

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **391/Chny/2022**
निर्धारण वर्ष / Assessment Year: 2017-18

Sundaram Home Finance
Limited,
5th Floor, Sundaram Towers,
No. 46, Whites Road,
Royahpettah,
Chennai – 600 014.

[PAN: AADCS-4826-J]

(अपीलार्थी/Appellant)

Assistant Commissioner of
v. Income-tax,
Corporate Circle -6(2),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. R. Vijayaraghavan, Advocate &
Shri. Saroj Kumar Parida, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri. R. Mohan Reddy, CIT

सुनवाई की तारीख/Date of Hearing : 10.01.2023

घोषणा की तारीख/Date of Pronouncement : 18.01.2023

आदेश /ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Principal Commissioner of Income Tax, Chennai -3, passed u/s. 263 of the Act dated 29.03.2022 and relevant to assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

"1. The order passed by the Learned Principal Commissioner of Income Tax-3 ("Pr CIT") is contrary to law and facts of the case.

2. The order passed by the Learned Pr CIT is completely contrary to the provisions of section 36(1)(viii).

3. The Learned Pr CIT grossly erred in assuming jurisdiction u/s. 263 of the Act on the ground that the impugned assessment order is erroneous in so far as it is prejudicial to the interest of the revenue when the subject matter of disallowance of deduction u/s. 36(1)(viii) of the Act was already dealt with by the Assessing Officer in the Assessment order alter thoroughly taken into consideration all relevant and necessary facts and particulars furnished by the Appellant during the course of scrutiny assessment.

4. The Learned Pr CIT erred in coming to a conclusion that the order of the Assessing Officer passed u/s. 143(3) of the Act is erroneous and prejudicial to the interests of the Revenue.

5. The Learned Pr CIT erred in determining the deduction allowable u/s. 36(1)(viii) of the Act at Rs.2457.86 Lakhs as against the amount quantified by the Assessing Officer of Rs.2640.94 Lakhs and in that process disregarded the detailed submission made by the Appellant explaining the order of the Assessing Officer.

6. The Learned Pr CIT erred in not correctly applying the provisions of section 36(1)(viii) of the Act in allowing the deduction which is least of the following:

- Amount transferred to Reserves created for the purpose of section 36(1)(vi) of the Act - Rs.2700.00 Lakhs.
- 20% of the profits derived from eligible business as revised by the Assessing Officer - Rs. 2640.94 Lakhs.

6.1. The Learned Pr CIT incorrectly deducted the income adjustment amount of Rs.242.14 Lakhs from the amount transferred to the Reserves for the purpose of section 36(1)(vii) of the Act. He ought to have appreciated that the amount of profit to be determined as a deduction u/s. 36(1)(viii) is different from and has no connection with or cannot alter the quantum of amounts transferred to the Reserves as per books, except that the amount determined allowable as deduction u/s. 36(1)(viii) should not exceed the amount transferred to the Reserves.

6.2. The Learned Pr CIT erroneously and without any basis deducted the disallowance in computing eligible profits [and which has already made by the Assessing Officer in computing

profits eligible for deduction u/ s 36(1)(viii)] from the amount transferred to Reserves and held that the Appellant is entitled to deduction u/s. 36(1)(viii) on the amount of such erroneously adjusted Reserves.

6.3. The Learned Pr CIT having not found any mistake in the eligible profits for section 36(1)(viii) as determined by AO and the amount transferred to the Reserves as per books was well within the limits prescribed under the section, ought to have held that the deduction allowed by the Assessing Officer is in order.

6.4. As the Pr CIT has not found the eligible profits computed by the Assessing Officer as erroneous and as the amount transferred to the Reserves were as per the Books was well within the limits prescribed u/s. 36(1)(viii), the twin conditions for assuming jurisdiction u/s. 263 were not satisfied and the order of the Pr CIT requires to be set aside as being without jurisdiction.

For the grounds stated above and those that may be adduced at the time of hearing, the Honorable Income Tax Appellate Tribunal may be pleased to allow the appeal of the Appellant and grant appropriate relief."

3. The brief facts of the case are that the assessee company, M/s. Sundaram Home Finance Limited, had filed its return of income for the assessment year 2017-18 on 31.10.2017, admitting total income of Rs. 2,27,02,32,160/-. The assessment has been completed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 28.12.2019, and determined total income of Rs. 2,13,00,47,921/-, by making additions towards disallowance u/s. 36(1)(viii) of the Act, amounting to Rs. 2,42,13,600/- and disallowance u/s. 14A r.w.r 8D of the Act at Rs. 13,07,191/-.

4. The case has been subsequently taken up for revision proceedings by the PCIT, Chennai-3 and show cause notice u/s. 263, dated 21.02.2022 has been served on the assessee. In the said show cause notice, the PCIT opined that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interests of the revenue on account of excess deduction allowed u/s. 36(1)(viii) of the Act to the extent of Rs. 1,83,07,000/-. Therefore, Id. PCIT called upon the assessee to file necessary objections, if any, for proposed revision. In response, the assessee submitted that the assessment order passed by the AO is neither erroneous nor prejudicial to the interests of the revenue, because if you consider disallowance made by the AO u/s. 36(1)(viii) of the Act, the net deduction allowed is less than the amount transferred to special reserve. Therefore, the proposed revision on the issue of disallowance u/s. 36(1)(viii) of the Act by reducing amount disallowed by the AO from amount transferred to special reserve account is unsustainable under law. The PCIT, after considering relevant submissions of the assessee and also taken note of relevant provisions of section 36(1)(viii) of the Act opined that, although the assessee is entitled for deduction u/s. 36(1)(viii) of the Act for Rs.

2457.86 lakhs, the AO has allowed deduction to the extent of Rs. 26,40,94,000/-, and thus, he opined that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interests of the revenue. Thus, set aside the assessment order and directed the Assessing Officer to re-do the assessment on the issue of deduction u/s. 36(1)(viii) of the Act, after affording sufficient opportunity of being heard to the assessee. Being aggrieved by the PCIT order, the assessee is in appeal before us.

5. The Ld. Counsel for the assessee, referring to provisions of section 36(1)(viii) of the Act submitted that deduction is allowable to the extent of least of the amount transferred during the previous year to the special reserve account created for the purpose of section 36(1)(viii) or 20% of profits derived from the business of providing long term finance, which is computed u/s. 28 or 200% of (paid share capital and general reserve as on the last date of the previous year) minus the balance of the special reserve account on the first day of previous year, whichever is lower. In this case, if you see the least of the following, deductions allowed by the AO @ 20% of the profits derived from the business by providing long term

finance is less than the amount of reserve created. Therefore, the AO has rightly allowed the claim, but the PCIT by wrong assumption of facts, set aside the assessment order passed by the AO.

6. The Ld. DR, on the other hand supporting the order of the PCIT submitted that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interests of the revenue on this issue and thus, the PCIT has rightly set aside the assessment order and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The order passed by the PCIT u/s. 263 of the Act cannot be sustained for the simple reason that the issue on which the PCIT assumed jurisdiction u/s. 263 and set aside the assessment order, has been subject matter, of consideration from the Assessing Officer during the assessment proceedings, which is evident from the fact that the AO has considered deduction claimed u/s. 36(1)(viii) of the Act and has disallowed excess claim made by the assessee. Therefore, on this account itself the revision order passed by the AO cannot

be sustained. Be that as it may, but fact remains that as per provisions of section 36(1)(viii) of the Act, deduction is allowable to the extent of the least of the following:

1. The amount transferred during the previous year to the special reserve account created for the purpose of section 36(1)(viii) or
2. 20% of profits derived from the business of providing long term finance, which is computed u/s. 28 but before claiming deduction under section 36(1)(viii) or
3. 200% of (paid share capital and general reserve as on the last date of the previous year) minus the balance of the special reserve account on the first day of previous year, whichever is lower.

8. In the instant case, the amount transferred to special reserve account created for the purpose of section 36(1)(viii) is Rs. 27,00,00,000/-. Further, 20% of the profits derived from the business by providing long term finance is Rs. 28,83,08,076/- as observed by the Ld. PCIT. The PCIT had also computed 200% of the paid up share capital and general reserve as on the last date of previous year minus the balance of special reserve account on the first day of the previous year at Rs. 8,13,76,88,000/-. From the above, least of the following is Rs. 27,00,00,000/-. The AO has allowed deduction

u/s. 36(1)(viii) of the Act at Rs. 26,40,94,000/-. In our considered view, the AO has rightly allowed deduction u/s. 36(1)(viii) of the Act at Rs.26,40,94,000/-. However, the PCIT by wrong assumption of facts has computed amount eligible for deduction u/s. 36(1)(viii) at Rs. 24,57,86,000/- by reducing amount disallowed by the Assessing Officer for Rs. 2,40,14,000/- from amount transferred to reserve account at Rs. 27,00,00,000/-. In our considered view, the assessment order passed by the AO on the issue of deduction allowed u/s. 36(1)(viii) of the Act is neither erroneous nor prejudicial to the interests of the revenue, and thus, we quash revision order passed by the PCIT u/s. 263 of the Act.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 18th January, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /**Vice President**

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 18th January, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |