its Order in I.T.A No.726/Mds /2010 as under:

"8. To reiterate, the assessee has maintained separate accounts for the purpose of Income Tax. Income for regular assessment u/s.143 needs to be determined on the basis of these books only. It is only for the purpose of application of sec.115J or 115JA or 115JB that the accounts kept by the assessee in compliance with the provisions of the Companies Act are made relevant by the Income Tax Act. The Ld.CIT(A) has given a finding that the Income Tax accounts do not contain any provision for bad debts. The assessee has claimed in the regular assessment only that sum which has been written off. Relevant extracts reproduced from the Tribunal's order for earlier years describe the methodology employed by the assessee for identifying the debts which are required to be written off as bad. In the circumstances, we find there is no scope to support the allegation by the Revenue that there is no write-off and what has been claimed is only a provision. The Hon'ble Supreme Court in the case of Southern Technologies Ltd vs Jt. CIT, 320 ITR 577, has held that the nature of expenditure under the income-tax cannot be conclusively determined by the manner in which accounts are presented in terms of the 1998 Directions. Though they deviate from accounting practice as provided in the Companies act, they do not override the provisions of the Income-Tax Act. Therefore, the decision in Southern Technologies case (supra) does not come not come to the aid of the Revenue. On the contrary, in the light of a proper method having been applied to identify and write off bad debts, income tax law does not envisage any further enquiry into the matter by the assessing officer as

held by the courts in a number of cases. In particular, we may refer to the decision of the Supreme Court in TRF Ltd., vs CIT, Ranchi 323 ITR 397 in which it has been held that for allowance of bad debts, it is enough if bad debts are written off as irrecoverable in the accounts of the assessee and it is not necessary for the assessee to establish that the debt has in fact become irrecoverable.

9. For the foregoing reasons, we have no hesitation in upholding the deletion of Rs.13,57,58,000/-. Consequently, the ground raised by the Revenue is dismissed"

26. Aggrieved by the Order of the Ld.CIT(A), the Revenue is on appeal before us.

Appearing for the Revenue, the Ld. DR argued that the assessee has made provision for bad debts amounting to Rs.2641.01 lakhs which was claimed as deduction and the same is not allowable as per the provisions of the Income Tax Act. As per the books of accounts, the assessee has written off the amount of Rs.14,248.80 lakhs whereas the claim was made for deduction of Rs.16,889.01 lakhs and claimed the excess deduction of Rs.2641.01 lakhs. The Ld. CIT(A) committed an error in allowing the appeal. On the other hand, the Ld.AR argued that the assessee is maintaining two separate set of books of accounts one for the purpose of computation of income and other for the purpose of Companies Act. The Income has been computed as per the books of accounts regularly maintained by the assessee for Income Tax purpose. In the Income Tax books, the assessee has written off all the bad debts claimed as deduction, in the Company's accounts maintained for the purpose of companies Act, the provision was made as NPA and it was shown as outstanding. The maintenance of two separate books of accounts has been upheld by the Hon'ble ITAT in the orders referred by the Ld.CIT(A) and also the Hon'ble jurisdictional High Court in the assessee's own case in 78 taxmann.com

43 for the AY 2006-07. The Ld.AR further argued that the issue is limited to the extent of application of the Hon'ble jurisdictional High Court's decision in the assessee's case for the year under consideration. Since the AO as well as the Ld.CIT(A) has verified the books of accounts, this Tribunal has no jurisdiction to verify whether the assessee is maintaining two sets of books of accounts or not. The Department's case is not that the assessee has not maintained the two separate sets of books of accounts, it is the case of the Revenue that the assessee is maintaining the two sets of books of accounts and NPA provision is not allowable as deduction u/s.36(i)(vii) of Income Tax Act. This issue has been squarely covered by the Hon'ble jurisdictional High Court and the decision relied upon by the assessee as well as the Ld.CIT(A) cited supra.

27.0 We heard the rival submissions and perused the material placed before us.

We have carefully gone through the decision of the Hon'ble jurisdictional High Court in the assessee's own case for the AY 2006-07. The Hon'ble jurisdictional High Court has held that the assessee is free to maintain two sets of books of accounts one for Income tax and another for corporate accounts. Since the assessee is maintaining two separate books of accounts, the provisions for the bad debts in the corporate accounts does not impact the claim of bad debts u/s.36(i)(vii) of Income Tax Act in regular computation of income. The issue in this case is whether the assessee is maintaining two separate books of accounts or not. If the two separate books of accounts are maintained whether the assesseee has

written off the bad debts in Income tax books or not? As per the Assessment Order, it appears that the AO has not verified the facts regarding the maintenance of the two separate books of accounts by the assessee. The AO has proceeded to complete the assessment on presumption that the assessee has maintained two separate books of accounts, without actually verifying the both the sets of books of accounts which is evident from the Assessment Order. The AO has not given any finding regarding the maintenance of two separate books of accounts and verification of the same in the assessment order. Similarly, the Ld.CIT(A) also proceeded with a presumption that the assessee was maintaining two sets of books of accounts and allowed the appeal. As per the Profit & Loss A/c, balance sheet filed by the assessee before us, both in Income Tax Balance sheet and Corporate accounts Balance sheet the outstanding of long term and short term advances are one and the same as under:

- As per corporate accounts Rs.2,45,575.13 lakhs
- As per Income Tax purpose Rs.2,49,575.15 lakhs

27.1 The outstanding advances shown in both in Income Tax as well as corporate accounts as per the schedule-12 of Companies Act and as per the Schedule -11 of balance sheet prepared for Income tax purpose are as under:

Schedule -12 Loans and Advances (Corporate accounts)

Particulars	***Long-term***	***Short-term***
	As at March 31,	***As at March 31,***
	2012	***2012***
Unsecured, considered good		
Capital advances	*719.24*	*--*
Security deposits	*1,046.55*	*300.00*
Loans and advances		
Assets under financing activities:		
- Secured, considered good	*2,27,370.63*	*7,68,852.49*
- Doubtful	*1,382.21*	*12,432.95*
- Unsecured, considered good	*19,445.40*	*48,259.74*
- Doubtful	*230.94*	*2,657.88*
- Less: provision for non-performing assets	*(230.94)*	*(2,657.88)*
Advances recoverable in cash or in kind or for value to be received – Unsecured, considered good	*--*	*2,014.05*
Total	***2,49,575.13***	***8,22,512.52***

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Shriram City Union Finance Ltd

Notes forming part of the financial statements for the year ended March 31, 2012

11. Loans and advances

Amount in ₹

Particulars	As at March 31, 2012		As at March 31, 2011	
	Long Term	Short Term	Long Term	Short Term
Unsecured, considered good				
Capital advances	7,19,24,381	-	1,08,92,615	-
Security deposits	10,46,55,379	3,00,00,000	5,53,71,039	-
Loans and advances				
Assets under financing activities :				
- Secured	22,83,63,94,224	77,19,38,73,042	18,65,50,26,547	43,14,16,84,359
- Unsecured.	1,94,45,40,227	4,82,59,74,410	2,20,15,98,089	4,89,54,70,125
Advances recoverable in cash or in kind or for value to be received -Unsecured. considered good	-	20,14,04,447	-	17,36,72,684
Total	**24,95,75,14,211**	**82,25,12,51,899**	**20,92,28,88,290**	**48,21,08,27,168**

Other assets

₹ in lacs

Particulars	As at March 31, 2012		As at March 31, 2011	
	Non- Current	Current	Non- Current	Current
Bank balances non-current portion [Refer note-13]	1,71,23,00,010	-	65,90,00,000	-
Interest accured on fixed deposit and other loan and advances	9,72,09,732	2,69,09,893	1,38,52,690	1,86,42,937
Securitisation-receivable	1,79,85,27,193	3,04,75,81,738	39,02,27,000	1,32,44,80,437
Service tax credit (input) receivable	-	1,06,76,103	-	1,46,00,285
Prepaid expenses	-	7,25,30,309	-	9,52,29,348
Advance Tax (Net of Provision for Income Tax)	-	1,00,41,17,907	-	66,86,49,518
Other assets	-	1,33,848	1,34,000	23,64,949
Total	**3,60,80,36,935**	**4,16,19,49,798**	**1,06,32,13,690**	**2,12,39,67,474**

SHRIRAM CITY UNION FIN... CHENNAI

27.2 From the above details of loans and advances as at the end of 31st March both for Income Tax and corporate accounts were outstanding at Rs.2495,75,14,211/- in the case of long term loans and advances and Rs.8225,12,51,899/- , in the case of short term advances and it appear that the assessee company has not written off the Provision for Non performing Assets amounting to Rs.2,641.01 Lakhs. If the assessee's contention that it had maintained two separate sets of books of accounts is correct, the assessee would have written off the bad debts in the Income tax books and demonstrated the difference of two sets. It appear that the assessee has maintained the books of accounts as per the companies act and computed the Income as per the Income tax act

27.3 This bench has called for both the sets of accounts purported to be maintained by the assessee i.e. corporate accounts as well as income tax accounts. On the date of hearing, the Ld.AR of the assessee has failed to produces both the sets books of accounts stated to be maintained by it. The Ld A.R. was specifically asked by this tribunal to produce the main cash books, general ledgers, debtors ledgers expenses account and the income account, Audit Report as per Sec.44AB of Income Tax Act and the books of accounts maintained as audited u/s.44AB and the accounts approved by the AGM. The assessee merely produced three ledger accounts copies but did not produce all the books of accounts called for and could not demonstrate that it has maintained two sets of books of accounts for Companies Act and Income Tax Act, and the Provision for NPA claimed as deduction in fact was written off in Income tax books.

Therefore, the issue regarding maintenance of two separate books of accounts and the correctness of the computation of income required further verification at the level of AO. On the similar facts, in the assessee's group company in ITA No.868 & 869/Mds/2015 the issue was remitted back to the file of the AO in Para Nos.13 & 14 are as under:

> *13. The next ground raised in the appeal of the Revenue is with regard to deletion of disallowance made by the Assessing Officer towards provision for non-performing assets [NPA]. The assessee has claimed non-performing assets of ₹.32.36 crores as bad debts. The Assessing Officer has disallowed the same as the assessee has made two sets of accounts i.e. one set of books of account for Income Tax Act and another set of accounts for Companies Act purposes. According to the Assessing Officer, the assessee cannot maintain two sets of account and he observed that the assessee has shown as provision in the statutory books and was claimed deduction ass written off for the purpose of income tax. He observed that as per section 36(1)(vii) bad debts actually written off is only to be allowed as deduction. He further observed that the decision of the Tribunal in I.T.A. No. 22/Mds/2011 dated 10.10.2011 for the assessment year 2006-07 cannot be applied as there is an appeal pending before the Hon'ble High Court. However, the ld. CIT(A) has concurred with the submissions of the assessee and allowed the ground raised by the assessee, against which, the Revenue is in appeal before the Tribunal for all these assessment years.*
>
> *14. We have heard both sides. The main contention of the assessee is that the issue has already been decided by the Tribunal by order cited (supra) and it has to be followed. However, we observed from the order of the Assessing Officer that he has given a finding that in the account prepared for the purpose of Income Tax, the assessee has claimed ₹.11659.84 lakhs as bad debt written off and the amount of ₹.3236.89 lakhs, which was shown as provision in statutory books was taken as written off for the purpose of income tax. From this, it is not clear to us as to whether this amount has been actually written off in the books of accounts maintained and got audited by the assessee under statute by crediting each individual debit account, then, it could be allowed as bad debt as held by the Hon'ble Supreme Court in the case of TRF Ltd. v. CIT 323 ITR 397, wherein, the Hon'ble Supreme Court has held that after 01.04.1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. Further, in the present case, the Assessing Officer has not examined as to whether the debt has, in fact, been written off, in the accounts of the assessee. This exercise has not been undertaken by the Assessing Officer. Hence, the matter is remitted back to the Assessing Officer for de novo consideration of the above mentioned aspect only, that too only to the extent of written off. Moreover, in our opinion, the facts of the assessee's case squarely fit into the ratio laid down by the above judgement of the Hon'ble Supreme Court rather than the order of the Tribunal in assessee's own case cited (supra). Being so, in our view, it is appropriate to remit back the entire issue to verify whether the debt is actually written off in the Audited books of accounts passing enough entries towards written off to the individual account and then only the assessee is entitled for deduction as bad debt provided the assessee fulfils the condition such as satisfaction of Income Tax Act as contemplated under section 36(2) of the Act. We, therefore, direct the Assessing Officer to verify the requirement of section 36(2) and decide thereupon. Accordingly, this issue raised by the Revenue is remitted back to the Assessing Officer for fresh consideration.*

27.4 Therefore, we are of the considered opinion that in this case the fact regarding whether the assessee is maintaining two sets of books of

accounts or not and what is the regular method of accounting employed by the assessee for the purpose of Income Tax Act, whether the true and correct income can be deduced from the Income Tax books or not, whether the assessee is claiming double deduction of any bad debts already written off required further verification at the end of the AO. Therefore, we remit the matter back to the file of the AO to verify the above aspects and re-adjudicate the issue on merits. This ground of appeal of the revenue is allowed for statistical purpose.

25.0 Ground No.2.1 repeated twice on for the disallowance made by the AO u/s.14A of the IT Act.

This issue has come up for adjudication in the assessee's appeal No.506/2016 in Ground No.II-D and decided in favour of the assessee and against the Revenue. Accordingly, we dismiss the Revenue's appeal on this ground.

26.0 The Second issue in Ground No.2.1 is related to the addition on account of royalty payment of Rs.5,65,94,842/-. The AO disallowed a sum of Rs.5,65,94,842/- Royalty paid to M/s.Shriram Ownership Trust for the use of its logo. The AO treated the payment as capital expenditure incurred for acquiring an intangible asset and allowed 25% of royalty amounting to Rs.1,41,48,710/- as depreciation and the balance payment of Royalty Rs.4,24,46.132/- was disallowed and added back to income.

27.0 On appeal before the CIT(A), the Ld.CIT(A) deleted the addition following the order of this Tribunal for the AY 2009-10 in ITA No.1898/Mds/2012. On identical facts, in the assessee's group company M/s.Shriram Transport Finance Co. Ltd., in ITA No.454/Mds/2016 dated 24.08.2016 ITAT has deleted the addition in respect of Royalty treating it as Revenue expenditure. For ready reference, we extract the relevant paragraphs of the ITAT Order in Page No.18 at Para No.29 as under:

> *29. We have considered the rival submissions on either side and perused the relevant material available on record. What was paid by the assessee is for the right to use the Logo belonging to Shriram Ownership Trust. When the assessee made payment for use of right, this Tribunal is of the considered opinion that the same cannot be treated as capital expenditure. Therefore, the CIT(Appeals) has rightly found that the payment made by the assessee is in the revenue field. In fact, similar addition made by the Assessing Officer for the assessment year 2002-03 was deleted by this Tribunal. The CIT(Appeals) by placing reliance on the order of this Tribunal in Shriram Tamil Nadu Pvt. Ltd., allowed the claim of the assessee. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.*

Following the decision of this Tribunal, in the assessee's group company, we hold that the Ld.CIT(A) has rightly deleted the addition and the order of the Ld.CIT(A) is upheld. The Revenue's appeal on this ground is dismissed.

28.0 Ground No.2.4 to 2.6 is related to the ESOP expenses amount to Rs.1,91,82,201/-

During the assessment proceedings, the AO found that the assessee claimed the amount of Rs.1,91,82,201/- towards Employees Stock Option Plan (in short "ESOP") and claimed as Revenue expenditure. The AO held that the expenditure was a contingent in nature and accordingly, disallowed the expenses.

28.1 Aggrieved by the Order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition following the order of this tribunal in assessee's own case for the AY 2009-10 in ITA No.1819/Mds/2012 dated 11.04.2013.

29.0 We heard the rival submissions and perused the material placed before us.

In the assessee's own case, for the AY 2009-10 this Tribunal held the expenditure as Revenue expenditure in ITA No.1819/Mds/2012. On identical facts in the assessee's group company M/s.Shriram Transport Finance Co. Ltd., in ITA No.728/Mds/2016 dated 24.08.2016 deleted the addition made by the AO treating the ESOP expenditure as allowable Revenue expenditure in Para No.33, which is re-produced as under:

> *33. We have considered the rival submissions on either side and perused the relevant material available on record. We have carefully gone through the orders of both the authorities below. The Assessing Officer found that in the assessee's own case for earlier assessment year, on the basis of very same Employees Stock Option Scheme, 2005, this Tribunal allowed the claim of the assessee for the assessment year 2009-10. The Assessing Officer found that the appeal is filed before the Madras High Court and the same is pending. The Assessing Officer also found that the Revenue has filed SLP against the judgment of Madras High Court in PVP Ventures Ltd. (supra) before the Supreme Court and the same was dismissed. Pending finality through review or curative petition, the Assessing Officer disallowed the claim of the assessee in order to protect the interest of the Revenue. This Tribunal is of the considered opinion that when the matter was finally decided by the jurisdictional High Court and the Revenue's SLP was dismissed by the Apex Court, the Assessing Officer has to follow the judgment of Madras High Court. Moreover, for assessment year 2009-10, this Tribunal allowed similar claim of the assessee on the basis of very same Employees Stock Option Scheme, 2005. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.*

30.0 Respectfully following the order of this Tribunal, we uphold the order of the Ld.CIT(A) and dismiss the Revenue appeal on this issue.

In the result, the appeal of the assessee and the revenue are partly allowed.

Order pronounced in the Open Court on 7th June, 2017, at Chennai.

Sd/-	**Sd/-**
(एन.आर.एस. गणेशन**)**	**(**डि.एस. सुन्दर सिंह**)**
(N.R.S. GANESAN)	**(D.S.SUNDER SINGH)**
न्यायिक सदस्य**/JUDICIAL MEMBER**	लेखा सदस्य**/ACCOUNTANT MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 7th June, 2017.
TLN

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

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