

Before The Income Tax Appellate Tribunal
C Bench
Mumbai
Before Sri Amit Shukla J M & Prashant Maharishi AM
In the matter of
CIFCO Finance limited, [AAACC1765F]
Bhupen Chambers, Dalal Street, Mumbai
V
The Asst Commissioner of Income tax
Aykar Bhavan 4th Floor , M K Road Mumbai 20

Serial number	ITA number	Assessment year	Filed by	Sections
1	2323/M/2016	1999 – 2000	AO	143 (3)
2	2496/M/2006	1999 – 2000	Assessee	143 (3)
3	2497/M/2006	2000 – 2001	Assessee	143 (3)
4	2341/M/2006	2000 – 2001	AO	143 (3)
5	2498/M/2006	2001 – 2002	Assessee	143 (3)
6	2499/M/2006	2002 – 2003	Assessee	143 (3)
7	487/M/2013	2003 – 2004	Assessee	penalty u/s 271 (1) (C)
8	5462/M/2006	2003 – 2004	Assessee	143 (3)
9	7547/M/2012	2004 – 2005	Assessee	143 (3) read with Section 147
10	490/M/2008	2004 – 2005	Assessee	143 (3)
11	488/M/2013	2004 – 2005	Assessee	penalty u/s 271 (1) (C)
12	1919/M/2009	2005 – 2006	Assessee	143 (3)
13	489/M/2013	2006 – 2007	Assessee	penalty u/s 271 (1) (C)
14	6075/M/2009	2006 – 2007	Assessee	143 (3)
15	6146/M/2011	2007 – 2008	Assessee	143 (3)
16	6147/M/2011	2008 – 2009	Assessee	143 (3)

Heard on :- 01/08/2022

Pronounced on :- 29/08/2022

Shri Vipul Joshi, Advocate for Assessee and Mr. Praveen Shekhar Sr AR
for Assessing officer

Judgment

Per Bench

01. This is bunch of 16 appeals filed by CIFCO Finance Ltd (the assessee/appellant) and the Asst Commissioner of income tax (OSD -II) Central range - 7, Mumbai from assessment year 99 - 2000 to 2008-09. All these appeals involved common issues. Both the parties argued this matter together, therefore, for the sake of brevity and compositeness all these appeals are disposed of by this common order.
02. These appeals are listed hereunder:-

SR No.	ITA number	assessment year	filed by	Particulars
1	2323/M/2016	1999 - 2000	AO	143 (3)
2	2496/M/2006	1999 - 2000	Assessee	143 (3)
3	2497/M/2006	2000 - 2001	Assessee	143 (3)
4	2341/M/2006	2000 - 2001	AO	143 (3)
5	2498/M/2006	2001 - 2002	Assessee	143 (3)
6	2499/M/2006	2002 - 2003	Assessee	143 (3)
7	487/M/2013	2003 - 2004	Assessee	penalty u/s 271 (1) (C)
8	5462/M/2006	2003 - 2004	Assessee	143 (3)
9	7547/M/2012	2004 - 2005	Assessee	143 (3) read with Section 147
10	490/M/2008	2004 - 2005	Assessee	143 (3)
11	488/M/2013	2004 - 2005	Assessee	penalty u/s 271 (1) (C)
12	1919/M/2009	2005 - 2006	Assessee	143 (3)
13	489/M/2013	2006 - 2007	Assessee	penalty u/s 271 (1) (C)
14	6075/M/2009	2006 - 2007	Assessee	143 (3)
15	6146/M/2011	2007 - 2008	Assessee	143 (3)
16	6147/M/2011	2008 - 2009	Assessee	143 (3)

We proceed to dispose them of assessment year wise as hereinafter.

ITA number	assessment year	filed by	particulars
2323/M/2016	1999 – 2000	AO	143 (3)
2496/M/2006	1999 – 2000	Assessee	143 (3)

03. For assessment year 1999 – 2000 , cross appeals are filed by assessee in ITA number 2496/M/2006 and The Assistant Commissioner Of Income Tax [The Id AO] in ITA number 2323/M/2006 against the appellate order passed by The Commissioner Of Income Tax (Appeals) Central – V, Mumbai [the Id CIT (A)] dated 18/1/2006. By that order appeal filed against the order passed u/s 143 (3) of the act on 14th/3/2000 to passed by the Deputy Commissioner of income tax (OSD – II), Central range, 7, Mumbai was partly allowed.
04. The brief facts of the case show that assessee is a public limited company assessed to tax since last several years. It is engaged in the business of leasing/higher purchase another finance related business. It filed its return of income on 31/12/1999 at a loss of ₹ 28,796,247/-. The assessment was made u/s 143 (3) of the act on 14th of March 2002 at a total income of ₹ 14,613,766/-. The assessee preferred an appeal before the learned CIT – A who disposed of the appeal of the assessee wide order dated 16/4/2002. Therefore, both the parties are aggrieved preferred these appeals.
05. Assessee has raised following grounds of appeal:-

- i. on the facts and in law, the Commissioner of income tax (appeals), Central B, Mumbai erred in confirming disallowance of reversal of lease rentals of ₹ 1,730,586/- made on the basis of the potential norms issued by the reserve bank of India
- ii. the CIT (A) failed to appreciate that the appellant was governed by Prudential norms issued by the reserve bank of India and was deducted any bound by these guidelines and thereby erred in confirming disallowance of reversal of lease rentals of ₹ 1,730,586
- iii. the CIT (A) failed to appreciate that even though the appellant was following accrual basis of accounting no income in respect of lease rentals reversed could have been said to have accrued and thereby erred in disallowing reversal of lease rental of ₹ 1,730,586/-
- iv. the CIT (A) failed to consider all the submissions made before him and thereby erred in confirming disallowance of reversal of lease rentals
- v. without prejudice to the above, the CIT (A) failed to appreciate that the amount of lease rentals reversed were in the nature of bad debts written off and thereby erred in confirming disallowance of reversal of lease rentals of ₹ 1,730,586
- vi. on the facts and in law the CIT (A) erred in confirming disallowance of claim of right of ₹ 279,794/- in respect of interest on securities offered for tax in earlier year on the ground that genuineness of the transaction remains to be proved

- vii. on the facts and in law, the CIT (A) erred in confirming disallowance of short-term capital gain on sale of securities on ground that the genuineness of the transaction remains to be proved
- viii. on the facts and in law the CIT (A) erred in confirming disallowance of bad debts written off of Rs. 4,47,759/- on the ground that similar claim was disallowed in assessment year 96 – 97
- ix. on the facts and in law, the CIT (A) failed to appreciate that in fact for assessment year 96 – 97, similar claim of appellant was partly allowed and thereby erred in disallowing claim of right of Rs 4447759/-
- x. on the facts and in law the CIT (A) erred in confirming disallowance out of interest in respect of advances given to CIFCO travel private limited relying only on the order of the CIT – A for assessment year 96 – 97 the CIT (A) erred in facts and in law in confirming disallowance out of depreciation on the ground that the depreciation was disallowed in the earlier year without independently examining allowability of depreciation for the year
- xi. on the facts and in law, the CIT (A) erred in confirming addition made rejecting bona fide change in method of accounting
- xii. on the facts and in law, the CIT (A) failed to appreciate that the change in method of accounting was in conformity with the accounting standard as prescribed by the Institute of chartered accountants of India and Prudential norms prescribed by the reserve bank of India and thereby erred in

confirming addition made rejecting change in method of accounting

xiii. the CIT (A) failed to appreciate that the appellant had clearly brought out that the change in method of accounting was for a bona fide reasons and thereby erred in confirming addition made on account of change in method of accounting

xiv. On the facts and in law, the CIT (A) erred in confirming disallowance of ₹ 3 lakhs in respect of interest taxed not paid u/s 43B of the act.

06. The assessing officer in ITA number 2323/M/2006 has raised following grounds of appeal:-

on the facts and in the circumstances of the case and in law, the learned CIT (A) erred in directing the AO to bifurcated the payment of lease rentals received from parties kores India Ltd and Prakash industries Ltd to principal and interest on only to tax interest component as income of the assessee.

07. Coming to the first ground of reversal of lease rent and higher purchase interest of ₹ 1,730,586/- challenged by the assessee as per ground number 1, the fact shows that the assessee company is essentially a nonbanking finance company and one of the major source of income is from lease rentals. The assessee has disclosed is letter of ₹ 783,743/- and higher purchase of ₹ 770,398 – for assessment year 1999 – 2000 against ₹ 2,823,047/- declared in the assessment year 98 – 99. Therefore the assessing officer questioned the sharp fall in the income from lease rent was to the assessee explained that assessee has made a reversal of entry for the lease rental income for the assessment year 1999 – 2000 amounting to ₹ 1,688,414/- and on account of higher purchase

interest reversal of ₹ 42,172/-. The reversal was made based on the guidelines issued by the reserve bank of India for nonbanking financial companies. The assessee also submitted a detailed not. The relevant notes to the accounts for the year were also shown. The learned and assessing officer found that reversed income is aggregating to ₹ 1,730,586/- being lease rental and higher purchase interest, which accrues to the assessee during the year. He further held that assessee has consistently followed income on accrual method in accounting income being lease rental. The Prudential norms issued by the reserve bank of India are in relation to income recognition, which falls on altogether different ground. The reversal of entries made is obviously subsequent to the end of the accounting period after accounting the lease rental he further referred to the report of the board of directors of the assessee company wherein it is mentioned that assessee was not registered as nonbanking financial company as application for registration of the assessee was not considered favorably. Therefore, the AO was of the view that NBFC Prudential norms do not apply to the assessee. Hence, he held that there is no reason to reverse the income of ₹ 1,730,586 for the year under consideration. Accordingly, this addition was made.

08. The assessee challenged the same before the learned CIT – A as per ground number 1 and 2. The learned CIT – A of the view that identical issue in assessment year 98 – 99 the identical disallowance was confirmed as assessee was not registered as an NBFC. He further held that the guidelines of the RBI has nothing to know with the determination of income which is to be done in accordance with the accounting followed by the assessee and the provisions of the income tax act. He further held that the

guidelines issued by the reserve bank of India did not have any purpose to overrule or supersede the provisions of the income tax act. Accordingly, the addition was upheld.

09. Before us, learned authorised representative submitted that this ground is identical to the ground of the appeal of assessee in ITA number 4046/M/2005. Coordinate bench in order dated 13/10/2021 has passed the order directing the assessing officer that if the amount is not taxed in the year in which same was offered as a income, plea of the assessee to not to press this ground in this appeal was accepted. He submitted that identical direction might be given to the learned assessing officer.
10. The learned departmental representative did not object to the same.
11. We have carefully considered the rival contention and perused the orders of the lower authorities as well as the order of the coordinate bench in assessee's own case for assessment year 1998 – 1999. In that appeal, this ground was not pressed by the assessee on the condition that the same would not result in to double addition in the year in which the income was already offered by the assessee. Therefore, naturally the claim of the assessee is that that the ground in this year may not be pressed, if the same is directed to be excluded in the assessment of the year in which it has been offered as income. As similar direction has been given by the coordinate bench in the earlier year, respectfully following the decision of the coordinate bench, we also give the similar direction as contained in paragraph number 12 of the order of the ITA T,. Accordingly, this ground of appeal with respect to the addition of ₹ 1,730,586 is dismissed.

12. The second issue in the grounds of appeal is with respect to the disallowance of claim of right of amounting to ₹ 2,79,794 in respect of interest on securities offered for tax in the earlier year on the ground that the genuineness of transactions remain to be proved. The facts show that assessee has written off ₹ 279,794/- being interest receivable on government securities on 12.5% as the SDL 2004 for the accounting year ended on 31/3/1998 and the same was offered for tax for assessment year 98 – 99 on accrual basis. However, the securities were sold in June 1998 and the amount of interest shown, as receivable in the earlier year i.e. assessment year 98 – 99 did not receive in view of the sale of the securities and therefore the same is written off. The AO questioned the same and stated that the securities were sold on cum interest basis and the assessee has incurred loss in the transaction of sale of securities. The assessee was not forthcoming with any explanation. AO disallowed the same. On appeal before the learned CIT – A assessee could not produce any evidence with respect to the sale of securities and it was found that the securities were never delivered to the assessee and was subsequently sold to the same person. Therefore, the CIT – A noted that the securities were sold remains unsubstantiated is no documents or correspondence bank transactions could be produced in support of the sale price of the securities. Therefore, the addition was confirmed with respect to the claim of interest and short-term capital loss.
13. The learned authorised representative reiterated the same facts before us and the learned departmental representative supported the orders of the lower authorities.

14. We have carefully considered the rival contention and perused the orders of the lower authorities. The facts are simply stated shows that assessee has purchased government securities of State development loans 2004 for Rs.43 lakhs of face value at a price of ₹ 4,579,500/- from one Mr. Sanjeev Aggarwal and Co of Jay per as per their bills dated September 29, 1997. In that year the sum of ₹ 279,794/- were shown as an income. During this year the assessee sold the same securities back to Sanjeev Aggarwal and Co and has claimed a short-term capital loss of ₹ 397,451/-. As the securities were purchased including interest and now sold including interest, no interest was received by the assessee during this year, which was shown as income in assessment year 1998 – 1999, write was claimed as deduction. The assessee has complete details of the purchase of securities however, no document regarding the sale of the securities were produced. It was also noted by the learned CIT – A assessee submitted that securities were never delivered to the assessee and was subsequently sold to the same person itself therefore the sale price of the security remains unsubstantiated in absence of any documentary evidence or bank transaction. Before us, also nothing is produced. Therefore, as the sale transaction itself remains unsubstantiated, reversal of interest also remains unsubstantiated and the lower authorities have correctly dealt with the same. The claim of the assessee that the purchases were accepted in the earlier years and the income was offered for taxation in the earlier year and therefore it should have been accepted, this ground also deserves to be rejected for the reason that assessee has failed to produce any evidence with respect to the sale of the securities.

Accordingly, all the grounds with respect to the disallowance of ₹ 279,794/- are dismissed.

15. The next grounds of appeal are with respect to the disallowance of bad debts amounting to Rs, 444,757/-. During the year, the assessee has written off an amount of ₹ 4,093,459 based on vouchers in respect of debts receivable from various parties related to hire purchase transaction. The AO noted that there are five parties financed through the dealers for purchase of various goods. These parties are now not traceable, therefore, amounts are not recoverable, hence, those were written off. AO disallowed the same for the reason that no proper agreement with the dealer was existing, doubt about the existence of genuine transaction and such write off are related to the business.
16. The assessee preferred appeal before the learned CIT – A following his own order for assessment year 96 – 97 and 97 – 98 confirmed the disallowance stating that it did not satisfy the criteria Under which the said claim is allowable u/s 36 (1) (vii) read with Section 36 (2) of the act.
17. We have heard the rival contentions on this issue and find that undoubtedly these were the amounts which were financed by the assessee through its dealer for purchase of consumer goods to the various parties. Undisputed fact shows that assessee is engaged in the business of leasing and hire purchase, assessee has advanced money to these parties through its dealers. Assessee is engaged in the business of money lending, it is also proved that the above amount could not be recovered, therefore according to us it satisfies all the conditions of allowability of bad debt in case of finance business. Merely certain deficiencies in the documents cannot be used to deny the claim of bad debt. In view of this we

direct the learned assessing officer to delete the disallowance of amount of bad debt claim of ₹ 4,44,757/-. We also direct the learned AO to look into the amount which is been claimed by the assessee, disallowed by the learned AO, raised in grounds of appeal before the learned CIT – A and amount of written by CIT – A in his order. Therefore, the correct amount deserves to be identified and to be allowed. These grounds of appeal with respect to the bad debts are allowed.

18. The next bunch of grounds of appeal relates to the disallowance of interest expenditure in respect of advances given to CIFCO travel private limited. The learned AO noted that assessee has given advance to the CIFCO travels private limited of ₹ 34.75 lakhs out of the interest-bearing funds and therefore the interest disallowance of ₹ 879,879/- was disallowed. On appeal before the learned CIT – A the issue was decided without any reasoning and directed the AO to follow the direction of CIT – A in assessment year 97-98.
19. On hearing the parties, it was pointed out that there is no disallowance on this count during the year and therefore it is not pressed. Accordingly, it is dismissed.
20. The next sets of grounds are with respect to disallowance of depreciation. The ground raised by the assessee challenges the direction of the learned CIT – A of confirming the disallowance of depreciation for the only reason that in the earlier year the disallowance was made but in this year it was confirmed without independently examining allowability of depreciation for this year. We find that the fact shows as per paragraph number 5 of the assessment order that the disallowance of depreciation was made in assessment year 1997 – 98 and 1998 and 99. The depreciation

was disallowed on certain assets on the ground that either the assessee did not exist or they were not used for releasing activity of the assessee. Therefore, during this year also depreciation claimed on these assets amounting to ₹ 348,280/- was disallowed. The learned CIT – A confirmed the action of the AO.

21. The learned authorised representative submitted that identical issue has been decided in assessment year 1998 – 1999 in ITA number 4046 and 4533/M/ 2005 dated 13/10/2021 wherein the issue has been dealt with in paragraph number 23 – 25 of the order. The learned departmental representative also submitted the same.
22. We have carefully considered and perused the orders of the lower authorities as well as the order of the coordinate bench. We find that in paragraph number 24 the coordinate bench has reproduced the order for assessment year 9697 of the coordinate bench in ITA number 3992/M/2001. In that paragraph the order of the ITAT for assessment year 94-95 was referred. In that order the orders for assessment year 1992 – 1993 and 93 – 94 one referred to and the matters were restored back to the file of the AO to decide it in accordance with the decision of ITAT. However, for assessment year 1998 – 99, the coordinate bench directed the AO to allow the depreciation. We find that the direction of the coordinate bench, which followed the decision of the other assessment years where the issue was set aside to the file of the AO, is not in conformity with those orders of ITAT. Accordingly we set-aside this issue back to the file of the learned assessing officer with a direction to decide the issue afresh in the light of orders of the ITAT. This ground of appeal is allowed accordingly to that extent.

23. Ground number 8 and sub- set of those grounds deals with the rejection of change in the method of accounting. The fact shows that Assessee Company has changed its accounting system from accrual to cash system in respect of interest income. Up to assessment year 1996 – 97, the assessee followed cash system and with effect from 1 April 1996, it decided to follow the accrual system. Then again, for the relevant assessment year it has reverted earlier policy of accounting of interest overdue based on certainty of realization. In nutshell the assessee has changed the accounting system price in a period of three years that is it followed cash system of accounting, adopted Mercantile system of accounting and again from assessment year 1998 – 99 it reverted back to cash system for accounting. The AO rejected the same stating that frequent change in the method of accounting leads to escapement of income. Accordingly he made an addition of ₹ 10,536,566 being income under reported because of change in the method of accounting.
24. The assessee challenged the same before the learned CIT – A. He found that identical issue has been decided against the assessee in assessment year 1998 – 1999 and therefore confirmed the action of the AO.
25. On careful consideration of the arguments of both the parties, perusal of the order of the coordinate bench for assessment year 1998 – 1999 dated 13/10/2021, we find that the coordinate bench in that year has dealt with this issue. In paragraph number 26 – 30 and directed the learned AO to delete the above addition accepting the change in the method of accounting made by the assessee. The coordinate bench held that assessee has been following method of accounting of revenue as per reserve bank of

India Prudential norms on actual realization basis, or when there was a reasonable certainty of realization of such income. Therefore, the above decision judicially binds us. Accordingly, we allow these grounds of appeal of the assessee with respect to the change in method of accounting and direct the learned AO deleted the addition accordingly.

26. Ground number 9 is with respect to disallowance of ₹ 3 lakhs made u/s 43B of the act. Assessee has debited interest tax of ₹ 3 lakhs to the profit and loss account and has not paid the same before the due date of filing of the return of income. Accordingly, the AO made the addition of the same. On appeal before the learned CIT – A assessee contended that the interest tax is in the nature of tax on income and is not covered Under Section 43B of the act. The learned CIT – A the arguments of the assessee and confirmed the disallowance.
27. Before us this ground was not pressed hence same is dismissed.
28. Accordingly, appeal of the assessee is partly allowed.
29. ITA number 2323/M/2006 filed by the assessing officer contends only issue where the learned CIT – A has erred in directing the AO bifurcated the lease rentals received from certain parties in principal and interest and to tax only the interest component as income of the assessee. We find that this issue is covered in favour of the assessee by the decision of the CIT – A in assessment year 1997 – 98 wherein the claim of the appellant was accepted based on remand report by the AO. This direction of the learned CIT – A is also in consonance with CIRCULAR: NO. 9 [R. DIS. NO. 27(4)-IT/43], DATED 23-3-1943. There is no change in the facts and circumstances of the case, on the merits we do not find any infirmity in the order of the learned CIT – A. As such,

nothing was contended before us by the revenue. Accordingly, appeal of the learned AO is dismissed.

30. In the result for assessment year 99 – 2000 appeal filed by the assessee in ITA number 496/M/2006 is partly allowed and you'll filed by the learned assessing officer in ITA number 2323/M/2006 is dismissed.

	2497/M/2006	2000 – 2001	Assessee	143 (3)
	2341/M/2006	2000 – 2001	AO	143 (3)

31. Assessee filed return of income on 30/11/2000 declaring loss of ₹ 22,225,475/- which was assessed u/s 143 (3) of the act at a total loss of ₹ 84,09,705 -. Several additions were made as in earlier assessment years which were challenged before the learned and CIT – A, he passed an order on 16/1/2006 giving part relief to the assessee and therefore both the parties are in appeal before us.

32. The ground number 1 and 2 of the appeal of the assessee are with respect to disallowance of reversal of lease rent of ₹ 507,300 made on the basis of Prudential norms issued by the reserve bank of India. This is identical to same ground number of the appeal of the assessee for assessment year 99 – 2000 with respect to the fact that assessee do not want to press this ground of appeal for the reason that year in which the income is offered should not be taxed once again. This issue has been decided by us in assessment year 1990 – 2000 by following the order of the coordinate bench in assessment year 98 – 99. Therefore respectfully following the same, ground number 1(a) to 1(d) are dismissed with a direction to the assessee to exclude and not to tax these incomes in the year and which assessee has offered them.

33. Ground number 3 are with respect to the disallowance of amount of ₹ 126,085 and ₹ 484,390 from two different parties where the

borrowers have defaulted in payment towards the bill discounting and lease charges and further the information with the assessee was that these companies have closed their operation. The cheques issued by these parties have also bounced. However, the learned AO disallowed the same is no details of steps taken to recover the above amount were shown. The facts clearly show that this amount has been written off by the assessee in its books of account and claimed as bad debt. The undisputed facts also show that assessee in the business of loans and advances and financing of assets through hire purchase. Identical issue arose in the case of the assessee for assessment year 99 – 2000 wherein we have allowed the claim of such bad debts as per ground number 5. Therefore, we allow the claim of that that the assessee reversing the orders of the lower authorities. Ground number 3 are allowed.

34. Ground number 4 is with respect to disallowance of depreciation of ₹ 261,210/- which is disallowed by the learned assessing officer following the order of the AO in 1997 – 1998 and 1998 – 1999 where the assets were either in not existence or whether they're been used for the purpose of the business was not known. Identical ground arose in the case of the assessee for assessment year 1998 – 1999 wherein the issue has been decided in favour of the assessee. However, we have dealt with this issue in the appeal of the assessee for assessment year 99 – 2000 wherein we have set-aside the whole issue back to the file of the learned assessing officer in accordance with the order of the coordinate bench in earlier years in assessee's own case. Therefore, according to that ground number 4 is restored back to the file of the learned assessing officer.

35. Ground number 5 is with respect to the rejection of method of accounting followed by the assessee. This is identical to ground arose in case of the assessee for assessment year 1998 – 99. By that order the learned assessing officer has made the addition of ₹ 9,230,816/-. We find that the method of accounting change by the assessee frequently is the main reason for not accepting the same by the revenue authorities. However for assessment year 1998 – 1999 the coordinate bench has taken a view that the method of accounting adopted by the assessee in this year is bona fide and in accordance with the reserve bank of India norms. Therefore respectfully following the decision of the coordinate bench in assessee's own case for assessment year 1998 – 1999 we also reject the orders of the lower authorities rejecting the change in the method of accounting and hence the addition of ₹ 9,230,816 is deleted. Accordingly, ground number five of the appeal of the assessee is allowed.
36. In the result ITA number 2497/M/2006 filed by the assessee is partly allowed.
37. ITA number 2341/M/2006 filed by the learned assessing officer is identical to the appeal of the learned assessing officer for assessment year 99 – 2000. We have held therein that the direction of the learned and CIT – A is in accordance with the circular issued by the CBDT, based on the remand report submitted by the AO and on the correct appreciation of real income theory. Therefore, we find no merit in the appeal of the AO. Accordingly, the solitary ground raised by the AO is dismissed.
38. In the result ITA number 2341/M/2006 filed by the AO is dismissed.

39. Accordingly, appeal of the assessee for assessment year 2000 – 01 in ITA number 2497/M/2006 is partly allowed and the appeal of the AO for the same assessment year 2341/M/2006 is dismissed.

2498/M/2006	2001 – 2002	Assessee	143 (3)
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40. ITA number 498/M/2006 is filed by the assessee against the order passed by the Commissioner of income tax appeals, Mumbai dated 18/1/2006 for assessment year 2001 – 02. The fact shows that the assessee filed return of income on 31/10/2001 declaring loss of ₹ 20,159,547/- which was assessed at a total loss of ₹ 5,855,694/- wherein certain addition is based on the assessment orders of the past years were made over and above sum new additions. These additions were challenged before the learned CIT – A who passed an order on 12/4/2004 partly allowing the appeal of the assessee. Therefore the assessee is aggrieved with the order of the learned CIT – A on confirmation of the disallowance of interest in respect of advances given to 1 of the company without charging interest and further upholding the issue of rejection of the change in the method of accounting.
41. The ground number 1 is with respect to confirming the disallowance of interest in respect of advances given to sift court travel private limited. The fact shows that there is no such addition made by the learned assessing officer with respect to the advances given to CIFCO travel private limited. Therefore, ground number 1 of the appeal is not arising out of the order of the learned CIT – A hence dismissed.
42. Ground number 2, is with respect to disallowance of depreciation on the ground that in earlier year the assets were neither found to be in existence or no evidence with respect to the fact that the

assets were given on lease for the purposes of the business of the assessee. We find that this issue is squarely covered in favour of the assessee by the decision of the coordinate bench in case of assessment year 98 – 99 wherein for that year the coordinate bench followed the decision in earlier years. We have also stated so in our order for assessment year 99 – 2000 in the appeal of the assessee and set-aside the issue back to the file of the learned assessing officer. Therefore for the similar reasons, we also set-aside ground number 2 of the appeal back to the file of the learned assessing officer to examine the issue afresh and grant depreciation if allowable on merits of the case.

43. Ground number 3 is with respect to the change in method of accounting by the assessee which was rejected by the learned assessing officer and confirmed by the learned CIT – A. We find that identical issue arose in the case of the assessee for assessment year 1998 – 1999, wherein the coordinate bench as per detailed order, which has been followed by us in the appeal of the assessee for assessment year 1999 – 2000, held that the method of accounting changed by the assessee is proper. Therefore, for the same reasons, we reverse the orders of the assessing officer and held that the change in the method of accounting is proper and in accordance with the law. Accordingly, ground number 3 of the appeal is allowed.
44. In the result ITA number 2498/M/2006 filed by the assessee for assessment year 2001 – 2002 is partly allowed.

2499/M/2006	2002 – 2003	Assessee	143 (3)
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45. For assessment year 2002 – 03 assessee filed its return of income on 31/10/2000 to declaring loss of ₹ 16,307,194/- same was assessed u/s 143 (3) of the act as per order dated 28/2/2005 at a loss of ₹ 7,260,384/-. The learned assessing officer made certain disallowances based on the orders of the assessing officer in case of the assessee for earlier years. The assessee preferred an appeal before the learned CIT – A partly allowed the appeal of the assessee. Therefore the assessee is in appeal before us with respect to certain addition/disallowance is confirmed by him.
46. The ground number 1 is with respect to the disallowance of interest in respect of interest free advances given to CIFCO travels private limited. We find that neither in the assessment order nor in the appellate order, there is any disallowance with respect to interest free advances given to this party. Therefore, the ground raised by the assessee is not correct it also did not mention any amount. Therefore, ground number 1 is dismissed.
47. Ground number 2 is with respect to the disallowance of depreciation based on the order of the assessing officer in earlier years wherein the assets are given on hire neither found to be not in existence or they were not found to be used in the business of the assessee. The identical issue arose in the case of the assessee for assessment year 1998 – 1999 wherein the coordinate bench directed AO to delete the disallowance. However when identical issue arose before us for assessment year 1999 – 2000 we found that in earlier years the coordinate bench has set aside the issue back to the file of the learned assessing officer to decide it up as in accordance of the orders of the ITAT. Therefore with similar direction we set-aside this ground of appeal to the file of the learned AO.

48. Ground number 3 is with respect to the change in method of accounting made by the assessee, which was rejected by the lower authorities. We find that identical issue arose in the case of the assessee for earlier years i.e. assessment year 98 – 99, wherein ITAT giving detailed reasons has upheld that the change in the method of accounting followed by the assessee is bona fide, in accordance with the law and proper. We have also followed the same in the case of the assessee for assessment year 1999 – 2000. Therefore, we reverse the findings of the lower authorities and upheld the change in the method of accounting made by the assessee as bona fide, proper and in accordance with the law. Accordingly, ground number 3 of the appeal of the assessee is allowed.
49. In the result ITA number 2499/M/2006 filed by the assessee for assessment year 2002 – 03 is partly allowed.

487/M/2013	2003 – 2004	Assessee	penalty u/s 271 (1) (C)
5462/M/2006	2003 – 2004	Assessee	143 (3)

50. ITA number 5462/M/2000 success filed by the assessee for assessment year 2003 – 04 against the order passed by the Commissioner of income tax dated 8/8/2006 contesting the issue of disallowance of interest of ₹ 215,821/-, disallowance of depreciation of ₹ 110,698/- and rejection of change in method adopted by the assessee and thereby making an addition of ₹ 3,862,997/-.

51. The brief facts shows that assessee filed its return of income on 28/11/2003 declaring total rural of ₹ 12,332,038/-. During the course of assessment proceedings, the learned assessing officer noted that assessee has given interest free advances to Acadia investment of ₹ 1,027,720 and to Divya finance of ₹ 25 lakhs on which no interest has been charged. The learned assessing officer computed the interest at the rate of 21% on the amount advanced to Acadia investment and made disallowance of interest expenditure of ₹ 215,821/-. The disallowance of depreciation of ₹ 110,698/- was also made with respect to the assets which did not exist or were not used for releasing activity of the assessee as held in assessment year 1997 – 1998. The learned assessing officer also rejected the change in the method of accounting made by the assessee and made an addition therein. Accordingly the assessment order u/s 143 (3) of the act was passed on 28/3/2006 determining the total income of the assessee at Rs 431,247/-.
52. The assessee challenged the assessment order before the learned CIT – A partly allowed the appeal of the assessee. Therefore, the assessee is in appeal before us with respect to the only three issues.
53. The first ground of appeal is with respect to the disallowance of interest of ₹ 215,821 in respect of advances given to Acadia investment Ltd. The claim of the learned assessing officer is that assessee has used interest-bearing funds to advance these parties. The learned and CIT – A confirmed the same stating that assessee has not given any evidence that the interest-bearing funds were not utilized for the same.
54. On careful hearing the arguments of the assessee, perusal of the orders of the lower authorities, we found that the balance

outstanding in the account of this party is the interest receivable from this party which was fully offered to taxation in the earlier years. The assessee has already contested that the principal amount has already been received and the amount outstanding is only interest. We do not find any reason to uphold the disallowance as the interest income has already offered for taxation in the earlier years and this amount is outstanding only with respect to that interest. We find that this is not an advance given by the assessee but merely an outstanding interest receivable. On this sum there was no disallowance made by the learned assessing officer in earlier years also. Therefore, the ground number 1 of the appeal of the assessee is allowed and AO is directed to delete the disallowance of ₹ 215,821 on account of interest free advances given to Acadia investment private limited amounting to ₹ 1,027,720/-.

55. Ground number 2 is with respect to the disallowance of depreciation of ₹ 110,698/- on assets either which have not been found in existence or which were not found to be used by the assessee for the purpose of its business. Identical issue is decided by the coordinate bench in assessee's own case for 1999 – 2000 wherein the issue is set aside to the file of the learned assessing officer following the orders of the coordinate bench in assessee's own case for earlier years. In view of this, we also set aside this ground of appeal back to the file of the learned assessing officer to decide the issue on the merits of the case. Accordingly, ground number 2 of the appeal is allowed with above direction.
56. Ground number 3 is with respect to the change in method of accounting rejected by the lower authorities. We find that identical issue arose in the case of the assessee for assessment year 1998

– 1999 wherein the coordinate bench for detailed order has held that the change in the method of accounting made by the assessee is bona fide, proper and in accordance with the guidance/direction of the reserve bank of India. In view of this, respectfully following the order of ITAT in assessee's own case for assessment year 1998 – 1999, we direct the learned assessing officer to accept the change in method of accounting made by the assessee and deleted the addition. Accordingly, ground number 3 of the appeal of the assessee is allowed.

57. Ground number 4 of the appeal of the assessee is with respect to the disallowance of amount of ₹ 3,709,392 has been written off by the assessee. The briefly stated the facts show that the assessee is in business of leasing and hire purchases. The above amount written off in respect of amount advanced under hire purchase and lease in the course of the business of the assessee. These are the amount of advances given for consumable durables. We have already dealt with this issue in assessee's own case for assessment year 1990 – 2000 wherein we have held that the disallowance deserves to be deleted in view of the fact that assessee is in the business of leasing and merely because of some delinquency in the documents, the claim of the assessee cannot be rejected. We find that in the current present case and a sum of ₹ 519,222/- is interest and brokerage income already offered in earlier years and now written off. Further, a sum of ₹ 1,503,135 is the hire purchase installment of lease charges receivable from the various parties, which could not be recovered, and draft. With respect to these two items, we direct the learned assessing officer to delete the disallowance. With respect to other items, there are no evidences available and therefore the disallowance of the

balance sum is confirmed. Accordingly, the assessee gets relief with respect to the sum of ₹ 1,503,135/- being outstanding hire charges receivable and a sum of ₹ 519,222/- being interest and brokerage income already offered for taxation in the earlier years. The ground number 4 of the appeal is partly allowed.

58. Accordingly, ITA number 5462/M/2006 filed by the assessee for assessment year 2003 – 04 is partly allowed.
59. ITA number 487/M/2013 is filed by the assessee for assessment year 2003 – 04 against the penalty confirmed by the learned CIT – A levied by the learned assessing officer u/s 271 (1) © of the act of ₹ 4,206,590/- by the order dated 22/11/2012.
60. We have already stated the facts of the case in deciding the quantum appeal of the assessee. The penalty has been levied on disallowance of interest of ₹ 215,821/-, depreciation disallowed of ₹ 110,698/-, addition made on account of change in the method of accounting of ₹ 7,864,880/- and bad debts written off ₹ 3,862,997/-.
61. Out of the above addition, as per our order in the quantum appeal in ITA number 5462/M/2016 all additions are deleted except to the extent of partial disallowance of bad debts written off. Therefore, penalty with respect to those additions, which have been deleted in the quantum proceedings, cannot be sustained. Accordingly, the penalty to that extent is deleted.
62. Based on the findings of the lower authorities we find that now the addition/disallowance made by the learned assessing officer is only with respect to bad debts claimed. The assessee has written off Rs. 37,09,392/-, out of which the claim of Rs. 5,19,222/- and claim of ₹ 15,03,135/- are already allowed by us. The balance but that is with respect to the fact that Assessee Company is in

the business of acting as a brokers to various fixed deposits of the company. The company was also accepting the fixed deposits all over the country. It had collection account in all major cities and towns. The company was accounting on the basis of the forms or advises received from it's a brokers or clients. It was respect of some of the accounts there remain difference as per the books of account as per the balances with the bank. Some differences were because of bank charges not accounted for. Therefore, there are certain amounts, which could not be reconciled due to the lack of accounting staff, which had already left. Therefore, such amounts were also written off. The learned assessing officer disallowed the same and CIT appeal confirmed the same. The ITAT also confirmed the same.

63. We have carefully considered the explanation of the assessee. No doubt the claim of the bad debt could not be explained by the assessee, however such explanation cannot be said to be inaccurate. It is not the case of the revenue authorities that the facts stated by the assessee are incorrect. The claim could have been allowed to the assessee with respect to the provisions of Section 29 of the act. However, assessee failed to substantiate the same either u/s 36 or u/s 28-29 in absence of adequate details. Therefore, it cannot be said that claim of the assessee is inaccurate.
64. The order passed by the Learned AO u/s 271 (1) (C) of the act levied the penalty for the reason that assessee has furnished inaccurate particulars of income with respect to claim of bad debts. The learned CIT – A on appeal also confirmed the same. On carefully looking at the facts of the case we find that merely because, the addition has been confirmed by the appellate

authorities, it cannot be said that the assessee has furnished inaccurate particulars of income.

65. Even otherwise, on the merits, the claim of the assessee is rejected. Merely because of the same, when the claim is not found to be unsustainable in law, the penalty deserves to be deleted.
66. Accordingly, we direct the learned assessing officer to delete the penalty for assessment year 2003 – 04. ITA number 407/M/2013 filed by the assessee against the confirmation of the penalty u/s 271 (1) (C) of the act is allowed.

7547/M/2012	2004 – 2005	Assessee	143 (3) read with Section 147
490/M/2008	2004 – 2005	Assessee	143 (3)
488/M/2013	2004 – 2005	Assessee	penalty u/s 271 (1) (C)

67. ITA number 490/M /2006 is filed by assessee for assessment year 2004 – 05 against the order of the Commissioner of income tax (appeals) – Central – V, Mumbai dated 23/11/2007 wherein appeal filed against the order u/s 143 (3) on 19/12/2006 passed by the assessing officer was dismissed.
68. Assessee is aggrieved by raising the grounds against disallowance of interest of ₹ 215,821 in respect of advances given to Arcadia investment Ltd and on account of disallowance of depreciation confirmed of ₹ 83,023. Both this issues were also arising in the appeals of the assessee for the earlier years.
69. To state the facts for the assessment year, assessee filed return of income on 30/10/2000 for declaring loss of ₹ 7,566,870/- stop on scrutiny AO found that assessee has an interest free advances Arcadia investment Ltd of ₹ 1,027,720/- on which no interest has

been charged. Therefore, as in past year, the learned AO disallowed 21% of the interest on the same amounting to ₹ 215,821/-. As in the past year where the depreciation was disallowed on account of certain assets that those assets either did not exist or are not used for the leasing activity of the assessee, depreciation of ₹ 83,023/- was disallowed. AO further made an adjustment rejecting the change in the method of accounting and consequently made an addition of ₹ 6,261,332/-. Assessment order u/s 143 (3) was passed on 19/12/ 2006 determining the total loss of the assessee at ₹ 920,094/-.

70. Aggrieved, assessee preferred appeal before the learned CIT – A the appeal of the assessee was dismissed. Therefore, assessee is in appeal before us.
71. The learned authorised representative relied upon his submission made in earlier years and submitted that this issue is squarely covered by those years.
72. The learned departmental representative also supported the orders of the lower authorities.
73. We have carefully considered the rival contentions and perused the orders of the lower authorities. The first ground of appeal is with respect to the disallowance of interest for the reason that assessee has advanced interest free loan to 1 of its entities wherein the learned assessing officer disallowed interest of ₹ 215,821/-. Identical issue arose in the case of the assessee in earlier years wherein we have held that this amount is pertaining to outstanding interest receivable from that party. It is not the advance which is been given out of interest-bearing funds available with the assessee. The interest receivable has already been offered for taxation in the earlier years. There is no provision

in the agreement either oral or written to charge interest on outstanding interest. In nutshell, the assessee has not advanced interest-bearing funds to that party i.e. Arcadia investment Ltd. Accordingly, for the reason given by us in earlier years, the interest disallowance of ₹ 215,821/- deserves to be deleted, accordingly reversing the orders of the lower authorities, ground number 1 of the appeal is allowed.

74. Ground number 2 is with respect to the disallowance of depreciation of ₹ 83,023/- this disallowance is with respect to the assets, which could not be found in existence or could not be found to have been given on hire purchase/lease in the ordinary course of business of the assessee. This issue arose originally in assessment year 1996 – 97. The coordinate bench in assessee's own case has dealt with this issue in earlier years. We have also followed the same while deciding the appeal of the assessee for assessment year 1999 – 2000. In that year, considering all the judgments of the coordinate benches in earlier years in case of the assessee, we have set-aside the whole issue back to the file of the learned assessing officer with a direction to decide it in accordance with the decisions of the coordinate bench. Accordingly, ground number 2 of the appeal is allowed to that extent.

75. Ground number 3 is with respect to the rejection of the change in method of accounting and consequent addition of ₹ 6,261,332/-. We find that identical issue has been dealt with in the case of the assessee in earlier years by coordinate bench. Order of the coordinate bench for assessment year 98 – 99 is followed, wherein it has been held that the change in method of accounting made by the assessee is proper, in accordance with the law and as per the

mandate of direction of reserve bank of India. We have also followed the same decision of the coordinate bench in earlier years in case of the assessee. Therefore, respectfully following the decision of the coordinate bench in case of assessee for assessment year 1998 – 1999, we also hold that the accounting policies changed by the assessee are proper. Accordingly the orders of the lower authorities are reversed and addition of ₹ 6,261,332/- deserves to be deleted. Ground number 3 is allowed.

76. In the result ITA number 490/M/2008 filed by the assessee for assessment year 2004 – 05 is allowed.
77. ITA number 488/M/2013 is filed by the assessee against the order of the Commissioner of income tax (appeals) dated 22/11/2012 wherein penalty u/s 271 (1) © of the income tax act, 1961 levied by the learned assessing officer as per order dated 30/3/2009 of ₹ 2,220,587 is confirmed.
78. Briefly stated the facts shows that as in the assessment order passed u/s 143 (3) of the act for assessment year 2004 – 05 the learned assessing officer made several additions. Against additions/disallowances the appeal filed by the assessee before the learned CIT – A) was dismissed, therefore, the learned AO levied penalty u/s 271 (1) (C) of the act by order dated 30/3/2009 leaving penalty for concealment of income.
79. While deciding the appeal of the assessee, against the order of the learned CIT – A in quantum proceedings, we have deleted all the additions confirmed by the learned CIT – A. Therefore, the penalty also does not sustain for the reason that the penalty was levied on all the additions confirmed by the learned CIT – A.

80. Issue of this the appeal in ITA number 488/M/2013 filed by the assessee for assessment year 2004 – 05 against confirmation of penalty u/s 271 (1) (C) of the act is allowed.
81. ITA number 7547/M/2012 is filed by assessee against the order passed by the Commissioner of income tax (appeals) – 40, Mumbai dated 22/10/2012 for assessment year 2004 – 05. Appeal filed by the assessee against the order passed u/s 143 (3) read with Section 147 of the income tax act dated 28/12/2011 passed by the Deputy Commissioner of income tax (OSD –II), Central range – 7, Mumbai was dismissed.
82. Briefly the fact shows that assessee filed return of income for assessment year 2004 – 05 originally on 30/10/2000 for at a total loss of ₹ 7,566,870/-. This was assessed u/s 143 (3) on a total loss of ₹ 920,100/- on 19/12/2006. Subsequently on verification of the case record, the learned assessing officer found that the assessee followed the cash system of accounting from assessment year 98 – 99 however no addition has been made on account of accrual of interest on lease and hire purchase that. Therefore, notice u/s 148 of the act was issued on 28/3/2011. Consequently accrued interest on debtors of ₹ 14,165,982/- was added to the total income of the assessee as per order dated 28/12/2011 passed u/s 143 (3) read with Section 147 of the act. The assessee objected before the learned assessing officer the validity of the initiation of reassessment proceedings stating that it is a change of opinion. The AO rejected such objection in the assessment order itself and proceeded to make the addition of accrued interest. AO found that as per schedule 7 of the balance sheet assessee has sundry debtors of Rs. 4,70,19,940/-, he computed interest at the rate of 30% thereon and made an addition of ₹

14,105,982. (In the assessment order he made an addition of ₹ 1,41,65,982/-).

83. Assessee preferred appeal before the learned CIT – A. He confirmed the reopening of the assessment and addition on the merits of the case.
84. We have carefully heard the rival contentions. The reasons recorded for reopening of the assessment are placed at page numbers 16 – 18 of the paper book, which clearly shows that the assessment was made on 19/12/2006 for assessment year 2004 – 05. The reasons recorded shows that it is on a reappraisal of the same facts. The learned assessing officer elaborate lead discussed the change in method of accounting made by the assessee and thereafter making substantial addition on that account in the original assessment. However, he did not made addition with respect to the accrued income. There is no tangible material available with the assessing officer to reopen the assessment except the same set of facts on which he has already applied his mind. Further, there is no failure on part of the assessee to disclose any material facts necessary for computation of its income. Further the objections raised by the assessee were not disposed of separately but in the assessment order itself that also makes the reassessment not sustainable. In view of this, the first ground of appeal raised by assessee against the validity of reopening is allowed. Therefore, we quash the reassessment order passed by the learned AO.
85. In view of our finding in ground number 1, ground number 2 with respect to the addition on merit of ₹ 14,165,982/- is not required to be adjudicated.

86. In the result ITA number 7547/M/2012 filed by the assessee for assessment year 2004 – 05 against the reopening of the assessment is allowed.

1919/M/2009	2005 – 2006	Assessee	143 (3)
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87. ITA number 1919/M/2019 is filed by the assessee for assessment year 2005 – 06 against the order passed by the learned Commissioner of income tax (appeals) Central – V, Mumbai dated 28/11/2008 . the appeal filed by the assessee against the order passed u/s 143 (3) of the act dated 17/12/2007 by the Asst Commissioner of income tax, Central range, 7, Mumbai is partly allowed.
88. The assessee is aggrieved with the order of the learned CIT – A and has challenged the same on account of confirmation of disallowance of interest of ₹ 215,821/- on amount of advances given related parties, disallowance of depreciation amounting to ₹ 62,267/- and rejection of the change in the method of accounting and making an addition of ₹ 7,815,641/- confirmed by the learned CIT – A.
89. Assessee filed its return of income on 20/10/2005 (wrongly mentioned by the learned assessing officer as 30/10/2004) at a loss of ₹ 7,053,823/-. The return of assessee was picked up for scrutiny and it was found that as in last year there is an advanced given to Arcadia investment Ltd of ₹ 1,027,720 on which the learned assessing officer computed interest at the rate of 21% and disallowed a sum of ₹ 215,821/- out of the interest expenditure. As some of the assets were not found in existence and it was not known whether same are used by the assessee in its leasing business or not with respect to 4 different parties. The

interest has been consistently disallowed by the learned assessing officer for past several years since 1989 – 90, therefore the continuation of the same disallowance of depreciation of ₹ 62,267/- was made. AO further considered that there is a change in the method of accounting adopted by the assessee in assessment year 98 – 99 which is challenged by the learned assessing officer since then and therefore he made an addition of ₹ 7,815,641/- on account of interest on lease and overdue interest on lease and hire purchase assets. Accordingly the assessment order u/s 143 (3) of the act was passed on 17/12/2700 and total income of the assessee at ₹ 1,649,740/- against the returned loss of ₹ 7,053,823/-.

90. The assessee preferred an appeal before the learned CIT – A who allowed the appeal of the assessee partly, therefore assessee is aggrieved and in appeal before us.
91. We have heard the rival parties who both confirmed that the issue involved in this appeal are covered in the appeals of the assessee for the earlier years.
92. We find that the ground number one with respect to the disallowance of interest of ₹ 215,821/- arose in the appeals of the assessee for earlier years, wherein we have deleted the addition holding that this amount is an outstanding interest, which is already been offered by the assessee for taxation, there is no provision of charging of interest on interest, and there is no advanced given by the assessee out of interest-bearing funds. Therefore for the similar reasons we delete the addition of disallowance of ₹ 215,821/- and allow ground number 1.
93. With respect to the ground number 2 of disallowance of depreciation of ₹ 62,267/- which arose in the earlier years of the

assessee wherein the coordinate bench following the order for assessment year 1998 – 1999 wherein the orders of the coordinate bench in assessee's own case for earlier years were followed, we have also followed the same for assessment year 1999 – 2000 and set-aside the issue back to the file of the learned assessing officer to decide in accordance with the direction of the coordinate bench in earlier years. Accordingly, this ground of appeal number 2 is allowed with above direction.

94. Ground number 3 is with respect to the addition of ₹ 7,815,641/- which arose on account of the change in the method of accounting made by the assessee. We find that identical issue arose in the case of the assessee for assessment year 1998 – 1999 wherein the coordinate bench held that the change in the method of accounting made by the assessee is proper, in accordance with the law, and as per the direction of the reserve bank of India. Therefore respectfully following the decision of the coordinate bench for assessment year 1998 – 1999 we allow ground number 3 of the appeal and direct the learned assessing officer to delete the addition of ₹ 7,815,641/-.
95. Accordingly, appeal of the assessee for assessment year 2005 – 06 in ITA number 1919/M/2009 is allowed.

489/M/2013	2006 – 2007	Assessee	penalty u/s 271 (1) (C)
6075/M/2009	2006 – 2007	Assessee	143 (3)

96. ITA number 6075/M/2009 is filed by the assessee for assessment year 2006 – 07 against the order passed by the Commissioner of income tax (appeals) – 40, Mumbai dated 18/9/2009 wherein the assessee is aggrieved with the additions confirmed by the learned

CIT – A with respect to (1) disallowance of interest expenditure of ₹ 215,821/- on advanced given to Arcadia investments private limited, (2) disallowance of depreciation of ₹ 46,700 on account that the similar disallowance was made in the earlier year where the assets were not found in existence or no details were available with that there used for the business of the assessee, (3) addition of ₹ 7,737,131/- on account of change in accounting policy where the lower authorities have rejected such change, (4) disallowance of ₹ 397,332 with respect to the amount written off. Assessee is also aggrieved with the charging of interest u/s 234B and 234C of the act.

97. The brief facts of the case show that assessee filed return of income for assessment year 2006 – 07 on 13/11/2006 income of Rs. Nil. The assessment u/s 143 (3) of the IT act took place on 12/12/2008 determining the total income of the assessee at ₹ 1,47,86,105/- making the additions which were also on the basis of earlier assessment years, same was challenged before the learned CIT – A passed an order on 18/9/2009 where certain claims were allowed and certain additions/disallowances were confirmed as in the past year, therefore, assessee is aggrieved and is in appeal before us.
98. Both the parties confirmed that the issues involved in this appeal are identical to the issues involved in the appeal of the assessee for earlier assessment years.
99. We have carefully considered the rival contention and perused the orders of lower authorities. We find that all the issues in this appeal are covered by the decision of the coordinate bench in assessee's own case for earlier years.

100. Ground number 1 is with respect to the disallowance of interest of ₹ 215,821/- on the amount of advances given interest free to the Arcadia investment private limited. This issue is identical to the appeal of the assessee in the earlier years wherein we have deleted the addition and held that this is an amount of interest receivable outstanding which has been offered by the assessee as income in the earlier years and there is no advanced made by the assessee out of interest-bearing funds. For similar reasons we allow ground number 1 of the appeal.
101. Ground number 2 of the appeal is with respect to the disallowance of depreciation of ₹ 46,700/- based on the orders of the coordinate bench in earlier years wherein this issue also arose before us for assessment year 1999 – 2000, we have set-aside this issue back to the file of the learned assessing officer to decide the issue in accordance with the direction of the coordinate bench. With similar directions we also set-aside ground number 2 of the appeal.
102. Ground number 3 of the appeal is with respect to the rejection of the change in the method of accounting made by the assessee by the lower authorities and thereby making an addition of ₹ 7,737,131. We find that identical issue arose in case of the assessee for assessment year 1998 – 2000 wherein the coordinate bench has held that the change in method of accounting made by the assessee is bona fide, proper, in accordance with the law and in accordance with the directions of the reserve bank of India. Accordingly, respectfully following the decision of the coordinate bench, we direct the learned assessing officer to delete the disallowance/addition of ₹ 7,737,131/- and allow ground number 3 of the appeal.

103. Ground number 4 of the appeal is with respect to the disallowance of ₹ 397,332/- on account of amount of written off. Fact shows that assessee has claimed the above sum as a bad debt. Wherein certain parties to whom advances have been given are not traceable and the amount could not be recovered. Therefore, the learned assessing officer made the addition for the reason that assessee could not give any evidence to show what efforts have been made for recovery of the above sum. The learned CIT – A also confirmed the same. We find that identical issue arose in the appeal of the assessee for earlier years wherein we have allowed the claim of the assessee u/s 36 (1) of the act holding that same is bad debt arising in the course of the leasing and hire purchase business of the assessee. We do not find any condition in the act that assessee has proved that what are efforts made by it for recovery of the above sum. Accordingly ground number 4 of the appeal is allowed and AO is directed to delete the disallowance of ₹ 397,332/-.
104. Ground number 5 with respect to the charging of interest u/s 234B and 234C is consequential, no arguments were advanced, and hence, it is dismissed.
105. Accordingly, appeal of the assessee for assessment year 2006 – 07 in ITA number 6075/M/2009 is partly allowed.
106. ITA number 489/M/2013 is filed by the assessee for assessment year 2006 – 07 wherein the learned CIT – A – 40, Mumbai power order dated 22/11/2012 confirmed the levy of penalty of ₹ 1,604,590/- u/s 271 (1) © of the income tax act, 1961 levied by the learned assessing officer as per order dated 29/6/2011 was confirmed. Therefore assessee is aggrieved and in appeal before us.

107. We find that the learned assessing officer has levied penalty with respect to the several disallowances made in the order u/s 143 (3) of the act dated 12/12/2008. As these additions/disallowance travelled before us, in ITA number 6075/M/2009 deleted all such disallowances. Therefore, there is no question of levy of penalty. Accordingly, the appeal filed by the assessee in ITA number 489/M/2013 for assessment year 2006 – 07 is allowed.

6146/M/2011	2007 – 2008	Assessee	143 (3)
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108. ITA number 6146/M/2011 is filed by the assessee for assessment year 2007 – 08 against the order of the CIT – A – 14, Mumbai dated 8/6/2011 wherein the learned CIT – A confirmed the addition disallowances made by the learned assessing officer in order passed u/s 143 (3) of the act on 14th/12/2009. Such additions were

- i. disallowance of interest of ₹ 215,821/- relying on the orders of the earlier assessment years,
- ii. disallowance of depreciation of ₹ 35,025/- on the basis of the earlier assessment years,
- iii. addition on account of change in the method of accounting rejected by the assessing officer and making an addition/disallowance of ₹ 7,737,171,
- iv. disallowance of amounts written off ,
- v. not adjudicating the claim of the assessee that the amount credited in respect of reversal of lease rent and hire purchase income is not taxable for the reason that same is already taxed in earlier years,

vi. Rejecting the claim of the assessee that the amount written back as waiver of principal amount state bank of India is not taxable on the ground that no such claim was made in the return of income.

109. The brief facts of the case show that assessee filed its return of income on 24 – 10 – 2007 declaring total income of Rs. Nil. The assessment u/s 143 (3) of the act was made on 14/12/2009 at ₹ 38,636,457 –. The assessment was challenged in appellate proceedings before the learned CIT – A passed an order on 8/6/2011. Assessee, aggrieved, is in appeal before us.

110. At the time of hearing, assessee raised an additional ground of appeal as per application dated 1/8/2022 stating that a sum of ₹ 12,719,687/- being the principal loan amount of state bank of India written back and credited to the profit and loss account is not taxable Under the provisions of the income tax act and consequently was required to be excluded while computing taxable income of the assessee. Assessee submitted that such ground was taken before the learned assessing officer as per letter dated 21/12/2009. However, inadvertently in the computation of income filed this amount was not excluded from the business income. The AO rejected the same stating that no revised return is filed. The assessee preferred the claim before the learned CIT – A in the grounds of appeal, which was rejected by him for the reason that assessee has not filed revised return of income. Assessee has challenged such rejection by the CIT – A, however, due to abundant caution, assessee also raised this ground before us as an additional ground. The claim of the assessee is that same is required to be adjudicated as no fresh facts are required to be investigated, material facts are available

on record and therefore same may be admitted and adjudicate. The learned authorised representative reiterated arguments as stated in the application for admission of additional ground.

111. The learned departmental representative vehemently objected to the same.
112. We have carefully considered the rival contention. We find that this issue was raised before the AO by way of a letter, before CIT appeal as a ground, out of abundant caution raised before us is additional grounds, no fresh facts are required to be investigated, the claim is legal, therefore, same is admitted.
113. Ground number 1 of the appeal is with respect to the disallowance of interest expenditure of ₹ 215,821/- based on the orders of the earlier assessment years for the reason that amount is advanced to Arcadia investments private limited without charging any interest. The identical issue arose in the appeal of the assessee for earlier assessment years stop wherein we have deleted this addition holding that there is no advanced given by the assessee out of the interest-bearing funds as this amount is outstanding as interest receivable which was offered for taxation in earlier years. Accordingly, ground number 1 of the appeal of the assessee is allowed and AO is directed to delete the disallowance of ₹ 215,821.
114. Ground number 2 is with respect to the disallowance of depreciation of ₹ 35,021/- based on the orders of earlier assessment years, which also arose in appeal of the assessee for earlier years wherein we have deleted the disallowance and matter was restored back to the file of the learned assessing officer to determine the disallowance on the merits of the case as per the direction of the coordinate bench in earlier years.

Therefore, for the similar reasons set-aside this ground of appeal back to the file of the learned assessing officer.

115. Ground number 3 is with respect to the addition of ₹ 7,737,171/- on account of rejection in the change in the method of accounting. This issue arose in the case of the assessee for assessment year 1998 – 1999, wherein the coordinate bench held that the change in the method of accounting adopted by the assessee is bona fide, proper, in accordance with the law and guidelines issued by the reserve bank of India. Therefore, respectfully following the decision of the coordinate bench, we allow ground number 3 of the appeal and direct the learned assessing officer to delete the addition of ₹ 7,737,171/-.
116. Ground number 4 is with respect to the amount written back by the assessee of ₹ 38,384,611 as bad debt during the course of assessment proceedings the assessee furnished all the details however as the claim of the assessee is rejected in earlier years, the disallowance was made. Same disallowance was confirmed by the learned CIT – A. We have carefully considered the identical disallowance in the appeals of the assessee for earlier years and allowed the above claim holding that the same has been written off by the assessee, the debt is arising during the course of leasing and finance business of the assessee, there is no requirement of showing the efforts put in by the assessee for recovery of the amount, therefore, for the similar reasons we direct the learned assessing officer to delete the disallowance and we allow ground number 4 of the appeal.
117. Ground number 5 of the appeal is with respect to the amount credited in respect of reversal of lease rental and HP income. We find that in the earlier years the assessee has not pressed that

these grounds because the reason that if such income is taxed in the earlier years it should not have been taxed in this year. The addition has been confirmed in the earlier years as the grounds were not pressed by the assessee, for this year is no such addition should have been made. Accordingly, we direct the learned assessing officer to delete such addition, ground number 5 of the appeal is allowed.

118. Ground number 6 is with respect to the rejection of claim of the assessee that the amount written back relating to waiver of capital amount due to the state bank of India was not taxable on the ground that no such claim was made in the return of income. The fact shows that a letter dated 21/12/2009 was addressed to the learned assessing officer during the course of assessment proceedings stating that in the amount written back of ₹ 49,327,008/- assessee has pointed out that a sum of ₹ 12,719,687/- relates to the principal amount of loan outstanding. Above amount was also stated to not have claimed as an expenses in the earlier years and hence the same is not liable to be included in the taxable income for the year and therefore AO was requested to consider the above and reduce the taxable income by some of ₹ 12,719,687/- being principal amount of loan due to state bank of India which was written back on account of one-time settlement with them. The assessee also submitted a copy of the resolution passed at the board meeting held on 3 September 2007 where there is a state bank of India cash credit account has been written back amounting to ₹ 19,327,008.14. It is apparent that when the assessment order was passed on 14th/12/2019 there is no mention of such amount. Therefore, it is apparent that the letter is dated 21 December 2019 whereas the

assessment order was already passed on 14 December 2019. Therefore, naturally, there was nothing before the assessing officer at the time of passing of the order. Neither the claim was not made by filing revised return nor was not the claim available during the course of assessment proceedings even by letter. Therefore, this issue was agitated by assessee before the learned and CIT – A who dealt with the same as per paragraph number 9 of his assessment order. Learned CIT – A further noted that the letter is dated 21/12/2009, which was submitted on 22/12/2009 whereas the assessment order has already been passed on 14th/12/2009 therefore AO naturally could not have considered the submission of the assessee. Therefore, he rejected the claim of the assessee.

119. Learned authorised representative submitted that when the letter has been filed before the learned assessing officer issued a considered the same and he failed to consider therefore the order of the CIT – A not entertaining the claim of the assessee is not correct.
120. The learned departmental representative supported the orders of the lower authorities.
121. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly, the assessee's letter filed before the learned assessing officer is after passing of the assessment order. Assessee did not claim the sum not chargeable to tax by filing revised return. Even in this case, nothing was available before the assessing officer. Therefore, in the wildest of dreams, the learned assessing officer could not have considered anything. The learned CIT – A has held so. Therefore, no fault

could have been found with the assessing officer. This has been held by learned CIT – A.

122. Further, it is apparent that no fresh claim was made before the appellate authorities either by letter or by any other mode. Therefore in fact there is no claim before the learned CIT – A. The only issue before the CIT appeal was that AO has erred; we find that there is no error in the part of the AO. Therefore, ground number 5 of the appeal is dismissed.
123. Ground number 7 of the appeal is with respect to the chargeability of interest u/s 234B of the act, which is consequential in nature, and assessee has not challenged that no interest is chargeable at all, therefore dismissed.
124. Now we come to the additional ground raised before us. We have already admitted the same. Therefore, now we remit it back to the file of the learned assessing officer to decide the same in accordance with the law. If the amount is neither taxable u/s 41 (1) of the act or u/s 28 of the act and the one-time settlement amount does not include any amount of interest, the AO may treat it accordingly. The provisions of Section 58 – 61 of the contract act also need to look at that is there any amount of interest which has been allowed to the assessee as deduction or not. It is the duty of the assessee to show before the learned assessing officer that what was the one-time settlement amount agreed upon between the parties by submission of the documents and how it did not contain any element of interest. Accordingly additional ground is allowed and set-aside to the file of the learned assessing officer with a direction to the assessee to substantiate its claim for the AO. AO may examine the same and decide it in accordance with the law.

125. In the result ITA number 6146/M/2011 filed by the assessee for assessment year 2007 – 08 is partly allowed.

6147/M/2011	2008 – 2009	Assessee	143 (3)
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126. ITA number 6147/M/2011 filed by the assessee for assessment year 2008 – 09 against the order passed by the learned CIT – A – 40, Mumbai dated 8/6/2011 wherein the appeal filed by the assessee against the order passed u/s 143 (3) of the act dated 1/12/2010 by the learned assessing officer is dismissed. Therefore assessee is aggrieved on 4 different points as Under:-

- i. disallowance of interest expenditure of ₹ 215,821/- based on findings in earlier assessment years
- ii. disallowance of depreciation of ₹ 26,270/- based on findings in earlier assessment years
- iii. addition of ₹ 7,737,171/- on account of rejection of the change in the method of accounting is non-earlier assessment years
- iv. Chargeability of interest u/s 234B of the act.

127. The fact shows that return of income was filed on 22/9/2008 declaring a total loss of ₹ 4,162,704/- which is assessed u/s 143 (3) of the act on 6/12/2010 determining total income of ₹ 7,979,222/- wherein the disallowance of ₹ 215,821/-, depreciation was disallowed of ₹ 26,270/- and addition was made due to the change in method of accounting of ₹ 7,737,131/- was made.

128. On appeal before the learned CIT – A all the above disallowances/addition was confirmed.

129. The learned authorised representative submitted that all these issues are covered in case of the assessee in earlier year. The

learned departmental representative also aggrieved with the same.

130. We have carefully considered the rival contention and perused the orders of the lower authorities. Ground number 1 of the assessee is with respect to the disallowance of ₹ 215,821/- relating to the amount allegedly advanced by the assessee free of interest out of the interest-bearing funds. This issue is identical to the issue arose in the case of the assessee in earlier years where the ITAT has deleted the addition holding that there is no interest-bearing funds used for advancing this amount to Acadia investments private limited because the amount outstanding is pertaining to the interest receivable offered as income in the earlier years. There were other reasons also given for deleting the disallowance. For the same reasons, in absence of change in facts and circumstances, ground number 1 of the appeal is allowed and AO is directed to delete the disallowance of ₹ 215,821/- out of interest expenditure.
131. Ground number 2 is with respect to the disallowance of depreciation of ₹ 26,270/- it is arising out of the same facts wherein the coordinate bench in earlier years has dealt with the same. We have also dealt with the same by following the decision of the coordinate bench in earlier years and set-aside the issue back to the file of the learned assessing officer with a direction to decide it in accordance with the law as directed by the ITAT. With similar direction we also set-aside ground number 2 to the AO. Accordingly it is allowed with above directions.
132. Ground number 3 is with respect to the rejection of the change in method of accounting and thereby making an addition of ₹ 7,737,131/-. This is identical to the issue arose in the case of the

assessee for assessment year 98-99 wherein the coordinate bench has dealt with this issue extensively and held that the method of accounting changed by the assessee is bona fide, proper and in accordance with the provisions of the income tax act as well as the guidelines of the reserve bank of India. In view of this, respectfully following the decision of the coordinate bench, we also allow ground number 3 and direct the AO to delete the addition of ₹ 7,737,131.

133. Ground number 4 is with respect to the chargeability of interest u/s 234B of the act, assessee did not advance any arguments. Therefore it is dismissed.
134. Accordingly appeal of the assessee is allowed partly.
135. In the result all 16 appeals related to the assessee are disposed off.

Order pronounced in the open court on 29/08/2022 .

Sd/-
(AMIT SHUKLA)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29 .08.2022

Sudip Sarkar, Sr.PS/ dragon

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai