

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

मजनीय श्री महवीर सिंह, उपाध्यक्ष एवम्
मजनीय श्री मनोज कुमार अग्रवाल, लेखकसदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपीलसं./ITA No. 10/Chny/2018
(निर्धारणवर्ष / Assessment Year: 2012-13)

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2. आयकर अपीलसं./ITA No. 11 /Chny/2018
(निर्धारणवर्ष / Assessment Year: 2013-14)

&

3. आयकर अपीलसं./ITA No. 12/Chny/2018
(निर्धारणवर्ष / Assessment Year: 2014-15)

M/s. Sundaram Finance Ltd. 21, Patullos Road, Chennai – 600 002.	बनाम/ Vs.	DCIT Large Taxpayer Unit -1, Chennai – 600 034.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAACS-4944-A		
(पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

&

4. आयकर अपीलसं./ITA No. 29/Chny/2018
(निर्धारणवर्ष / Assessment Year: 2012-13)

&

5. आयकर अपीलसं./ITA No.30/Chny/2018
(निर्धारणवर्ष / Assessment Year: 2013-14)

&

6. आयकर अपीलसं./ITA No. 31/Chny/2018
(निर्धारणवर्ष / Assessment Year: 2014-15)

DCIT Large Taxpayer Unit -1, Chennai – 600 034.	बनाम/ Vs.	M/s. Sundaram Finance Ltd. 21, Patullos Road, Chennai – 600 002.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAACS-4944-A		
(पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri R. Vijayaraghavan, (Advocate) - Ld. AR
Department by	:	Shri V. Nandakumar, CIT –Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	10-04-2024
घोषणाकीतारीख / Date of Pronouncement	:	17-05-2024

आदेश / ORDER

PER BENCH:

1.1 Aforesaid cross-appeals for Assessment Years (AY) 2012-13 to 2014-15 arises out of separate orders of learned first appellate authority. However, the facts as well as issues are substantially the same in all the years and it is admitted position that adjudication in one year shall have equal application to the other years also.

1.2 The Ld. AR, at the outset, placed on record issue-wise chart and submitted that most of the issues are covered by the earlier orders of Tribunal in assessee's own case. The copies of the same have been placed on record. The Ld. CIT-DR also advanced arguments.

1.3 Having heard rival submissions and upon due consideration of relevant material on record including the orders of Tribunal in earlier years, our adjudication would be as under. First, we take up assessee's appeal ITA No.10/Chny/2018 for AY 2012-13 which arises out of the order of learned Commissioner of Income Tax (Appeals)-17, Chennai dated 26.10.2017 in the matter of an assessment framed by Ld. AO u/s 143(3) of the Act on 23.03.2015. The grounds taken by the assessee read as under: -

"1. The order of the Commissioner of the Income Tax (Appeals) is contrary to law, weight of evidence and probabilities of the case.

2. The Commissioner of the Income Tax (Appeals) erred in disallowing notional expenditure of Rs.2,60,53,123/- u/s.14A read with Rule 8D disregarding the fact that no expenditure was actually incurred for earning the exempt income.

3.1 The Commissioner of the Income Tax (Appeals) has erred in invoking the Rule 8D where in it can be done only when there is an expenditure incurred for earning the exempt income whereas in our case there is no expenditure actually incurred for the said purpose.

3.2 Even assuming rule 8D is to be invoked the Commissioner of the Income Tax (Appeals) erred in arriving at the quantum of disallowance. The Appellant company is in the financing business and has availed and disbursed loans in the normal course Of its business activity. It has earned Interest income and incurred interest expenses towards its finance Business the net interest income has been considered as part of its Taxable income. The investments which were made long time back, were made out of own funds and not out of borrowed funds. Notwithstanding the above, the Commissioner of the Income Tax (Appeals) erred in taking the interest expenditure incurred wholly for the purpose of financing business while computing the disallowance under clause (ii) of the Rule 8D.

3.3 The Commissioner of the Income Tax (Appeals) while computing the quantum under clause (iii) of Rule 8D ought to have considered only the investments that earned the exempt incomes during the relevant previous year and not all the investments in equity and preference shares.'

4. The Commissioner of the Income Tax (Appeals) erred in not allowing the claim of the appellant that the amount recovered (Rs.1,95,88,388/-) in respect of bad debts written off in the books of amalgamating companies is not taxable in their hands

4.1 The Commissioner of the Income Tax (Appeals) erred in distinguishing the decision of the Madras High Court in P K Kaimal's case (123 ITR 755) whereas the decision is squarely applicable to the facts of the appellant.

4.2 The Commissioner of the Income Tax (Appeals) erred in observing that the bad debts recovery would be taxable u/s.176 (3A) as income of discontinued business.

5. The Commissioner of the Income Tax (Appeals) erred in coming to the conclusion that for the hire purchase transactions, the interest rate implicit in the transactions i.e. Internal rate of return (IRR) method adopted in the books determines the real income.

5.1 Without prejudice to the above, the Commissioner of the Income Tax (Appeals) erred in not reducing the difference amount of Rs.3,97,50,654/- being the excess of income under ESM basis over IRR method, which was added to

the taxable income by the appellant in the return of income, based on the stand taken in the assessments for earlier years i.e. income taxed on IRR method.

5.2 Without prejudice to the contention of the Assessee that income from Hire Purchase should be assessed under EMI method, the CIT(A) having held that income from Hire Purchase should be assessed under the IRR method, in which case Rs. 3,97,50,654/(offered by the Assessee under EMI method adopted for Income Tax Purposes) has been brought to tax in the earlier years and would not constitute income of the current year and hence required to be reduced from taxable income.

6. The Commissioner of the Income Tax (Appeals) ought to have appreciated the fact that UPS is used only as an integral part of computer and hence it has to be included under the block "Computer" and cannot be included under the block "Plant and Machinery" for the purpose of reckoning the depreciation rates.

7. The Commissioner of the Income Tax (Appeals) ought to have considered the fact that the software development expenses have been capitalized in the books in order to meet the requirement specified in Accounting standard 26 issued by the Institute of Chartered Accountants of India.

7.1 The Commissioner of Income Tax (Appeals) erred in treating the software development costs as capital expenditure and allowed depreciation @ 60% as against the claim of the appellant that it is business expenditure as these are revenue in nature and revenue expenses have to be allowed in the year in which they are incurred.

Ground No.1 is general in nature. In Ground nos. 2 & 3, the assessee is aggrieved by disallowance u/s 14A. Ground No.4 is related with taxability of bad-debts recovery. Ground No.5 is related with methodology to recognize interest income. Ground No. 6 is related with depreciation on UPS. Ground No.7 is related with claim of software development expenses.

2. The assessee being a resident corporate assessee is stated to be engaged as non-banking finance company as well as engaged in the business of hire purchasing and leasing. The assessee filed revised return of income for AY 2012-13 on 29.03.2013 declaring total income of Rs.491.67 crores which was processed u/s 143(1) on 13.06.2014. The case was selected for scrutiny under CASS and notices u/s. 143(2) and

142(1) of the Act were issued on 07.08.2013 and 24.07.2014 respectively. An assessment was framed u/s. 143(3) on 23.03.2015 by ACIT, LTU, Chennai making certain additions / adjustments and disallowances. Upon further appeal, the Ld. CIT(A) granted partial relief to the assessee which has resulted into present cross-appeals before us. The issues which form subject matter of assessee's appeal are adjudicated as under: -

3. Ground Nos. 2 & 3 : Disallowance u/s.14A r.w. Rule 8D:

3.1 The assessee earned exempt dividend income of Rs.34.57 Crores and also earned Profit on Sale of Shares for Rs.1.20 Crores which was also claimed exempt. However, the assessee did not offer any disallowance u/s 14A. Considering the fact that the assessee had made substantial investment of Rs.850.70 Crores during the year which were shown as 'current investments', Ld. AO proceeded to make disallowance u/s 14A r.w.r. 8D. It was also observed by Ld. AO that the assessee was actively involved in purchase and sale of investments / mutual funds. The disallowance would be attracted even if the assessee did not earn any exempt income from a particular investment. The CBDT, vide Circular No. 5/2014 dated 11.02.2014, has clarified this position of law.

3.2 Finally, applying Rule 8D, Ld. AO computed aggregate disallowance of Rs.260.53 Lacs which was interest disallowance u/r 8D(2)(ii) for Rs.1.47 Lacs and indirect expense disallowance u/r 8D(2)(iii) for Rs.259.05 Lacs, being 0.5% of average value of investments. Similar disallowance was made for AYs 2013-14 and 2014-15.

3.3 The Ld. CIT(A) confirmed the disallowance against which the assessee is in further appeal before us.

3.4 The submissions of Ld. AR are two-fold viz. own funds are more than the investments made by the assessee and therefore, no interest disallowance is called for. Secondly, the 0.5% as per Rule 8D(2)(iii) should be computed by considering only those investments which have actually yielded any exempt income during the year. This proposition is stated to have been accepted by Tribunal in earlier year.

3.5 We find that, on similar facts, Tribunal in assessee's own case for AYs 2008-09 to 2010-11 (ITA Nos. 74/Chny/2015 & ors. dated 09.03.2022) accepted both the propositions of Ld. AR. Following consistent stand of Tribunal, we direct Ld. AO to verify whether assessee's own funds are sufficient enough to cover the investment. If so, interest disallowance would not be justified. Further, the indirect disallowance of 0.5% should be computed only on those investments which have yielded exempt income during the year. The grounds, in all the three years, stand allowed for statistical purposes.

4. Ground No. 4 : Recovery of Bad-Debt written off in the books of amalgamating Companies

4.1 The assessee, in its computation of income, reduced taxable income by Rs.195.88 Lacs being amount recovered out of bad-debts written-off in the books of amalgamating companies on the ground that it was exempt / non-taxable. It transpired that the assessee recovered this sum out of bad-debts which were written-off in the books of amalgamating companies. The same was claimed on the ground that recovery of bad-debts should be taxed under the specific provision of Sec. 41(4) and not u/s. 41(1) of the Act. For taxing recovery of bad debts u/s. 41(4) of the Act, the identity of the assessee should be the same who originally claimed deduction of bad-debts written off. This was

as per the decision of Hon'ble Madras High Court in the case of **CIT vs. PK Kaimal 123 ITR 755 (Mad)**. Since the amalgamating company was no more in existence, such recoveries would not be taxable in the hands of the assessee. However, distinguishing the cited case-law, Ld. AO held that Sec. 41(1)(b) of the Act, shall apply to the successor of business also. The bad-debts, having been allowed as expenditure in the predecessor's hand, the successor would be liable to be taxed when the same are recovered. The Ld. AO held that the successor is specifically defined as the amalgamated company. The provisions of Sec. 176(3A) could also be invoked which provide that in case of discontinued business, any sum received thereafter would be deemed to be the income of the assessee. Accordingly, the reduction of taxable income was denied to the assessee in this year as well as in AYs 2013-14 and 2014-15.

4.2 The Ld. CIT(A), following first appellate order for AY 2004-05, confirmed the stand of Ld. AO against which the assessee is in further appeal before us.

4.3 Admittedly, this issue is covered against the assessee by the order of Tribunal in earlier years. In latest decision in ITA Nos.74/Chny/2015 & ors. dated 09.03.2022, at para 5.3, the bench held that after amalgamation, the assessee has all the rights as well as liabilities of amalgamating company which were transferred to it. Such recoveries of bad-debts were nothing but business receipts for assessee and therefore, assessable in its hands. Respectfully, following the same, we dismiss the grounds urged by assessee, in all the three years.

5. Ground No. 5 : Method of recognizing income on hire purchase contracts

5.1 It transpired that to recognize income on hire purchase contracts, the assessee switched over to Internal Rate of Return (IRR) method from Even-Spread Method (ESM) for apportionment of finance charges on hire purchase transactions. The switch over was stated to be as per the requirements of the Accounting Standard (AS-19) on leases issued by the Institute of Chartered Accountants of India (ICAI). However, for income tax purpose, the assessee continued to follow ESM method as done in earlier years. For the current AY, such change resulted in hire purchase finance charges on ESM basis being higher than the income recognized on IRR method in the books to the tune of Rs.397.50 Lacs. Accordingly, the same was offered to tax by the assessee while computing the taxable income. The Ld. AO did not concur with the same.

5.2 The Ld. CIT(A), following the decision of Tribunal for AY 2001-02 in ITA Nos.955 & 829/Mds/2005 dated 31.07.2007 confirmed the stand of Ld. AO against which the assessee is in further appeal before us.

5.3 We find that this issue is covered by the latest order of Tribunal in ITA Nos.74/Chny/2015 & ors. order dated 09.03.2022. The bench, in paras 3.2 and 3.3, considered the decision of Hon'ble High Court of Madras in assessee's own case. The Hon'ble Court had directed Ld. AO to tax the interest income on EMI method or ESM method which was consistently being followed by the assessee and allow consequential relief in accordance with law. Considering the same, similar directions were issued by Tribunal.

5.4 Since facts are pari-materia the same in this year, we issue similar directions to Ld. AO in this year to recognize income on such transactions. The assessee is directed to provide the requisite details. The grounds thus raised stand allowed for statistical purpose.

5.5 This issue arises in assessee's appeals for AYs 2013-14 & 2014-15 also which stand disposed-off on similar lines.

6. Ground No.6: Rate of depreciation on UPS

The assessee claimed depreciation on UPS system @60%. However, Ld. AO restricted the same to 15%. The Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us. We find that this issue has been decided by Tribunal in assessee's favor. In para 13.2 of latest order ITA Nos.74/Chny/2015 & ors. order dated 09.03.2022, Tribunal confirmed first appellate order which allowed depreciation of 60%. Considering the same, this issue is decided in assessee's favor for all the three years.

7. Ground No.7: Nature of Software Development expenditure

7.1 The assessee, in its books, capitalized software development expenses of Rs.2.79 Lacs but claimed the same as revenue expenditure. It transpired that the assessee incurred expenditure of Rs.154.99 Lacs out of which amount of Rs.152.19 Lacs was cost of software which was added to computer block whereas the balance amount represent manpower cost which was claimed as revenue expenditure. The Ld. AO disallowed the revenue expenditure but inadvertently made disallowance of Rs.152.19 Lacs instead of Rs.2.79 Lacs. The Ld. CIT(A) directed Ld. AO to allow depreciation on Rs.152.19 Lacs. No directions have been given qua expenditure of Rs.2.79 Lacs which is the grievance of the assessee.

7.2 The Ld. AR has submitted that depreciation may be allowed on the remaining amount of Rs.2.79 Lacs also. Accepting the same, we direct Ld. AO to allow depreciation on Rs.2.79 Lacs. The corresponding ground

stand partly allowed. The appeal of the assessee for AYs 2012-13, 2013-14 and 2014-15 stands partly allowed.

Revenue's Appeal for AY 2012-13

8. The issues that fall for our consideration are – (i) Treatment of Broken Period Interest; (ii) Disallowance of bad Debts; (iii) Indexation benefit while computing Capital Gains on government securities; (iv) Rate of Depreciation on Motor Vehicles. These are adjudicated as under:

9. Treatment of Broken Period Interest

9.1 It transpired that the assessee was in regular sale and purchase of Government securities. These securities were classified as investment. It was noted that in almost every sale or purchase of securities, capital-loss was booked after taking the benefit of indexation. It was noted by Ld. AO that broken period interest on purchase and sale of securities was accounted as revenue item in the books in accordance with AS-13 issued by ICAI. However, for tax purposes, these items were treated as part of cost / consideration, as the case may be, based on the decision of Hon'ble Supreme Court in the case of **Vijaya Bank (187 ITR 547)**. Accordingly, the resultant gains / losses were offered to tax under the head capital gains. However, Ld. AO opined that the transactions would be assessable as 'business income'. Accordingly, the surplus was reduced from the income of the assessee. The Ld. CIT(A), following first appellate order for AY 2004-05, allowed the assessee's ground. Aggrieved, the revenue is in further appeal before us.

9.2 We find that this issue is subject matter of latest Tribunal order in ITA Nos.74/Chny/2015 & ors. order dated 09.03.2022. The coordinate bench observed that Ld. CIT(A) did not appreciate the facts of the issue properly. The courts have held that if the securities are regularly

purchased and sold, they could be stock-in-trade. Therefore, the matter was remitted back to the file of Ld. AO for fresh examination with a direction to the assessee to place all the material before Ld. AO. Since facts are similar in this year and with a view to enable revenue to take consistent stand in the matter, we remit this issue back to the file of Ld. AO on similar lines. This issue arises in revenue's appeal for AYs 2013-14 and 2014-15 also which stands disposed-off on similar lines. The grounds thus raised stands partly allowed for statistical purposes.

10. Disallowance of bad Debts

10.1 The assessee debited Rs.1432.73 Lacs as bad and doubtful debts. The same were mainly related to the hire purchase and mortgage loan transactions. The assessee relied on the decision of Hon'ble Madras High Court in **CIT vs. Brilliant Tutorials Pvt. Ltd. 292 ITR 399 (Mad)**. However, relying upon the decision of Hon'ble High Court of Madras in **M/s South Indian Surgical Corporation Ltd. V/s CIT (287 ITR 62)** and the decision of Hon'ble Gujarat High Court in **Dhall Enterprises & Engineers Ltd. (207 CTR 729)**, the claim was disallowed as was done in assessment order for AY 2005-06. The Ld. CIT(A), following first appellate order for AY 2005-06, decided this issue in assessee's favor against which the revenue is in further appeal before us.

10.2 We find that this issue has been settled in assessee's favor by coordinate bench in its order ITA Nos.285 & 286/Chny/2015 dated 04.09.2019. The coordinate bench, at para 10.3 of the order, relying upon order for AY 2001-02, dismissed revenue's appeal. Therefore, taking consistent view in the matter, we dismiss the grounds raised by the revenue. Similar issue arises in revenue's appeal for AYs 2013-14 &

2014-15 as well which stand disposed-off on similar lines. In the result, the revenue's grounds, for all these years, stand dismissed.

11. Indexation benefit while computing Capital Gains on government securities

11.1 The next issue is qua grant of indexation benefit by Ld. CIT(A) to the assessee on government securities holding that Bonds and Debentures are distinguishable from government securities. The assessee claimed indexation benefit on government securities. However, Ld. AO denied the same on the ground that all capital assets which are in the nature of debt instruments, excluding capital indexed bonds issued by Government, was not eligible for indexation benefit with the insertion of third proviso to Sec.48. The Ld. CIT(A), following first appellate order for AY 2003-04 allowed indexation benefit. Aggrieved, the revenue is in further appeal before us.

11.2 We find that this issue has been settled in assessee's favor by coordinate bench in its order dated 31.03.2017 in ITA No.284/Chny/15 for AY 2003-04 (para 7 to 13). The bench observed that government securities are not excluded from the definition of capital assets. As per Sec.2(42A), the expression 'securities' shall have the meaning as assigned in Clause-11 of Securities Contract Regulation Act, 1956 which includes government securities also. It was thus concluded by the bench that bonds and securities are distinguishable. The bonds are not freely tradable whereas the securities are freely tradable. The Bonds could not be equated with securities. Further, from plain reading of 3rd proviso to Sec.48. Government securities were not excluded for indexation benefit and only bond or debentures were excluded. Accordingly, the revenue's grounds were dismissed. Facts being pari-materia the same, we dismiss

this ground. This issue arises in revenue's appeal for AYs 2013-14 & 2014-15 as well which stand disposed-off on similar lines.

12. Rate of Depreciation on Commercial vehicles

12.1 The assessee claimed higher depreciation of 50% on leased vehicles. The Ld. AO rejected the claim on the ground that the assessee was involved in the business of finance and leasing and the accelerated depreciation was not available to them. The accelerated depreciation would be available only for those businesses which were running the vehicles on hire.

12.2 The Id. CIT(A) allowed the claim of the assessee by considering item no. 3(via) as inserted in New Appendix-1 (Table of Rates at which depreciation is admissible). w.e.f. 01-04-2009. The relevant observations read as under: -

4.11.1 It is an undisputed fact that the appellant had been all along claiming depreciation on the leased vehicles at the prescribed rate of 15%. Item no.3 (via) was inserted in New Appendix I (Table of rates at which depreciation is admissible) w.e.f. 1.4.2009 by Income Tax (Third Amendment) Rules 2009, and reads as follows:

"New commercial vehicle which is acquired on or after the 1st day of January 2009 but before the 1 day of October 2009 and is put to use before the 1st day of October 2009 for the purpose of business or profession (see paragraph 6 of the Notes below this Table) - 50%"

Paragraph 6 of the Notes

"Commercial vehicle" means "heavy goods vehicle" , "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle" and "medium passenger motor vehicle" but does not include "maxi-cab", "motor cab", "tractor" and "road-roller". The expressions "heavy goods vehicle", "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle" and "medium passenger motor vehicle" "maxi-cab", "motor cab", "tractor" and "road-roller" shall have the meanings respectively assigned to them in section 2 of the Motor Vehicles Act, 1988."

Admittedly the appellant-company is in the business of leasing of motor vehicles, being motor cars, to various companies and claimed depreciation @15%. In this regard, it is relevant to refer to the decision of the Hon'ble Supreme Court in the case of CIT vs Shaan Finance (P) Ltd (231 ITR 308)(SC) wherein in a similar case the apex Court declared as follows:

When the business of the assessee is leasing of such machines, the machines so leased out are being used for the purpose of the assessee's business. The income by way of hire charges which the assessee receives is also taxed as business income of the assessee.

In the case of the appellant it is seen that the business of the appellant involves leasing of motor cars and the lease rentals received are offered to tax as business income.

In view of the above, and respectfully following the view endorsed by the Hon'ble ITAT I hold that the Assessing Officer erred in disallowing the depreciation claimed by the appellant. The Assessing Officer is directed to allow depreciation at the higher rate of 50% for the new motor vehicles acquired between 1.1.2009 and 30.09.2009 and used for the purposes of their business. The appellant succeeds in this ground.

12.3 We are of the considered the Ld. CIT(A) has clinched the issue in correct perspective after appreciating the statutory provisions. The adjudication of Ld. CIT(A), therefore, do not require any interference on our part. The grounds raised by the revenue stand dismissed. This issue arises in AY 2013-14 also which stand disposed-off on similar lines. In the result, revenue's appeal for all the years stand partly allowed for statistical purposes.

Conclusion

13. The assessee's appeals, for all the years, stands partly allowed. The revenue's appeals, for all the years, stands partly allowed for statistical purposes.

Order pronounced on 17th May, 2024

**Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT**

**Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER**

चेन्नई/ Chennai; दिनांक/ Dated : 17-05-2024
JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. Assessee
2. Department
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF