

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE,
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.528/Del/2019
(ASSESSMENT YEAR 2011-12)**

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| ACIT Circle-6(1) New Delhi | Vs. | M/s. Clix Finance India Pvt. Ltd. (Early known as GE Capital Services India Ltd.) E-20, 1 st Floor Hauz Khas New Delhi-110 016 PAN-AAACG 0239L |
| (Appellant) | | (Respondent) |

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| Appellant by | Ms. Nimisha Singh, CIT-DR |
| Respondent by | Mr. Sachit Jolly and Ms. Disha Jham, Advocates |

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| Date of Hearing | 04/07/2023 |
| Date of Pronouncement | 19/07/2023 |

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-22, New Delhi ["Ld. CIT(A)", for short], dated 29.10.2018 for Assessment Year 2011-12. Grounds taken in this appeal are as under:

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is legally justified in deleting the addition of Rs.15,98,86,715/- on account of claim of loss on sale of finance receivables.

2. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

3. Brief facts of the case are that, the assessee filed return declaring loss of Rs. 54,60,29,396/- and subsequently filed revised return. The case was selected for scrutiny and assessment order came to be passed u/s 143(3) read with Section 144C of the Act by assessing the loss of Rs. 30,93,58,600/- as against returned loss at Rs. 54,60,29,396/-. Aggrieved by the assessment order dated 30/04/2015, the assessee preferred an appeal before the CIT(A). The ld. CIT(A) vide order dated 29/10/2018 deleted the addition of Rs. 15,98,86,715/- made on account of claim of loss on sale of finance receivables. Aggrieved by the order of the CIT(A), the Revenue preferred the present appeal on the grounds mentioned above.

4. The Ld. Departmental Representative submitted that the ld. CIT(A) committed an error in deleting the addition of Rs. 15,98,86,715/- made on account of claim of loss of sale of finance receivables. The Ld. Departmental Representative relying on the order of the A.O. submitted that the order of the CIT(A) requires interference at the hands of the Tribunal.

5. Per contra, the Assessee's Representative submitted that the Id. CIT(A) while allowing the Appeal of the assessee, relied on the order of the Co-ordinate Bench of the Tribunal in the case of Assessee's group company i.e. GE Money Financial Services Pvt. Ltd. for the Assessment Year 2002-03 to 2005-06 and deleted the disallowance of Rs. 15,95,86,715/- made by the A.O. which requires no interference by the Tribunal.

6. We have heard both the parties and perused the material available on record. It is found that the Id. CIT(A) while deleting the disallowance of Rs. 15,95,86,715/- relied on the order of the Co-ordinate Bench of the Tribunal in Assessee's group company i.e. GE Money Finance Service Pvt. Ltd. for Assessment Year 2002-03 to Assessment Year 2005-06, in ITA No. 4235/Del/2011, ITA No. 4206/Del/2011 and ITA No.13/Del/2012. The findings of the Ld. CIT(A) are hereunder:-

“6.1 The assessee the assessee is an NBFC and in addition to the business of providing loans and leases, purchase/sale of loans/finance receivables is an integral part of business activities of NBFCs and these transactions are also permitted by RBI guidelines. During the subject year, the assessee has assigned certain finance receivables to Shri Ram Transport Finance Company Limited (hereafter STFCL) which resulted in a loss and was debited in the Profit and Loss account by the Assessee.

6.2 On perusal of the assessment order it is noticed that the AO disallowed the loss majorly on the basis that Assessee did not transfer the loan facilities in totality on account of following reasons:

1. Simultaneous to signing of the loan agreement between the assessee and STFCL, there was an interim service agreement entered into between the parties.

2. The Assessee was to indemnify the buyer upto the outstanding amount upto 20%. Thus, the Assessee still has stakes in the loans sold to the buyer and the loss claimed @ 13% or 14% are not final and can go upto 20%.

3. The loans to various debtors were given on the security of vehicles or other assets and the vehicles and other machineries were hypothecated in favour of the assessee particularly in the case of vehicles. Further, the vehicles remain to be hypothecated in favour of the assessee.

6.3 In response to the above observations of the AO, the Ld. AR submitted relevant agreements entered between the Assessee and buyer. The assessee while making reference to clause 2.1, 2.2 and 2.8 of the assignment agreements, submitted that the finance receivables were assigned without 'recourse' i.e. to say in the event of default by the borrower in repaying instalments to STFCL, it cannot claim such loss from the assessee.

6.4 The Assessee also brought my attention to clause 4.2 of the assignment agreements according to which the agreement was duly completed in terms of on the basis of following:

- The estimated sales consideration was duly received by the Assessee from STFCL as per clause 4.2.1 of the agreement. In this regard, copy of certificates from bank of the Assessee evidencing the receipt of estimated sales consideration from STFCL was also submitted by the Assessee.*
- All the underlying documents and underlying security were transferred in view of clause 4.2.3 of the agreement.*
- A letter was executed between the parties as per Schedule D in view of clause 4.2.4 of the agreement. Copy of the said executed letter was also submitted by the Assessee.*

6.5 Further, attention was drawn to clause 7.8 of the agreement wherein it was stated that the indemnification of 20% of buyer's loss was on account of any breach of representation and warranty or breach of any seller's covenants agreements or obligations contained under the assignment agreement. With respect to hypothecation of vehicles, the Assessee submitted that the Assessee had the right to transfer/sale loans without prior approval of the borrowers and hence there was no requirement to make endorsement of loan in

favour of STFCL upon transfer of loans. In this regard, attention was drawn to clause 13(a) of the loan agreements (on sample basis) entered with the borrowers. Further, it was brought to my attention that the Assessee issued Power of Attorney to STFCL to give effect to the transaction contemplated under the said agreement.

6.6 I have considered the facts of the case and submission filed by the Assessee. In view of the submission of the Assessee, I am of the view that the said assignment has been completed during the subject year itself on account of my following observations:

a) It has brought to my notice that 3 assignment agreements dated July 12, 2010, August 23, 2010 and September 24, 2010 were entered with STFCL of which the closing date is July 14, 2010, August 26, 2010 and September 24, 2010. Basis the terms of these assignment agreements, am of the view that these assignment agreement have been completed during the year itself. Even otherwise, if we consider the interim service agreement entered between the Assessee and STFC it has been noticed that the interim service agreement were entered for a period of 30 days from the closing date of the assignment agreements which is completed within the subject year i.e. August 13, 2010, September 25, 2010 and October 24, 2010

respectively. Therefore, it can be said that the interim service agreement has also been completed during the year itself.

b) Considering the submission of Assessee, I am inclined to agree with the assessee's submission that in light of the power of attorney issued by the Assessee to STFCL, there is no additional requirement to transfer hypothecation in favour of STFCL. It is also submitted that it is a standard transaction in this industry and the modus in all such transaction is the same and given the volume of transactions mentioned, it is physically impractical to approach tens of thousands of customers and change the documentation in favour of the buyer and hence the same legal effect is sought to be obtained via the Power of Attorney.

6.7 With respect to allowability of loss, the AO has noted that section 28 is a charging section and not for allowing losses to the assessee. In this regard, the Assessee submitted that expenditure necessitated out of commercial expediency has to be allowed and the said transaction is incidental to its business and is allowable under section 28 of the Act.

6.8 I have considered the facts of the case and submission filed by the Assessee in this regard. Considering the same, I am of the view that the finance receivables/debtors were created in ordinary course

of business and there was an outflow of money from assessee's funds. In the present case, assessee had assigned certain finance receivables from whom assessee was facing difficulties in getting installments due and Assessee sold those finance receivables to a third party for a consideration. Thus, selling of finance receivables was purely a commercial decision taken by assessee in line with the prevailing business practice in order to minimize its business loss. This was a case of outright: sale without recourse obligations. The assessee was NBFC and, therefore, the financing was done in ordinary course of business and the loans under current assets acquired more or less the same character as of stock-in-trade and, accordingly, constituted trade debts/ receivables.

6.9 Since, such transaction are in normal course of business of NBFCs, it may be noted that such loss is incidental to the business of the Appellant and fulfills all the conditions laid down by section 28 of the IT Act for allowability of loss and supported by various judicial precedents cited by the Appellant above.

6.10 Further, with respect to allowability of loss, the Appellant has also taken an alternative ground to allow the loss as bad debts. The Appellant submitted that an assessee engaged in the business of money lending is allowed deduction of debts that are written off as

bad. The loss has been calculated as the difference between outstanding amounts less sale value realized against the finance receivables assigned. The loss has arisen as a result of short recovery of outstanding dues from these borrowers and the same has been debited by the Appellant to its P&L account and have been written off in the books.

6.11 It is further brought to the notice that the similar issue was decided by the Hon'ble Jurisdictional ITAT in appellant's group company in the case of GE Money Financial Services Pvt. Ltd. for AY 2002-03 to AY 2005-06. Further, during the course of the hearing, the Appellant brought to my attention that, Hon'ble Delhi High Court has passed order dated November 1, 2017 against the above ITAT orders wherein the question of law raised by the Revenue on this issue has not been accepted. Copy of the respective orders is placed on record by the Appellant. The relevant portion of the ITAT order in the case of GE Money Financial Services Pvt. Ltd (supra) is as under:

“38. We have considered the rival submissions and have perused the record of the case. The assessee was engaged in the business of consumer and auto finance. Accordingly, in course of its business it financed the consumer goods and automobiles. Thus, the debtors were created in ordinary course of business and there was out flow of money from assessee's coffers. It is well accepted commercial fact that realization of

loan is one of the most difficult task faced by any money lender. Therefore, entrepreneurs consider various avenues for realization of their dues. Under such circumstances those who are in a position to realize non-performing assets take over loans from entrepreneurs. It is well settled commercial practice to invest in stressed assets which is presently gaining momentum on account of upsurge in NPAS in business and financial institutions. High profile fund managers are finding lot of business prospectus in acquiring non-performing portfolio at considerable discounts. Thus, fund managers are, therefore, investing in the stressed assets space. The government has also eased norms in this regard. Thus, selling of delinquent loan portfolio was purely a commercial prudent decision taken by assessee in line with the prevailing business practice in order to minimize its business loss. This was a case of outright sale without recourse obligations. The assessee was NBFC and, therefore, the financing was done in ordinary course of business and the loans under current assets acquired more or less the same character as of stock-in-trade and, accordingly, constituted trade debts/ receivables. It is not disputed that amount received on sale of delinquent assets had been adjusted against the outstanding balances and only net amount had been claimed as deduction. Thus, receipts also got accounted for in profit & loss account. Therefore, it was primarily a trading loss arising during the ordinary course of assessee's business. Further, we find that different clauses of memorandum of association reads as under:-

"6.4 It was submitted that the aforesaid activity of the Appellant is in line with the objects stated in its Memorandum

of Association ("MOA"). It was explained that Clause III of the MOA lists down the main and incidental/ ancillary Objects for which the Appellant Company has been formed. The following relevant Clauses of the MOA were also reproduced for Ld. AO's ready reference:-

"1. To carry on and undertake the business as financiers to provide finance for purchase of all types of consumer durables, office plant and equipment, vehicles (including commercial vehicles, automobiles, four wheelers, two wheelers). chattels, hospital equipments, home appliances, industrial plant and equipment, machinery by way of (but not limited to) lease and hire purchase finance.

2.

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6. To negotiate loans, to draw, accept, endorse, discount buy, sell and deal in bill of exchange, promissory notes, bonds, debentures, coupons and other instruments and securities
38.1. Therefore, this activity was in line with the main objects of assessee also.

38.2. Now coming to the submissions of ld. CIT(DR) that assessee had primarily sold right to receive money. This plea of ld. CIT(DR) has to be considered keeping in view the entire conspectus of the assessee's business. This cannot be considered in isolation de hors of the nature of assessee's business. Ld. counsel has rightly pointed out that had there been direct loss or repossession of assets then the loss would have been allowed. Therefore, on the same footing loss arising out of sale of delinquent assets portfolio also is to be

allowed. Admittedly, assessee had right to receive money from its debtors on account of financing of assets. This right had accrued in favour of assessee in ordinary course of business and not on capital account. Further, we are in agreement with ld. counsel for the assessee that the conditions laid down u/s 36(1)(vii) read with section 36(2)(i) are also fulfilled because of following reasons:

- The debt or loan was in respect of a business which was carried on by the assessee in the relevant accounting year;
- The debt represented money lent in the ordinary course of the business, which was akin to money lending;
- The amount was written off as irrecoverable in the accounts of the assessee for that accounting year in which the claim for deduction was made for the first time.

38.3. In view of above discussion this ground is allowed.”

6.12 Further, the reference of AO to the transaction being collusive in nature/ colorable device to avoid tax is also without any reason / support and is merely based on the assumption that the transaction has not been completed during the subject year. The AO has not brought on record any evidence to substantiate hi allegations. The Appellant brought to my notice that STFCL is an unrelated part and a company listed on the stock exchange and the transaction is backed up b strong commercial consideration. Thus, this allegation of AO is not sustainable. 6.13 In view of the above discussion and respectfully following the decision Hon'ble ITAT in the case of GE Money financial (Supra), the disallowance of Rs. 15,95,86,715 is deleted and ground of the Assessee is allowed.”

7. The Department of Revenue has not placed any divergent ratio or judicial pronouncements contrary to the order of the Co-ordinate Bench dated 29/08/2016 made in the case of G.E. Money Finance in GE Money Finance Service Pvt. Ltd. for Assessment Year 2002-03 to Assessment Year 2005-06, in ITA No. 4235/Del/2011, ITA No. 4206/Del/2011 and ITA No.13/Del/2012 which was relied by the Ld. CIT(A), therefore by respectfully following the ratio laid down by the Co-ordinate Bench in the case of GE India G.E. Money Finance (Supra), we find no error or infirmity in the order of the CIT(A) and find no merit in the grounds of Appeal of the Revenue, accordingly, the Grounds of appeal of the Revenue are dismissed and the Appeal filed by the Revenue is dismissed.

Order pronounced in open Court on 19th July, 2023

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 19/07/2023
Pk/R.N, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI