

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AHMEDABAD "SMC" BENCH, AHMEDABAD**

**[Coram: Pramod Kumar AM]**

ITA No.2051/Ahd/2011  
Assessment Year: 2002-03

**Arman Lease & Finance Limited,** .....**Applicant**  
*502/503, Sakar – II, Opp. Old High Court,  
Off Ashram Road, Ahmedabad – 380 009. [PAN : AABCA 3165 E]*

**Vs.**

**Assistant Commissioner of Income-tax,** .....**Respondent**  
*Circle-1, Ahmedabad.*

ITA No.344/Ahd/2012  
Assessment Year: 2001-02

**Arman Financial Services Ltd.,** .....**Applicant**  
*502/503, Sakar – II, Opp. Old High Court,  
Off. Ashram Road, Ahmedabad – 380 009. [PAN : AABCA 3165 E]*

**Vs.**

**Assistant Commissioner of Income-tax,** .....**Respondent**  
*Circle-1, Ahmedabad.*

**Appearances by**

**Bandish S.Soparkar** for the appellant  
**Prasoon Kabra** for the respondent

Date of concluding the hearing: 20.04.2018  
Date of pronouncing the order: 17.07.2018

**O R D E R**

1. These two appeals pertain to the same assessee, involve some common issues and were heard together. As a matter of convenience, therefore, both of these appeals are being disposed of by this common order.

**ITA No. 2051/Ahd/2011 - Assessment year 2002-03**

2. This appeal is directed against the order dated 1<sup>st</sup> July 2011 passed by the CIT(A) in the matter of assessment under section 143(3) r.w.s. 254 of the Income Tax Act, 1961, for the assessment year 2002-03.

3. Grievances raised by the appellant are as follows:

1. The learned Assessing Officer has erred in law and on facts of the case by holding that the Business of granting of Loans against Hypothecation, Hire Purchase and Lease does not amount to granting of Loans and Advances and therefore the appellant is not covered by the exceptions listed in explanation to section 73. The learned assessing officer has accordingly erred in applying the provisions of section 73 and not allowing the setoff the Loss from Shares and Securities of Rs.15,69,203/- against its Business Income and Learned C.I.T.(A) without, appreciating all the facts of the case in proper perspective further erred in confirming the same.

1.1. Your Appellant submits that under the facts and circumstances of the case and as explained in detail vide letter dated 16/11/2009, the word "Loans" or the word "Advances" are not defined in section 73. Nor they are defined in chapter VI-A or Section 2. The definition given in section 269SS and 269T is only for the limited purpose of those sections. The Learned Assessing officer has erred in Law and facts in not relying on the meaning of the said words in common parlance. The learned Assessing Officer has on the contrary erred in law by relying on the definition in section 269SS and 269T and Learned CIT (A) has also not appreciated the facts in proper perspective and rejected the above grounds.

1.2. Your appellant also submits that the Learned Assessing Officer has erred in law and facts by misinterpreting explanation to sec.73. The explanation to sec.73 was inserted by the Taxation Law (Amendment) Act, 1975 w.e.f. 01/04/77, and that the Circular No.204 dt.24/07/1976. The object of the provision is to curb the device sometime resorted by the business houses controlling groups of companies to manipulate and reduce the taxable income of companies under their control. In the present case there is no such device and hence the Learned Assessing Officer has misinterpreted the provision of explanation to sect. 73 of the I.T. Act. The Learned C.I.T.(A) without appreciating all the facts of the case in proper perspective further erred in confirming the same.

1.3. Your Appellant also submits that the learned Assessing Officer has also erred in holding that the Business of Hire Purchase does not amount to granting of Loans and Advances. Your Appellant relies on the ratio laid down in this regard in the decision Hon. of Andhra Pradesh High Court in the case of SPBP Srirangacharyulu vs. CIT 57 ITR 95 and the decision of Hon. Supreme Court in the case of Sundaram Finance v/s. State of Kerala (AIR 1956 SC 1176).

Your appellant also relied on the decision of the Hon. ITAT Delhi Bench E in the case of NBI Industrial Finance Co. Ltd. v/s. Dy. Commissioner of Income Tax (2004) 1 SOT 132 (Delhi). Learned CIT(A) has not even considered the decision of Hon. Delhi Tribunal and has rejected the above grounds.

1.4. Your appellant further submits that during the year, your appellant has carried out the activity of granting of Loans against Hypothecation of Assets, however the Learned Assessing Officer wrongly hold and state that there is only a cosmetic change in the sense that the nomenclature used to refer to the activity carried on is changed from hire purchase to granting of Loans against hypothecation of assets and Learned C.I.T.(A) without appreciating all the facts of the case in proper perspective further erred in confirming the same.

2. The Learned Assessing Officer has erred in law and facts of the case in disallowing by estimating the expenses of Rs.71,696/- relating to dividend income. The dividend received was in respect of shares held in stock in trade and the purpose of purchasing such shares was not to earn tax free dividend but to take the advantage of

*market fluctuations. The Learned C.I.T.(A) without appreciating all the facts of the case in proper perspective further erred in confirming the same.*

*2.1. The Learned Assessing Officer has erred on facts of the case in estimating 8.2% of the total expenditure incurred as expenditure related to earning the dividend income*

4. So far as the first ground of appeal is concerned, learned representatives fairly agree that the issue is now covered in favour of the assessee by a coordinate bench decision in the case of Gujarat Gas Financial Services Pvt Ltd Vs ACIT (ITA Nos 35,515/Ahd/2005 and 1095/Ahd/2006; order dated 31<sup>st</sup> October 2013). The authorities below had decided the issue against the assessee on the basis of this Tribunal's decision in the case of Gujarat Gas Financial Services Ltd (115 ITD SB 218) but when this decision travelled in appeal before Hon'ble jurisdictional High Court, Their Lordships were pleased to send the matter back to the Tribunal, and, in the said proceedings, the matter was decided in favour of the assessee. The very foundation of the action of the authorities below thus ceases to hold good in law. Learned representatives donot dispute this position.

5. In view of the above position, I hold that the Explanation to Section 73 was wrongly invoked on the facts of the case, and the Assessing Officer should have, accordingly, allowed the set off of related loss against the business income.

6. As regards the second ground of appeal, this issue is now covered against the assessee by Hon'ble Supreme Court's judgment in the case of Maxopp Investments Ltd Vs CIT [(2018) 91 taxmann.154 (SC)] inasmuch the fact that the shares were held as stock in trade is not relevant for determining the applicability of Section 14A. The assessee must, therefore, fail on this count.

7. In the result, the appeal is partly allowed in the terms indicated above.

**ITA No. 344/Ahd/2012 - Assessment year 2001-02**

8. This appeal is directed against the order dated 1<sup>st</sup> December 2011 passed by the CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2001-02.

9. Grievances raised by the appellant are as follows:

- 1. On the facts and in the circumstances of the case it is most respectfully submitted that the Hon'ble CIT(A) has erred in law and on facts by considering share trading loss Rs.13,10,241/- as speculation loss and thereby not allowing such loss against business income.*
- 2) On the facts and in the circumstances of the case it is most respectfully submitted that the Hon'ble CIT(A) has erred in law and on facts by making disallowance of Rs.68,524/- u/s.14A r.w. Rule 8D.*

10. Learned representatives fairly agree that whatever I decide for identical grievances raised in the appeal for the assessment year 2002-03 will follow mutatis mutandis. Vide my order above, I have allowed the first ground of appeal and dismissed the second ground of appeal. There is no change in the material facts and circumstances and the stand of the parties. I, therefore, allow the first ground of appeal, directing the Assessing Officer to treat Rs.13,10,241 as a normal business loss eligible for set off against the business income since

Explanation to Section 73 was admittedly wrongly invoked on the facts of this case, and dismiss the second ground of appeal confirming the disallowance under section 14A.

11. In the result, the appeal for the assessment year 2001-02 is also partly allowed. To sum up, both the appeals are partly allowed in the terms indicated above. Pronounced in the open court today on 17<sup>th</sup> day of July, 2018.

*Sd/-*

Pramod Kumar  
(Accountant Member)

*Dated: Ahmedabad, the 17<sup>th</sup> day of July, 2018.*

*PBN/\**

<i>Copies to:</i>	<i>(1) The appellant</i>	<i>(2) The respondent</i>
	<i>(3) CIT</i>	<i>(4) CIT(A)</i>
	<i>(5) DR</i>	<i>(6) Guard File</i>

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad*