आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./**I.T.A. Nos.942, 943, 944, 945 & 953/Chny/2023**
निर्धारण वर्ष/**Assessment Years: 2015-16, 2017-18, 2018-19 & 2020-21**

The Deputy Commissioner of Income Tax, Central Circle 1(4), Chennai -600 034.	Vs.	Shriram Chits Private Limited, 3-6-478, III Floor, Anand Estates, Opp. Indian Bank, Liberty Road, Himayat Nagar, Hyderabad 500 029. **[PAN:AAFCS44916D]**
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri A. Sasi Kumar, CIT
प्रत्यर्थी की ओर से/Respondent by	:	Shri R. Sivaraman, Advocate
सुनवाई की तारीख/ Date of hearing	:	24.01.2024
घोषणा की तारीख /Date of Pronouncement	:	21.02.2024

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

The four appeals in ITA Nos. 942 to 945/Chny/2023 filed by the Revenue are directed against the common order of the ld. Commissioner of Income Tax (Appeals) 18, Chennai, dated 28.06.2023 relevant the assessment years 2015-16, 20-17-18, 2018-19 and 2020-21. The common grounds raised in the appeals of the Revenue are reproduced as under:

1. The order of the ld. Commissioner of I.T. (Appeals) is opposed to law and facts of the case.

2. The learned CIT(A) erred in allowing the claim of bad debts in respect of running chits contrary to the decision of Hon'ble High Court of Hyderabad, Telangana in ITA Nos, 307 of 2005, 92 of 2006 & 154 of 2006 for the A.Ys. 1998-99, 1999-2000 and 2000-01 in the assessee's own case, dated 09.06.2023, wherein the order of the Hon'ble ITAT, Hyderabad has been upheld, in setting aside the issue of claim of bad debts to the file of the Assessing Officer for verification.

2.1 The learned CIT(A) failed to appreciate and follow the decision of the Hon'ble ITAT Hyderabad in ITA No. 500/Hyd/99 (A.Y. 1995-96), ITA No.294/Hyd/ 2001 (A.Y. 1997-98), ITA No. 471/Hyd/2002 (A.Y. 1998-99) and ITA No. 1049/Hyd/ 2002 (A.Y. 1999-2000) dated 26.07.2004 in the assessee's own case, wherein it was held that bad debts in respect of subscriptions defaulted by the prized subscribers can be claimed only to the extent of the funds introduced by the Foreman and that the subscriptions that is becoming bad in future point of time cannot be held to have become bad in the current year and hence bad debts can be allowed only to the extent of the funds put in by the Foreman during the year.

3. The ld. CIT(A) has erred in directing the AO to recompute the disallowance under section 14A without following the law contained in Explanation to Section 14A and to compute the amount of expenditure to be disallowed under the second limb of Rule 8D(2) by taking into account only the amount of investments which yielded exempted income (dividend) income during the year by following the decision of the jurisdictional ITAT in the case of Parry Agro Industries Limited in ITA No.2372 & 2373/Chny/2017.

3.1 The ld. CIT(A) has failed to appreciate that disallowance u/s 14A is called for when the assessee is found to have made investments income from which is not includible in the total income and there is no condition that such investment should have resulted in earning of dividend income during the year.

3.2 The ld. CIT(A) has failed to appreciate that the decision of the Hon'ble ITAT, Chennai, in Parry Agro Industries Limited in ITA No.2372 & 2373/Chny/2017 has been accepted only due to Low Tax Effect and the same has not been accepted by the department on merits.

3.3 The ld. CIT(A) has erred in directing the AO to restrict the amount of disallowance u/s 14A to the amount of exempt income earned during the year contrary to the Explanation to section 14A clarifying that disallowance is called for even when there is no exempt income earned by the assessee during the year.

4. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of ld. CIT(A) may be set aside and that of the Assessing Officer be restored.

2. Since facts and grounds are identical, for the sake of convenience, we shall take the appeal for the assessment year 2015-16 in I.T.A. No. 942/Chny/2023 for adjudication.

2.1 Brief facts of the case are that the assessee company engaged in the business of chits and filed its return of income for the assessment year 2015-16 on 29.09.2015 admitting total income of ₹.58,26,36,900/-. The return was processed under section 143(1) of the Income Tax Act, 1961 ["Act" in short]. Subsequently, notice under section 148 of the Act dated 23.01.2018 was issued and served on the assessee. Notices under sections 142(1) and 143(2) of the Act were issued and served upon the assessee. The assessee's counsel appeared and furnished the details as called for.

3. From the details furnished by the assessee, the Assessing Officer has noted that the assessee has debited an amount of ₹.63,84,79,939/- on account of bad debts written off during the previous year relevant for the assessment year 2015-16. Out of this, bad debts amounting to ₹.32,78,21,398/- pertain to the running chits and the balance bad debts of ₹.31,06,58,541/- pertain to the terminated chits. For and from the Asst. Year 1989-90 the conditions required for allowance of a bad debt under section 36(1) (vii) r.w.s. 36(2) of the Act are as under:

(i) It must be a proper debt or a part there of
(ii) It must be of revenue nature, Contra-distinguished from capital nature
(iii) It must be written off as irrecoverable in the accounts of the assessee for the previous year.
(v) (a) it must be taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year or

(b) it must represent moneys lent in the ordinary course of business of banking or money lending which is carried on by the assessee.

In order to claim a bad debt under section 36(1) (vii) of the Act, the assessee has to satisfy all the four conditions mentioned above, Otherwise, the assessee is not entitled to claim a bad debt under section 36(1) (vii) of the Act. The Assessing Officer was of the opinion that the chit fund transactions will not partake the character of debt and as such the relationship between the chit organization and subscriber (whether or not a prized subscriber) is not relationship of creditor and debtor. By considering the chit agreement as well as Full Bench of Hon'ble Kerala High Court in the case of Janardhana Mallan and others vs. Gangadharan and other (AIR) 1983 Kerala 178, the Assessing Officer was of the opinion that the foreman and the subscribers enter into contract where the subscribers oblige themselves to pay the subscriptions in stated instalments and the Foreman obliges himself to pay the prized amount when once the chit is prized by the subscriber at an instalment. This obligation of the subscriber arises from the stipulations in the contract. Even when he is a prized subscriber, he has the same obligations to pay the future subscriptions arising not by reason of the fact that he has prized the chit but because of the contract entered into by him with the Foreman to pay such subscriptions whether the chit is prized or not. If he bids the chit at any instalment and demands the prized money,

the obligation of the Foreman to pay the same also arises under contract. Future subscriptions paid by the subscribers are not in discharge of the liability for the prized amount because, the prize amount is received by the subscriber as of a right not as a loan. The Madras High Court in P.N.Raghavan Vs. Arrugham AIR 1935 Madras 385 held that a chit fund transaction was not a case of borrowing at all and it was entirely different from a loan transaction. The loan envisages the relationship of a creditor and a debtor. However, in a chit fund transaction, there cannot be relationship of a creditor and debtor between stake holder and subscriber. If the stake holder advances any amount, he advances only to one of the members, the funds of the whole body of chit fund as the funds belong to whole lot of subscribers.

4. The Assessing Officer has further observed that the above view of various High Courts has been affirmed by Supreme Court in Shriram Chits and Investments Pvt. Ltd Vs Union of India AIR 1993 SC 2003 that chit agreement is not a money lending transaction and that there is no relationship of debtor and creditor for the purpose of it being treated as a money lending transaction. When these facts enunciated by Hon'ble Supreme Court were put forth before assessee, he contended that "the Supreme Court decision dealt with only the Constitutional validity of the

central enactment on the Chit Funds Act and is not relevant to the issue. In the said case the Supreme Court was considering whether the parliament had power to legislate in respect of chit contracts under the concurrent list. It held that the pith and substance thereof is to be examined to determine whether it falls within the legislative competence of any particular legislature. It is further well settled that even if such legislation incidentally affects or deals with other aspects, its constitutionality have to be upheld on the principle of pith and substance. In the said decision, the Hon'ble Supreme Court has held that the relationship between the foreman as the organizer of the chit and the members of the chit fund were not that of the borrower and lender and that When a person joins the chit and agrees to make subscription in future, no debt is created against him in favour of the foreman or any other person. It held that even in the case of a prized subscriber who is required to make such subscription there is no debt involved. He argued that it would therefore be seen that the said decision dealt with nature of chit agreement as to its incidence with reference to compliance of terms of such Agreement and on the relationship of the parties in such working. It did not and had no occasion to consider the relationship, which arises between the foreman and the prized subscribers when he defaults.

5. Considering various decisions, the Assessing Officer has disallowed ₹.60,65,55,942/- being 95% of the bad debts claimed at ₹.63,84,79,939/-. Alternative claim of the assessee in respect of bad debts under section 37(1) of the Act as well as under section 28 of the Act has also been denied by following various decisions.

6. The assessee carried the matter in appeal before the ld. CIT(A). After considering the submissions of the assessee as well as the decision of the Hon'ble High Court of Hyderabad, Telangana, the ld. CIT(A) has observed and held as under:

7. Decision along with the reasons:

7.1 The Hon'ble 'B' Bench of ITAT, Hyderabad, vide its order in ITA Nos. 500/Hyd/99, 506/Hyd/99, 294/Hyd/2001, 327/Hyd/2002, 471/Hyd/2002 and 1049/Hyd/2002 dated 26.07.2004 for the AYs 1995-96, 1997-98, 1988-99 and 1999-2000 dated 26.07.2004 has allowed the assessee's appeal on the issue of commission on cancelled chits and allowability of bad debts.

7.2 Further, the Hon'ble High Court of Hyderabad, Telangana has pronounced as order in ITA Nos.307 of 2005. 92 of 2006 & 154 of 2006 in the assessee's own case for the AYs 1998-99. 1999-00 and 2000-01 respectively, in which the revenue appeal on allowance of bad debts, commission on cancelled chits, royalty is dismissed.

7.3 The operative part of the said High Court order is reproduced below:

[Quote]

> *17.4. With regard to the case of assessee, Tribunal noted that for the assessment years 1995-96 and 1997-98, the claim for bad debt was allowed by the first appellate authority ie., CIT(A) against which Revenue was in appeal. Tribunal did not find any infirmity in the orders of the first appellate authority as the assessee had given details of the claim which were examined by the assessing officer. Being a voluntary payment in discharge of a legal obligation, assessee would be entitled to have the amount deducted as a bad debt in the year of write off. The decision whether the debt has become bad or not has to be viewed dispassionately. The fact that the assessee had not taken steps by way of legal proceedings against the*

debtor would not automatically justify the finding that he would not be entitled to write off the amount as a bad debt. Honesty of the assessee is relevant. What is required to be seen is whether a bonafide assessment has been made by the assessee to the effect that realisation of the debt is not possible. Revenue cannot insist on any demonstrable and infallible proof that the debt has become bad debt. For the assessment years 1995-96 and 1997-98, the view taken by the first appellate authority was affirmed and Revenue's appeals on the issue of bad debts were dismissed.

18.1. Thus, the view taken by the Tribunal was that bad debts could be allowed to the extent of the instalments defaulted by the prized subscriber and written off as bad debt in the books by the assessee. But for the future instalments that are likely and yet to be defaulted no claim can be allowed. However, Tribunal was of the view that full facts and figures were not available and therefore, the matter was remanded back to the file of the assessing officer 1or considering the claim afresh, Accordingly, the orders of the assessing officer for the assessment years 1998-99 and 1999-2000 on the issue of allowability of bad debt as affirmed by the CIT(A) were set aside and the matter was remanded back to the file of the assessing officer for consideration afresh.

23.1. However, Supreme Court has clarified that even if a claim for deduction under Section 36(1) is not allowed, the possibility of its exclusion under Section 37 cannot be ruled out in as much as the heads of expenditure that can be claimed as deduction are not exhaustive, that being the precise reason for existence of Section

37. Therefore, in a given case, even if the expenditure relates to business and the claim for its treatment under other provisions are unsuccessful, application of Section 37 is per se not excluded.

24. After a thorough consideration, we are of the view that decision of the Supreme Court in Khyati Realtors Private Limited (Supra) does not really undermine or render the decision of the Tribunal unsustainable. Tribunal has given good reasons as to why the claim of bad debt is an allowable deduction under Section 36(1)(vii) of the Act. That apart, Tribunal took the view that bad debts can be allowed to the extent of the instalments defaulted by the prized subscriber and written off as bad debt in the books by the assessee, but at the same time clarifying that for future instalments that are likely and yet to be defaulted no claim for bad debt can be allowed. However, to allow such a claim to the extent indicated, Tribunal observed that more facts and figures were required and therefore, relegated the matter back to the file of the assessing officer. We see no error or infirmity in the view taken by the Tribunal on the issue of bad debts covering both the facets.

25. That brings us to the next issue as to royalty payment. While deleting the disallowance made on this count by the assessing officer and allowing, the claim of the assessee, Tribunal took note of the fact that the only ground for the disallowance was that in the prior assessment years no such payment was made. However, the undisputed fact is that the logo and the words

"Shriram Chits" is owned by M/s, Shriram Chits and Investments (Private) Limited. Assessee had used the logo and the above words while carrying on its business.

.....

27. We are in respectful agreement with the view expressed by the Madras High Court as extracted supra. Therefore, we have no hesitation in answering this issue in favour of the assessee.

28. The last issue is that of the claim relating to commission on removed chits. Tribunal decided this issue in favour of the assessee. This was what the Tribunal held:

> *6.3. Tine of recognition of income from Commission on cancelled chits: This issue is involved in the assessee's appeals for assessment years 1998-99 and 1999-2000. The dispute is about time of accrual of the income by way of commission in respect of cases where defaulting non-prized subscribers who are removed from the chit and in whose place new subscribers are substituted. On a careful consideration of the issue, we find that from out of the amount that is payable to the defaulting subscriber consequent to his replacement by another person the company is entitled to deduct 9% as commission. This has nothing to do with the regular commission income of the assessee. Thus the stand of the assessee that the commission income accrues when the accounts have been finally settled to the defaulting non-subscriber to our mind appears to be the correct position. Otherwise in case of a non-prized subscriber the amount of 5% would be deducted from the amounts due to him much before the settlement of his account and recognized as income by way of transfer from current liabilities to profit and loss account. Reliance was placed by the Revenue on the Special Bench decision of the Tribunal in the case of Shriram Chits and Investment Private Limited, Chennai v. ACIT (263 ITR (AT) 65). This decision is not applicable to the facts of this case. The Commission/remuneration to the foreman in that case was sought to be recognized on the completion of chit method and had nothing to do with the type of additional commission receivable in case of substitution of a subscriber as in this case. The nature of income in both these cases are different The further commission of 5% receivable from a defaulting subscriber consequent to his removal and substitution on a full and final settlement of a defaulting subscriber account is recognized as income on the finalization of the issues. This is not an unacceptable proposition. We agree with the submission of the learned counsel for the assessee, which are at para 4.11 of this order. In the result, this ground of appeal of the assessee is allowed.*

28.1. Thus, according to the Tribunal, from out of the amount that is payable to the defaulting subscriber, subscription to his replacement by another person, the assessee is entitled to deduct 5% as commission. This commission amount has got nothing to do with the regular commission income of the assessee. Stand of the assessee that the commission income

accrues when the accounts have been finally settled with the defaulting non-subscriber is the correct position.

29. We are in agreement with the view expressed by the Tribunal on this issue. Thus, this issue is also answered in favour of the assessee.

30. Therefore, on a thorough examination of all aspects of the matter, we answer the questions proposed by the Revenue as substantial questions of law against the Revenue and in favour of the assessee.
[Unquote]

Respectfully following the decision of Hon'ble High Court of Hyderabad, Telangana in the assessee's own case, the Grounds relating to Bad debts in respect of running chits, bad debts in respect of terminated chits, commission on cancelled chits, and royalty are allowed. The AO is directed to delete the additions made on these counts.

7. Aggrieved, the Revenue is in appeal before the Tribunal for the assessment years under consideration.

7.1 The ld. DR has submitted that the Hyderabad Benches of the Tribunal has held that bad debts in respect of subscriptions defaulted by the prized subscribers can be claimed only to the extent of the funds introduced by the Foreman and that the subscriptions that is becoming bad in future point of time cannot be held to have become bad in the current year and hence bad debts can be allowed only to the extent of the funds put in by the Foreman during the year and pleaded that the said order of the Hyderabad Benches may be followed.

8. On the other hand, the ld. Counsel for the assessee has submitted that by following the decision of the Hon'ble High Court of Hyderabad,

Telangana in assessee's own case, the ld. CIT(A) has decided the issue in favour of the assessee and prayed following the same.

9. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee. In this case, the assessee has debited an amount of ₹.63,84,79,939/- on account of bad debts written off during the previous year relevant for the assessment year 2015-16. Out of this, bad debts amounting to ₹.32,78,21,398/- pertain to the running chits and the balance bad debts of ₹.31,06,58,541/- pertain to the terminated chits. The Assessing Officer, on the grounds and reasons mentioned in the order of assessment, took the view that the amount claimed as bad debts could not be allowed as a deduction having regarding to the provisions of section 36(1)(vii) r.w.s. 36(2) of the Act. Accordingly, the said amount was added to the income of the assessee. On appeal, by following the decision of the Hon'ble High Court of Hyderabad, Telangana in assessee's own case dated 09.06.2023 in ITA No. 307 of 2005, 92 of 2006 & 154 of 2006 for the assessment years 1998-99, 1999-2000 and 2000-01 dismissing the appeals of the Revenue on the issue of claim of bad debts, the ld. CIT(A) directed the Assessing Officer to delete the additions.

10. So far as the judgement of the Hon'ble High Court for the State of Telangana at Hyderabad is concerned, we have perused the judgement and find that the Hon'ble High Court has held that the claim of the assessee in respect of bad debt is allowable under section 36(1)(vii) of the Act. The relevant portion of the order is extracted as under:

> *17. First, let us take up the issue of bad debts. As already noted above, there are two aspects insofar the issue of bad debts is concerned. The first issue is whether the claim for deduction as bad debt is allowable under Section 36(1)(vii) of the Act? The second aspect is the point of time at which such deduction is allowable.*
>
> *17.1. On the issue of allowability of the claim as bad debt, Tribunal held as follows:*
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> *6.6 (i) We first examine the allowability of the claim as bad debt. The Hon'ble Andhra Pradesh High Court in the case of Goverdhan Upadhyan v. Aekelle Kameswar Rao (died) and others (1996 (4) ALT 1) held as follows:*
>
> > *"The relationship between the prized subscriber and the foreman is of a debtor and creditor when the prized subscriber receives the amount and undertakes to pay the subsequent instalments due to the foreman."*
>
> *A full discussion on the issue is at pages 6 & 7 of the reported judgment wherein the judgment of the Hon'ble Madras High Court in the case of Angammal v. R.Sankaranarayanan (AIR 1989 Madras 53) was referred to. In its judgment in the case of Shriram Chits & Investments (P) Limited v. Union of India & others (AIR 1993 SC 2063) the Hon'ble Supreme Court was considering the constitutional validity of an enactment and had no occasion to consider the relationship which arises between foreman and the prized subscriber when he defaults. The jurisdictional High Court judgment in straight on this point.*
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> *6.6 (ii) Whatever may be the interpretation placed by Courts on this issue, the CBDT has placed its interpretation on the issue.*
>
> *6.6 (iii) The instructions issued by the Central Board of Direct Taxes vide Instruction No.1175 under Order F.No.21/78-IT (80) dated 16th May, 1978 read as under:*
>
> *"(a) If any person organizes Chit Funds and for this purpose brings the members together, administers the Chit Funds and thereby earns commission etc. profits made by such a person is income from business and if for any special reason there is loss then it is business loss. Normally, there should be no loss to the organiser unless he takes over the liability of some of the members. In such a case, the unrecovered amount due from such members will have to be treated as bad debts and the test to*

be adopted in usual business assessment for the allowance of bad debts would be applicable in such cases also.

(b) In the hands of the subscribers, a few will be receiving more than what they have subscribed. This extra amount is in the nature of interest and as such taxable. Members who take the money earlier from the chit will necessarily have to contribute more which means that they incur loss, which is nothing but interest paid for moneys taken in advance. The claim of such a loss will have to be considered for the purpose of allowance according to the provisions of the Act depending upon how the money was utilised by the subscriber.

Subsequently the Board issued clarification on a query from the Chief Commissioner of Income Tax II, New Delhi on 25th March 1992 which is as follows:

Subject: CBDT Instruction No.1175, dated May 16, 1978 Liability to assessment – Profits made by subscriber of chit funds – Question regarding.

1. I am directed to refer to your letter F.No.66(II)/HO/proposal under Section 263/91-92/4101, dated November 15, 1991 on the above mentioned subject.

2. The issues raised by you have been carefully examined by the Board. In this regard, I am directed to say, that Board are of the view that Instruction No.1175 issued in consultation with M.O.L cannot be withdrawn on the basis of decision of Punjab & Haryana High Court in case of Soda Silicate & Chemical Works (supra). The Board's instruction stands."

In this regard, it is clearly stated that when the organizer takes over the liability of some of the members and when such amounts remain unrecovered, the same should be treated as bad debt. Thus the circular of the Board settles the first controversy.

6.6 (iv) The Hon'ble Supreme Court in the case of Ranadey Micro Nutrients v. CCE [(1996) 97 ELT 19] observed as follows:

> *"One should have thought an officer of the Ministry of Finance would have greater respect for circulars such as these issued by the Board, which also operates as these issued by the Board, which also, operates under the aegis of the Ministry of Finance, for it is the board which is by statute, entrusted with the task of classifying excisable goods uniformly. The whole objective of such circulars is to adopt a uniform practice and to inform the trade as to how a particular product will be treated for the purposes of excise duty. It does not lie in the mouth of the Revenue to repudiate a circular issued by the Board on the basis that it is inconsistent with a statutory provision. Consistency and discipline are of far greater importance than the winning or losing of court proceedings."*

6.6 (v) The binding nature of the circular issued by the Board of Direct Taxes on the Revenue officials need not be reiterated. As the Central Board of Direct Taxes has placed its interpretation on the issue, the same has to be necessarily applied by all the income tax authorities though the interpretations may have otherwise been made by the courts and this proposition is laid down by the Hon'ble Supreme Court in the

case of Collector of Central Excise v. Dhiren Chemical Industries (259 ITR 554 at 557) wherein it is held as follows:

> *"We need to make it clear that regardless of interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding on the Revenue."*

Similar was the view of the Hon'ble Supreme Court in the case of K.P.Varghese (131 ITR 597 (SC)). The Apex Court held as follows, at page 612 of the Report:

"The two circulars of the CBDT to which we have just referred are legally binding on the revenue and this binding character attaches to the two circulars even if they be found not in accordance with the correct interpretation of sub-section (2) and they depart or deviate from such construction. It is now well settled as a result of two decisions of this Court, one in Navnit Lal C. Javeri v. K.K.Sen, (AAC (1965) 56 ITR 198) and the other in Ellerman Lines Limited v. CIT [(1971) 82 ITR 913] that circulars issued by the CBDT under Section 119 of the Act are binding on all officers and persons employed in the execution of the Act even if they deviate from the provisions of the Act."

6.6 (vi) The Hon'ble Supreme Court in the case of Union of India v. Azadi Bachao Andolan (263 ITR 706 (SC)) at page 732 observed as follows:

"in the teeth of this clarification, the assessing officer chose to ignore the guidelines and spent their time, talent and energy on the consequential matters, we think that the Central Board of Direct Taxes was justified in issuing "appropriate" direction vide Circular No.789 (see (2000) 243 ITR (St.) 57) under its powers under Section 119, to set things on course by eliminating avoidable wastage of time, talent and energy of the assessing officer discharging the onerous public duty of collection of revenue."

All the arguments of the learned Standing Counsel on the issue of CBDT circular are answered by the Hon'ble Supreme Court in this case (263 ITR 706) and thus we need not specifically deal with them."

6.6 (vii) Thus the Revenue has to apply the interpretation laid down by the Central Board of Direct Taxes on this issue in the circular issued in this regard. Thus we hold that the Revenue is bound to take a view that the amount recoverable from a defaulting prized subscriber by the foreman is a debt.

6.6 (viii) Various benches of the Tribunal have consistently taken a view that a claim of the assessee is maintainable as bad debt. It is not the case of the Revenue that the transaction in question was not bona fide or that the assessee has attempted to conceal taxable income or that this is a device for evasion of payment of tax. Only the legality of the claim under Section 36(1)(vii) and point of time of the claim are being disputed by the Revenue on the ground that this would lead to postponement of tax due to the government. Based on the foregoing discussion, we uphold the claim of the assessee and hold that the Revenue should follow the CBDT circular and take a view that the claim of the assessee is maintainable as bad debt.

17.2. Thus, Tribunal followed the decision of the jurisdictional High Court in the case of Goverdhan Upadhyan v. Aekelle Kameswar Rao 1996 (4) ALT 1. Thereafter, Tribunal referred to and followed instruction No.1175 dated 16.05.1978 issued by the CBDT which was later on clarified by the CBDT itself on 25.03.1992. As per the instructions of CBDT, if any person organised chit funds and brings the members together, administers the chit funds and thereby earns commission etc., profits made by such a person is income from business and if for any special reason, there is loss then it is business loss. Normally, there should be no loss to the organiser unless it takes over the liability of some of the members. In such a case, the unrecovered amounts due from such members would have to be treated as bad debt. The test to be adopted in usual business assessment for the allowance of bad debts would be applicable in such case also. In the clarification dated 25.03.1992, CBDT reiterated the view taken in instruction No.1175 dated 16.05.1978. After referring to various Supreme Court decisions, Tribunal held that instructions and circulars issued by CBDT are binding on revenue authorities. Therefore, there was no reason for the revenue authorities not to follow the instructions of CBDT. Further, Tribunal observed that there was no reason to deny the claim of the assessee of bad debt. It is not the case of the Revenue that the transaction in question was not bona fide or that the assessee had attempted to conceal taxable income or that the claim was a device for evasion of payment of tax. Only the legality of the claim under Section 36(1)(vii) of the Act and the point of time of that claim were being disputed by the Revenue on the ground that this would lead to postponement of tax due to the government. On due consideration, Tribunal upheld the claim of the assessee and held that the Revenue should follow CBDT instruction and took the view that the claim of the assessee is maintainable as bad debt.

17.3. Insofar the second aspect is concerned, Tribunal noted that earlier the assessee was making claim for bad debts in respect of defaulting prized subscribers at the closure of the chit. Later on, the assessee claimed deduction in the year of default itself. According to the Tribunal, what was required to be considered was whether the assessee had taken an honest and bona fide decision. Tribunal noted that during the assessment proceedings assessee had filed details of the bad debts showing proof of suits filed as well as suits filed in subsequent years, the details of which were examined by the assessing officer. After considering the decisions of the Mumbai and Chennai Benches of the Tribunal in similar matters as well as the decision of the Gujarat High Court in the case of Girish Bhagwatprasad (supra), Tribunal took the view that under Section 36(1)(vii) of the Act as it stood after the amendment with effect from 01.04.1989, writing off in the books of accounts of a bad debt is sufficient and the assessing officer has no option of deciding the year in which the debt had become bad debt.

17.4. With regard to the case of assessee, Tribunal noted that for the assessment years 1995-96 and 1997-98, the claim for bad debt was allowed by the first appellate authority ie., CIT(A) against which Revenue was in appeal. Tribunal did not find any infirmity in the orders of the first appellate authority as the assessee had given details of the claim which were examined by the assessing officer. Being a voluntary payment in discharge of a legal obligation, assessee would be entitled to have the amount deducted as a bad debt in the year of write off. The decision whether the debt has become bad or not has to be viewed dispassionately. The fact that the assessee had not taken steps by way of legal proceedings against the debtor

would not automatically justify the finding that he would not be entitled to write off the amount as a bad debt. Honesty of the assessee is relevant. What is required to be seen is whether a bonafide assessment has been made by the assessee to the effect that realisation of the debt is not possible. Revenue cannot insist on any demonstrable and infallible proof that the debt has become bad debt. For the assessment years 1995-96 and 1997-98, the view taken by the first appellate authority was affirmed and Revenue's appeals on the issue of bad debts were dismissed.

18. Coming to the assessment years 1998-99 and 1999-2000, Tribunal was of the view that the issue was the same. Only difference was that in the earlier assessment years, assessee was making the claim of bad debt in respect of the prized subscribers on the closure of the chit i.e., the year in which the chit was closed. From the assessment year 1998-99 onwards, assessee made its claim after the default was made by the prized subscriber in payment of four instalments. Tribunal held as follows:

> *6.6 (xvi) Now we consider the appeals of the assessee for the assessment years 1998-99 and 1999-2000 on the same issue. The crucial difference in the claim of the assessee for these two years is that the assessee was earlier making the claim for such bad debt in respect of the prized subscribers on the close of the chit i.e., the year in which the chit is closed. From the assessment year 1998-99, the assessee made its claim after default was made by the prized subscriber in payment of four instalments.*
>
> *6.6 (xvii) Though we have held that the decision of the assessee to write off a particular sticky debt cannot be questioned by the Revenue, when it is a honest decision and though we have given a finding that the decision is a honest decision viewed from a businessman's point of view, we observe that there is another angle to this issue. The claim proceeds on the premises that the money lifted by the prized subscriber at an auction is out of the funds ploughed in due to the legal requirements as the foreman. This premises is not true. The chit contributions of the other subscribers are handed over to the prized subscriber on an auction after the foreman deducts his commission.*
>
> *6.6 (xviii) The funds of the foreman are involved only to the extent of defaults both by the prized and non- prized subscribers. The claim of the foreman to the extent his funds are involved can be considered as an allowable claim. A future liability that may arise to the foreman due to continuing default in paying instalments by a prized subscriber cannot be claimed at this point of time. This factor can best be explained by the following example.*
>
> *6.6 (xix) In a chit there are 24 subscribers and if each one of them contributes Rs.100 per month for 24 months and in the 2nd month of the chit one subscriber bids and takes Rs.2400 – the loss of Rs.960 – commission @ 5% Rs.120 i.e. Rs.1,320/- and defaults for four consequent months and there is no other defaulter, the money put in by the foreman is Rs.400 against Rs.1,320/- due from the defaulting subscriber. So against Rs.400 put in by the foreman due to legal requirements, at the end of 4 months, he is not*

entitled to write off Rs.1,320/- and claim the same as a bad debt. This is not permissible. In other words, the foreman in this case would be writing off a future possible liability of Rs.920 that may or may not arise. A loss may be claimed without bringing in funds. This factor is also explained in the Technical Guide on Accounting and Auditing for Chit Fund Business published by the Research Committee of the Institute of Chartered Accountants of India, New Delhi which at page 19 under the head Accounting Standard (AS) 4, Contingencies and Events occurring after the Balance Sheet date at para 3.11 and 3.12 read as follows:

> *"3.11. In a Chit Fund Business, it is possible that some prized subscribers may not pay their instalments after receiving the prized amount. The loss arising on account of non-payment of instalments by a prized subscriber is borne by the Foreman. Accordingly, in respect of the instalments which have become due on the balance sheet date but not by the prized subscribers as well as the instalments which have not become due on the balance sheet date but the prized subscriber has defaulted in respect of the instalments which have become due, a provision has to be created or a contingent liability has to be disclosed keeping in view the requirements of paragraphs 10 and 11 of AS 4 reproduced below:*
>
> > *"10. The amount of a contingent loss should be provided for by a charge in the statement of profit and loss if:*
> > *(a) it is probable that future events will confirm that, after taking into account any related probable recovery, an asset has been impaired or a liability has been incurred as at the balance sheet date, and*
> >
> > *(b) a reasonable estimate of the amount of the resulting loss can be made.*
> >
> > *11. The existence of a contingent loss should be disclosed in the financial statements if either of the conditions in paragraph 10 is not met, unless the possibility of a loss is remote."*
> >
> > *3.12. The amount of the provision for loss in respect of the defaulting prized subscribers can be estimated on the basis of, amongst other things, the past experience of the enterprise, information about the ability of the individual subscribers to pay, and the appraisal of the uncollectibles based on the current business environment of the business of the relevant subscribers. For instance, where the past experience of a particular Chit Fund business indicates that the prized subscribers do not generally pay after a continuous default of paying, say, three instalments, it may be appropriate to make a provision for the entire amount outstanding. In estimating the amount of the provision for loss, the realisable value of the security lodged with the Foreman should also be considered."*

6.6 (xx) On these facts a claim of loss without corresponding inflow of funds from the foreman, which is a definite possibility in this method of claim, cannot be upheld. The amount of loss can definitely be allowed to the extent that the foreman has put in his funds and has come to a conclusion that his funds are not recoverable due to the account becoming sticky and to the extent he has taken an honest decision for writing off the same in his books. In other words, bad debts can be allowed to the extent of the instalments defaulted by the prized subscriber, and written off as bad debt in the books by the assessee. But for the future instalments that are likely and yet to be defaulted, no claim can be allowed. The assessing officer cannot replace the judgment of the businessman. The facts that the assessee has written off as bad debt when prized subscribers defaulted for four consecutive months does not to our mind affect his claim as this is based on past experience of the assessee in his business and is in tune with the current RBI norms for NBFCs as well as for banking companies. These decisions have become a prudential norm in the financial sector. Thus there is nothing wrong in adopting this guideline or policy.

6.6 (xxi) We have to mention that this issue has not come up during the course of arguments of the case. If the assessee has made the claim as indicated above, no prejudice would be caused to him by setting aside the matter. Similarly no prejudice would be caused to revenue on this count as it can examine the claim afresh. To allow the claim to the extent indicated above fresh collection of facts and figures are required and thus we set aside the issue to the file of the assessing officer for considering the claim afresh in the light of this order. Thus the appeal of the assessee for the assessment years 1998-99 and 1999-2000 on this ground of allowability of bad debt is allowed for statistical purposes.

18.1. Thus, the view taken by the Tribunal was that bad debts could be allowed to the extent of the instalments defaulted by the prized subscriber and written off as bad debt in the books by the assessee. But for the future instalments that are likely and yet to be defaulted no claim can be allowed. However, Tribunal was of the view that full facts and figures were not available and therefore, the matter was remanded back to the file of the assessing officer for considering the claim afresh. Accordingly, the orders of the assessing officer for the assessment years 1998-99 and 1999-2000 on the issue of allowability of bad debt as affirmed by the CIT(A) were set aside and the matter was remanded back to the file of the assessing officer for consideration afresh.

19. We may now advert to Section 36(1)(vii) of the Act which is relevant. It may be mentioned that this provision had undergone amendment with effect from 01.04.1989. Prior to 01.04.1989, Section 36(1)(vii) read as under:

***36. Other deductions:-** (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-*
*(i) to (vi) ***
(vii) subject to the provisions of sub-section (2), the amount of any debt or part thereof, which is established to have become a bad debt in the previous year.

After the amendment with effect from 01.04.1989, Section 36(1)(vii) now reads as follows:

36. Other deductions:- *(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-*

*(i) to (vi) ***

(vii) subject to the provisions of sub-section (2), the amount of any debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year.

19.1. Thus, what is noticeable is that prior to the amendment, the amount of any debt or part thereof which was established to have become a bad debt in the previous year was an allowable deduction while computing the income in terms of Section 28 of the Act. However, this was subject to sub- section (2) of Section 36. After the amendment, the requirement of establishing a debt as a bad debt has been done away with. Whereafter, the amount of any bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year became an allowable exemption.

19.2. This provision, pre and post amendment with effect from 01.04.1989 was considered by the Supreme Court in TRF Limited (supra). Whereafter, it was held that after 01.04.1989 it is not necessary for the assessee to establish that the debt in fact has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee.

20. Before we proceed further it would be apposite to advert to sub-section (2) of Section 36 and Section 37 of the Act.

20.1. As per sub-section (2) of Section 36, in making any deduction for a bad debt or a part thereof, the provisions contained therein shall be applied, such as, no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year or represents money lent in the ordinary course of the business of banking or money lending which is carried on by the assessee; if the amount ultimately recovered on any such debt or part of debt is less than the difference between the debt or part and the amount so deducted, the deficiency shall be deductible in the previous year in which the ultimate recovery is made; any such debt or part of debt may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous order, but the assessing officer had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year; etc.

20.2. Thus, what sub-section (2) of Section 36 says is that the deductions claimed under sub-section (1)(vii) of Section 36 would be subject to fulfilment of the conditions mentioned in sub-section (2).

21. On the other hand, Section 37(1) provides that any expenditure other than capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in calculating the income chargeable under the head "profits and gains of business or profession".

22. In Oriental Kuries Limited (supra), the issue which had arisen for consideration before the Supreme Court was with respect to the jural relationship between a chit fund entity and the subscribers created by the chitti agreement; the related question was whether it is a debt in praesenti or a promise to discharge a contractual obligation. After an elaborate analysis, Supreme Court has held that the relationship between a chit subscriber and the chit foreman is a contractual obligation which creates a debt on the day of subscription. On default taking place, the foreman is entitled to recover the consolidated amount of future subscriptions from the defaulting subscriber in a lump sum. Supreme Court has held as follows:

> *10. We do not agree with the view expressed by the Division Bench. When a prized subscriber is allowed to draw the chit amount, which is in the nature of a grant of a loan to him from the common fund in the hands of the foreman, with the concessional facility of effecting repayment in instalments; this is subject to the stipulation that the concession is liable to be withdrawn in the event of default being committed in payment of any of the instalments. The chit subscriber at the time of subscription, incurs a debt which is payable in instalments. If a subscriber is permitted to withdraw the collected sum on his turn, without being bound to pay the future instalments, it would jeopardise the interest of all other subscribers, and the entire mechanism of the chit fund system would collapse.*
>
> *11. A perusal of the provisions of Chapter V of the 1982 Act makes it clear that if a prized subscriber defaults in making payment of an instalment, the chit foreman has the right to recover the amount covering all future subscriptions from the defaulting subscriber as a consolidated amount. Section 32 of the 1982 Act empowers the foreman to recover the consolidated payment of all future subscriptions forthwith in the case of a default. Chapter V of the Chit Funds Act, 1982 prescribes the rights and duties of prized subscribers. Sections 31 to 33 in Chapter V read as follows:*
>
> > *"31. Prized subscriber to furnish security.—Every prized subscriber shall, if he has not offered to deduct the amount of all future subscriptions from the prize amount due to him, furnish, and a foreman shall take, sufficient security for the due payment of all future subscriptions and, if the foreman is a prized subscriber, he shall give security for the due payment of all the future subscriptions to the satisfaction of the Registrar.*
> >
> > *32. Prized subscriber to pay subscriptions regularly.—Every prized subscriber shall pay his subscriptions regularly on the dates and times and at the place mentioned in the chit agreement and, on his failure to do so, he shall be liable to make a consolidated payment of all the future subscriptions forthwith.*
> >
> > *33. Foreman to demand future subscriptions by written notice.—(1) A foreman shall not be entitled to claim a consolidated payment from a defaulting prized subscriber under Section 32 unless he makes a demand to that effect in writing.*

(2) Where a dispute is raised under this Act by a foreman for a consolidated payment of future subscriptions from a defaulting prized subscriber and if the subscriber pays to the foreman on or before the date to which the dispute is posted for hearing the arrears of subscriptions till that date together with the interest thereon at the rate provided for in the chit agreement and the cost of adjudication of the dispute, the Registrar or his nominee hearing the dispute shall, notwithstanding any contract to the contrary, make an order directing the subscriber to pay to the foreman the future subscriptions on or before the dates on which they fall due, and that, in case of any default of such payments by the subscriber, the foreman shall be at liberty to realise, in execution of that order, all future subscriptions and interest together with the costs, if any, less the amount, if any, already paid by the subscriber in respect thereof:

Provided that if any such dispute is on a promissory note, no order shall be passed under this sub-section unless such promissory note expressly states that the amount due under the promissory note is towards the payment of subscriptions to the chit.

(3) Any person who holds any interest in the property furnished as security or part thereof, shall be entitled to make the payment under sub-section (2).

(4) All consolidated payments of future subscriptions realised by a foreman shall be deposited by him in an approved bank mentioned in the chit agreement before the date of the succeeding instalment and the amount so deposited shall not be withdrawn except for payment of future subscriptions.

(5) Where any property is obtained as security in lieu of the consolidated payment of future subscriptions, it shall remain as security for the due payment of future subscriptions."

(emphasis supplied)

12. The object is to empower the foreman to recover the amount in a lump sum from a defaulting subscriber, so as to secure the interest of the other subscribers, and ensure smooth functioning of the chit fund. Such a provision would not amount to a penalty.

13. The relationship between the foreman and the subscribers in a chit fund transaction is of such a nature that there is a necessity and justification for making stringent provisions to safeguard the interest of the other subscribers, and the foreman. If a prized subscriber defaults in payment of his subscriptions, the foreman will be obliged to obtain the equivalent amount from other sources, to meet the obligations for payment of the chit amount to the other members, who prize the chit on subsequent draws. For raising such an amount, the foreman may be required to pay high rates of interest.

14. The stipulation of empowering the foreman to recover the entire balance

amount in a lump sum, in the event of default being committed by a prized subscriber, is to ensure punctual payment by each of the individual subscribers of the chit fund. Without punctual payments, the system would become unworkable, and the foreman would not be in a position to discharge his obligations to the other members of the chit fund.

15. In view of the aforesaid discussion, the relationship between a chit subscriber and the chit foreman is a contractual obligation, which creates a debt on the day of subscription. On default taking place, the foreman is entitled to recover the consolidated amount of future subscriptions from the defaulting subscriber in a lump sum.

23. In Khyati Realtors Private Limited (supra), on which much reliance has been placed by Mr. Prasad, learned Standing Counsel, a three-Judge Bench of the Supreme Court took the view that merely stating a debt as an irrecoverable write off without appropriate treatment in the accounts as well as known compliance with the conditions mentioned in Section 36(1)(vii) and 36(2) of the Act would not entitle the assessee to claim a deduction as a bad debt. Referring to the earlier decision of the Supreme Court in TRF Limited (supra), which had a coram of two Hon'ble Judges, Supreme Court in Khyati Realtors Private Limited (supra) observed that in TRF Limited (supra) the Court did not examine the impact of Section 36(2). According primacy to its decision in Southern Technicalities Limited v. Joint CIT 9 and Catholic Syrian Bank Limited v. CIT 10, Supreme Court held as follows:-

18. It is evident from the above rulings of this court, that:

(i) The amount of any bad debt or part thereof has to be written-off as irrecoverable in the accounts of the assessee for the previous year;

(ii) Such bad debt or part of it written-off as irrecoverable in the accounts of the assessee cannot include any provision for bad and doubtful debts made in the accounts of the assessee;

(iii) No deduction is allowable unless the debt or part of it "has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year", or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee;

(iv) The assessee is obliged to prove to the AO that the case satisfies the ingredients of Section 36(1)(vii) as well as Section 36(2) of the Act.

23.1. However, Supreme Court has clarified that even if a claim for deduction under Section 36(1) is not allowed, the possibility of its exclusion under Section 37 cannot be ruled out in as much as the heads of expenditure that can be claimed as deduction are not exhaustive, that being the precise reason for existence of Section 37. Therefore, in a given case, even if the expenditure relates to business and the claim for its treatment under other provisions are unsuccessful, application of Section 37 is per se not excluded.

24. After a thorough consideration, we are of the view that decision of the Supreme Court in Khyati Realtors Private Limited (supra) does not really undermine or render the decision of the Tribunal unsustainable. Tribunal has given good reasons as to why the claim of bad debt is an allowable deduction under Section 36(1)(vii) of the Act. That apart, Tribunal took the view that bad debts can be allowed to the extent of the instalments defaulted by the prized subscriber and written off as bad debt in the books by the assessee, but at the same time clarifying that for future instalments that are likely and yet to be defaulted no claim for bad debt can be allowed. However, to allow such a claim to the extent indicated, Tribunal observed that more facts and figures were required and therefore, relegated the matter back to the file of the assessing officer. We see no error or infirmity in the view taken by the Tribunal on the issue of bad debts covering both the facets.

25. That brings us to the next issue as to royalty payment. While deleting the disallowance made on this count by the assessing officer and allowing the claim of the assessee, Tribunal took note of the fact that the only ground for the disallowance was that in the prior assessment years no such payment was made. However, the undisputed fact is that the logo and the words "Shriram Chits" is owned by M/s. Shriram Chits and Investments (Private) Limited. Assessee had used the logo and the above words while carrying on its business.

25.1. This issue is no longer res integra. In the case of Wavin (India) Limited (supra), Madras High Court examined such a claim in the context of amount paid to a foreign collaborator as contribution towards research and development expenditure. Madras High Court held that such expenditure could not be regarded as capital expenditure. It being a business expenditure, assessee was entitled to claim deduction. This decision of the Madras High Court was upheld by the Supreme Court in Waven (India) Limited (supra) wherein Supreme Court agreed with the reasoning given by the Madras High Court while upholding the expenditure to be of revenue nature. The expenditures were incurred to obtain benefit of development and research made by the foreign company; such an expenditure could not be said to be for acquisition of any asset at all.

26. In Honda Siel Cars India Limited (supra), Supreme Court once again examined the distinction between capital and revenue expenditure. Referring to its earlier decision in CIT v. Ciba of India Limited11, Supreme Court held that royalty paid for use of technical information or knowhow would be in the nature of revenue expenditure as no enduring benefit is acquired thereby. Supreme Court held as follows:

> *19. If the aforesaid factors are taken in isolation, probably the claim of the assessee may be justified. Distinction between capital and revenue expenditure with reference to acquisition of technical information and know-how has been spelled out by this Court [Ed.: A few such cases are CIT v. Wavin (I) Ltd., (1998) 8 SCC 585; Jonas Woodhead & Sons Ltd. v. CIT, (1997) 10 SCC 119; and Alembic Chemical Works Co. Ltd. v. CIT, (1989) 3 SCC 329 (Alembic case discussed below).] as well as the High Courts in series of cases. Primary test which is adopted to differentiate between capital and revenue expenditure remains the same, namely, the enduring nature test. It means where the expenditure is incurred which gives enduring benefit, it will be treated as capital expenditure. In contradistinction to the*

cases where expenditure of concurrent and reoccurring nature is incurred and the latter would belong to revenue field. Technical information and know-how are intangible. They have different and distinct character from tangible assets. When the expenditure is incurred to acquire a tangible asset, determination as to whether the said acquisition of tangible asset is of capital nature or the expenditure is of revenue nature, may not pose a problem. However, in case of technical information and know-how, having regard to their unique characteristic, the questions that need to be posed for determining the nature of such an expenditure are also of different nature. In case where there is a transfer of ownership in the intellectual property rights or in the licences, it would clearly be a capital expenditure. However, when no such rights are transferred but the arrangement facilitates grant of licence to use those rights for a limited purpose or limited period, the Courts have held that in such a situation, the royalty paid for use of such technical information or know-how would be in the nature of revenue expenditure as no enduring benefits is acquired thereby. This was so held in a classic case, entitled CIT v. Ciba of India Ltd. (AIR 1968 SC 1131 : (1968) 69 ITR 692)

26.1. This decision of the Supreme Court has been followed by the Madras High Court in Shriram Transport Finance Company Limited (supra). Madras High Court has held that royalty payment made by the assessee for use of logo or trademark for a particular period for improvement/ expansion of business would qualify as revenue expenditure. Thus, Madras High Court held as follows:

7.11. Thus, it is crystal clear from the aforesaid decisions of the Hon'ble Supreme Court that royalty payment made by the assessee, for use of logo or trademark for a particular period, for improvement/ expansion of business, would qualify as revenue expenditure. The judgment in Honda Siel Cars India Limited (supra) is of no assistance to the revenue as in that case, the technical know-how was shared pursuant to technical collaboration agreement and not only technical information was transferred, but on field complete assistance was given pursuant to the joint venture agreement. Further, in that case, the very same business was set up by the transferee company. However, in the present case, it is not the case. The grant of licence to use the intellectual property of the parent company for limited purpose, cannot be treated as transfer of ownership or title. Though the licence is renewed periodically, it by itself does not guarantee the renewal. Similarly, the parent company is always at liberty to not only cancel the license, but also grants such rights to any other organization. Further, the findings of the Apex Court in the above judgment that when the intellectual property right is not transferred, but permitted to be utilized for a particular period, would have to be treated as revenue expenditure, on application to the facts of this case, tilts the balance in favour of the assesses. Every expenditure incurred to acquire some right over intangible asset, cannot be ipso facto termed as capital expenditure. The nature of the assets, right, information or technical know-how that is transferred, must be such that without which the transferee could never commence the business. As rightly contented by the learned senior counsel appearing for the assessees, the benefit granted by the licensor is not enduring in nature in the present case. The assessing officer without appreciating the terms of the licence agreement and ascertaining the nature of the expenditure incurred by the

assessee companies, disallowed the deduction of royalty payment and allowed the depreciation at 25% treating it as capital expenditure. However, the appellate authorities, while deleting the disallowances made by the assessing officer, have rightly treated the royalty payment as revenue expenditure. Once the payment of royalty is treated as revenue expenditure, automatically, it goes without saying that the assessees would be entitled to 100% deduction. Therefore, we need not interfere with the orders passed by appellate authorities. Accordingly, the substantial questions of law relating to royalty, are answered in favour of the assessees.

27. We are in respectful agreement with the view expressed by the Madras High Court as extracted supra. Therefore, we have no hesitation in answering this issue in favour of the assessee.

28. The last issue is that of the claim relating to commission on removed chits. Tribunal decided this issue in favour of the assessee. This was what the Tribunal held:

6.3. Time of recognition of income from Commission on cancelled chits: This issue is involved in the assessee's appeals for assessment years 1998-99 and 1999-2000. The dispute is about time of accrual of the income by way of commission in respect of cases where defaulting non-prized subscribers who are removed from the chit and in whose place new subscribers are substituted. On a careful consideration of the issue, we find that from out of the amount that is payable to the defaulting subscriber consequent to his replacement by another person the company is entitled to deduct 5% as commission. This has nothing to do with the regular commission income of the assessee. Thus the stand of the assessee that the commission income accrues when the accounts have been finally settled to the defaulting non-subscriber to our mind appears to be the correct position. Otherwise in case of a non-prized subscriber the amount of 5% would be deducted from the amounts due to him much before the settlement of his account and recognized as income by way of transfer from current liabilities to profit and loss account. Reliance was placed by the Revenue on the Special Bench decision of the Tribunal in the case of Shriram Chits and Investment Private Limited, Chennai v. ACIT [263 ITR (AT) 65]. This decision is not applicable to the facts of this case. The commission/ remuneration to the foreman in that case was sought to be recognized on the completion of chit method and had nothing to do with the type of additional commission receivable in case of substitution of a subscriber as in this case. The nature of income in both these cases are different. The further commission of 5% receivable from a defaulting subscriber consequent to his removal and substitution on a full and final settlement of a defaulting subscriber account is recognized as income on the finalization of the issues. This is not an unacceptable proposition. We agree with the submission of the learned counsel for the assessee, which are at para 4.11 of this order. In the result, this ground of appeal of the assessee is allowed.

28.1. Thus, according to the Tribunal, from out of the amount that is payable to the defaulting subscriber, subscription to his replacement by another person, the assessee is entitled to deduct 5% as commission. This commission amount has got

nothing to do with the regular commission income of the assessee. Stand of the assessee that the commission income accrues when the accounts have been finally settled with the defaulting non-subscriber is the correct position.

29. We are in agreement with the view expressed by the Tribunal on this issue. Thus, this issue is also answered in favour of the assessee.

30. Therefore, on a thorough examination of all aspects of the matter, we answer the questions proposed by the Revenue as substantial questions of law against the Revenue and in favour of the assessee.

11. While dismissing the appeals of the Revenue and deciding the issue in favour of the assessee by the Hon'ble High Court of Hyderabad, Telangana vide its order dated 09.06.2023, we have also perused the decision of the Hyderabad Benches of the Tribunal, wherein, for the assessment years 1998-99 and 1999-2000 in ITA Nos. 471 & 1049/Hyd/2002, the Tribunal, in principle, allowed the appeal of the assessee in respect of bad debts claim and remitted the matter back to the file of the Assessing Officer for verification of factual issues of the case. Similarly, the Judgement of the Hon'ble Madras High Court in assessee's own case in T.C.A. Nos. 996 to 998 of 2005 dated 03.04.2012 relied on by the assessee at its paper book page 124, wherein, the Hon'ble High Court has observed and held as under:

9.In order to decide on the rival contentions made, it is necessary to get into the decision of the Apex Court reported in AIR 1993 SC 2063 (Shriram Chits & Investments (P) Ltd. Vs. Union of India & others), a decision which dealt with the vires of the Chit Funds Act.

10.The present assessee company, apart from similarly placed chit companies, challenged the validity of the Chit Funds Act, that the regulatory measures over the business of the chit companies were in violation of Article 19(1) (g) of the Constitution of India. While upholding the provision of the Chit Funds Act, in the decision reported in AIR 1993 SC 2063 (Shriram Chits & Investments (P) Ltd. Vs.

Union of India & others), the Apex Court pointed out that the dominant purpose of the Act is to regulate the chit, control the activity of the foreman and protect the interests of the subscribers. The Apex Court further pointed out that the pith and substance of the Act was to deal with special contract and consequently, it fell within Entry 7 of List III of the Third Schedule to the Constitution. In paragraph 13 of the judgment of the Apex Court, it pointed out that Section 6 of the Act specifically refers to chit agreement to be entered into between the subscribers and the foreman. The Act provided for, how the contract has to be implemented and acted upon between the parties to the contract and that it could not be treated as a money lending business. The agreement entered into as per Section 6 provides for distribution of the chit amount. The foreman brings the subscribers together. The Act provides for payment of commission for the services rendered by the foreman and the foreman does not lend any money belonging to him. The foreman is responsible for regular collection of subscriptions from a widely scattered body of members. He has to conduct the draws or the auction and maintain accounts. He is under obligation to pay the prize amount on the due date whether or not all the members have paid their subscriptions. In case of defaults, he had often to make good the deficit out of his own resources. If the prized member defaults in his instalments, litigation follows to recover the amount. If the defaulter is a non-prized member, the foreman has to find out a suitable substitute or, in the alternative, has to take over the chit himself and continue the business. Noting the obligation of the foreman, the Apex Court pointed out, that the dominant purpose of the Act being to regulate the chit, control the activity of the foreman and protect the interest of the subscribers, the legislature had brought in this special kind of contract. Thus holding that the provisions of the Act are regulatory in nature, the Apex Court further pointed out that the Act intends to avoid fraud played on the subscribers by delaying the payment. Dealing with the nature of chit agreement, the Apex Court referred to the decision of the Kerala High Court reported in AIR 1983 Ker 178 (FB) (Janardhana Mallan Vs. Gangadaran), holding that the chit transaction is not a money lending transaction within the meaning of Money Lenders Act and there is no creditor and debtor relationship, for the purpose of it being treated as a money landing transaction.

11.Keeping this declaration of law, when we look into the provisions of the Chit Funds Act, one may note the obligation of the foreman, particularly as given under Section 21. While enumerating the rights of the foreman, the Act also takes care to impose an obligation on the foreman to do all acts which may be necessary for the due and proper conduct of the chit under sub clause (f) which empowers the foreman to substitute subscriber in the place of defaulting subscriber. As far as the duties of the foreman as enumerated under Section 22(2) of the Act is concerned, the Act stipulates that in the event of default by a prized subscriber, in respect of the prize amount due in respect of any draw remaining unpaid until the date of the next succeeding installment, the foreman shall deposit the prize amount in a separate account in an approved bank mention in the chit agreement. The Act also provides that where the prize subscriber does not collect the prize amount in respect of any instalment of a chit within a period of two months from the date of the draw, it shall be open to the foreman to hold another draw in respect of such instalment. The Section also provides that the foreman may appropriate to himself the interest accruing on the amount deposited under the second proviso to sub-section (1), for which he is entitled.

12. As far as the balance sheet of the company is concerned, Section 24 enumerates what is required to be stated in the balance sheet. The Rules therein provide for the format of the balance sheet. A reading of the schedule, as against the assets side, shows loans and advances to subscribers as well as the liabilities as relatable to non-prized subscribers. The assets side also contains receipt of interest and such other amount which can be transferred to fall under the caption of assets. In terms of the provisions thus prescribed in Section 24, the balance sheet and profit and loss account clearly showed the amount intimated by the company as against the default committed by the chit holders and the balance sheet was also audited by the Chartered Accountant qualified to act as Auditor under the Companies Act. In the context of the payment thus made, the question that arises herein is as to whether the activity of the assessee could be termed as falling under the status of a creditor that on the debt amount advanced, the same could be characterised as a debt for the purpose of treating it under Section 36(2) of the Chit Funds Act.

13. It is a settled position of law as held in [2010] 323 ITR 397 (SC) (TRF Limited vs. Commissioner of Income Tax) that after the amendment to Section 36(1)(vii) of the Income Tax Act, with effect from 01.04.1989, it is not necessary for an assessee to establish that the debt, in fact, has become irrecoverable and that it is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. In the context of the different stand taken by the revenue in the year and the consideration in contradistinction to the earlier years, the terms of the claim of the assessee in earlier years assume significance.

14. It is not denied by the Revenue that in respect of the earlier years 1990-91 and 1991-92, the claim of the assessee for deduction as a bad debt was allowed and in the appeal preferred by the Revenue before the Tribunal, the Tribunal referred to the clarification issued by the Board in F.No.169/21/78/21/78-IT(80) dated 16th May 1997, which reads as follows:-

(a) If any person organises Chit Funds and for this purposes brings the members together, administers the Chit Funds and thereby earns commission, etc., profits made by such a person is income from business and if for any special reason there is loss then it is business loss. Normally there should be no loss to the organiser unless he takes over the liability of some of the members. In such a case the unrecovered amount due from such members will have to be treated as bad debts and the test to be adopted in usual business assessment for the allowance of bad debts would be applicable in such cases also.

(b) In the hands of the subscribers, a few will be receiving more than what they have subscribed. This extra amount is in the nature of interest and as such, taxable. Members who take the money earlier from the chit will necessarily have to contribute more which means that they incur loss, which is nothing but interest paid for moneys taken in advance. The claim of such a loss will have to be considered for the purpose of allowance according to the provisions of the Act depending upon how the money was utilised by the subscriber.

15. The subsequent clarification issued on 25.03.1992, which had been extracted in the order of the Tribunal relating to the assessment years 1990-91 and 1991-92, merits to be extracted hereunder:-

Government of India Ministry of Finance Department of Revenue Central Board of Direct Taxes 25th March 1992 The Chief Commissioner of Income tax II New Delhi. Sir, Subject : CBDT Instruction No.1175 dated May 16, 1973 Liability to assessment Profits made by subscriber of chit funds Question - regarding.

1. I am directed to refer to your Letter F.No.66(II)/HO/Proposal under section 263/91-92/4101, dated November 15, 1991 on the above mentioned subject.

2. The issues raised by you have been carefully examined by the Board. In this regard, I am directed to say, that Board are of the view that Instruction No.1175 issued in consultation with M.O.L. cannot be withdrawn on the basis of decision of Punjab & Haryana High Court in case of soda Silicate & Chemical Works (supra). The Board's Instruction stands.

3. Regarding proceedings under Section 263 pending before the Commissioner of Income-tax Delhi-II, New Delhi, Board cannot issue any directions.

Thanking you, Yours faithfully sd/-
Under Secretary of the Government of India

16. Having regard to the specific observation of treating the unrecovered amount of the subscriber and the debts as bad debts, the Tribunal allowed the case of the assessee that the claim was to be construed as a bad debt, allowable as deduction under Section 36. In the background of the above facts, although we are inclined to dismiss the Revenue's appeal, the decision taken by the Commissioner of Income Tax (Appeals) in respect of the above-said claim merits to be noted herein.

17. A perusal of the order of the Commissioner of Income Tax (Appeals) shows as regards the responsibility of the Foreman as listed under the Chit Funds Act. It is admitted by the parties herein that having regard to the obligation under the Chit Funds Act, the assessee had to pump in its own money for the purpose of ensuring that the chit cycle goes on as promised. It is an admitted fact that in respect of shortfall due to non-payment, the company brought in its own money which was utilised for running the chit business and this did not stand in the way of the statutory obligation of the foreman on getting the chit cycles move on as before. Thus with statutory obligation imposed and well in compliance of the said obligation, that the company had to pay its own money to have the successful chit circulated as before, as pointed out by the Apex Court, if there is an obligation under a special contract between the defaulted chit holder and the company, even if the amount due is not treated as a debt within the meaning of the Money Lenders Act, yet, the contract gives rise to a relationship of a creditor and debtor. Thus, the Commissioner of Income Tax (Appeals) having gone into the requirement of the provisions under the Chit Funds Act, held that the advancement of the money is part and parcel of the business, thus giving rise to a situation that when the defaulter did not make the payment to the company, the company had to claim it as a bad debt for the purpose of deduction under Section 36.

18. It may be of relevance herein to note that while considering the said claim, the Commissioner of Income Tax (Appeals) pointed out that having regard to the nature of payment made, the claim has to be considered as intimately connected with the business, resulting as a case of a bad debt. Hence, apart from Section 36,

the same merited to be considered as falling under Sections 28 and 37 in the business expenditure resulting in a loss. As already pointed out, when the Revenue went on appeal as against the view of the Commissioner of Income Tax (Appeals) challenging that it would amount to a bad debt, apparently, no claim was made on the side of the Revenue to dispute the view of the Commissioner of Income Tax (Appeals) that the claim might also fall under the head of business loss under Section 28. thus, when the Tribunal rejected the Revenue's appeal, it clearly pointed out that it confirmed the view of the Commissioner of Income Tax (Appeals) as stated above that the claim is allowable not only as a bad debt, but could also be considered as a case of business loss under Section 28. The question raised before this Court thus is relatable to one part of the Tribunal's order as to whether the defaulted amount paid by the assessee could be treated as a bad debt.

19. It is not denied by the Revenue that the payment made in the course of the business had resulted in a loss of the chit amount which is also allowable under Section 28. Given the above-said fact, we have no hesitation in rejecting the Revenue's appeal on this question.

20. Learned counsel appearing for the Revenue brought to our attention the decision of the Bombay High Court dated 28.02.2012 in T.C.No.89 of 2011, wherein, the Bombay High Court had an occasion to consider the money paid by the stock broker on the default committed by its client. The Bombay High Court held that the liability to pay the brokerage may arise at a point of time anterior to the liability to pay the value of the shares transacted. Nevertheless, it would constitute part of the debt that arises on the same transaction involving the sale or purchase of shares. Since the transactions are part of the same transaction and since both form a component or part of the debt, the requirement of Section 36(2)(i) are fulfilled and the assessee is entitled to treat it as a bad debt. Extending the same logic to the present case herein, going by the obligation of the foreman arising under Sections 21 and 22 of the Chit Fund Act to make good the default to the successful bidder on the subsequent day transaction, the claim was rightly considered by the Tribunal as one allowable under Section 36 of the Act.

21. As far as the reliance placed on the decision reported in [2010] 328 ITR 342 (Commissioner of Income Tax vs. Sahib Chits (Delhi) (P) Ltd.) is concerned, we do not find that the Revenue could draw any assistance from the said decision, since the said decision relates to a totally different situation. A perusal of the above judgment of the Delhi High Court shows that it is more on the question of discount allotted to the members of the chit in the prized chit disbursed by the various members and the successful bidder being given the contribution made. Thus the distribution was not made out of any money borrowed by the assessee to result in a debt for considering the same as deduction at source.

22. As far as the decision reported in [1998] 229 ITR 727 (Suman Saving and Investments Pvt. Ltd. vs. CIT) is concerned, the same also is not of any relevance to the case herein, considering the amendment to Section 36 and the nature of business of the assessee herein on the admitted position that when the Department had not agitated the issue further in respect of assessment years 1990-91 and 1991-92 and the situation herein is no different from that of the earlier orders, we have no hesitation in confirming the order of the Tribunal, thereby dismissing the Revenue's appeal.

In the result, the Tax Case Appeals stand dismissed. No costs.

12. We have gone through the above judgement, wherein, the Hon'ble Madras High Court has dismissed the appeals of the Revenue for the preposition that the unrecovered amount of the subscriber was to be construed as a bad debt and allowable as deduction under section 36 of the Act.

13. So far as the ground raised by the Department is that the Hyderabad Benches of the Tribunal, vide its order in ITA Nos. 471 & 1049/Hyd/2002 remitted the issue of bad debts to the file of the Assessing Officer is concerned, we find that the ground raised by the Department is not correct for the reason that the Hyderabad Benches of the Tribunal, in principle, allowed the claim of bad debts and only for factual verification, remitted the matter to the Assessing Officer. Therefore, it cannot be said that the entire issue, on merits, has been remitted back to the file of the Assessing Officer.

14. Keeping in view of the decision of the Hyderabad Benches of the Tribunal, Hon'ble High Court of Hyderabad, Telangana vide its order dated 09.06.2023 as well as the judgement of the Hon'ble Madras High

Court in assessee's own case (supra), the ground raised by the Department is dismissed.

15. In view of the above decision, similar ground raised by the Revenue in the assessment years 2017-18, 2018-19 & 2020-21 are also dismissed.

16. The next common ground raised in the appeals of the Revenue is with regard to the disallowance under section 14A of the Act. The brief facts and observations made in the appellate order are reproduced as under:

7.5.1 The disallowance under section 14A made by the AO for the above impugned AYs is detailed below:

	AY 2015-16	*AY 2017-18*	*AY 2018-19*	*AY 2020-21*
Disallowance u/s 14A r.w. Rule 8D(2)(iii) made by the AO	*20,50,422*	*24,62,134*	*52,71,194*	*1,13,77,195*
Disallowance u/s 14A made by the assessee	*0*	*0*	*4,59,784*	*1,13,77,195*
Addition to the total income on this account	*20,50,422*	*24,62,134*	*48,11,410*	*1,13,77,195*
Exempt income claimed by the assessee	*53,00,021*	*10,60,004*	*17,49,023*	*10,00,000*

7.5.2 The AO, after applying the provisions of Rule 8D(2)(i), calculated 1% of annual average of the monthly average of investments, thus arriving at the above disallowance. The contention of the assessee is that, for the purpose of calculating the amount of disallowance under provisions of Rule 8D, only those investments that would fetch exempt income should be included. Further, the assessee has also submitted that such investments were made out of own funds and it had surplus money which would enable to make such investments. Hence, no expenditure was incurred towards such exempt income.

7.5.3 I have considered the submissions of the appellant. The Rule 8D reads as under:

As per the present income tax laws (post amendment in June 2016),

expenditure incurred in relation to earning exempt income is the aggregate of following:

- *Any amount of expenditure which is directly relating to exempt income; and*
- *An amount that is equal to 1 per cent of the annual average of the average of opening and closing balances of the investment, income from which does not form part of the total income.*

However, any disallowance computed under this Rule cannot exceed total expenditure claimed by taxpayer.

It may be seen from the above that the Rule 8D provides disallowance of 1% of the annual average value of investment, income from which does not form part of the total income. Hence, the investments which fetched the dividend income alone has to be considered for disallowance. Reliance is placed on the jurisdictional Chennai Tribunal in the case of Parry Agro Industries Limited in ITA No.2372 & 2373/Chny/ 2017.

7.5.4 In CIT (Central-I), Chennai vs Chettinad Logistics Pvt. Ltd. [2017| 80 taxmann, com 221 (Madras) dated 13.03.2017 it has been held that Section 14A can only be triggered, if assessee seeks to square off expenditure against income which does not form part of total income under Act; Rule 8D only provides for a method to determine amount of expenditure incurred in relation to income, which does not form part of total income of assessee and it cannot go beyond what is provided in Section 14A. Thus, where no exempt income i.e., dividend, was earned in relevant assessment year by assessee, Section 14A cannot be invoked. Supreme Court dismissed Department's SLP in CIT (Central) 1 vs. Chettinad Logistics (P.) Ltd. [2018] 95 taxmann.com *250 (SC) dated 02.07.2018 through a summary order, on delay as well as merits.*

7.5.5 The assessee has furnished details of dividend income received by it and the investment made details for the above impugned AYs. Accordingly, the AO is directed to rework the computation of disallowance u/s 14A u/r 8D and to restrict the same to the extent of dividend income earned by the assessee in the respective AYs, also taking into account the above stated jurisdictional ITAT decision in the case of Parry Agro Industries Limited in ITA No. 2372 & 2373/Chny/2017. If disallowance so arrived, in any particular year, is less than the disallowance made by the assessee itself, the AO is directed to adopt the disallowance made by the assessee in the return, as the assessee is privy to the information relating to the direct and indirect expenses incurred by it for earning dividend income. The concerned grounds are thus partly allowed.

17. We have heard the rival contentions. The contention of the assessee is that for the purpose of calculating the amount of disallowance under provisions of Rule 8D, only those investments that would fetch exempt income should be included. The above contention of the

assessee is acceptable in view of the decision of the Coordinate Benches of the Tribunal in the case of Parry Agro Industries Ltd. v. DCIT in ITA No. 2372 & 2373/Chny/2017 dated 21.03.2018. Just because, the Department has not accepted the decision of the Tribunal, we cannot take any different view in the absence of any higher Courts decision having modified and reversed the findings of the Tribunal. Moreover, the ld. CIT(A) has rightly directed the Assessing Officer to rework the computation of disallowance under section 14A r.w. Rule 8D to restrict the same to the extent of dividend income earned by the assessee by following the above decision in the case of Parry Agro Industries Ltd. v. DCIT (supra).

18. Further, where there is no exempt income earned in relevant assessment year, section 14A of the Act cannot be invoked in view of the decision in the case of CIT v. Chettinad Logistics (P) Ltd. as rightly followed by the ld. CIT(A). Thus, we find no infirmity in the order passed by the ld. CIT(A) with regard to the application of section 14A r.w. Rule 8D.

19. The appeal filed by the Revenue in ITA No. 953/Chny/2023 for the assessment year 2018-19 appears to be in duplicate and is liable to be

dismissed. Accordingly, the duplicate appeal filed by the Revenue is dismissed.

20. In the result, all the appeals filed by the Revenue are dismissed.

Order pronounced on the 21st February, 2024 at Chennai.

Sd/-	Sd/-
(MANOJ KUMAR AGGARWAL)	(V. DURGA RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, the 21.02.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1.अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3.आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.