

IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI

BEFORE SHRI PAWAN SINGH JUDICIAL MEMBER AND

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA No. 3992/Mum/2001 (Assessment Year 1996-97)

M/s Cifco Finance Ltd. Bhupen Chambers, Ground Floor, Unit-I, Dalal Street, Fort, Mumbai-400001. PAN: AAACC1765F	Vs.	DCIT (OSD II), Central Section, C.G. O. Building Annexc, 101, M.K. Marg, Mumbai-400020.
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Appellant

Respondent

ITA No. 4080/Mum/2001 (Assessment Year 1996-97)

DCIT (OSD II), Central Section, C.G. O. Building Annexc, 101, M.K. Marg, Mumbai-400020	Vs.	M/s Cifco Finance Ltd. Bhupen Chambers, Ground Floor, Unit-I, Dalal Street, Fort, Mumbai-400001. PAN: AAACC1765F
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Appellant

Respondent

ITA No. 4045/Mum/2005 (Assessment Year 1997-98)

M/s Cifco Finance Ltd. Bhupen Chambers, Ground Floor, Unit-I, Dalal Street, Fort, Mumbai-400001. PAN: AAACC1765F	Vs.	DCIT (OSD II), Central Section, C.G. O. Building Annexc, 101, M.K. Marg, Mumbai-400020.
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Appellant

Respondent

ITA No. 4532/Mum/2005 (Assessment Year 1997-98)

DCIT (OSD II), Central Section, C.G. O. Building Annexc, 101, M.K. Marg, Mumbai-400020	Vs.	M/s Cifco Finance Ltd. Bhupen Chambers, Ground Floor, Unit-I, Dalal Street, Fort, Mumbai-400001. PAN: AAACC1765F
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Appellant

Respondent

Appellant by

: Shri Vipul Joshi with

Shri Mukul Pandya (AR)

Respondent by

: Shri Ashish Pophare (DR)

Date of Hearing

: 22.08.2019

Date of Pronouncement

: 01.11.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. These set of four cross appeals are directed against the order of Id. CIT(A)-V, Mumbai dated 04.04.2001 for Assessment Year 1996-97 & dated 13.04.2000 for Assessment Year 1997-98. In all appeals, the parties have raised certain common grounds of appeal, therefore, all the appeals were clubbed, heard together and are decided by a common order. For appreciation of facts the appeals for AY 1996-97 are treated as lead cases. In appeal for Assessment Year 1996-97, the assessee has raised the following grounds:

“1a. On Facts and in Law, the Honourable Commissioner of Income tax (Appeals), Central V. Mumbai (CIT(A)) failed to appreciate that the amount of advance received from Kenil- worth Investments Limited was without any stipulation as to payment of interest and therefore the appellant could not have provided interest in the earlier years and thereby erred in confirming disallowance out of interest of Rs. 1,73,24,918/-.

1b. On facts and in Law, the CIT(A) erred in confirming disallowance out of interest of Rs. 1,73.24,918/- on the ground that such disallowance was confirmed by him in another case without appreciating the fact that the facts in both the above cases were clearly distinguishable.

1c. On Facts and in Law, the CIT(A), erred in confirming disallowance out of interest of Rs. 1,73,24,918/- without appreciating the fact that the liability to pay interest arose for the first time on basis of order of the Special Court and as the appellant was following Accrual Method of Accounting the entire interest was allowable expenses for the year.

The appellant, therefore, prays that the order of the CIT(A) be set aside and the Assessing Officer be directed to delete the disallowance of interest of Rs. 1,73,24.918/-.

2a. The CIT(A) erred in Facts and in law in confirming disallowance of Rs. 72,321/- out of bad debts in respect of amount due from Arcot Finance Limited on the ground that no details were filed in course of assessment proceedings.

2b. The CIT(A) erred in Facts and in Law in not accepting affidavit filed of Managing Director of the appellant as an additional evidence and thereby confirming disallowance of Rs. 72,321/- out of bad debts.

The appellant, therefore, prays that the order of CIT(A) be set aside and the Assessing Officer be directed to delete the disallowance of Rs. 72,321/- out of interest paid.

3. On Facts and in Law, the CIT(A) erred in confirming disallowance of Rs. 16,85,250/- out of interest expenses in respect of advance given to Cifco Properties Private Limited and Cifco Travel Private Limited ignoring the facts that the advances given were for the purpose of business of the appellant.

The appellant, therefore, prays that the order of CIT (A) be set aside and Assessing Officer be directed to delete the disallowance out of interest expenses of Rs. 16,85,250/-.

4. Without Prejudice to ground No.3, on Facts and in Law, the CITCA) erred in confirming the disallowance of interest @ 21% instead of @ 15% in respect of advances given to Cifco Properties Private Limited and Cifco Travels Private Limited.

The appellant, therefore, prays that the order of the CIT(A) be set aside and the Assessing Officer be directed to work out disallowance of interest @ 15% .

5a. On Facts and in Law, the CIT(A) erred in treating lease arrangement entered with Kores India Limited. as a financial disallowing and thereby arrangement Rs. 15,46,140/- out of depreciation claim for the year

upholding the finding of the Assessing Officer recorded in assessment proceedings for Assessment Year 1995-96.

5b. On Facts and in Law, the CIT(A) erred in holding that the finding made in assessment for Assessment Year 1995-96 can said to have reached finality as the appellant had filed application under Kar Vivad Samadhan Scheme and thereby confirming disallowance of Rs. 15,46,140/- out of claim of depreciation in respect of lease arrangement with Kores India Limited.

5c. On Facts and Law, the ld. CIT(A) erred in not allowing depreciation treating after the lease even arrangement with Kores India Limited as a Financial arrangement.

5d. On Facts and Law, the CIT(A) erred in holding that depreciation on certain assets leased in earlier years, be allowed only if such assets were in existence in the previous year and also been put to use.

The appellant, therefore, prays that the Order of CIT(A) be set aside and the Assessing Officer be directed to allow depreciation of Rs. 17,15,727/-.

6a. On Facts and in Law, the CIT(A) erred in confirming disallowance of Rs. 41,87,500/- out of depreciation in respect of lease to Prakash Industries Limited on the same reasons mentioned while disallowing depreciation In respect of lease agreement with Kores India Limited.

6b. On Facts and in Law, the CIT(A) erred in holding that the finding made in assessment for Assessment Year 1995-96 can said to have reached finality as the appellant had filed application under Kar Vivad Samadhan Scheme and thereby confirming disallowance of Rs. 41,87,500/- out of claim of depreciation.

6c. On Facts and in Law, the CIT(A) erred in not allowing depreciation even after treating the lease agreement with Prakash Industries Limited as a Financial arrangement.

The appellant, therefore, prays that the order of the CIT(A) be set aside and the Assessing Officer be directed to allow the claim of depreciation of Rs. 41,87,500/- in respect of lease agreement with Prakash Industries Limited.

7. Without Prejudice to appeal filed in case of Oceanic Investments Limited, on Facts and in Law, the CIT(A) erred in not deleting income relating to Income from Sale of Shares of Panchmahal Cements Limited after upholding in case of Oceanic Investments Limited that no such transactions existed.

The appellant, therefore, prays that the order of the CIT(A) be set aside and the Assessing Officer be directed to delete the income of Rs. 22,50,000/- from assessed income.”

2. Brief facts of the case are that the assessee is a company engaged in the business of finance and leasing. The return of income was filed by assessee on 30.11.1996 declaring Loss. The case was selected for scrutiny and the assessment was completed under section 143(3) on 31.03.1999. The Assessing Officer while passing the assessment order made various additions/disallowances consisting interest disallowance of Rs. 2.30 crore, disallowance of bad-debts of Rs. 17,83,092/-, disallowance of interest on account of free advance given to its associate/group company, disallowance on depreciation on lease hold asset, taxed the profit on sale of shares of Panchmahal Cements Ltd. On appeal before the Id. CIT(A), the assessee was granted relief on disallowance of write off, partial relief on disallowance on account of interest free advances to its group concern and partial relief on the lease hold assets. Aggrieved by the order of Id. CIT(A), both the parties have

filed their respective appeals by raising the grounds of appeal as narrated above.

3. We have heard the submissions of the learned authorised representative (Id. AR) for the assessee and learned departmental representative (Id DR) for the revenue and gone through the orders of the lower authorities. Ground No.1 in assessee's appeal relates to disallowance of interest payable to Kenilworth. The Id. Authorized Representative (AR) of the assessee submits that the assessee claimed interest expenses of Rs. 2.30 crore interest payable on amount advanced by Kenilworth Investment Pvt. Ltd.. The Assessing Officer allowed only Rs. 57.60 Lakhs and disallowed remaining of Rs. 1.73 crore. The Assessing Officer disallowed by taking view that interest liability pertains to period from 25.03.1992 to 31.03.1995 and not of current years. Only interest of Rs. 57.60 Lakhs pertains to the year under assessment, is allowable. The Id. CIT(A) confirmed the action of Assessing Officer by referring that the similar controversy was in a appeal of Smt. Aditi Dalal which was decided against the assessee by Id. CIT(A) vide his order dated 25.08.1999.
4. The Id. AR of the assessee submits that the assessee received Rs. 2.88 crore as interest free loans from Kenilworth in earlier years. As per the order of Special Court dated 05.07.1995, the assessee to repay the principle amount + interest @ 20% p.a. for the period starting from

25.03.1992 (from the date of receipt of advance). Thus, the interest liability of Rs. 2,30,84,918/-, which includes Rs. 1,73,24,918/- for earlier years was paid by the assessee. The ld. AR of the assessee submits that there was no stipulation on interest in the agreement while taking advance and therefore, no interest had accrued in earlier years. The Assessing Officer erroneously relied on the order of Massore Tobacco Company Ltd. vs. CIT [115 ITR 698 (Kar.)] and Saraya Sugar Mills P. Ltd. vs. DCIT [117 ITR 344]. The ld. AR of the assessee further submits that in assessee's group concern i.e. Cifco Ltd., the ld. CIT(A) allowed the interest in Assessment Year 1996-97 vide order dated 04.03.2004, copy of the order is placed on record, and no appeal is filed by the revenue against the allowance on such interest. In case of Aditi Dalal where the Assessing Officer had relied on the same two decisions and ld. CIT(A) also based his decision, the Tribunal allowed the claim of Aditi Dalal in ITA No. 4750/Mum/2001, copy of which is placed on record.

5. On the other hand, the ld. Departmental Representative (DR) for the revenue relied on the order of lower authorities.
6. We have considered the submission of both the parties and perused the material available on record. During the assessment, the Assessing Officer noted that the assessee has debited an amount of Rs. 2,35,92,606/- from Profit & Loss A/c on account of interest liability.

The interest liability consist of interest liability @ 20% p.a. from 25.03.1992 to 31.03.1995 of Rs. 1,73,24,918/- and only Rs. 57,60,000/- pertains to the relevant Financial Year under consideration. On show-cause, the assessee explained that they have received interest free loan of Rs. 2.88 crore from M/s Kenilworth Investment in 1991. M/s Kenilworth had received almost identical amount from Dhanraj Mills Pvt. Ltd., a company belonging to Killic Nikson /BR Ruia group, M/s Dhanraj Mills Pvt. Ltd. was declared a notified entity in the Security Scam of 1992. The Special Court constituted for trial of scam related matters passed order directing the assessee to make the payment of interest amounting to Rs. 2.88 crore to Dhanraj Mills Pvt. Ltd. with 20% interest thereon w.e.f. 25.03.1992 to 31.03.1996. The Assessing Officer allowed only 20% interest on Rs. 2.88 crore for relevant period i.e. 01.04.1995 to 31.03.1996 and remaining claim of Rs. 1,73,24,918/- was disallowed holding that expenses do not relate to the year under consideration. The ld. CIT(A) confirmed the action of Assessing Officer by taking view that a similar controversy/dispute had arisen before him in case of Smt. Aditi Asim Dalal and vide order dated 25.08.1999 in CIT(A) cent.v/DCIT(OSD)/6/99-2000 was decided against the assessee. The ld. CIT(A) has not given any independent finding. We have noted that the co-ordinate bench of Tribunal allowed the appeal of Aditi Asim

Dalal in ITA No. 4814/Mum/1999 dated 07.07.2004 by passing the following order:

“5. We have considered the rival submission and perused the materials on record. We find that there is no dispute that the loan was advanced by Shri Bhupendra C. Dalal to the assessee, interest free because as per the affidavit of Shri Bhupendra C. Dalal is appearing on page No. 32 of the paper book. It is specifically mentioned by him that there is no interest chargeable to her i.e. assessee, In view of this, it is apparent that there was no liability in earlier years for making payment of interest on account of t his loan from Shri Hupendra C. Dalal. The liability has arisen on 07.06.95 by the order of the Special Court. We find that in the case of Brihan Maharashtra Sugar Syndicate Ltd. (supra) it was held by the Hon’ble jurisdictional High Court that in order to be allowable as a deduction under Maharashtra Agricultural Income Tax Act, 1992, expenditure in question must be incurred in the relevant previous year. Again expenditure must be one which is incurred for the purpose of deriving agricultural income from land and must not be in the nature of capital expenditure or personal expenditure. There is nothing in the section, which would impose a condition that in order to be allowable as a deduction, the expenditure must have been incurred in order to earn the income of the relevant previous year or must relate to the income of the previous year. Similarly, we find that in the relevant section in the Income Tax Act i.e. 36(1)(iii), the requirement is that the interest should be payable in respect of capital borrowed for the purpose of business. In the present case, this is not the case of the revenue that the amount was not borrowed for the purpose of business because the interest relating to the current year has been allowed and disallowance was made only of that portion which pertains to the earlier years. We are of the considered opinion that because originally the amount was borrowed Interest free, there was no interest liability; and hence, the same could not be accounted for in the earlier years. Liability to pay interest from 1.4.92 @ 24% per annum has arisen on 7.6.95 only as per the order of the Special Court; and hence, in our considered opinion, the same is allowable in full in this year only. This ground of the assessee is allowed.”

7. Further by considering the decision of Aditi Asim Dalal (supra) the similar relief was allowed in Nildeep Investment Company for same Assessment Year on almost similar set of fact in ITA No. 3290, 3291/Mum/2002 dated 11.06.2006. Considering the consistent decision of co-ordinate bench, wherein similar interest disallowance was directed to be deleted, therefore, following the decision of co-ordinate bench (supra), we direct the Assessing Officer to delete the disallowance of Rs. 1,73,24,918/-. In the result, Ground No.1 of the appeal is allowed.
8. Ground No.2 relates to disallowance of bad-debt of Rs. 72,321/-. The ld. AR of the assessee submits that Assessing Officer disallowed by taking view that no evidence to show efforts of recovery was furnished by assessee. The assessee needs to prove that debt had become bad. The ld. CIT(A) confirmed the action of Assessing Officer by taking view that no submission in respect of bad-debt is made by assessee. The ld. AR of the assessee submits that the claim of bad-debt of Rs. 72,321/- relates to Arcot Finance. The assessee in the statement of fact furnished before the ld. CIT(A) specifically stated that interest accrued for earlier years, and not received, still offered to tax in respective years. The principle amount was already received in the past. The ld. AR further submits that breakup of write off is given in the computation of income. The ld. AR further submits that similar relief on account of bed debts, was allowed to the assessee by the Tribunal for Assessment Year 1992-93 in ITA No.

2541,2765/Mum/1996 vide order dated 17.10.2008 and again in AY 1993-94 in ITA No. 5437/Mum/1997 dated 17.10.2008 and again for AY 2005-06 in ITA No. 678/Mum/2009 dated 12.03.2010, however, no order for order giving effect to the order of Id. CIT(A) is passed by Assessing Officer. The Id. AR submits that in the business of finance advances were given in the regular course of business. The interest income was taxed on accrual basis. The recovery of interest income had become time barred. As per commercial expediency, board of Direct of the assessee decided to write off the said amount. In support of his submission, the Id. AR of the assessee relied upon the DBDT Circular No. 551 dated 23.01.1990 and the decision of Hon'ble Supreme Court in TRF Ltd. vs. CIT (323 ITR 397) and the Circular No. 12 of 2016 accepting the ratio of decision of Hon'ble Supreme Court (supra). In alternative, the Id. AR of the assessee claimed as business loss.

9. On the other hand, the Id. DR for the revenue relied upon the order lower authorities.

10. We have considered the submission of both the parties and perused the material available on record including the decision of co-ordinate bench in assessee's own case for various years as referred by Id. AR in his submission. The Id. CIT(A) while discussing this issue in para-6 of his order recorded that the assessee has not made any submission regarding the write off of Rs. 72,321/- in respect of Arcot Finance Ltd. and

confirmed the disallowance of write off accordingly. We have noted that in para-3 of statement of fact filed before the Id. CIT(A), the assessee has specifically stated in the fact related to ground no.2 that interest accrued on the advance to Arcot Finance Ltd. was offered to tax. In our view, the assessee has fulfilled the condition and discharge its onus by specifically pleading that interest accrued on the write off amount was shown in earlier years. We have also noted that the assessee has clearly stated that the write off amount relates to interest and that principle amount was already paid. It is settled law that no suit lie for recovery of interest. We have further noted that the assessee was allowed write off of claim in respect of other debtor. Therefore, in view of the aforesaid discussion, we direct the Assessing Officer to delete the disallowance of Rs. 72,321/-. In the result, Ground No.2 of the appeal is allowed.

11. Ground No.3 & 4 relates to disallowance out of interest on account of interest free advances. The Id. AR of the assessee submits that interest free advances were given to Cifco Properties Pvt. Ltd. and Cifco Travel Pvt. Ltd., the associate/group concern. The assessee gave advance of Rs. 40.25 lakhs to Cifco Travel Pvt. Ltd. and Rs. 40 lakhs to Cifco Properties Pvt. Ltd. The assessee gave interest free advances. The assessee was required to furnish the accounts of these companies. The assessee filed details reply dated 11.01.1999 and 10.03.1999. The assessee in its reply with regard to advance to Cifco Travel Pvt. Ltd.

stated that reason for not charging interest was that the subsidiary had taken agency of Modiluft Archana Airways with regard to Cifco Properties, the assessee stated that the amount was paid for making advance for purchase of property. The Assessing Officer not accepted the reply of assessee holding that no convincing reason was given for advancing to Cifco Travel. For Cifco Property, the Assessing Officer concluded that no agreement is furnished. The Id. CIT(A) confirmed the action of Assessing Officer and upheld the disallowance of 21% of interest. The Id. AR submits that the assessee wanted to diversify its travel business and the subsidiary has taken agency of Modiluft Archana Airways. The Id. AR for the assessee submits that advance was given in February 1996 and received back in September 1997. Regarding Cifco Property, the Id. AR submits that advance was given for purchase of property at Beena Complex, Andheri, the plan did not materialised and the amount was recovered. The Id. AR submits that the assessee has sufficient interest free funds to give advance to its subsidiaries. The Assessing Officer has not established the nexus of interest bearing funds and advances. In alternative and without prejudiced submission, the Id. AR submits that the disallowed rate of interest is highly excess, the interest paid between 15% to 21%, funds were not used for entire period. The assessee has applied for rectification vide application dated 07.04.2000, the Assessing Officer considered it in his order giving effect

to CIT(A) order and no appeal is filed by department. In past no such disallowance was made on similar advances.

12. On the other hand, the Id. DR for the revenue supported the order of lower authorities.

13. We have considered the submission of the parties and perused the record. We have noted that in order giving effect, the Assessing Officer vide his order dated 23.01.2012. The Assessing Officer out of interest of Rs. 8,45,280/- in respect of Cifco Travel deleted Rs. 8,20,395/- and in respect of disallowance of Cifco Properties of Rs. 8,40,000/-, the Assessing Officer reduced/deleted Rs. 7,54,849/-. Accordingly, only dispute left with regard to Cifco Travel at Rs. 24,855/- and for Cifco Properties Rs. 85,151/-. Considering the submission of the assessee that assessee has advanced money to its sister concern/subsidiary, from the interest free funds available for business expediencies. The Assessing Officer has not brought on record any nexus of interest bearing fund and the advances given to sister concern.

14. We have noted that the Hon'ble High Court in assessee's group case/sister concern in CIT Vs Cifco Ltd vide ITA No. 1355 of 2018 dated 13.02.2009, while considering the question of law whether Tribunal was justified in allowing the appeal of assessee and directing the Assessing Officer to delete the interest charged on interest free advances diverted to group concern held that in earlier years, the interest

had not been disallowed by the Tribunal in ultimate conclusion was right in holding that the loan was taken was not used to give a loan to sister company. Admittedly, the loan advanced from surplus of the company. It is open to a company on the ground of commercial expediency to advance loan to its sister company and dismissed the appeal of revenue.

15. Considering these facts, in our opinion, when in earlier year also, the interest has not been allowed, the action of Assessing Officer was not justified in disallowance of interest in respect of Cifco Travel & Cifco Properties. In view of the aforesaid discussion and keeping in view that substantial interest disallowance has been deleted by Assessing Officer while giving effect to the order of Id. CIT(A). Therefore, we direct the Assessing Officer to delete the entire disallowance.

16. In the result, Ground Nos. 3 & 4 of the appeal are allowed.

17. Ground No. 5a to 5c relates to issue of depreciation by treating the lease agreement with Kores India Ltd. as a financial agreement. The Id. AR of the assessee submits that assessee claimed depreciation on lease hold asset installed at Kores India Ltd. The assessee claimed 50% of depreciation in AY 1995-96. The Assessing Officer disallowed by taking view that the machinery was not put to use and were installed on 08.05.1995. For the year under consideration, the Assessing Officer simply followed the order of AY 1995-96 by taking view that no new

material was furnished. The Assessing Officer considered the financial charges at 24% of Rs. 7,42,147/-. However, the lease rent offered was Rs. 7,23,600/-. The difference of Rs. 18,574/- added as a finance charges, no depreciation was allowed. The Id. CIT(A) upheld the action of assessing officer holding that disallowance in assessment order for AY 1995-96 attains finality. The Id. CIT(A) directed that lease rental of Rs. 7,23,600/- to be bifurcated into principle and financial charges by the Assessing Officer and financial charges only to be taxed.

18. The Id. AR of the assessee submits that matter for AY 1995-96 was settled under Kar Vivad Samadhan Schme (KVSS) and it did not take away the right of assessee for adjudication of issue on merit in other years. The Id. AR submits that CBDT issued a clarification that KVSS does not decide judicial issue and does not forego right to appeal on same issue in other AY. The Id. AR submits that copy of lease agreement dated 15.03.1995 is placed on record. The confirmation of General Manger of lessee, Insurance Policy, Installation Certificate, Lease Rental, details invoice, excise challan of supplier, consignment note of transporter, Truck No., Octroi receipt is placed on record. The Id. AR submits that Assessing Officer made direct enquires by issuing summon under section 131 and summoned General Manager of Kores India. All documents and statements and enquiry confirmed the installation and date of delivery.

19. The ld.AR of the assessee submits that the Hon'ble Supreme Court in case of ICDS Ltd. vs. CIT [350 ITR 527(SC)] held that when the assessee purchased vehicles from manufacturers, leased out those vehicles to customers, it was entitled to claim depreciation in respect of vehicles so leased out. Thus, on the basis of decision of Hon'ble Supreme Court the assessee is entitled for claim of depreciation on leased asset.
20. On the other hand, the ld. DR for the revenue submits that the assessee has made the financial arrangement way back in F.Y. 1994-95. In AY 1995-96, the similar claim of assessee was disallowed and the same has attained finality.
21. We have considered the rival submission of the parties and perused the material available on record. We have noted that the lower authority has not disputed the ownership of leased asset. In AY 1995-96, there was a limited dispute about the date of put to use. Even otherwise, the dispute for AY 1994-96 was settled under KVSS, and it would not take any right of the assessee for taking up the issue in subsequent years. We have further noted that the assessee has placed on record sufficient material showing ownership of leased asset. The Hon'ble Supreme Court in ICDS Ltd. vs. CIT (supra) held that when assessee purchased vehicles from manufacturers (asset) and leased out those asset to customers, it was entitled to claim depreciation in respect of vehicles so

leased out. Considering the decision of Hon'ble Supreme Court, we direct the Assessing Officer to allow the depreciation on leased asset i.e. Induction Melting Furnace leased to Kores India Ltd. In the result, Ground No. 5a to 5c are allowed.

22. Ground No. 5d relates to depreciation-earlier year assets. The ld. AR of the assessee submits that Assessing Officer disallowed depreciation on assets which is disallowed in earlier years. The Assessing Officer disallowed by taking view that similar disallowances was confirmed by ld. CIT(A), therefore, based on the assessment order for AY 1995-96 disallowed depreciation of Rs. 17,15,727/-. The ld. CIT(A) allowed the depreciation for earlier years and directed the same should be allowed after verification that assets were in existence and put to use in the Assessment Year. The ld. AR of the assessee submits that the Assessing Officer while passing the order giving effect allowed depreciation in case of leases with LML Ltd., Aplab Ltd. and Precision Capsule Ltd. The ld. AR further submits that in appeal for AY 1994-95, the Tribunal restored the matter back to the Assessing Officer to decide the issue afresh in the light of decision for AY 1989-90 relying on the order of AYs 1991-92 and 1993-94. For AY 1989-90 the Tribunal set-aside the issue to the file of ld. CIT(A).

23. On the other hand, the ld. DR for the revenue though supported the order of lower authorities. However, on our query about the further

against the order of Tribunal, the Id. DR submits that matter may be restored back to the lower authorities to pass consequential order.

24. We have considered the submission of both the parties and find that on similar grounds on various lease assets for various years, the Tribunal in AY 1994-95 by following the other years order restored back the issue to the file of Assessing Officer with the following direction:

6.3 Ground 6 is against the disallowance of depreciation of assets whose lease period has expired. We note that for the assessment year 1991-92 the Tribunal restored the issue to the file of the assessing officer, which was followed for assessment years 1992-93 and 1993-94 by the Tribunal. The Tribunal vide paragraphs 9 & 10, while following the order for assessment year 1991-92 held as follows:

“9. Ground No.25 relate to disallowance of depreciation of assets whose lease period are expired in this regard, the learned counsel for the assessee has submitted that this ground is squarely covered by the Order of the Tribunal in the assessee's own case for the assessment year 1991-92 in which the matter was restored to the file of the Assessing Officer for its re-adjudication.

10. The learned Departmental Representative on the other hand has submitted that the identical issue was raised before the CIT(A) in the assessment year 1993-94 and CIT(A) has restored the issue to the file of the Assessing Officer with certain directions. Since the matter has to be restored back to the file of the Assessing Officer, the CIT(A) directions given in assessment year 1993-94 do also taken into account while disposing of the appeal.”

25. Considering the aforesaid decision of Tribunal, this Ground of appeal is restored back to the file of Assessing Officer to decide the issue afresh in the light of aforesaid order of the Tribunal. In the result, Ground No. 5d is allowed for statistical purpose.

26. Ground No.6 relates to depreciation on leased asset to Prakash Industries Ltd. (Wind Electric Generator (“WEG”). The Id. AR submits that WEG was purchased from Prakash Industries Ltd. for Rs. 83.75 lakhs and leased back to Prakash Industries for putting Wind Farm at Tamilnadu. The sale and leased back transaction was examined in detailed in AY 1995-96 wherein the disallowance of depreciation was made that asset was not installed and put to use before 31.03.1995 and/or there was mismatch in year of make, machine number, location and place of installation. The assessee was only financier, even if purchase to be accepted as genuine. The Id. CIT(A) rejected the contention raised by assessee, however, directed the AO to bifurcate lease income of Rs. 20,10,000/- into principle and financial charges and tax only financial charges.

27. The Id. AR for the assessee submits that the assessee has furnished the complete details of lease agreement, transportation, installation, confirmation, photographs of lease equipments and submits that similar lease was made to Kores India Ltd. and that he adopts the same argument as made for allowance of depreciation on lease asset to Kores India Ltd.

28. On the other hand, the Id. DR for the revenue supported the order of lower authorities.

29. We have considered the submission of both the parties and perused the record including various documentary evidence furnished in respect of lease asset including lease agreement, transportation, installation, insurance policy and photographs of leased equipments. We have further noted that this issue is similar to the ground taken in Ground No. 5a to 5c, which we have allowed by following the decision of Hon'ble Supreme Court in ICDS Ltd. (supra). Therefore, this ground of appeal is also allowed with similar observation.

30. Ground No.7 relates to taxing profit of Rs. 22.50 lakhs on sale of shares of Panchmahal Cement Ltd. The ld. AR of the assessee submits that during the relevant period, the assessee sold and purchases share of Panchmahal Cement Ltd. from Oceanic Cement Ltd. The assessee had a profit of Rs. 22.50 lakhs and offered the same for taxation. The ld. CIT(A) not allowed the ground of appeal by taking view that there is no discussion in the assessment order that assessee itself included the amount in its Profit & Loss A/c and offered to tax. The assessee before the ld. CIT(A) contended that the Assessing Officer in case of Oceanic Investment Ltd., the entire transaction relating to the shares of Panchmahal Cement Ltd. were bogus and if in appeal in that case the finding of Assessing Officer were upheld, the amount of Rs. 22.25 lakhs offered by assessee for taxation should taken away from the income of assessee. The ld. CIT(A) on this contention concluded that appeal can

only be maintained by aggrieved person and cannot be taken in another case and the ground was rejected being incompetent. The ld. AR of the assessee submits that the assessment order of Oceanic Investment Ltd. was passed by same Assessing Officer on the same day. It was further argued that the transaction of Oceanic Investment Ltd. as bogus was affirmed by ld. CIT(A) and was upheld by Tribunal vide order dated 26.02.2007 in ITA No. 3993/M/2001.

31. On the other hand, the ld. DR for the revenue supported the order of lower authorities.

32. We have considered the submission of both the parties and perused the record. We have noted that the assessee itself offered the profit on sale of shares of Panchmahal Cement Ltd., for taxation. Before the ld. CIT(A), the assessee raised the ground that in case of Oceanic Investment Ltd. the transaction of shares of Panchmahal Cement, which was treated as bogus transaction, is upheld in appeal, the amount offered by assessee should be taken away from the income of assessee. The ld. CIT(A) rejected the ground that the assessee never claimed this profit of this amount as offered by mistake and that the assessee cannot be said to have been aggrieved by the action of Assessing Officer. In our considered view, the action of ld. CIT(A) is reasoned one. There is no adverse treatment of the profit shown on sale of shares either by Assessing Officer or by First Appellate Authority. Therefore, we do not

find any justification for interfering with the finding of Id. CIT(A). In the result, this ground of appeal is dismissed.

33. In the result, appeal of the assessee is partly allowed.

ITA No. 4080/Mum/2001 (AY 1996-97) by revenue

34. The revenue in its cross appeal has raised the following grounds:

1 a) directing to delete the disallowance of Rs.17, 10,771/- made on account of write off of accounts in respect of debit balances in the cases of Andhra Sintex Ltd., Swastik Surfactants Ltd., Indage India Ltd;

b) not considering the fact that the claim of deduction made by the assessee was not on account of 'bad debts' written off but was in respect of 'accounts' written off;

c) ignoring the fact that the assessee company had not claimed deduction of write offs under the head bad debts;

d) applying the provisions of Sec.36(1 X vii) read with Sec.36(2) of the Act to the claim of write off of accounts even though the aforesaid provisions are applicable only in respect of claim off of write off of bad debts;

e) overlooking the fact that the write off of accounts was authorised by the Board of Directors on the assessee company after the end of relevant previous year. in their meeting held on 2/11/1996 which fact is noted in the appellate order;

f) ignoring the fact that till the last date of the relevant previous year the accounts were not authorised to be written off and such authorisation for write off given by the Board of Directors in the following previous year subsequent to the end of the relevant previous year for assessment year 1996-97.

g) not taking into account the fact that there was no justification . for write off of accounts as on 31/3/1996;

2. a) directing to grant relief to the assessee to the extent of disallowance of interest related to debit balances carried over from the preceding year, in respect of interest free loans advanced to M/s. Oceanic Investments Ltd;

b) relying upon the decision of the Hon 'ble Karnataka High Court in the case of err Vs. Sridev Enterprises 192 ITR 165 even though the facts in that case were totally different and were not applicable to the case of the assessee ;

c) not appreciating the fact that interest free advances of Rs.1,77,00,000/- made to M/s. Oceanic Investment Ltd., in the immediate preceding previous year was in the nature of advance against purchase of property, and after the scraping of transaction with that company during the relevant previous year the nature of outstanding amount of Rs.1,09,50,000/- with M/s. Oceanic Investment Ltd., changed to interest free loan;

d) overlooking the change in the nature of advances made to M/s. Oceanic Investment Ltd., due to cancellation of transaction for purchase of property;

e) ignoring the fact that during the relevant previous year the amount outstanding in the name of M/s. Oceanic Investment Ltd. was in the form of interest free loan which was diverted out of interest bearing loans taken by the assessee and hence the decision of the Hon'ble High Court of Karnataka in 192-ITR 165 was not applicable;

3. a) directing to bifurcate the lease rental income between the recovery of principal and the receipt of financial charges in respect of lease rental received from M/s. Prakasb Industries Ltd., and from M/s .Kores India Ltd ;

b) directing to consider the lease rental income receivable for the entire lease period for this purpose and exclude there from the principal amount of lease finance in arriving at the income from financial charges for the entire lease period

c) ignoring the fact that claim of depreciation at 100% on the leased assets was made by resorting to manipulate methods and therefore income as financial charges on the amount financed was also structured taking into account the benefits of 100% depreciation availed off by resorting to such fraudulent methods;

d) not taking into account that such a direction may lead to absurd results in as much as the return to the assessee on the amounts financed amounted to only 4% (approx.) even though admittedly loans at bearing interest @ 15% to 21 % were taken by the assessee;

e) not appreciating the fact that in such structured and collusive transactions, the return could have been negative also depending on the benefits availed off by the assessee on account of various deductions;

f) not taking into account the fact that the direction given would reduce the income declared as lease rent as per the return of income filed and therefore would result in the assessee being assessed on an income lesser than the income declared in the return :

g) not confirming the order of Assessing Officer to arrive at income on financial charges @ 24% on the outstanding amount due from the lessees on reducing balance method."

35. Ground No.1 relates to deleting the disallowance of amounts written off of Rs. 17,10,771/-. The ld. DR for the revenue supported the order of Assessing Officer. The ld. DR for revenue submits that Assessing Officer disallowed write off of Rs. 11.05 lakhs of Andhra Syntex Ltd., Rs. 204 lakhs and Rs. 3.62 lakhs of Swastik Surfancutents Ltd. and Rs. 38,776/- of Indage (I) Ltd. holding that assessee has not furnished evidence that any action was taken for recovery of these amount. The ld. CIT(A) allowed relief to the assessee holding that disallowance of these write off were not proper.

36. On the other hand, the ld. AR of the assessee supported the order of ld. CIT(A). The ld. AR submits that the assessee made advance to Andhra Syntex during AY 1985-86. The assessee has offered interest accrued for earlier years but not received. For Swastik, the advance was given in AY 1986-87, interest was accrued for earlier years was offered to tax but not received. Similarly for Indage India, the assessee made advance in the AY 1989-90 and offered the interest in earlier years to tax, though

it was not received. The assessee furnished the details of write off during the assessment as well as in first appeal. In the statement of fact, the assessee made detailed submission. In addition to that the assessee filed affidavit of Chairman and Managing Director, Shri Kamlesh Suresh Gandhi along with the accounts written off of all three entities. In the affidavit it was contented that assessing officer has not given sufficient opportunity. The ld. AR further submits that in the business of finance and advances was given in regular course of business and interest income was tax on accrual basis in past. The advances had become time barred. Parties were not making payment inspite of efforts taken by assessee. Andhra Syntex Ltd. was declared as a sick company by Board of Industrial Finance & Reconstruction (BIFR) and no amount was recoverable. The ld. AR submits that the assessee was liable to prove that the debt had become bad. It was sufficient if the same was write off in the books of accouts. The ld. AR also relied upon the decision of Hon'ble Supreme Court in TRS Ltd. Vs CIT (supra) and Circular of CBDT No. 12 of 2016 dated 03.05.2016. The ld. AR in alternative claimed the write off may be allowed as business loss.

37. We have considered the submission of both the parties and gone through the orders of lower authorities. We have noted that the Assessing Officer disallowed the claim of write off by taking view that no evidence to show the effort to recover the amount of write off. Before

the Id. CIT(A), the assessee categorically stated that the assessee has offered the interest on advances to tax in earlier years and that the advances given to the parties have become time barred. The assessee also placed on record the affidavit of Managing Director of assessee, wherein the assessee stated that no sufficient time was granted to assessee to prove its contention by the Assessing Officer. On the contention of assessee, a remand report was sought from the Assessing Officer. The Assessing Officer furnished his remand report vide letter dated 05.12.2000. In the remand report, the Assessing Officer has stated that no evidence was produced during the assessment proceeding, the assessee was given full opportunity to furnish the detail of amount of written off and to justify the reasons thereof.

38. The Id. CIT(A) after considering the submission of assessee and amended provision of law with regard to write off, allowed the relief of Rs. 17,10,771/-. The relief allowed by the Id. CIT(A) consist of claim of write off of Swastik Surfancutents Ltd., Andhra Syntex Ltd. and Indage India Ltd. We have noted that the Hon'ble Supreme Court in TRF Ltd. vs. CIT (supra) held that after 01.04.1989 it is not necessary for the assessee to establish that debt, infact has become irrecoverable. It is enough, if the bad is written off as irrecoverable in the accounts of assessee. We have noted that the assessee has specifically pleaded that interest income from the advance was offered in earlier years, which has

not been disputed by Assessing Officer. Therefore, we do not find any merit in the ground of appeal raised by revenue. In the result, the ground of appeal raised by revenue is dismissed.

39. Ground No.2 relates to deleting the disallowance of interest advanced to Oceanic Investment Ltd. The Id. DR for the revenue submits that assessee not furnished any agreement for waiver of interest on the advance to Oceanic Investment Ltd. The debtors company has properties in Delhi and made huge investment. It was not a case where debtor was unable to pay the interest. The Id. CIT(A) deleted the disallowances to the extent of reopening balance. The Id. DR prayed for restoring the order of Assessing Officer and to reverse the order of Id. CIT(A).

40. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR further submits that no such disallowance was made in past. The assessee made an advance of Rs. 177 lakhs by way of security deposit by way of specific agreement. Oceanic Investment Ltd. repaid Rs. 67.50 lakhs during the year itself but could not pay back balance of Rs. 109.5 lakhs due to liquidity crunch. The advance was given for purchase of property; there was no agreement for payment of interest. Accordingly, there was no question of waiver of interest during the year. The Id. CIT(A) granted relief after appreciation of fact.

41. We have considered the submission of parties and perused the order of lower authorities. We have noted that during the assessment proceeding, the Assessing Officer noted that assessee had shown interest free advances of Rs. 177 lakhs to Oceanic Investment Ltd. on seeking explanation the assessee explained that advance was made for purchase a property in Delhi and Pune and later on plans were abandoned. Oceanic Investment Ltd. could not repay the balance after paying Rs. 66.50 and no interest was charged. The Assessing Officer not accepted the contention of assessee. The Assessing Officer concluded that interest waiver was totally one sided and the company have huge investment in share and owned property in New Delhi. The Assessing Officer disallowed the interest @ 21%. On appeal before the Id. CIT(A), the assessee made detailed submission as explained before us and also explained that no disallowance was made in earlier year. The Id. CIT(A) accepted that no disallowance of interest was made in earlier year and in view of the decision of Hon'ble Karnataka High Court in CIT vs. Sridev Enterprises [192 ITR 165 (Kar.)]. The Id. CIT(A) directed the Assessing Officer to grant the relief to the assessee to the extent of disallowance of interest related to the debit balance carried over from the preceding year. No contrary fact or law is brought to our notice to take the different view. Therefore, we do not find any reason to interfere with the finding

of Id. CIT(A), which we affirmed. In the result, Ground No.2 is dismissed.

42. Ground No.3 relates to direction of bifurcate lease rent into repayment of principal amount and interest component as well as to delete estimation of higher lease rental received in case of Kores India and Prakash Industries Ltd. The Id. DR for the revenue supported the order of Assessing Officer.

43. On the other hand, the Id. AR of the assessee submits that this ground of appeal is interconnected with ground no. 5 & 6 in assessee's appeal.

44. Considering the fact that we have granted full relief to the assessee on Ground No. 5 & 6 in assessee's appeal by following the decision of Hon'ble Supreme Court in ICDS Ltd. vs. CIT (supra). Therefore, this ground of appeal raised by revenue has become infructuous. In this result, this ground of appeal is dismissed being infructuous.

45. In the result, appeal of the revenue is dismissed.

ITA No. 4045/Mum/2005 (AY 1997-98) by assessee

46. Ground No.1 relates to disallowance of interest given to Cifco Travel Pvt. Ltd. We have noted that this ground of appeal is identical to the ground no.4 in appeal for AY 1996-97, which we have allowed, therefore, following the principle of consistency when no variance in fact is brought to our notice, this ground of appeal is allowed with similar direction.

47. Ground No.2 relates to disallowance of depreciation on the basis of earlier years. The Id. AR of the assessee submits that Assessing Officer made disallowance by following the order of earlier years. The Id. CIT(A) confirmed by relying the order of AY 1996-97. We have noted that depreciation was disallowed on various assets by Assessing Officer in AY 1996-97, the Id. CIT(A) confirmed the action of Assessing Officer. However, we have granted full relief to the assessee by following the decision of Hon'ble Supreme Court in ICDS Ltd. vs. CIT (supra). Therefore, following the same principle, the assessee is allowed full relief on this ground of appeal.

48. In the result, ground no.2 of the appeal is allowed.

49. Ground No.3 relates to disallowance of estimated expenses for entertainment. The Id. AR of the assessee submits that he is not pressing this ground of appeal. Considering the submission of Id. AR of the assessee, this ground of appeal is dismissed as not pressed.

50. Ground No.4 relates to addition on account of finance charges of Rs. 18,541/- for lease to Kores India Ltd. We have noted that this ground of appeal is identical to the Ground no.5 & 6 in assessee's and ground no. 3 in revenue's appeal for AY 1996-97. We have already allowed ground no. 5 & 6 in assessee's appeal and dismissed the revenue's ground no.3, therefore, following the consistency, the ground of appeal raised by assessee is allowed with similar directions.

51. In the result, appeal of the assessee is partly allowed.

ITA No. 4532/Mum/2005 by revenue (AY 1997-98)

52. At the outset of hearing, the ld. AR of the assessee submits that the tax effect involved in the present appeal is less than the monetary limit of Rs. 50,00,000/- as prescribed by CBDT in its Circular No. 17/2019 dated 08.08.2019 and accordingly, the appeal is liable to be dismissed.

53. On the other hand, the ld. DR submits that the revenue may be given liberty to get the appeal revived, if at later stage it discovered by tax effect is more than the monetary limit.

54. Considering the submission of ld. AR of the assessee, the appeal of the revenue is dismissed with the liberty to the revenue to get the appeal revived, if at later stage it is discovered that the tax effect is more than Rs. 50,00,000/-.

55. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 01/11/2019.

Sd/-
RAJESH KUMAR
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 01.11.2019

SK

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

**Dy./Asst. Registrar
ITAT, Mumbai**