

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

माननीय श्री वी. दुर्गारव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.848/Chny/2020**
(निर्धारण वर्ष / **Assessment Year: 2016-17**)

M/s. Cholamandalam Investment & Finance Co. Ltd. No.2, Dare House, NSC Bose Road, Parrys, Chennai-600 001.	बनाम/ Vs.	ACIT Corporate Circle-1(2), 121, M.G. Road, Chennai – 600 034
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAACC-1226-H		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri Ajit Kumar Jain- Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri M. Rajan-Ld. CIT-DR

सुनवाई की तारीख/ Date of Hearing	:	28-03-2022
घोषणा की तारीख / Date of Pronouncement	:	08-06-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2016-17 arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Chennai [CIT(A)] dated 28.02.2020 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 30.12.2018. Though the assessee has raised multiple grounds of appeal, however, during hearing, Ld. AR did not press ground nos. 2 & 3

and therefore, the same are dismissed as being not pressed. The remaining grounds to be adjudicated by us are ground nos. 1 & 4 which read as under:-

1. Addition made for excess interest spread ('EIS') income earned on assignment of receivables amounting to INR 58,60,53,473

On the facts, and in the circumstances of the case, and in law, the learned CIT(A) erred in upholding the addition of the present value of excess interest spread as appearing in the securitization agreement, in the year in which the loan receivables are securitized as against accruing it over the life of the underlying receivables.

On the facts, and in the circumstances of the case, and in law, the learned CIT(A) has erred in upholding that the Appellant had transferred all the substantial risks and rewards in the receivables on signing the securitization agreement.

On the facts, and in the circumstances of the case, and in law, the learned CIT(A) has erred in upholding that interest income accrues to the Appellant in the year of sale of receivables and in not appreciating the fact that the interest spread is pertaining to future years and its accrual and receipt was contingent on conditions which cannot be reasonably estimated on the date of agreement.

On the facts and in the circumstances of the case, and in law, the learned CIT(A) has erred in ignoring the principle of real income and subjected the assessee to pay tax on amount for which the assessee has no right to receive

Without prejudice to the above and on the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in not considering the submissions filed by the Appellant to direct the learned AO, that, the relief of the present value of excess interest spread taxed on upfront basis in the current year is ought to be provided in the respective subsequent year to the Appellant.

4. Allowability of Education Cess paid as an expenditure under section 37(1) of the Act:

On facts and in the circumstances of the case, and in law, your Appellant would like to make a fresh legal claim before your Honour to allow the deduction of 'Education Cess and Higher Education Cess' while computing the total income.

On facts and in the circumstances of the case, and in law, your Appellant would like to rely on the decision by Hon'ble Bombay High Court in case of Sesa Goa Limited vs JCIT and Hon'ble Rajasthan High Court in case of Chambal Fertilizers and Chemicals Ltd., wherein, it has been held that, the amount paid towards 'cess' cannot be considered equivalent to amount paid towards any 'tax'.

On facts and in the circumstances of the case, and in law, your Appellant wishes to draw attention to the fact that this ground was not taken in the appeal filed with the learned CIT(A). However, such omission was neither deliberate nor contumacious but has come up out of the legal position which has come to the notice of the Appellant subsequent to completion of appellate proceedings before the learned CIT(A).

2. The registry has noted a delay of 176 days in the appeal, the condonation of which has been sought by Ld. AR vide petition dated 02.10.2020. It has been submitted that due to nationwide lockdown arising out of Covid-19 Pandemic, the offices were non-operational and

there was limited movement of employees. The delay occurred due to unforeseen and unprecedented circumstances and the delay was not deliberate on the part of the assessee. We find that appellate order has been passed on 28.02.2020 and nationwide lockdown started in the country due to Covid-19 pandemic from the month of March, 2020. Thereafter, substantial period was marred by the lockdown. Concurring with assessee's submissions, we condone the delay and proceed with adjudication on merits.

3. The Ld. AR advanced arguments in support of the claim and submitted that interest on securitization transactions have been offered over the tenure of loans as per consistent accounting policy of revenue recognition. The Ld. AR submitted that only real income was to be brought to tax. The Ld. CIT-DR, on the other hand, justified the additions as sustained in the impugned order. The Ld. CIT(A) submitted that there was outright sale of debts and therefore, the interest has accrued to the assessee in this year. Clarifications as sought by the bench were responded to by both the sides. Having heard rival submissions and after going through the orders of lower authorities, our adjudication would be as under.

Assessment Proceedings

4.1 The assessee being resident corporate assessee is a non-banking finance company (NBFC). It is stated to be engaged in the business of financing and a non-deposit accepting entity. During assessment proceedings, it transpired that the assessee offered amount of Rs.205.34 Crores towards interest spread on assignment / securitization transactions. An amount of Rs.245.71 Crores was shown as 'remittances payable-derecognized assets' under the current liabilities. Accordingly,

the assessee was directed by Ld. AO to furnish note on method of recognition of revenue from interest earned on the derecognized assets. Upon perusal, it transpired that the transactions of derecognized asset were securitisation transaction.

4.2 Securitisation is the process of raising funds for the business under which a single performing asset or pool of performing assets are sold to a special purpose vehicle (SPV). The assets are transferred from the Balance Sheet of the originator to the SPV in return for an immediate cash payment. In turn, the SPV sells the security interest representing claims on incoming cash flows from the asset or pool of asset to third-party investors by issuance of pass-through certificates. In other words, the assessee would get immediate compensation from SPV to give up pool of assets. The SPV, in turn, would sell the security interest to third-party investors. For the same, the assessee entered into securitisation agreement with various stake holders during the year.

4.3 Upon perusal of sample agreement entered into by the assessee with IDBI Trusteeship Services Ltd. (IDBI), it was noted that the assessee as a seller was also appointed as the servicer for collecting and depositing the receivables. In other words, the assessee plays a dual role i.e., seller as well as servicer. IDBI paid purchase consideration of Rs.551.84 Crores to the assessee. The assessee, in turn, unconditionally and irrevocably sells, transfers, assigns and conveys all the right, title benefit and interest in the receivables and the underlying security together with all other rights, benefits, powers, risks, guarantees and indemnities in relation thereto as contained in the underlying documents. The IDBI would hold the assets in trust for and for the

benefits of the beneficiaries and shall be deemed to be the full, true and absolute owner of all such assigned assets.

4.4 The execution of the deed constitutes an acknowledgement by the assessee seller and the trust that the assignment and transfer is an absolute sale and assignment of the assets on an outright basis from the seller to trust, carrying good clear and marketable title. It shall not form part of the properties or assets of the seller in any event. As per the terms, trustee would not have any recourse against the seller in respect of the assets transferred for whatever reasons. The seller was not to make good any losses suffered by the trustee due to non-receipt of receivables other than to the extent of the credit enhancement made available. Any rescheduling or restructuring of the terms of the underlying documents after the transfer of assets to the trustee shall be binding only on the trust and not on the seller. The assessee as a service provider shall collect and receive payment of the receivable and provide certain other services at one time upfront fees of Rs.1000/-. It was the responsibility of the servicers to obtain and deposit post-dated cheques received from the obligors for and on behalf of the trust.

4.5 The trustees would open and maintain a 'collection and payout account'. The scheduled payouts have been arrived at on the basis of the expected collection from the receivables subject to pre-payments, foreclosures etc. The agreement also proposes a waterfall mechanism which priorities the payments which are to be made from the 'collection and payout account'.

4.6 The payment from 'Collection and Payout Account' would be made by the IDBI Trust as per the 'Waterfall Mechanism'. As per the waterfall

mechanism, the proceeds deposited in the Collection and Payout Account' would be utilized in the following order of priority:

- (i) Any statutory or regulatory dues;
- (ii) Any expenses incurred by the Servicer or alternate servicer or Trustee or Trust or any fees payable to the Rating Agency, Trustee, Due Diligence Auditor, Legal Counsel and/or the Designated Bank;
- (iii) Payment of arrears in the Investor Payouts
- (iv) Yield to the Investors
- (v) Principal portion of the Scheduled Payouts and the Prepayment Amounts, if any, to the Investors;
- (vi) Reinstatement of the Credit Enhancement;
- (vii) Residual amount, if any, shall be paid to the Seller on a monthly basis towards Excess Interest Spread (EIS).

The Excess Interest Spread (EIS) is the difference between the interest realized from the pool of receivables and interest yield which is payable to the investors. Further, the assessee is required to maintain cash collateral as determined by the credit rating agency. The said cash collateral along with opening overdues and EIS is termed as 'credit enhancement'. In the event of shortfall in collection of receivables, the said credit enhancement is utilized to meet shortfalls in payment to investor. The second last priority of the Trust is to re-instate the cash collateral; the last priority being the payment of EIS to the appellant. In case of shortfall in collection, the Trust is permitted to utilize the EIS and accordingly, the last priority for the trust is to pay the proceeds collected to pay the EIS to the appellant. The entire process of securitization would have many stages i.e.,

(i) Securitisation of receivable to the trust / SPV as on the date of entering into the securitisation agreement

As on the date of the transaction, the appellant receives what is called a 'purchase consideration' that covers only the principal amount of the borrowings, i.e. the book value reflecting in the accounts of the appellant

as on the date of securitisation of receivables, from the Trust / SPV. In other words, on the date of securitisation of receivables, the appellant does not earn any profit since the transaction is undertaken at par i.e. consideration is restricted to the principal component reflecting in the books of accounts. Since the risks and rewards attached to the pool of receivables are transferred to the trust / SPV, the value of the underlying receivables (i.e. loan) in the books of the appellant is derecognized on receipt of securitisation consideration.

(ii) Subsequent event is on the due date of the installment from the borrower/obligor and earning of EIS

On the due date of installment, the appellant remits to the Trust the entire installment collected from the borrower in the designated 'Collection and Payout Account', operated by the Trust. Further, as per the terms of the agreement, the appellant receives the residual amount by way of EIS as per the waterfall mechanism from the Trust out of the installment collected and remitted to the trust. The EIS arises to the appellant due to the difference between the interest received on Loans and the Yield payable to the beneficiaries. The proportionate component of EIS becomes due to the appellant on the respective due date of the installment subject to the collection made from the borrower.

4.6 The rationale to undertake such transactions as stated by the assessee was to maintain liquidity and to reduce cost of borrowings. The immediate purchase consideration received is generally used to pay-off the borrowings of the company or used for fresh disbursements. This would ultimately reduce borrowing costs for the assessee and the assessee would earn EIS in future periods which is evidenced by the fact that the weighted average interest earning of securitized assets would be

in the range of 14% as against average payout of 7% to the investors which would yield EIS of approx. 7% to the assessee. As against entering into the securitisation transaction, the appellant would have to procure loan from a bank and would have to incur interest expense in the range of 9% and therefore, securitization would be beneficial to the assessee.

4.7 The main dispute before us is recognition of EIS spread while computing the income of the assessee. As summarized by Ld. AO, the total purchase consideration of securitisation agreement, in this year, amounts to Rs.1348.10 Crores. The present value of EIS (after applying a discount factor) that is computed as a proportion of the interest that is estimated to be received by the investor over the tenure of the loan amounts to Rs.88.858 Crores, out of which an amount of Rs.30.24 Crores has been offered to tax by the assessee during this AY leaving balance of Rs.58.60 Crores which is to be offered to tax in the subsequent years. It has been submitted that following consistent method of revenue recognition, this amount has already been offered to tax in subsequent years over the life of the underlying receivables.

4.8 The income thus offered by the assessee is on the reasoning that interest spread pertains to future years and its accrual and receipt is contingent upon certain conditions which cannot be estimated on the date of agreement. The said treatment of EIS is stated to be in line with the prudential norms prescribed by RBI and the principles of prudence. Further, similar practice is followed by the industry. Further, if income is utilized as per the agreed waterfall mechanism, there would be situations where the residual EIS payable to assessee could be 'nil' or significantly lesser or even higher (if shortfalls in previous months are collected in a

subsequent month at one go) than the amounts which are set out in the schedule wherein scheduled amounts are based on ideal cash flows. Further, the agreement provides that the schedule of investor payouts forming part of the agreement may be revised from time to time in accordance with the Transaction Documents whether on account of pre-payments, part payments or otherwise. It also provides that the payout schedule is indicative in nature and may undergo alterations as per the provisions of the Deed.

4.9 Accordingly, the time at which the residual EIS as receivable by the assessee would become determinate only on the day when the Trust is aware of the amounts which are credited in the 'Collection and Payout Account' and the quantum of monies which have to be utilized for meeting any statutory dues of the Trust or the expenses due and payable by the Trust including fees and interest payable to the persons making available the External Credit Enhancement and also the quantum of monies which are required for meeting the overdue 'Pass Through certificate' (PTC) Yield, in respect of any shortfalls in Investor payouts in previous months, which could only be determined on each payout date.

4.10 However, Ld. AO opined that since the assets have absolutely been transferred on outright basis, balance interest spread (EIS) of Rs.58.60 Crores would also be taxable in the hands of the assessee in this year. This was despite that fact that part of such EIS was already offered to tax in preceding years as well as in succeeding years whenever it accrued to the assessee as per the terms of the agreement. The assessee has chosen to offer the excess interest spread over a

period ranging from 4 years to 16 years, depending on the tenure of the loans advanced to the obligors.

4.11 In this year, the assessee entered into such sale transaction with various SPVs and had recognized interest spread from all such agreements amounting to Rs.205.34 Crores as extracted in para-8 of the assessment order. The Ld. AO held that these transactions were sale transactions only which were evident from the terms of the agreement. The assessee had completely sold a segment of loan portfolio to the SPV and transferred all the risks and rewards attached to it. The SPV has become the true and absolute owner of the debts. Thus the transaction of sale is complete and the revenue is crystallized in the year of sale since the significant risks and rewards of ownership are transferred to the buyer. As per Accounting Standard-9 (AS-9), where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, revenue recognition is postponed to the extent of uncertainty involved. However, where there is no uncertainty as to ultimate collection, revenue is recognized at the time of sale even though payments are made by installments. When the uncertainty related to collectability arises subsequent to the time of sale or the rendering of the service, it is more appropriate to make a separate provision to reflect the uncertainty rather than to adjust the amount of revenue originally recorded. In the present case, it is very clear that the revenue is measurable at the time of sale itself. This is evident since the revenue in the form of excess interest spread is quantified in the agreement itself. With respect to the uncertainty involved, the agreement clearly spells out that the entire risks and rewards are transferred to the buyer and hence there is no uncertainty involved in the hands of the

assessee. Further, the assessee had no obligations towards the receivables from the obligors by the trust (SPV). It is only an arrangement between the trust and the assessee that the interest portion will be shared in future. The assessee de-recognized the assets to the extent of Rs.1348.10 Crores which was sold to SPVs. The excess interest spread of Rs. 132.36 Crores has been determined as income of assessee. However, the same is spread over the life of the agreements which was not correct. Since the assessee was following mercantile system of accounting, the entire profit arising out of the sale transaction has to be offered in the year of sale. In this case the excess interest spread is the profit earned by the assessee and the same has to be offered in the year of de-recognition of the assets. In the said background, Ld. AO proceeded to compute the present value of interest spread which would be taxable in the hands of the assessee. The position as summarized by Ld. AO was as under; -

- As per the agreements, the transaction is an absolute sale transaction
- All the significant risks and rewards of the asset is transferred to the buyer
- Once the debt assets are transferred, there is no outstanding amount receivable by the assessee and hence there is no right to receive interest by the assessee.
- Once there is no right to receive interest, there is no depth in submission of the assessee that the interest income accrues over the tenure of the loan and hence it can offer income only in the year in which the interest accrues.
- The assessee, in the capacity of a "servicer" receives only Rs. 1000/- as service fee as per the contract. Hence the submission that the income will accrue only upon rendering the services also will not hold good.

Finally, it was concluded that the excess interest spread which is offered in various years has accrued to the assessee in the year of sale itself. In other words, the total excess interest spread of Rs.132.36 Crores has accrued to assessee on sale of Rs.1348.10 Crores of loan portfolio to various Special Purpose Vehicles. To arrive at the present value of such future inflows, Ld. AO adopted the discount factor of 9.7% and computed

the present value of such interest spread as Rs.58.60 Crores which was finally added to the income of the assessee as under: -

	Deal Name	Agreement Period (Months)	Purchase consideration (A)	EIS – Interest income for CIFCL over the life of the Agreement	Present value @ 9.7% Discounted rate – Note 1 (B)	Purchase Consideration + PV of interest (C)=(A)+B	Principal (D)=(A)/(C)*(A)	Interest (E)=(B)/(C)*(A)	Interest income already accrue in the books and offered to tax in the FY 2015-16 (F)	Upfront EIS on Day One (G)=(E)-(F)
1	PLAT INU M TRUST SEP2 015	54	4,50,05,17,630	42,67,23,407	30,49,80,074	4,80,54,97,704	4,21,48,93,064	28,56,24,567	10,41,41,927	18,14,82,640
2	PLAT INU M TRUST MAR 2016	52	3,46,20,80,379	26,01,56,305	18,77,03,462	3,64,97,83,841	3,28,40,30,253	17,80,50,126	7,40,92,614	10,39,57,512
3	PLAT INU M TRUST FEB2 016	54	5,51,84,08,683	63,67,55,637	46,02,91,873	5,97,87,00,556	5,09,35,54,043	42,48,54,640	12,42,41,319	30,06,13,321
	VF TOTAL		13,48,10,06,692	1,32,36,35,350	95,29,75,410	14,43,39,82,101	12,59,24,77,359	88,85,29,333	30,24,75,860	58,60,53,473

Aggrieved as aforesaid, the assessee assailed this addition before Ld. CIT(A).

Appellate Proceedings

5. During appellate proceedings, the assessee reiterated the entire process of securitisation and submitted that only real income was to be taxed during the year. Alternatively, the income already offered to tax in earlier years was to be factored-in while making addition in this year. However, Ld. CIT(A) held that as per the agreement, the transaction was an absolute sale transaction. All the significant risks and rewards of the asset are transferred to the buyer. Once the debt assets are transferred, there is no outstanding amount receivable by the assessee and hence,

there is no right to receive the interest in future. Once there was no right to receive the interest, there was no weight in the argument of the assessee that the interest income accrues over the tenure of the loan and hence it can offer income only in the year in which the interest accrues. In such a case, the incidence of taxation could not be postponed due to future years by making entries in the books of accounts. If the year of accrual of income is identified then the income has to be assessed in the year of accrual and the same could not be deferred by the accounting entire. Accordingly, the additions were upheld. Aggrieved the assessee is in further appeal before us.

Our findings and Adjudication

6. The undisputed facts that emerge are that the assessee has transferred certain pool of outstanding debts owned by it by way of absolute sale to SPV by receiving lump-sum purchase consideration which is equal to the book value of the pool of debts transferred by the assessee. The SPV funds the deal by issuing pass-through certificates to the beneficiaries which get return of approx. 7%. Thus, the assessee gets immediate recovery of the principal outstanding. These debts would generate interest income in the range of approx. 14% over their respective tenure. As per the terms of the agreement, the assessee would be entitled for excess interest spread (EIS) as generated from the debts over their tenure which is in the range of 4 years to 16 years. The assessee would collect the debts on due date and deposit the receivables in a separate 'Collection and Payout Account'. The surplus generated by the SPV (which would be in range of 7% approx.) in this account would be distributed as per unique mechanism which is known as 'Waterfall mechanism'. The priority of payment was as under: -

- (i) Any statutory or regulatory dues;
- (ii) Any expenses incurred by the Servicer or alternate servicer or Trustee or Trust or any fees payable to the Rating Agency, Trustee, Due Diligence Auditor, Legal Counsel and/or the Designated Bank;
- (iii) Payment of arrears in the Investor Payouts
- (iv) Yield to the Investors
- (v) Principal portion of the Scheduled Payouts and the Prepayment Amounts, if any, to the Investors;
- (vi) Reinstatement of the Credit Enhancement;
- (vii) Residual amount, if any, shall be paid to the Seller on a monthly basis towards Excess Interest Spread (EIS).

In other words, what the assessee would actually get over the tenure of the debts is uncertain. The assessee is entitled for residual surplus only after series of payment as aforesaid. The EIS arises to the appellant due to the difference between the interest received on Loans and the Yield payable to the beneficiaries. The proportionate component of EIS becomes due to the appellant only on the respective due date of the installment subject to the collection made from the borrower. The assessee offers the income over the tenure of the debts as and when the same is crystallized and accrues to the assessee. The assessee is following consistent method of accounting to recognize the revenue in this manner. Following this consistent method, the income on these transactions has been offered in subsequent years also. The income thus offered by the assessee is on the reasoning that interest spread pertains to future years and its accrual and receipt is contingent upon certain conditions which cannot be estimated on the date of agreement. The said treatment of EIS is stated to be in line with the prudential norms prescribed by RBI and the principles of prudence. Further, similar practice is followed by the industry. Notably, if income is utilized as per the agreed waterfall mechanism, there would be situations where the residual EIS paid to assessee could be 'nil' or significantly lesser or even

higher (if shortfalls in previous months are collected in a subsequent month at one go) than the amounts which are set out in the schedule, wherein scheduled amounts are based on ideal cash flows. Further, the agreement provides that the schedule of investor payouts forming part of the agreement may be revised from time to time in accordance with the Transaction Documents whether on account of pre-payments, part payments or otherwise. It also provides that the payout schedule is indicative in nature and may undergo alterations as per the provisions of the Deed. Accordingly, the time at which the residual EIS as receivable by the assessee would become determinate only on the day when the Trust is aware of the amounts which are credited in the 'Collection and Payout Account' and the quantum of monies which have to be utilized for meeting any statutory dues of the Trust or the expenses due and payable by the Trust including fees and interest payable to the persons making available the External Credit Enhancement and also the quantum of monies which are required for meeting the overdue 'Pass Through certificate' (PTC) Yield in respect of any shortfalls in Investor payouts in previous months. All these amounts could only be determined on each payout date.

7. The case of the revenue is that the debts so transferred by the assessee are absolute sale and assignment of the assets on an outright basis from the seller to trust, carrying good clear and marketable title. They cease to form part of the properties or assets of the assessee and the trustees would not have any recourse against the assessee in respect of the assets transferred for whatever reasons. The assessee was not to make good any losses suffered by the trustee due to non-receipt of receivables other than to the extent of the credit enhancement

made available. Therefore, the income so arising on these transactions would have to be offered to tax in this year only. The transaction of sale is complete and the revenue is crystallized in the year of sale since the significant risks and rewards of ownership are transferred to the buyer. As per Accounting Standard-9 (AS-9), where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, revenue recognition is postponed to the extent of uncertainty involved. However, where there is no uncertainty as to ultimate collection, revenue is recognized at the time of sale even though payments are made by installments. When the uncertainty related to collectability arises subsequent to the time of sale or the rendering of the service, it is more appropriate to make a separate provision to reflect the uncertainty rather than to adjust the amount of revenue originally recorded. We find that it is undisputed fact that the debts have been transferred by way of absolute sale and there is no recourse to the assessee in case of default by the borrowers. There is no quarrel on this point. The only point under dispute is recognition of revenue under such an arrangement. We are of the considered opinion that though the sale may be unconditional but the revenue under the arrangement may arise at different point of time keeping in view the terms of the arrangement. In the present case, the receipt of EIS is uncertain and the same may or may not accrue to the assessee over the terms of the loan. The same has already been noted by us in preceding paras 4.8 & 4.9 of the order. The assessee, following a consistent method of accounting, has offered EIS to tax on proportionate basis as and when they have accrued over the tenure of loan and the same has been accepted by revenue. The said methodology is in accordance with the RBI norms as well as AS-9

which provide that in case the revenue could not be measured with reasonable certainty, a suitable provision thereof should be made. However, in the present case, we find that EIS may not have even accrued to the assessee in future years and thus, no such provision could be made in this year. Therefore, keeping in view the principle of prudence as well as rule of consistency, no fault could be found with the accounting methodology adopted by the assessee to recognize the revenue under securitization transactions.

8. The last aspect of the matter is that Ld. AO has arrived at estimated income under such arrangement by applying the present value factor on future estimated earnings, the receipt of which was uncertain. We concur with the submissions of Ld. AR that such a methodology has not been recognized under Income Tax Act and only the real income has to be assessed to tax.

9. Considering entirety of facts and circumstances, we direct Ld. AO to accept the accounting methodology of the assessee and delete the impugned addition. The corresponding ground thus raised stand allowed.

10. In ground no.4, the assessee seeks deduction of education cess. The same is based on various judicial pronouncements as rendered on the subject. However, this issue has now been settled by Finance Act, 2022 wherein amendment to Sec.40(a)(ii) has been brought retrospectively with effect from AY 2005-06 by way of insertion of Explanation-3 which read as under: -

Explanation 3-For the removal of doubts, it is hereby clarified that for the purposes of this sub-clause, the term "tax" shall include and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax;

Considering the same, we would hold that no such deduction is available to the assessee. This ground stand dismissed.

11. The appeal stands partly allowed in terms of our above order.

Order pronounced on 08th June, 2022.

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 08-06-2022
TLN

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, चेन्नई / DR, ITAT, Chennai
6. गार्ड फाईल / Guard File