

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A", NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

	I.T.A. No.1991/DEL/2016	
	A.Y. : 2011-12	
DCIT, CIRCLE 10(1), NEW DELHI	VS.	M/S GE MONEY FINANCIAL SERVICES PVT. LTD. 401-402, 4 <sup>TH</sup> FLOOR, AGGARWAL MILLENNIUM TOWER, E-1,2,3, NETAJI SUBHASH PLACE, PITAMPURA, DELHI - 110 034 (PAN: AAACC0642F)
<b>(ASSESSEE)</b>		<b>(RESPONDENT)</b>

Revenue by : Sh. Arun Kumar Yadav, Sr. DR  
Assessee by : Sh. Sachit Jolly, Adv.

**ORDER**

**PER H.S. SIDHU : JM**

The Revenue has filed this Appeal against the impugned Order dated 04.01.2016 of the Ld. CIT(A)-16, New Delhi relevant to assessment year 2011-12.

2. The following are the grounds raised by the Revenue-

"1. *Whether on facts and circumstances of the case, the Ld. CIT(A) was correct in deleting*

*the addition of Rs. 5,30,83,067/- made on account of interest accrued on sticky loans and advances, ignoring the fact that the assessee company follows the mercantile system of accounting and, therefore, all the incomes are mandatorily required to be included in the its total income on accrual basis.*

*2. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing."*

3. The brief facts of the case are that Assessee filed return of income declaring NIL income after claiming set off of losses and income u/s. 115JB at Rs. 92,77,50,120/- on 28.11.2011. Subsequently, the assessee filed revised return of income on 28.3.2013 declaring NIL income after claiming set off of losses and income u/s. 115JB at Rs. 92,91,86,141/-. In the revised computation, the assessee declared NIL income and books profits u/s. 115JB of Rs. 93,47,72,934/-. The case was selected for scrutiny and notice under section 143(2) was issued on 7.8.2012. Notice u/s. 142(1) was issued on 5.8.2013. Questionnaire u/s. 142(1) was

issued dated 30.10.2014. Due to change of incumbency issued fresh notice u/s. 142(1) on 21.11.2014. In response to notices, the AR of the assessee appeared from time to time and filed the requisite details. Assessee company is engaged in the business of consumer and auto finance. During the course of hearing, AR has produced books of account which have been test checked. During the year under consideration the assessee had undertaken transaction with its associated enterprises. The International Transactions entered into by the assessee with the associated enterprises were referred to the Transfer Pricing Officer (TPO) for determining the Arm's Length Price. The TPO has passed his order u/s. 92CA(3) dated 31.10.2014 wherein no adverse inference has been drawn in respect of international transaction. In this case the assessee company vide its reply dated 17.12.2014 furnished detailed submissions on the allowability of Interest on sticky loans and advances of Rs. 5,30,83,067 (net of interest reversal in relation to which principal has been written off) which has not been recognised by it for the assessment year in question in view of the Prudential Norms prescribed by the RBI. The assessee has submitted detailed written submissions and taken support of various judicial precedents in this respect which have been considered. Additionally, the assessee also

brought to my notice the judgment of Delhi ITAT passed on October 31,2012 for AY 2003-04 and AY 2004-05 in the assessee's own case wherein, full relief on the issue of interest on sticky loans has been granted to the assessee. However, the department has preferred an appeal before the Delhi High Court the matter is pending. Hence, claim of the assessee in this regard cannot be accepted. As per Companies Act, 1956, Section 209 w.e.f. 15.06.1988 makes it obligatory for all companies to maintain their accounts on accrual basis and according to double entry system of accounting. In view of this amendment all the companies are required to keep their accounts on accrual basis of accounting in respect of any accounting year closing on or after 15.6.1988. In the instant case for the purpose of audited accounts prepared as per the Companies Act, 1956 the income on sticky loans is provided and recognized as income. Subsequently the entry is reversed on the close of accounting year and income on the claimed sticky loans is not recognized. This implies that mercantile system is not being followed as far as interest income is concerned on the loans which become bad. A similar issue has been discussed at length by my predecessor in the assessment order dated 20.2.2001 passed u/s. 143(3) of the Act for AY 1998-99. Even the Ld. CIT(A) vide his order dated 16.1.2002 upheld the said additions made by predecessor.

Respectfully following the stand of the Department in prior years the interest on sticky loans amounting to Rs.5,30,83,067/- not recognized by the assessee in its books of account was disallowed and was added to the taxable income of the assessee company vide order dated 16.3.2015 passed u/s. 143(3) of the Act by assessing the income at Rs. 43,03,39,000/- as per normal provisions and income u/s. 115JB at Rs. 93,52,11,607/-. Against the aforesaid AO's order dated 16.3.2015, assessee appealed before the Ld. CIT(A)-16, New Delhi who vide his impugned order dated 04.1.2016 has deleted the addition and partly allowed the appeal of the assessee. Aggrieved with the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

4. Ld. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal.

5. Ld. Counsel of the assessee relied upon the order of the Ld. CIT(A).

6. We have heard both the parties and perused the relevant records, especially the impugned order. We find that the issue involved in the present appeal is squarely covered in favour of

the assessee in assessee's own case in A.Y.2000-01, 2003-04 and 2004-05. For the sake of convenience, the relevant observation of the ITAT in A.Y.2001-02 in Appeal No. 3476 is reproduced as under:

*"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 ITA Nos. 3192,3476,2809 & 2445/0ell2007 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 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 uniform*

*administration of law by all the income tax authorities in a specific situation and is, therefore, validly issued u/s 119 of the Income tax Act. As such, the circular would be binding on the Department."*

*Respectfully following the decision of Hon 'ble Supreme Court we confirm the order of Ld. CIT(A)."*

6.1 We also find that Assessee got favourable decision in its own case of this issue in A.Y.2003-04, 2004-05 also and placed reliance before the Ld. CIT(A) on the following case laws:

1. Favourable order passed by Hon'ble Delhi ITAT in assessee's group company case (GE Capital Services India) for A.Y.1999-00.
2. Decision of Hon'ble jurisdictional Delhi High Court in case of CIT vs Vasisth Chay Vyapar Ltd. [(2010) 330 ITR 440 Delhi HC].

6.2 Therefore, respectfully following the above mentioned judicial pronouncements, Ld. CIT(A) has rightly deleted the addition of Rs.5,30,83,607/- as interest accrued on sticky loans, which does not

need any interference on our part, hence, we uphold the action of the Ld. CIT(A) and reject the ground raised by the Revenue.

7. In the result, the Appeal filed by the Department stands dismissed.

Order pronounced on 16/11/2017.

Sd/-

**[PRASHANT MAHARISHI]  
ACCOUNTANT MEMBER**

*Date 16/11/2017*

**SRBHATNAGAR**

**Copy forwarded to: -**

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

Sd/-

**[H.S. SIDHU]  
JUDICIAL MEMBER**

By Order,

Assistant Registrar, ITAT, Delhi Benches