आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 587/CHNY/2024**

निर्धारण वर्ष/Assessment Year: 2012-13

Easyaccess Financial Services Ltd., New No.18, Old No.40, Mussuri Subramaniam Salai, (Oliver Road), Mylapore, Chennai – 600 004.	Vs.	**The Income Tax Officer,** Corporate Ward 2(1), Chennai.
PAN: AABCE 4646G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by	:	Ms. M. Lavanya, FCA & Shri Shrenik Chordia, CA
प्रत्यर्थी की ओर से/Respondent by	:	Shri N. Sanjay Gandhi, JCIT
सुनवाई की तारीख/Date of Hearing	:	13.06.2024
घोषणा की तारीख/Date of Pronouncement	:	14.06.2024

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) in Order No.ITBA/NFAC/S/250/2023-24/1060282095(1) dated 30.01.2024. The assessment was framed by the Deputy Commissioner of Income Tax, Corporate Circle 2(1), Chennai for the assessment year 2012-13 u/s.143(3) r.w.s.147 of

the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 27.09.2017.

2. The first issue in this appeal of assessee is as regards to assumption of jurisdiction by the AO for reopening of assessment u/s.147 r.w.s. 148 of the Act, as the AO during the original assessment proceedings has formed an opinion after seeking explanation and after examining the present issue of factoring of income u/s.143(3) of the Act. Hence, now reopening is bad in law. The assessee also raised the interconnected issue, which is on merits that the CIT(A) erred in confirming the addition made by the AO beig factoring income in the hands of the assessee.

3. Brief facts are that the assessee company is a Non-Banking Finance Company (NBFC) engaged in the business of loan, trade financing, factoring and leasing and registered with the Reserve Bank of India and classified as a loan company non deposit taking systematically. The assessee for the relevant assessment year 2012-13 filed its return of income on 28.09.2012 and subsequently, revised its return of income on 27.03.2014 declaring a total income of Rs.45,35,41,070/-. The original assessment was completed u/s.143(3) of the Act on 15.12.2014 under normal provisions as well

as under MAT. Subsequently, the AO noticed that the assessee purchased receivables towards discount from the customer and pays amount which is net of factoring discounting charges and in relevant assessment year 2012-13 relevant to financial year 2011-12, discount equivalent to the interest and accrual of this certain amount of Rs.285.77 lakhs has escaped assessment and hence, notice u/s.148 of the Act for reopening of assessment u/s.147 of the Act was issued on 28.03.2017. Apart from the above issue, there were two other issues of commission to directors of Rs.10.50 lakhs and contribution towards CSR initiatives amounting to Rs.18.50 lakhs claimed as deduction but ultimately these two issues have got settled at the level of the AO or the CIT(A) but now no controversy on these before us. The AO after considering the explanations and documents noted that the assessee purchases receivables to discount from the customer and pays amount which is net of factoring/discounting charges and hence, the method of recognition of revenue by the assessee with regard to bill factoring will not acceptable for the reason that the assessee is reducing part of the factoring income corresponding to the unexpired period of discount and the income to the extent of Rs.285.77 lakhs had escaped assessment. Therefore, the AO following the decision of Hon'ble Madras High Court in the case of TVS Finance and Services Ltd., vs.

JCIT reported in 318 ITR 435 held that income accrues on the date of discounting and discount is equivalent to the interest and therefore, added a sum of Rs.285.77 lakhs. Aggrieved, assessee preferred appeal before the CIT(A) on reopening as well as on merits.

4. The CIT(A)-NFAC on reopening, dismissed the ground of assessee as under:-

> *"6.2 Ground No.2 is against the initiation of proceedings u/s 147 when there was no failure on the part of the assessee in truly and fully disclosing matieral facts. It is seen that the notice for reopening AY 2012-13 was issue don 28.30.2017 and hence the action was taken within 4 years from the end of the relevant AY. Thus the condition of there being a need for non-disclosure of material facts by the assessee is not attracted. Ground no. is dismissed."*

On merits, the CIT(A)-NFAC following the decision of Hon'ble Madras High Court in the case of TVS Finance and Services Ltd., *supra* dismissed the assessee's ground by observing in para 6.4 as under:-

> *"6.4. I find the above decision is squarely applicable to the facts of the present case. In the written submission, the appellant has relied upon the decision in the case of Tamilnadu Mercantile Bank Limited [2007] 291 ITR 137 to contend that in past years no such disallowance was made and as its method of keeping books were accepted in past years, in this year the AO was wrong in taking a different view. It is trite law that the principle of res judicata does not apply to income tax proceedings. Hence this plea is rejected and in view of the judicial principle laid down by the jurisdictional Hon'ble Madras High Court in the case of TVS Finance and Services Ltd., the addition made by the AO of Rs. 2,85,77,000/- on account of factoring income is sustained and ground no. 3 is dismissed.*

Aggrieved, now assessee is in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. Brief facts narrated by ld.AR for the assessee before us are that during the course of original assessment proceedings, the AO specifically required the assessee to file note on factoring charges and details of un-matured factoring charges and advances from customers. This query was raised by the AO on 21.11.2014 and these details were filed before the AO on 05.12.2014. The ld.AR for the assessee drew our attention to the note, which is enclosed as Annexure -3 to the reply wherein income from factoring of receivables is explained and the relevant reads as under:-

Annexure-3
Income from factoring of receivables
This constitutes factoring of receivables from the customers at a discount.

Factoring transaction involves purchase of receivables at a discount by the factor from its customer. While purchasing the receivables, the factor pays its customer the amount which is net of factoring charges

Easyaccess Financial Services Limited (EFSL) does factoring of receivables and pays to customer the amount which is net of factoring charges. (i.e. The discount amount / factoring charges are deducted from the gross value of receivables factored while making the payment to the customer).

As the discount / factoring charges accrue over the credit period of the factored receivables and is a period based income, such income is recognized over the credit period of the receivables.

At the end of the financial year, such of those factoring income which represents the incomes relating to future periods, constitutes un-matured factoring charges and grouped under current liabilities.

Recognition of income over the credit period of the receivables ensures incomes recognized in line with the costs that are incurred for sourcing the funds by the factor to pay for the factored receivables.

Borrowing costs are a period based cost that are recognized only to the extent of costs linked to amounts borrowed and accrues over the period of borrowing.

Recognizing the factoring income over the period of the receivable ensures matching concept between income and expenditure, which is the basis for mercantile system of accounting

Note:
If factoring charges are to be recognized as upfront income, there would be a mismatch between the factoring income and borrowing costs, as such borrowing costs would have got recognized only to the extent of amounts borrowed for the period till the Balance Sheet date even though the due date of such borrowing falls after the Balance Sheet date. This will contradict the principles of mercantile system of accounting

5.1 The ld.AR filed complete details of un-matured factoring charges as on 31.03.2012 and the details are now enclosed in assessee's paper-book at pages 6 to 9. The ld.AR for the assessee stated that this factoring charges is recurring income year after year and assessee is disclosing this income from the beginning and the Revenue in all the years have accepted this income as it is being factoring charges disclosed by assessee on accrual basis. The ld.AR for the assessee filed copy of assessment order framed by the Department u/s.143(3) dated 11.03.2014 for the assessment year

2011-12. The ld.AR stated that in assessment year 2011-12, although scrutiny assessment was happened but no addition on this account was made and factoring charges were accepted as it is. The ld.AR for the assessee also filed chart of factoring charges of the relevant assessment year 2012-13, wherein un-matured factoring income as on 31.03.2012 recognized during the assessment year 2013-14. The chart reads as under:-

Easyaccess Financial Services Limited
PAN :AABCE4646G
Assessment year 2012-13
Previous Year 2011-12
Summary of recognition of factoring income

Particulars	*Unmatured Factoring Income as on 1st Apr.2011 – income recognized during AY 2012-13*	*Income received during AY 2012-13 out of factoring transactions*	*Unmatured Factoring Income assessee on 31st Mar.2012- income recognized during AY 2013-14*	*Income recognized during AY 2012-13 out of factoring transactions*
Redington	*4,90,84,385*	*17,67,03,681*	*1,54,54,146*	*21,03,33,920*
Others	*1,35,14,715*	*20,39,02,145*	*1,31,22,853*	*20,42,94,007*
Total	*6,25,99,100*	*38,06,05,826*	*2,85,76,999*	*41,46,27,927*

5.2 Thereafter, the ld.AR took us through the note to the financial statement for the year ended 31.03.2013 and showed us that the un-matured factoring income as on 31.03.2012 of Rs.285.77 lakhs was disclosed in next year i.e., 2013-14 and this un-matured

factoring income reduced to 51.00. The relevant schedule of 'other current liabilities' is as under:-

3.6 Other Current Liabilities		*Rs. In lakhs*
	March 31, 2013	*March 31, 2012*
Un-matured factoring income	*51.00*	*285.77*
Interest received in advance from customers	*553.44*	*945.45*
Statutory liabilities	*10.60*	*33.43*
Total	*615.04*	*1,264.65*

5.3 The ld.AR stated that this income of Rs.285.77 lakhs out of which, whatever is accrued has already been disclosed of in assessment year 2013-14. Apart from this, the ld.AR took us through the various account statements, wherein revenue recognition method is given and assessee is following Accounting Standard 19 and as per AS-19, the assessee has recognizing its revenue which is as per accounting standard formulated by ICAI. The ld.AR for the assessee also stated that the reliance placed by the AO and the CIT(A)-NFAC on the decision of Hon'ble Madras High Court in the case of TVS Finance and Services Ltd., *supra,* is without basis wherein the Hon'ble Madras High Court in the case of CIT vs. Tamilnadu Mercantile Bank Ltd., reported in [2007] 291 ITR 137 has categorically recorded the finding that even after deletion of section 18 of interest on securities, which was taxable only on specified dates when it becomes due for payment and not on accrual basis.

The Hon'ble Madras High Court in the case of Tamilnadu Mercantile Bank Ltd., held that there was no change in the method of accounting by the assessee. The AO accepted the method of accounting followed by the assessee during the earlier assessment years but without any change in circumstances, changed them method of assessment during the financial years in question, which was unsustainable. Even though Section 18 was deleted, the assessee was taxable for interest on securities only on specified dates when it became due for payment, in view of third proviso to section 145(1) which was in force during the relevant assessment years, as well as in the light of the well settled principles laid down in various decisions. Now, the ld.AR for the assessee also relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Shoorji Vallabhdas and Co., reported in [1962] 46 ITR 144, wherein it is held as under:-

> "*Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a hypothetical income, which does not materialize.*"

6. We have gone through the entire materials placed before us, which was filed during the course of original assessment proceedings. Now, we have to go reasons recorded for reopening of

assessment and the relevant reasons are reproduced as it is in the assessment order, which reads as under:-

The assessment in this case was completed on 15-12-2014 u/s 143(3) of the Income Tax Act. As against revised returned income of Rs. 45,04,21,071/-, the assessment was completed and the assessed at an income of Rs. 45,36,29,840/-.

Assessee is mainly engaged in bill discounting/factoring activity. The assessee purchases receivables to a discount from the customer and pays amount which is net of factoring/discounting charges. At the end of FY, assessee is reducing part of the factoring income corresponding to the un-expired period of discount and income taken out during the year is Rs.285.77 lakhs. As held by Hon'ble Madras High court in TVS Finance and services Ltd VS JCIT (318 ITR 435) under similar circumstances, income accrues on the date of discounting. Discount is equivalent to the interest and accrual of this is certain and arises on the date of discount itself and such income cannot be postponed or spread over the period of discount. Therefore, the amount of Rs. 285.77 lakhs should have been brought to tax in AY 2012-13.

During A.Y. 2009-10, a sum of Rs.10.50 lakhs paid as commission to directors was disallowed. The assessee has made a similar commission payment of Rs. 27 lakhs during the year to the very same persons although the very same circumstances continued. Even assessee could not demonstrate any reasons for making such payments and their specific contributions. The persons, the nature of payments and the circumstances remaining the same, the amount of Rs. 27.00 lakhs paid as commission to directors should have been disallowed.

In the P &L A/c assessee claimed deduction of Rs. 18.50 lakhs being "Contribution towards CSR initiatives". In fact CSR expenses became mandatory only by virtue of sec. 135 of the Companies Act, 2013 which was not in operation during the previous year. Mere fact that indirectly assessee earned goodwill of the general public does not imply that the expenditure was incurred for business purposes and such expenditure is not deductible u/s 37 as held in Malayala Manorama Co.Ltd. Vs CIT(Ker) 284 ITR 69 and Nahar Spinning Mills Ltd. vs CIT (P&H) 226 Taxman 364. While such philanthropic activity are laudable, it perse cannot constitute deductible business expenditure and assessee has to prove the corresponding expediency in making out such donations as held in CIT Vs Bharat Heavy

Electrical Ltd. (Del) 352 ITR 88 and CIT & Anr Vs Wipro Ltd. (Kar) 360 ITR 658.

The above amount of Rs. 331.27 lakhs being represents income escaped under various heads and is to be brought to tax. In view of reasons mentioned above, the AO had reasons to believe that your income for AY 2012-13 had escaped assessment and notice u/s 148 was issued."

From the above reason and the material placed before AO by the assessee during original assessment proceedings, we noticed that the entire details were called for by the AO during scrutiny assessment by raising a specific query and assessee produced complete lot of factoring income including the income disclosed year after year as and when it is actually accrued. In our view, this reopening is nothing but change of opinion and moreover, there is no tangible material which has come to the notice of the AO after framing of original assessment u/s.143(3) of the Act. The Hon'ble Supreme Court in the case of CIT Vs Kelvinator of India Ltd., reported in (2010) 320 ITR 561 (SC) and held as under:-

On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1st April, 1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re- open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also

keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No.549 dated 31st October, 1989, which reads as follows:

> "7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression `reason to believe' in Section 147.--A number of representations were received against the omission of the words `reason to believe' from Section 147 and their substitution by the `opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, `reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression `has reason to believe' in place of the words `for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same."

For the afore-stated reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs."

6.1 As regards to change of opinion, the Hon'ble Delhi High Court in the case of Ralson India vs. DCIT reported in [2014] 366 ITR 103 has held that "the change of opinion cannot *per-se* be reason to reopen assessment because in the original proceedings once the AO has called for certain material and after taking into account or

consideration has framed the assessment and if the concept of change of opinion is to be removed, as was urged by Revenue, the AO would be left with unbridled and arbitrary powers" and accordingly, reopening was quashed by the Hon'ble Delhi High Court by holding the change of opinion. In the present case before us also, the AO has made enquiry about factoring charges and assessee has completely established that whatever factoring charges accrued in this year are disclosed and balance was carried forward and this amount of Rs.285.77 lakhs was mainly disclosed in assessment year 2013-14. Even the assessee argued the concept of consistency in view of the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT reported in [1992] 193 ITR 321 (SC), wherein it is held as "strictly speaking, res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year." We noted that the AO once has called the entire details in regard to factoring income and examined all the aspects while framing assessment originally u/s.143(3) of the

Act, this is merely a change of opinion and the AO has no reason to reopen the assessment. As regards to merits of the case also, the assessee is consistently following this accounting standards and disclosing the income as and when it is getting accrued consistently and Revenue is accepting the same and even in scrutiny assessment u/s.143(3) of the Act. Even otherwise, on merits, the assessee is following Accounting Standard 19 and disclosing the income in the books of accounts accordingly. Hence on jurisdictional issue we quash the reopening as well as the issue on merits is also covered in favour of assessee by the decision of Hon'ble Madras High Court in the case of Tamilnadu Mercantile Bank Ltd., *supra.* In term of the above, we allow the appeal of assessee on jurisdiction as well as on merits.

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

Order pronounced in the open court on 14th June, 2024 at Chennai.

Sd/-	Sd/-
(एस. आर. रघुनाथा)	(महावीर सिंह)
(S.R. RAGHUNATHA)	**(MAHAVIR SINGH)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 14th June, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.