आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

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

श्री एन.आर.एस. गणेशन,न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.No.72/CHNY/2015**

(निर्धारण वर्ष / Assessment Years: 2004-05)

M/s. Sundaram Finance Ltd., No.21, Pattulos Road, Chennai – 600 002. **PAN: AAACS 4944A**	Vs	The Joint Commissioner of Income Tax, Company Range VI Chennai - 34.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./**I.T.A.No.73/CHNY/2015**

(निर्धारण वर्ष / Assessment Years: 2005-06)

M/s. Sundaram Finance Ltd., No.21, Pattulos Road, Chennai – 600 002. **PAN: AAACS 4944A**	Vs	The Addl. Commissioner of Income Tax, Company Range VI Chennai - 34.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./**I.T.A.Nos. 285 & 286/CHNY/2015**

(निर्धारण वर्ष / Assessment Years: 2004-05 & 2005-06)

The ACIT, LTU-1, Chennai-34.	Vs	**M/s. Sundaram Finance Ltd.,** No.21, Pattulos Road, Chennai – 600 002. **PAN: AAACS 4944A**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri R. Vijayaraghavan, Advocate
राजस्व की ओर से /Revenue by	:	Shri Sridhar Dora, JCIT

सुनवाई की तारीख/Date of hearing : 14.06.2019
घोषणा की तारीख /Date of Pronouncement : 04.09.2019

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee & the Revenue filed the above appeals against the orders of the Commissioner of Income Tax (Appeals), Large Taxpayer Unit, Chennai in ITA Tr.No.7/13-14/LTU(A) and ITA Tr.No.6/13-14/LTU(A) both dated 14.11.2014 for the assessment years 2004-05 & 2005-06, respectively.

2. The assessee is a public limited company, NBFC engaged in the business of hire purchase financing, equipment leasing and allied activities. It has been following the mercantile system of accounting. Since inception, Even Spread Method (ESM) as the basis for apportionment of Hire installment into principal and finance income, has been adopted by the assessee consistently over the years. The Hire purchase agreement entered into with the clients provides for recognizing the income /expenses, as the case may be, on ESM basis. So, the assessee recognised the hire purchase income on ESM basis both for Book and Income Tax purposes upto the previous

year ended 31.03.2000 relevant to Assessment year 2000-01. From previous year 2000-01 onwards, it followed IRR method for the apportionment of the Hire installment into principal and finance charges component as prescribed by the Accounting Standard on Leases (AS 19) issued by the Institute of Chartered Accountants of India. Though it switched over to IRR method for Books to comply with the Accounting Standard, however, it continued to follow ESM for recognizing the Hire purchase income for Income Tax purposes as sec 145(1) required the assessees to compute the profits and gains of business or profession or Income from other sources in accordance with either on cash or mercantile system of accounting regularly employed by them. The assessment position regarding the same in the earlier years is summarised as under:

Assessment year	*Amount Rs. in lakhs*	*Remarks*
2001-02	*8630.68*	*Reduced from the taxable income in regular assessment by the AO.*
2002-03	*44.30*	*Reduced from the taxable income in the Memo of Income but taxed in the regular assessment by the AO.*
2003-04	*2573.83*	*Offered to tax in the Memo of income and also taxed on protective basis in the regular assessment by the AO.*

2.1 However, while making the assessments for the assessment years 2004-05 and 2005-06, the A O concluded that the entire hire purchase transactions are loan and the interest rate implicit in the transaction i.e., Internal Rate of Return (IRR) method adopted in the books determines the real income and assessed accordingly. Aggrieved, the assessee filed appeals before the CIT(A) and the Ld. CIT(A) found that in the assessee's own case for AY. 2001-02, in the similar issue, the Hon'ble ITAT Chennai in ITA No.955/Mds/05 and ITA No.829/Mds/05 dated 31.7.2007 decided the issue in favour of the revenue, therefore, following it he dismissed the appeals against which the assessee filed these appeals.

3. Before us, the Ld.AR relied on the decision of the jurisdictional Hon’ble High Court of Madras in its own case viz M/s. Sundaram Finance Limited vs. ACIT in Tax Case Appeal No.158 of 2009, dated 05.03.2019.

4. We heard the rival submissions. In the above case, i.e., in Tax Case Appeal No.158 of 2009, dated 05.03.2019, on the following question of law :

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Internal Rate Return (IRR) method is the appropriate method of income recognition in hire purchase transaction as against the Equated Sum (ESM) method regularly followed by the Appellant?;

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest income on hire purchase transactions accrued only under the Internal Rate Return (IRR) method and form part of the mercantile system of accounting?;

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the appellant is not entitled to maintain its Book on the Internal Rate Return (IRR) method while offering the income on Equated Sum (ESM) method for tax purpose.

The Hon'ble High Court held as under:

"6. Having perused the aforesaid Judgements, we are of the clear opinion that the later decision of Andhra Pradesh High Court relied on by the learned counsel for the Revenue does not help the case of the Revenue and Andhra Pradesh High Court itself distinguished the facts before it from the Madras High Court decision in the case of Ashok Leyland (Supra). Admittedly, the Assessee has been following the same method of E.M.I for bifurcation of its income into Principal and interest component for all these years in question. The S.O.D method gives higher finance charges (interest) for the initial years and lower finance charges (interest) for the later years, i.e, the Sum of Digits is sum total of the number of years e.g. If the Hire Purchase Agreement is for 10 years, the SOD is 55 (1+2+3+4+5+6+7+8+9+10 = 55). Therefore, total financial charges for the first year would be

10/55, for the second year 9/55, for third year 8/55 and so forth which would clearly give higher financial charges for interest taxable in the first year. This SOD method even though adopted by the Assessee in its Book of Accounts on the basis of Guidelines issued by the Institute of Chartered Accountants of India was not adopted in the Returns of Income filed by it which consistently adopted EMI method for taxability of interest income all these years. Since, for the previous assessment years, this Court has already approved such bifurcation of income and has held that interest income (Finance charges) on consistently adopted basis of E.M.I. would be taxable in the hands of the Assessee, the mere change of Accounting method in its Book of Accounts on the basis of S.O.D. does not alter the position in the tax in the hands of the assessee. Therefore, the Judgement of Andhra Pradesh High Court in the case of Sri Chakra Financial Services Ltd. Vs. Commissioner of Income Tax [(2013) 350 ITR 398] is distinguishable.

7. On the other hand, since in the case of Ashok Leyland Finance Ltd., (supra) the Coordinate Bench of this Court has upheld the taxability with regard to interest income on EMI method, which has been consistently followed, there is no reason to take a different view in the matter for the present Assessment years, in this case.

8. Accordingly, the present Appeal of Assessee is allowed and the questions of law are answered in favour of the Assessee and as against the Revenue. No order as to costs."

Therefore, following the above decision, we direct the AO to tax the interest income on EMI method or ESM, which has been consistently followed by the assessee and allow the consequential relief in

accordance with law. Thus, the assessee's appeals on this issue are allowed for both assessment years 2004-05 and 2005-06.

5. The next issue is on the provision for non-performing assets (NPAs) :

The assessee made provision for NPAs in the Profit & Loss A/c, as per the directions of the statutory authority viz., Reserve Bank of India which are mandatory in nature. The provision for NPAs is made in the Profit & Loss A/c for the difference between opening cumulative provision and closing cumulative provision for each asset. In the assessments for the earlier years, such provision was added to the taxable income but was allowed by the CIT(A) based on the stay of the Madras High Court from assessment year 1998-99 onwards. The department has filed an appeal before the Tribunal against the order of CIT(A). In the regular assessment for the assessment year 2002-03, the said provision was added to the taxable income but the demand was stayed in view of the Madras High Court's stay order and the Ld.CIT(A)'s order for earlier years. However, in the regular assessment for the assessment year 2003-2004, the provision for NPAs which was reversed during the year was included in the taxable

income for the year for the reason that the issue was allowed by the CIT(A) in the earlier years and if it is allowed for this assessment year, it would amount to double deduction.

5.1 For the assessment years 2004-05 and 2005-05 also, the provision for NPAs was reversed in the books and it was included in the taxable income of the respective year. Before the AO, the assessee pleaded that this issue has to be treated consistently following the stand taken in the assessments made in the earlier years. However, the AO has rejected the assessee's plea stating that the issue is in appeal before the ITAT and the matter has not reached finality. On appeals, the assessee pleaded before the Ld.CIT(A) that its claim is an admissible business deduction, without prejudice to such claim, the reversal of provision during the respective assessment year should be deducted from the taxable income consistent with the stand taken in the assessments made in the earlier years, otherwise it would result in double taxation of the amount in the respective assessment years. The Ld.CIT(A) found that in assessee's own case for AY. 2001-02, in the similar issue, the Hon'ble ITAT Chennai in ITA No.955/Mds/05 and ITA No.829/Mds/05

dated 31.7.2007 upheld the order of the Commissioner of Income-tax (Appeals) on this issue and hence decided against the assessee. Therefore, respectfully following that decision, the Ld.CIT(A) dismissed the assessee's appeals against which the assessee filed these appeals.

5.2. Before us, the ld AR submitted that the ld Commissioner of Income tax (Appeals) erred in not reducing the provision for non-performing assets at Rs. 72,49,109/- and Rs.16,44,58,656/- from the taxable income which was reversed during the assessment years 2004-05 and 2005-06, respectively, consistent with the stand taken in the assessments.

5.3 We heard the rival submissions. Since the assessee's claim require verification, we deem it fit to restore this matter back to the AO for a fresh examination and due decision after affording adequate opportunity to the assessee. Thus, the assessee's appeal grounds on this issue are treated as partly allowed for both assessment years 2004-05 and 2005-06.

6. The next issue pertains to not allowing the assessee's claim that the amount recovered in respect of bad debts written off in the books of amalgamating companies as an exempt income in its hands: The assessee recovered Rs.2,33,79,628 and Rs.3,80,40,407/- from the bad-debts written off by the erstwhile amalgamating companies viz. India Equipment Leasing Ltd, Aparajitha Finance Company Ltd, Balika Finance Company Ltd, Paramjyothi Finance Company Ltd and Sundaram Finance Services Ltd, during the assessment years 2004-05 and 2005-06, respectively and claimed it as an exempt / non taxable revenue in the respective assessment year. It contended before the AO that the recovered bad debts should be taxed only under the specific section U/s 41 (4) and not U/s 41 (1). For taxing recovery of bad debts U/s 41 (4), the identity of the assessee should be same who originally claimed the deduction for bad debts written off and it relied on the decision of the Hon'ble Madras High Court in the case of CIT v. P.K. Kaimal (123 ITR 755). The AO distinguished the above case-law and also referred to application of s.176(3A) which states that

> "Where any business is discontinued in any year, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the

> year of receipt, if such sum would have been included in the total income of the person who carried on the business had such sum been received before such discontinuance.

The AO stated that the assessee has earned the receipts from recovery of bad debts of the amalgamating company by its own efforts during the year. Alternately, if recovery of bad debts have to be removed from income, then the expenditure attributable to earning of such income also should have been estimated by the assessee and added to the income and that the income generated by incurring business expenditure can certainly be categorized as business income. As such, the receipts of recovery of bad debts would represent the assessee's taxable income and held that such recovery of bad debts is taxable u/s 41 (4) of the Act in the assessment years 2004-05 and 2005-06, respectively, in the case of amalgamated company i.e., the assessee. He further stated that any income not being specifically exempt under the Act is taxable as income from other source. Accordingly, he brought to tax the bad debts recovered at Rs.2,33,79,628 and Rs.3,80,40,407/- in the assessment years 2004-05 and 2005-06, respectively. On appeals before the CIT(A), the assessee contended that for the applicability of sec.41 (4), the identity of the assessee should be maintained to tax the recovery of

bad debts. In the assessee's case, the amalgamating companies who actually wrote off the bad debts were no more in existence and hence the recovery of bad debts by the assessee would not be chargeable to tax as upheld by the Madras High Court in the case of CIT Vs. P.K.Kaimal (123 ITR 755). It is further stated that the successor of the business is defined in Explanation 2 to Section 41 (1) which includes amalgamated company and no corresponding definition has been found under Section 41 (4). In the case of amalgamation, the identity of the amalgamating company is completely lost and the name of the company is struck down from the Registrar of Companies. Hence, the reasoning given by the assessing officer in distinguishing P.K.Kaimal's case that the identity of the amalgamating companies is not completely lost in the assessee's case is not correct etc. The Ld.CIT(A) held that the assessee's contention is not appealing for the following reasons :

> *"(a) The provision of s.41 (1) was amended by Finance Act, 1992 w.e.f. 1.4.1993 so as to include the assessability in the hands of the successor in business and in the Explanation-2 to the section, successor in business includes the amalgamated company in the case of amalgamation of companies. Therefore, the recovery of bad debts as per s.41(4) has to be brought to tax in the hands of the successor company i.e., the amalgamated company. Even though the provisions of s.41 (4) clarifies that the old business activity need not be*

continued by the successor to bring to tax the debts recovered subsequently, it is silent with regard to the person in whose hands the recovered amounts to be taxed. It will be clear that the said amount has to be taxed in the hands of amalgamated company when we read s.41 (4) along with s.41 (1). Therefore, the argument of the appellant that the successor of the business as defined in Explanation 2 to s.41 (1) was not correspondingly defined in s.41 (4), is not on proper reasoning. The decision of Hon'ble Madras High Court in the case of P.K. Kaimal (supra) relied on by the appellant is also out of context. The above decision is with regard to dissolution of erstwhile firm and the business was taken over by the assessee as proprietor which means the erstwhile firm is out of scene completely. In the instant case, it is the issue of amalgamation and the amalgamating company has merged with the amalgamated company along with its assets and liabilities .including bad debts relatable to it. The meanings of "dissolution", "amalgamation" and "merger" as per New Oxford Advanced Learner's Dictionary are as under:

"Dissolution: (i) the Act of officially ending a marriage, a business agreement or a parliament, (ii) the process in which something gradually disappears, (iii) the act of breaking up an organisation etc.

Amalgamation: (i) If two organisations amalgamate or are amalgamated, they join together to form one large organisation, (ii) to put two or more things together so that they form one.

Merger: The act of joining two or more organisations or businesses into one.

In view of the above meanings, in the case of dissolution an entity which was in existence disappears from the scene subsequent to merger. Whereas in the case of amalgamation or merger it is the case of two entities coming together to form a larger new entity which means to say that both are in co-existence. Therefore, the decision relied on by the appellant is of no much help as the facts of

dissolution are distinguishable from that of amalgamation or merger. In this context the observation of the AO as under is proper:

"Thus in the case of amalgamation of companies, it can be said that the amalgamating company 'exists' within the amalgamated company without having a separate identity. The identity of that company is not completely lost."

(b) In the case of amalgamation, the amalgamating company has joined the amalgamated company ie., the appellant company along with its assets and liabilities which means to say it has joined the new company along with its bad debts also which were written off on the date of merger. When the amalgamated company owns up the assets and liabilities of the erstwhile amalgamating company the bad debts recovered subsequently by the amalgamated company should also be taken into account as its income and offered to tax. In the case of CIT v. T. Veerabadra Rao (1985) 22 Taxman 45 (SC), the Hon'ble Supreme Court has made the observation at para 7 as under:

> 7. Section 28 of the Act, referred to in sub-section (1) of section 36, provides that income under the head 'Profits and gains of business or profession', shall be chargeable to income-tax. The profits and gains of a business are charged to income-tax. To compute the profits and gains so chargeable, section 36 provides for allowing a number of deductions. Each of the deductions must relate to the business. If the same assessee was carrying on a business and he wrote off a debt relating to the business as irrecoverable, he would without doubt be entitled to a corresponding deduction under clause (vii) of sub-section (1) of section 36 subject to the fulfilment of the conditions set forth in sub-section (2) of section 36. If a business, along with its assets and liabilities, is transferred by one owner to another, we see no reason why a debt so transferred should not be entitled to the same treatment in the hands of the successor. The recovery of the debt is

a right transferred along with the numerous other rights comprising the subject of the transfer ...

From the above decision, it is clear that if a business along with its assets and liabilities is transferred from one owner to another there is no reason why a debt so transferred should not be entitled to the same treatment in the hands of the successor. The recovery of debt is a right transferred along with the numerous other rights to the successor company. The Supreme Court has come to this conclusion while dealing with an issue of whether money owed by a debtor under a transaction with the predecessor firm can be written off as irrecoverable in the accounts of the successor assessee in a subsequent year and claimed as bad debt by it u/s 36(1)(vii) - held as yes. Applying the same analogy, the bad debts pertaining to erstwhile amalgamating companies can be taken as income of the succeeding amalgamated companies for all practical purposes and offered to tax as per the provisions of the Act.

(c) The A O has also relied on the provisions of s.176(3A) quoted supra which states that if there is any discontinuance of business by any person any sum received after such discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt as if such sum would have been included in the total income of that person who carried on the business had such sum been received before such discontinuance. This analogy drawn by the AO also goes in support of AO's stand.

(d) The observation made by the AO that the appellant company would have taken efforts, used its man power, time, energy etc for the recovery of such bad debts is well taken. Even though the details of the gap between the date of merger and the date of recovery is not available to assess the extent of efforts made, the appellant might have made a continuous effort over a period of time to recover such bad debts pertaining to its erstwhile subsidiary companies. In the process the appellant might have incurred some expenditure and

debited the same in its P&L a/c. Any income generated by incurring business expenditure, therefore, can certainly be categorised as business income. Therefore, the bad debts recovered by the appellant subsequently should be brought to tax in its hand as its own income.

(e) Another observation made by the AO with regard to a well established fact that any income not being specifically exempt under the Act is taxable as income from other source, is also well taken. Any income earned by a person, unless otherwise specifically exempt under certain provisions of the Act, should suffer tax. The appellant has not explained under what section of the Act the recovered bad debts are exempt.

5.2.2 In view of the above discussion, the bad debts pertaining to erstwhile subsidiaries recovered by the appellant company needs to be taxed in its hands. As such, the addition made by the AO is in order."

6.1 The Ld.A R made the same submissions as made before the Ld.CIT(A) and relied on the decisions of the Hon'ble Madras High Court in the case of CIT Vs. P.K.Kaimal (123 ITR 755) and the Hon'ble Apex court's decision in the case of Saraswati Industrial Syndicate Ltd vs CIT 186 ITR 278 which was also rendered under Section 41. When the bench asked the Ld.AR what is the nature of the impugned receipts, he replied that it is capital in nature. Per contra, the ld DR supported the orders of lower authorities, in to to.

6.2 We heard the rival submissions. The fact remains that assessee has recovered Rs.2,33,79,628 and Rs.3,80,40,407/- from the bad-debts written off by the erstwhile amalgamating companies viz. India Equipment Leasing Ltd, Aparajitha Finance Company Ltd, Balika Finance Company Ltd, Paramjyothi Finance Company Ltd and Sundaram Finance Services Ltd during the assessment years 2004-05 and 2005-06, respectively. The Ld. CIT(A) upheld the additions U/s 28 r.w.s176 (3A) and also U/s 56 of the Act. The amalgamating companies have joined the amalgamated company, i.e., the assessee company, means that they have transferred their business along with their assets and liabilities to the amalgamated company, i.e., the assessee company. Therefore, after the amalgamation, the amalgamated company i.e., the assessee company, has all the rights the amalgamating companies had in their business which were transferred to it and also it owes all the liabilities the amalgamating companies owe and transferred to it. In exercise of such rights only, the assessee company recovered Rs.2,33,79,628 and Rs.3,80,40,407/- during the assessment years 2004-05 & 2005-06 respectively, from the bad-debts written off by the erstwhile amalgamating companies and therefore such recoveries are

nothing but the business receipts of the amalgamated company i.e., the assessee and hence they are assessable in it its hands. This decision is also in accordance with the decision of the Hon'ble Supreme Court in the case of CIT v. T. Veerabadra Rao (1985) 22 Taxman 45 (SC), relied on by the Ld.CIT(A), supra,. Therefore, we do not find any infirmity in the orders of the Ld.CIT(A) on this issue and hence dismiss the corresponding grounds of the assessee for the assessment years 2004-05 and 2005-06, respectively.

7. The next issue is the additional grounds of appeal filed on the disallowance of the business origination costs of Rs.9,70,67,626/- actually incurred by the assessee during the assessment year 2005-06 .

The Ld.AR submitted that for the assessment year 2005-06, the assessee has filed an appeal before the ITAT bearing number ITA 73/CHNY/2015 dated 12.01.2015 against the orders of Commissioner of Income Tax (Appeals) dated 14.11.2014 and prays to add the following as additional grounds of appeal. As per the order dated 14.11.2014, the CIT (A) has erred in dismissing the appellant's

appeal against the order of Assessing officer in disallowing the business origination costs of Rs.9,70,67,626 actually incurred by the appellant during the year. Being aggrieved by the order of the CIT(A), the appellant files this appeal.

ADDITIONAL GROUNDS OF APPEAL
(All sections refer to Income Tax Act, 1961, as amended, unless otherwise stated)

1. The Order of the Commissioner of Income Tax (Appeals) is contrary to law, weight of evidence and probabilities of the case.

2. The Commissioner of Income Tax (Appeals) erred in coming to the conclusion of dismissing the Appellant's appeal against the order of the Assessing officer in disallowing business origination costs of Rs.9,70,67,626/- actually incurred by the appellant during the year on the ground that the appellant, itself, deferred the said amount to the subsequent years in the books.

2.1 The Commissioner of Income Tax (Appeals) ought to have appreciated that under mercantile system of accounting, revenue expenditure should be allowed in the year in which it was incurred irrespective of the treatment given in the books of the Appellant.

2.2 The commissioner of Income Tax (Appeals) has given relief in the AY 2008-09 hence the Appellant has not added the issue in its original grounds of appeal however being advised by its counsel the appellant prays to add it as an additional ground of appeal.

For the reasons stated above and those that may be adduced at the time of hearing, the Hon'ble ITAT may be pleased to allow the appeal of the Appellant as additional ground and grant such relief/relief's considering the facts and circumstances of the case.

7.1 We heard the rival submissions and admit the additional ground. This issue pertains to allowance of business origination cost

of Rs.4,35,19,418/- as against Rs.14,05,87,044/- claimed by the assessee on the ground that the assessee itself deferred the said amount to the subsequent years in the books. The AO observed that the assessee incurred Rs.14,05,87,044/- towards commission given to direct market agents for procurement of business. This amount represented upfront expenditure incurred in the course of business. In the books of account, the business origination cost was apportioned over the tenure of the contracts in order to determine the financial performance and pricing of each contract. Accordingly, Rs.4,35,19,418/- was charged to P&L a/c for this year and the balance of Rs.9,70,67,626/- was carried over to the balance-sheet for amortization in the subsequent years. However, while filing the return of income, the assessee claimed the balance of Rs.9,70,67,626/- also on the ground that it is a revenue expenditure instead of spreading over the amount to the period of contract. The AO by relying on the decision of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Ltd [1997] [225 ITR 802] and also by stating that the assessee itself apportioned over the tenure of the contracts in order to determine the financial performance and pricing of each contract and that if the entire

amount of commission paid to market agents is claimed this year it will be a distorted picture of income, allowed only the amount debited to P& L a/c of Rs.4,35,19,418/- and disallowed Rs.9,70,67,626/-. On appeal before the CIT(A), the Ld.CIT(A) held that in the books of account the assessee itself has deferred balance amount of total expenditure after claiming Rs.4.35 crores for the year. Therefore, it cannot take a different stand while computing profits for the year in the computation statement. It is also brought to my notice that the assessee itself has reversed such claim in the

7.2 On this issue, the Ld. AR relying on the case in Taparia Tools Ltd vs. JCIT (Supreme Court) 372 ITR 605 submitted that as per the decision normally revenue expenditure incurred in a particular year has to be allowed in that year and if the assessee claims that expenditure in that year, the Department cannot deny the same. Fact that assessee has deferred the expenditure in the books of account is irrelevant. However, if the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of 'Matching Concept' is satisfied. Since the assessee claimed the entire amount of Rs.14,05,87,044/- on the ground that it

is a revenue expenditure instead of spreading over the amount to the period of contract, applying this case law he pleaded that the balance of Rs.9,70,67,626/- may also be allowed.

7.3 We heard the rival submissions and find merit in the Ld.AR's above submission. Applying the Hon'ble Supreme Court decision, supra, we allow the assessee's appeal on this issue.

8. Let us now examine the Revenue's appeal filed in ITA No.285/Chny/2015 for AY 2004-05. The next issues are against the directions of the Id. CIT(A) to the Assessing Officer to allow : (1) the capital loss of Rs. 86,09,134/- on account of sale of Sundaram Mutual Fund (dividend option) to the assessee without reducing the dividend income of Rs.76,16,755/- claimed as exempt, in contravention to the provision of sec. 94(7) and (2) to allow the capital loss of Rs. 74,94,659/- on account of sale of units of Sundaram Bond Saver - Bonus Option Unit.

8.1 On the issue number 1 : The assessee company invested Rs. 1,80,00,000/- in Sundaram Mutual Fund in Bond Saver Scheme

Dividend on 7-11-2003. On the same day, a loan of Rs.1,50,00,000/- was also taken from HDFC bank @ 5.25% which was subsequently repaid on 14-11-2003. Same day dividend of Rs.76,16,755/- was declared by mutual fund as this was the record date for declaration of dividend. This amount of dividend was received by company on 13-11-2003. These units of mutual fund were sold on 13-2-2004 for Rs.93,90,866/- and loan of Rs.1,50,00,000/- was repaid to HDFC Bank and a capital loss of Rs. 86,09,134/- has been claimed by the company and the amount of dividend received has been claimed as non taxable.

8.1.1 The AO in view of the intent and language of s.94(7) , reduced the capital loss to the tune of Rs.76,16,755/-, being the amount of dividend receipt, from short term capital loss and held that the eligible capital loss is only Rs.9,92,379/- and accordingly, the AO made a disallowance of capital loss of Rs.76,16,755/-. On appeal, the Ld.CIT(A) held that the disallowance of capital lost to the extent of dividends earned is not called for the following reasons:

Firstly, the period of holding was more than three months, therefore, s.94(7) will not apply.

Secondly, the assessee's case pertains to AY.04-05 due to which the amended provisions ie sub-clause (b) which was substituted by Finance Act, 2004 w.e.f.1.4.2005 are not applicable as they are applicable from AY.05-06. Therefore, the assessee's case falls prior to the amendment during which within three months clause was available for both securities and units.

Thirdly, the dividends earned of Rs.76,16,755/- cannot be reduced from its gross capital loss since the dividend income is exempt u/s 10.

8.2 On the issue number 2 i.e., on the disallowance of capital loss in respect of sale of units of Sundaram Bond Saver - Bonus option unit :

The assessee had acquired / bought 6,98,152 units on 18/3/2004 and an equal amount of units were allotted additionally as bonus units on that date. It sold the original units on 22/3/2004 and incurred a short term capital loss of Rs.74,94,659/-. It further stated that the Scheme in which it made an investment was the 'Growth' scheme. The Net Asset Value (NAV) of the same on the date of purchase i.e., on 18.3.2004 and on the date of sale i.e., 22.3.2004 were Rs.21.4853 and Rs.10.7503, respectively. It stated that as per the information obtained from Sundaram BNP Paribas Mutual Fund, the total size of the scheme 'Sundaram Bond Saver Institutional Bonus' as on 18.3.2004 was Rs.221.16 crore and the investment is of Rs.1.50 crore in that scheme from its group. The details in gist are as under:

Description	*Date of Acquisition*	*Cost of Acquisition Rs.*	*Date of Sale*	*Sale Value Rs.*	*Capital loss*
Sundaram Bond Saver					
Bonus option	*18/3/2004*	*15000000*	*22/3/2004*	*7505341*	*7494659*

The AO stated, inter alia, that the appellant is in full control of mutual fund as the 100% equity is held by the appellant company and initially the Bonus scheme was not there in the Sundaram Bond Saver Institutional Scheme and this option was made available from 5.3.2004. The AO further stated that carving out a bonus scheme itself is against the objective of the above scheme. He came to the conclusion that the entire scheme of giving bonus to the big investors is a colourable device as the appellant company is holding 100% shares and therefore the benefit derived by investment at this scheme for five days and claiming loss of capital loss of Rs.74,94,659 is disallowed. Accordingly, the AO relying on the decision in the case of McDowell And Co.Ltd v. Commercial Tax Office, 154 ITR 148 SC, disallowed the amount claimed as short term capital loss. On appeal, the Ld.CIT(A) held, inter alia, that *"the argument of the appellant is that the entire transaction of purchase and sale of the shares and declaration of dividends by Sundaram Mutual Fund is regulated by*

SEBI and schemes are launched only after getting approval from them. Therefore, the question of influencing Sundaram Mutual Fund by the appellant company does not arise. The ld.AR has further submitted that when compared to the corpus of Sundaram Bond Saver Institutional Plan - Bonus option, which is at Rs.221.16 crores the investment made by the appellant in the scheme is only Rs.1.50 crores contributing only 0.67%. Therefore, the low quantum of investment cannot lead to any influence by the appellant company on Sundaram Mutual Fund. Hence, the argument of the AO that a colourable device was used in getting bonus from Sundaram Mutual Fund is out of context. After careful consideration of the arguments raised by the appellant, I do not find any merit in the disallowance made by the AO. In the scheme of things, the transactions of shares and declaration of bonus will be fully controlled by SEBI guidelines and even though the appellant is having 100% control over Sundaram Mutual Fund, the investment made by the appellant with that company are insignificant. Therefore, it is highly improbable to conclude that the appellant company has gained in this process by using colourable device as per the decision in the case of Mc Dowell

and Company Ltd (154 ITR 148) (SC). In view of this, the Ld.CIT(A) allowed the appeal." Aggrieved, the Revenue filed this appeal.

8.3 The Ld. DR submitted that on the former issue that the Ld. CIT(A) erred in directing the Assessing Officer to allow the capital loss without reducing the dividend income which was claimed as exempt, in contravention to the provision of sec. 94(7) of I. T. Act. The Id. CIT(A) failed to appreciate that the assessee has used a colourable device for claiming the capital loss and the decision of the/Supreme Court in the case of Mcdowells and Company Ltd. (154 ITR 148) applies to the facts of the case .Thus , the dividend income claimed as exempt has to be set off against the capital loss claimed on account of sale of units of Sundaram Mutual Funds (dividend option). On the second issue submitted that the Id. CIT(A) erred in directing the Assessing Officer to allow the capital loss on account of sale of units of Sundarm Bond Saver - Bonus Option Unit and failed to appreciate that assessee was holding 100% shares in the above mutual funds and benefit derived by assessee by investment at this scheme for five days which proved that the assessee has used a colourable device for claiming the capital loss and the decision of the

Supreme Court in the case of Mcdowells and company Ltd. (154 ITR 148) applies to the facts of the assessee's case. Per contra, the Ld.AR supported the order of the Ld.CIT(A) taking us through the relevant portions of the Ld.CIT(A) order.

8.4 We heard the rival submissions and gone through relevant material. In the light of the Special Bench decision of the Tribunal in its order dt. 15th July, 2005 reported as Walfort Share & Stock Brokers Ltd. vs. ITO & Anr. (2005) 96 TTJ (Mumbai)(SB) 673, which has been affirmed by the Bombay High Court vide its judgment dt. 8th Aug., 2008 reported in Commissioner Of Income-Tax. vs Walfort Share And Stock Brokers (P) Limited, 310 ITR 421 and the Hon'ble Apex court's decision In Commissioner Of Income-Tax. vs Walfort Share And Stock Brokers (P) Limited. 326 ITR 1(SC), we find that on the facts and circumstances, supra, the reasonings of the Ld.CIT(A) on both issues, supra, do not require any interference and hence dismiss the corresponding grounds of the revenue on both issues.

9. The next issue pertains to disallowance of broken period interest on purchase/sale of securities for the assessment years

2004-05 & 2005-06 in ITA Nos.285 & 286 /Chny/2015 for AYs 2004-05 & 2005-06 :

9.1 In the assessment order for the assessment year 2004-05 it is stated as under:

"Assessee company is in the business of regular sale and purchase of Government securities and has classified them as investment. The sale and purchase of government securities have been considered for computation of capital gain or loss as the case may be and in almost every sale or purchase of government security capital loss has been booked after taking the benefit of indexation. This year also assessee. company has claimed capital loss of Rs.2,67,21,743/- despite these instruments being in the nature of having fixed rate of return at the tenure of the instrument but if the government security is sold during the year the value of accrued interest is generally reflected in the market value as on the date of sale or purchase this amount has been capitalized as the cost of purchase whereas the amount of interest received during the year on government securities has been taken as revenue receipt by the assessee company. So applying the same analogy the broken period interest also has to be taken as revenue receipt only.

We submit that broken period interest on purchase and 'Sale of securities amounting to Rs.36,95,424 and Rs.47,35,865 were accounted as revenue items in the books in accordance with the Accounting Standard-13 issued by the Institute of Chartered Accountants of India. However, for tax purpose, the same were treated as part of cost/consideration as the case may be, based on the decision of Supreme Court in Vijaya Bank's case (187 ITR 547). Accordingly, the above said broken period interest were offered to tax under the head "Capital gains" on sale of securities. After consideration of reply submitted the difference amount of Rs.10,40,841/- is added back to the business income"

9.2 Similar addition was made for the assessment year 2005-06 also. On appeals, the assessee submitted as under before the Ld. CIT(A) :

a. These securities were held by the appellant as investments and disclosed the same in its financial statement.

b. Appellant realized the net amount in the course of sale/purchase of Government securities and treated as part of the cost of the securities.

c. The appellant offered to tax the broken period interest on purchase/sale of securities under the head "Capital gains" while deducting the same from business income in the Return as forming part of cost of investment as upheld by the Supreme Court in Vijaya Bank's case (187 ITR 541)

d. Circular No.610 dt.31.7.91 issued by the CBDT clearly clarifies that the broken period interest cannot be taxed under business income by upholding the above Supreme Court decision.

9.3 The Ld.CIT(A) found that

" in appellant's own case for AY. 2001-02, in the similar issue, the Hon'ble ITAT Chennai in ITA No.955/Mds/05 and ITA No.829/Mds/05 dated 31.7.2007 remitted the issue back to the file of CIT(A) by holding as under:

"5.4 In both the cases, the Hon'ble High courts have held that since the investments were in the character of stock-in-trade, broken period interest will be revenue in nature. Since the present issue has not been examined from this point of view, we remit the issue to the file of Commissioner of Income-tax (Appeals) to consider the issue and give a finding accordingly. The assessee should be given adequate opportunity of being heard.

11.2.1 It is understood from the above decision of the IT AT, Chennai that if the investments are taken as stock-in-trade then broken period interest will become revenue in nature. In the instant case, the appellant has made it very clear that the investments in securities were taken as capital and broken period interest was offered under the head capital gains by following the Supreme Court's decision in the case of Vijaya Bank (187 ITR 547) wherein the Hon'ble Supreme Court stated that the amount expended for the purchase of securities will be in the nature of capital outlay. Since the facts and circumstances of the decision are directly applicable in the appellant's case, respectfully following the decision in the case of Vijaya Bank (supra), I direct the AO to treat it as capital receipt and allow the claim made by the appellant"

9.4 Aggrieved, the Revenue filed appeals for the assessment years 2004-05 & 2005-06 with following grounds

"1 The Id. CIT(A) failed to appreciate that broken period interest has been considered by assessee as revenue items in its books in accordance with the accounting Standard-13 issued by the Institute of Chartered Accountants of India and the same was claimed as capital item for the purpose of income tax only.

2 The Id. CIT(A) failed to appreciate that the Hon'ble High Court of Kerala in the case of CIT vs. Catholic Syrian Bank Ltd. (092 Taxmann 580) has held that the interest relating to broken period is the income of the assessee i.e. a revenue receipt. "

9.5 We heard the rival submissions. It is clear from the above that the assessee is in the business of regular sale and purchase of

Government securities, however, has classified them as investment. The sale and purchase of government securities have been considered for computation of capital gain or loss, as the case may be, and in almost every sale or purchase of government security capital loss has been booked after taking the benefit of indexation. For the impugned assessment years also the assessee company has claimed capital loss despite these instruments being in the nature of having fixed rate of return at the tenure of the instrument. The broken period interest on purchase and 'Sale of securities were accounted as revenue items in the books in accordance with the Accounting Standard-13 issued by the Institute of Chartered Accountants of India. However, for tax purpose, the assessee treated them as part of cost/consideration as the case may be, based on the decision of Supreme Court in Vijaya Bank's case 187 ITR 547 rendered u/s 18 of the Act which is no more in the statute from 01.4.1989 and hence it is clear that the Ld.CIT(A) has not appreciated the facts and circumstances of this issue properly. The courts have held that if the securities are regularly purchased and sold they could be stock in trade in such case the income or loss could be revenue in nature etc .The Hon'ble ITAT Chennai in ITA

No.955/Mds/05 and ITA No.829/Mds/05 dated 31.7.2007 has also pointed out them, supra. In the facts and circumstances, these issue requires readjudication afresh and hence we deem it fit to remit the issues back to the AO for a fresh examination for the assessment years 2004-05 & 2005-06. The assessee shall place all the material on which it relies in support of its contentions and comply with the requirements of the AO in accordance with law. The AO is also is at liberty to conduct appropriate enquiry as deemed fit, however, the AO after affording due opportunity to the assessee decide these issues in accordance with law for the assessment years 2004-05 & 2005-06. The corresponding grounds of the revenue are treated is partly allowed for the assessment years 2004-05 & 2005-06.

10. The next issues is the Revenue's appeal filed in ITA No.286/Chny/2015, AY 2005-06 against the order of the ld. CIT(A) in deleting the disallowance of entire bad debt of Rs.12,82,23,000/- made by the Assessing Officer.

10.1 The assessee essentially a retail financier of transport vehicles claimed bad debts of Rs.12,82,23,000 duly written off by it . The AO

relying on the decision of Hon'ble Madras High Court in the case of M/s South India Surgical Co Ltd v. ACIT (287 ITR 62), held inter alia, that in majority of the cases no legal action has been initiated to recover the amount, even in the cases where arbitration award has been passed the assessee has written off the amount and claimed the same as bad debt before the amount was realized. He further stated that in several cases where the debt is written off as bad, the reason given for such write off was 'party has not paid the installments', without taking any action for collection the same were written off just because the party has not paid the installments, in several cases even without attempting to collect the outstanding amounts, or even without initiating any legal action, it has simply claimed the amount due as 'bad debt' which shows that the assessee is trying to reduce the tax liability by writing off the debts which are really not become bad. For the above reasons, he added the entire amount of bad debt claimed at Rs.12,82,23,000 to the returned income.

10.2 On appeal before the CIT(A), the assessee apart from various submissions, relied on the following decisions:

(a) TRF Ltd (Civil Appeal No.5293/2003) (SC)
(b) DCIT v. Oman International Bank Saog, 100 ITD 285 (Bom) (SB)
(c) CIT v. Star Chemicals (Bom) P Ltd, 11 DTR 311 (Bom)
(d) CIT v. Morgan Securities and Credits P Ltd, 292 ITR 339 (Del)
(e) CIT v. Brilliant Tutorials P Ltd, 292 ITR 399 (Mad)

The Ld. CIT(A) found on similar issue in the assessee's own case for A.Y 01-02 the ITAT, Chennai in ITA No.1161/Mds/2010 dated 13.11.2010 allowed the claim made by the assessee. Since the facts and circumstances are same for both the years, respectfully following the decision of the ITAT, Chennai, the ld CIT(A allowed the claim of the assessee. Aggrieved, the revenue filed this appeal with following grounds :

3. The ld. CIT(A) erred in deleting the disallowance of entire bad Rs. 12,82,23,000/- made by the Assessing Officer.

3.1 The ld. CIT(A) relied upon the decision of the ITAT in assessee's own case for A.Y. 2001-02 in ITA. No. 1161/Mds/2010 dated 13.11.2010. The above decision of the ITAT was not accepted by the department and appeal to the High Court has been filed.

3.2 The Id. CIT(A) failed to appreciate that the disallowance was made by the Assessing Officer considering the business activity of the assessee i.e. higher purchase and mortgage loan and on relying upon the decision of the Hon'ble Madras High Court in the case of South Indian Surgical Corporation Ltd. (287 ITR 62) and Hon'ble Gujarat High Court in the case of Dhal Enterprises and Engineers Ltd. (207 CTR 729).

10.3 We heard the rival submissions. On the similar issue in the assessee's own case for A.Y 01-02, this Tribunal in ITA

No.1161/Mds/2010 dated 13.11.2010 allowed the claim made by the assessee. When the facts and circumstances are same for both the years, following it, the Ld.CIT(A) allowed the claim of the assessee and hence we uphold the order of the Ld.CIT(A) and dismiss the Revenue's appeal on this issue.

11. In the result, the assessee's appeals as well as the Revenue's appeals for the assessment years 2004-05 and 2005-06 are partly allowed.

Order pronounced in the court on the 4th September, 2019 at Chennai.

Sd/-	Sd/-
(एन.आर.एस. गणेशन)	(एस जयरामन)
(N.R.S. Ganesan)	(S. Jayaraman)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य /Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 4th September, 2019

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती/Assessee 2. राजस्व/Revenue 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF