आयकर अपीलीय अधिकरण,'बी'न्यायपीठ,चेन्नई

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

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर.रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./**ITA Nos.: 07, 08 & 09/Chny/2018**
निर्धारणवर्ष / Assessment Years: 2010-11, 2011-12 & 2011-12

Sundaram Finance Limited, 21, Patullos Road, Chennai – 600 002. **[PAN: AAACS-4944-A]**	v.	Deputy Commissioner of Income Tax, Large Taxpayer Unit -1, Chennai – 34.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./**ITA Nos.: 26, 27 & 28/Chny/2018**
निर्धारणवर्ष / Assessment Years: 2010-11, 2011-12 & 2011-12

Deputy Commissioner of Income Tax, Large Taxpayer Unit -1, Chennai – 34.	v.	Sundaram Finance Limited, 21, Patullos Road, Chennai – 600 002. **[PAN: AAACS-4944-A]**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./**ITA No.: 79/Chny/2022**
निर्धारणवर्ष / Assessment Years: 2015-16

Sundaram Finance Limited, 21, Patullos Road, Chennai – 600 002. **[PAN: AAACS-4944-A]**	v.	Deputy Commissioner of Income Tax, Large Taxpayer Unit-1, Chennai – 34.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./**ITA Nos.: 80 & 81/Chny/2022**
निर्धारणवर्ष / Assessment Years: 2016-17 & 2017-18

Sundaram Finance Limited, 21, Patullos Road, Chennai – 600 002. **[PAN: AAACS-4944-A]**	v.	Assistant Commissioner of Income Tax, Circle -1, Large Taxpayer Unit, Chennai – 34.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./**ITA No.: 636/Chny/2023**
निर्धारणवर्ष / Assessment Year: 2018-19

Sundaram Finance Limited, 21, Patullos Road, Chennai – 600 002. **[PAN: AAACS-4944-A]**	v.	Deputy Commissioner of Income Tax, Circle -1, Large Taxpayer Unit, Chennai – 34.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri. R. vijayaraghavan, Advocate
प्रत्यर्थीकीओरसे/Respondent by : Shri. V. Nandakumar, CIT

सुनवाई की तारीख/Date of Hearing : 29.05.2024
घोषणा की तारीख/Date of Pronouncement : 28.06.2024

आदेश /O R D E R

PER BENCH:

1.1 Aforesaid cross-appeals for Assessment Years (AY) 2010-11, 2011-12, 2015-16, 2016-17, 2017-18 & 2018-19 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.

ITA No.7/Chny/2018 for AY 2010-11:

2. First, we take up assessee's appeal ITA No.7/Chny/2018 for AY 2010-11 which arises out of the combined order of learned Commissioner of Income Tax (Appeals)-17, Chennai dated 27.10.2017 in the matter of an assessment framed by AO u/s 143(3) r.w.s.147/28.03.2016.

2.1 The following grounds of appeal have been made by the Assessee :

Ground No.1 - is general in nature.

Ground No. 2& 3 - the assessee is aggrieved by treating the software development expenses as capital expenditure and allowing depreciation @ 60%, against claim of revenue expenditure.

3. 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 return of income for AY 2010-11 and 2011-12 and declared the income and other details of assesement are given below :

Particulars	**A Y 2010-11**
Income declared in Return of	Rs.255.49 Cr.

Income filed	
Scrutiny Assessement - CASS	Yes
Order U/s.143(3)	18/02/2013
Income Assessed to Tax	Rs.342.92 Cr.
Order U/s.143(3) r.w.s 147	28/03/2016
Income Assessed to Tax	Rs.344.06 Cr.

The assessments as above were framed u/s. 143(3)r.w.s. 147 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:-

4. Ground Nos.2&3:Nature of expenditure - Software Development for the A Y 2010-11:

4.1.The assessee, in its books, capitalized software development expenses of Rs.344.19Lacs but claimed the same as revenue expenditure. It transpired that the assessee incurred expenditure of Rs.344.19Lacstowards cost of software which was added to computer block in Fixed assets, which was claimed as revenue expenditure in the computation of Total Income. The Ld. AO disallowed the revenue expenditure.

4.2 The Ld. AR has submitted that the software development expenditure be allowed as revenue expenditure, as against impugned disallowance of expenditure and granting of depreciation

by treating the Software development expenditure as capital expenditure.

4.3 The issue has already been decided in the assessee's own case by the co-ordinate bench of the Tribunal in ITA No.10 to 12/2018 dated 17.05.2024 for the A.Y. 2012-13 to 2014-15, by following the decision of the Tribunal we dismiss the ground by upholding the decision of the ld.CIT(A) of software development expenditure as capital asset and allowing the deprecation on the same @ 60%. The corresponding ground stand dismissed.

4.4 Respectfully, following the same, we dismiss the grounds urged by assessee, in the Assessment year 2011-12.

ITA No.8/Chny/2018 & ITA No.9/Chny/2018 for AY 2011-12

5. Now, we take up assessee's appeal ITA No.8/Chny/2018&No.9/Chny/2018 for AY 2011-12 which arises out of the combined order of learned Commissioner of Income Tax (Appeals)-17, Chennai dated 27.10.2017 in the matter of an assessment framed by AO u/s 143(3) dated 27/03/2014 and 143(3) r.w.s.147 / 09.12.2016.

6. The following grounds of appeal have been made by the Assessee :

(i) Recovery of bad debt written off in the books of amalgamating companies

(ii) Depreciation on UPS

(iii)Disallowance u/s. 14A r.w.r. 8D of the Act

(iv) Interest Income or ESM/IRR method

(v) Inclusion of notional income related to NPA as income

(vi) expenditure on presentation to employee and customers

(vii) Adhoc disallowance of expenditure on Pooja @office premises and branch opening.

Particulars	**AY 2011-12**
Income declared in Return of Income filed	Rs.362.62 Cr.
Scrutiny Assessement - CASS	Yes
Order U/s.143(3)	27/03/2014
Income Assessed to Tax	Rs.424.54 Cr.
Ld. CIT(A) Order	26.10.2017
Order U/s.143(3) r.w.s 147	09/12/2016
Income Assessed to Tax	Rs.492.29 Cr.
Ld. CIT (A) Order	27.10.2017

7. Recovery of Bad-Debt written off in the books of amalgamating Companies:

7.1 The assessee, in its computation of income, reduced taxable income by Rs.599.49 Lacsbeing 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, the 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 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 2015-16, 2016-17, 2017-18 and 2018-19.

7.2 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.

7.3 Admittedly, this issue is covered against the assessee by the order of Tribunal in earlier years. In latest decision in ITA No.10 to 12/2018 dated 17.05.2024 for the A.Y. 2012-13 to 2014-15, at para4.3, 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 other three A.Ys. i.e. 2015-16, 2016-17& 2017-18 also.

8. Rate of depreciation on UPS:

8.1 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'sfavour. In para 6 of latest order ITA No.10 to 12/2018 dated 17.05.2024 for the A.Y. 2012-13 to 2014-15, the Tribunal confirmed first appellate order which allowed depreciation of 60%. Considering the same, this issue is decided in assessee'sfavour for in other three A.Ys. i.e. 2015-16, 2016-17 & 2017-18 also.

9. Disallowance u/s.14A r.w. Rule 8D:

9.1 The assessee earned dividend income of Rs.58.52 Crores and also earned Profit on Sale of Shares of Rs.2.18 Crores, totaling to Rs.60.71 crores and same was claimed as exempt U/s.10 of the Act. However, the assessee did not offer any disallowance u/s 14A. Considering the fact that the assessee had made substantial investment of Rs.945.99 Crores during the year which were shown as 'current investments, the AO proceeded to make disallowance u/s 14A r.w.r. 8D. It was also observed by the 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.

9.2 Finally, applying Rule 8D, the AO computed aggregate disallowance of Rs.222.23Lacs which was interest disallowance u/r 8D(2)(ii) and indirect expense disallowance u/r 8D(2)(iii) being 0.5% of average value of investments. Similar disallowance was made for AYs 2015-16 and 2016-17.

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

9.4 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.

9.5 We find that, on similar facts, Tribunal in assessee's own case in ITA Nos.10 to 12/2018 dated 17.05.2024 for the A.Y. 2012-13 to 2014-15, 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 other two years i.e. AYs 2015-16 and 2016-17 also, stand allowed for statistical purposes.

10. Method of recognizing income on hire purchase contracts:

10.1 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 offinance 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.510.90Lacs. Accordingly, the same was offered to tax by the assessee while computing the taxable income. The same was accepted by the AO.

10.2 The Ld. CIT(A), has also accepted the view of the AO, since the ground of appeal has not been raised by the assessee for the A.Y.2011-12. However, the Ld. ARsought a reduction from total income stating that the said amount of Rs.510.90 lacs has been brought to tax in the earlier years and would not constitute income of the current year.

10.3 We find that this issue is covered by the latest order of Tribunal in ITA Nos.10 to 12/2018 dated 17.05.2024 for the A.Y. 2012-13 to 2014-15. The bench, in paras5.3 and 5.4, 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.

10.4 Since facts are pari-materia the same in this year, the Assessing Officer and the Ld.CIT(A) have already affirmed the income offered to tax to the tune of Rs.510.90 lacs is in consistency with the method of income followed in hire purchase finance charges as correct. In our considered view, the claim of the assessee for a reduction from total income of Rs.510.90 lacs which was brought to tax in the earlier years is not acceptable and therefore the ground of the assessee is dismissed.

11.Inclusion of Notional Income related to NPA as income for the A Y 2011-12:

11.1 The Assessee has been following the practice of recognizing income on NPAs only when it is actually realized. The net amount that was not recognized as income used to be added to the income in the earlier years in the assessment stage. But the same has been deleted by the appellate authorities and further appeal has been preferred by the department however, as of now after giving

effect to the order of the CIT(A), the income that has suffered tax is the actual realization from NPA.

11.2 In the current year, the net realization from NPA is a credit figure of Rs.3,57,93,775/-. The Assessing officer has rejected the claim of the assessee to deduct the same from the Income, stating that the same would become double deduction.

11.3 The Ld.CIT(A), up holds the action of the assessing officer.

11.4 The Ld. AR of the assessee stated that the action of assessing officer will be appropriate only if uniformly the income is assessed for all the years. Since, the department is still pursuing before the High Court for earlier years contending that notional income on the basis of contract should be assessed. If that stand is upheld then the same amount cannot be taxed in the year of receipt.

11.5 We have perused the issue and we consider that there is no reason to interfere in the decision of lower authorities and dismiss the ground of the assessee.

12.Disallownace of Pooja Expensesfor the A Y 2011-12:

12.1 The assessee has claimed an expenditure of Pooja Expenses, which represent expenses incurred during branch opening ceremonies and customary poojas held at their office premises. These expenditure are spent by the assessee as customary

expenditure in the course of business on day to day operations as a practice/ritual.

12.2 The ld. AR stated that in the facts of the case, the assessee is having huge turnover on year on year basis and has earned a profit of around Rs.600 to Rs.700 Crores every year and paying the taxes to exchequer promptly and the expenditure claimed towards pooja expenses of Rs.34.32 lakhs is a miniscule and the same has been spent on the strong belief on the super natural power to the success of the business activity carried out by the company and for the welfare of the people working for the assessee company. Therefore, the pooja expenses claimed is eligible to be a business expenditure and the same be allowed fully, as against the allowing of only 50% by the Ld. CIT(A) without any basis. The ld. AR also relied on the decision of Hon'ble High Court of P&H in the case of **Atlas cycle Industries Ltd Vs.CIT[1982] 134 ITR 458**, wherein the Hon'blecourt held that "periodic grants to management of temple constructed for employees are allowable as business expenditure" and prayed for allowing the pooja expenses claimed as business expenditure.

12.3 The assessee company has developed a custom carrying out pooja on regular basis & on the occasions of special festivals apart from conducting pooja at the time of branch opening ceremonies. Such expenditure are rightly claimed as business expenditure as these expenses are made in the interest and welfare of the Assessee and its employees.

12.4 On perusal of facts and circumstances of the case and considering the huge turnover,Profits declared, customer base and employees of the assessee company, the amount of expenditure spent forpooja expenses as a commercial expediency to the business and claiming such expenditure is reasonable. The amount spent towards Pooja expenses is a miniscule compare to the turnover and profits of the assessee. Considering the decision of the high court of P&H in the case of Atlas cycle Industries Ltd Vs.CIT, the claim of pooja expenses claimed by the assessee cannot be denied as inadmissible expenditure. Therefore, we are of the considered view that the said expenditure is spent by the assessee company is a commercial expediency and claiming the same as business expenditure cannot be termed as personal in nature and hence appeal of the assessee is allowed by dismissing the decision of by the lower authorities. Hence, the assessee succeeds in this ground and allowed.

12.5 This issue arises in assessee's appeals for AYs 2015-16, 2016-17, 2017-18 and 2018-19 also. Facts remaining the same, the assessee's ground for all these years stands allowed.

13. Disallowance of presentation to employees / customers :

13.1 The assessee has claimed an expenditure on presentation to employees and customers, which has been spent towards gifts and compliments given to the customers and employees on the special occasions like marriage, opening ceremonies and anniversaries. These expenditure are spent by the assessee as customary

expenditure in the course of business to maintain the good will with the customers and bondage with the employees to the organization.

13.2 The ld. AR argued that as stated in the facts of the case, the assessee is a non-banking finance company and engaged in the business of Hire purchasing and leasing finance. The assessee has a huge number of customers and also employees to achieve the huge turnover on year on year basis and has earned a profit of around Rs.600 to Rs.700 Crores every year.

13.3 The assessee company has developed a custom of giving gifts and compliments to its employees and customers on the special occasions like marriage, opening ceremonies and anniversaries. Such expenditure are rightly claimed as business expenditure as these expenses are made to develop the good will as a commercial expediency.

13.4 On perusal of facts and circumstances of the case and considering the huge turnover, Profits declared, customer base and employees of the assessee company, the amount of expenditure spent on account giving gifts and compliments to employees and customers as a commercial expediency to the business and claiming such expenditure is reasonable. Therefore, we are of the considered view that the said expenditure is spent by the assessee company is a commercial expediency and claiming the same as business expenditure cannot be termed as personal in nature and hence appeal of the assessee is allowed by dismissing the decision

of disallowing the same by the lower authorities. Hence, the assessee succeeds in this ground and allowed.

13.5 This issue arises in assessee's appeals for AYs 2015-16, 2016-17, 2017-18 and 2018-19 also. Facts remaining the same, the assessee's ground for all these years stands allowed.

Revenue's Appeal ITA NO.26 to 28/2018 for AYs 2010-11& 2011-12

14. The issues that fall for our consideration are –

(i) Rate of Depreciation on commercial Vehicles @50%

(ii) loss on sale of repossessed assets

(iii) Depreciation on software development

(iv) Depreciation on computer software

(v) Disallowance of bad Debts

(vi) Non-Compete fees as revenue expenditure

(vii) Business origination cost

These are adjudicated as under:

15. Rate of Depreciation on Commercial vehicles

15.1 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.

15.2 The ld. 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 1day 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'bleSupreme Court in the case of CIT vsShaan Finance(P)Ltd (231ITR 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 appellantinvolves 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.

15.3 We are of the considered view that 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.

15.4 This issue arises in AY 2011-12 also which stand disposed-off on similar lines. In the result, revenue's appeal on this groundfor both the years stand dismissed.

16. Loss on sale of repossessed assets allowed as expenditure :

16.1 The Assessing officer observes that out of the total amount of Rs.1367.68 Lakhs and Rs.902.10 Lakhs claimed as loss on sale of repossessed assets for the A Ys.2010-11 and 2011-12 respectively, an amount of rupees 156.36 and 158.02 was only added back Hindi computation of income statements, therefore, the balance amount of 1211.32 and 744.08 was Brock to tax by the assessing officer for the assessment years 2010 11 under 2011 12 respectively.

16.2 It is the view of the assessing officer that 'loss on sale of repossessed assets' is a capital loss and as per the provisions of section 43(6)(c)(i), the WDV ofthe block of the assets will be computed by adjusting the block accordingly. In contrast the appellant contends that 'loss on sale of repossessed assets' is nothing but short realization of receivables that has been written off as bad debts. Therefore, the loss on repossessed assets was claimed in full, whereas, the loss on fixed assets owned by the appellant company was only added back in the computation of income statements. The appellant, further contended that 'loss on repossessed assets' was from current assets and not from fixed assets as considered by the assessing officer.

16.3 The Ld.CIT (A) by following the view endorsed by the Hon'ble High Court of Delhi in the case of Citicorp Maruthi finance limited (ITA numbers 1712 and 1714 / 2010 dated 29.11.2010) the disallowance of Rs.156.36 Lakhs and Rs.158.02 Lakhs made for the Assessment years 2010-11 and 2011-12 respectively deleted.

16.4 The Revenue contends that, the impugned action of the Ld.CIT (A) is bad in law and needs to be reversed.

16.5 We have heard the rival contentions and noted that the company has debited an expenditure of loss on sale of assets which includes both loss on sale of assets from the 'block of assets' and also loss on sale of 'repossessed assets'. The assessee has disallowed the loss on the sale of block of assets, since the

depreciation on the block of assets has been claimed by the assessee on year-on-year basis.

16.6 However, the assessee is into business of financing for purchase of assets to customers and in case of default in repayment, such assets are repossessed as per the terms of agreement and or sold to the third parties. If, the amount realized on sale of repossessed assets falls short of the principal amount outstanding, it results in a loss which is nothing but a bad debt which has been written off in the books as 'loss on sale of repossessed assets'. Since, assets are treated as stock in trade the resulting on disposal of the same is a trading loss and an admissible business deduction as a bad debt written off u/s. 36(1)(vii) of the Act.

16.7 Considering the facts and circumstances of the case, we are inclined to uphold the decision of the ld.CIT(A) of deleting the disallowance of expenditure by the AO, and direct the AO to verify the correctness of the claim of 'loss on sale of repossessed assets' and allow the expenditure in accordance with law. Therefore, this ground of the revenue is dismissed.

16.8 This issue arises in AY 2011-12 also which stand disposed-off on similar lines. In the result, revenue's appeal on this ground for both the years stand dismissed.

17. Depreciation on Software Development :

17.1 We find that an identical issue has been considered by us in appellant's own case for assessment year 2010-11 in ITA No. 7/Chny/2018. The facts are identical for the year under consideration. The reasons given by us in preceding paragraph no. 4 to 4.4, shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we dismiss the ground raised by the revenue for assessment year 2010-11.

18. Depreciation on Computer Software :

18.1 The assessee has claimed depreciation of Rs.48,48,510/- @60% on computer software purchased of Rs.96,04,553/- as an expenditure. The AO, restricted the depreciation to 25% and thereby made a disallowance of Rs.28,98,298/- during the AY 2010-11.

18.2 The ld.CIT(A) has deleted the disallowance as the depreciation on computers including computer software are eligible @60% of depreciation.

18.3 We find that there is no infirmity in the order of the ld.CIT(A) in deleting the disallowance of depreciation made by the AO. The admissibility of depreciation @60% for **computers including computer software** has been clearly mentioned inentry no. 5 under the head 'machinery and plant' of the table of the rates at which the depreciation is admissible (new appendix-I u/r. 5 of the I.T. Rules, 1962). This issue has already been endorsed by the coordinate bench of Chennai Tribunal in the case of ACIT vs TNQ Books and

Journals Pvt Ltd in ITA No. 330/Mds/2016. Therefore, respectfully following the decision of the Jurisdictional bench of the ITAT, we hold that allowing the appeal of the assessee for claiming the depreciation at 60% by the ld.CIT(A) is in accordance with law and does not require interference. Hence, the ground of the revenue is dismissed.

19. Disallowance of bad Debts;

19.1 The assessee debited Rs.2866.37 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.

19.2 We find that this issue has been settled in assessee'sfavour by coordinate bench in its order ITA Nos.10 to 12/2018 dated 17.05.2024 for the A.Y. 2012-13 to 2014-15. 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.

20. Non Compete fees as revenue expenditure for ay 2011-12:

20.1 The assessee has claimed an expenditure of Rs.60 Lakhs towards non-compete fee to Inland Carriers (Bombay). The AO has disallowed the expenditure u/s. 37 of the Act, treating the same as capital expenditure.

20.2 The impugned action of the AO has been deleted by the Ld.CIT(A) by following the decision of Hon'ble Supreme Court in the Guffic cum P ltd Vs.CIT – 332 ITR 602 (SC) and also the Hon'ble High Court of Madras in the case of Carborandum Universal Ltd Vs. CIT 26 Taxmann.Com 268 (Mad), wherein it is ruled that expenditure incurred towards payment of non-compete fee was allowable as a deduction u/s. 37(1) of the Act.

20.3 We heard the rival contentions and considering the facts and circumstances of the case and orders of the authorities below. We note that the assessee has paid an amount of Rs.60 lakhs as non-compete fee Inland Carriers (Bombay), to take over the business of logistics. The ld.CIT(A) has considered the decision of the Hon'ble Supreme Court in the case of Guffic cum P ltd Vs.CIT (Supra), wherein the lordship has declared as under:

> *"The position, in law, is clear and well-settled There is a dichotomy between the receipt of compensation by an assessee for the loss of agency and receipt of compensation attributable to the negative/restrictive covenant. The compensation received for the loss of agency is a revenue receipt, whereas the compensation attributable to a negative/restrictive covenant is a capital receipt.*

Payment received as non-competition fee under a negative covenant was always treated as a capital receipt till the assessment year 2003-04. It is only vide the Finance Act, 2002 with effect from 1-4-2003 that the said capital receipt is now made taxable under section 28(va). The Finance Act, 2002 itself indicates that during the relevant assessment year compensation received by the assessee under non-competition agreement was a capital receipt, not taxable under the Act. It became taxable only with effect from 1-4-2003. It is well-settled that a liability cannot be created retrospectively."

Further, the ld.CIT(A) also relied on Hon'ble High Court of Madras in the case of Carborandum Universal Ltd Vs. CIT (Supra), wherein the ruling has been given as below:

"expenditure incurred towards payment of non-compete was allowable as deduction u/s. 37(1) of the Act. Further, it is not the case of the AO that the expenditure was not incurred for the business purposes of the appellant company."

20.4 By respectfully following the decisions of the Hon'ble Supreme Court and the Jurisdictional High Court, we are of the opinion that the non-compete fee paid by the assessee of Rs.60 lakhs is allowable expenditure u/s. 37(1) of the Act and hence, the ground of the revenue is dismissed.

21. Business Origination Cost:

21.1 The Assessee company paid Commission to direct marketing agents/dealers for procurement of business.This amount represents upfront expenditure incurred in the course of business and termed as'business origin cost' in the books of accounts. The assessee has deducted applicable TDS on such payments and claimed an expenditure of Rs.30.39 crores. The AO has disallowed such

expenditure treating it as capital in nature since it results in increased effectiveness and efficiency of the business.

21.2 The ld.CIT(A) after hearing the assessee and going through the details and records, considered the said expenditure of commission paid to vehicle dealers for sourcing the customers to provide finance is a revenue expenditure. The ld.CIT(A) also noted that it is an initial direct cost incurred for sourcing the finance business in the normal course of company's operations. The commission paid to the dealers/marketing agents after deducting at source in accordance with the provisions of the Act also shows that the said expenditure is in the nature of revenue and hence, the company followed the policy of charging off entire business origination cost to P&L account in the year in which it was incurred. The ld.CIT(A) also observed that the AO in the assessment made for the AY 2007-08 u/s. 143(3) r.w.s. 147 of the Act, no disallowance was made and deleted the disallowance of business origination cost made by the AO of Rs.30.39 crores.

21.3 We find that this issue has been dealt with by tribunal in ITA No.74 to 78/2015 dated 09.03.2022 for the A.Ys.2006-07 to 2010-11. The bench vide paras 6.2 & 6.3 of the order, chose to follow the decision of Hon'ble Apex court in **Taparia Tools Pvt. Ltd. Vs. JCIT (372 ITR 605)** where in it was held that normally revenue expenditure incurred in a particular year has to be allowed in that year and if the assessee claims the full expenditure, department could not deny the same. Finally the claim was allowed.Therefore,

this issue is covered in Assessee'sfavour. We direct the AO to allow the claim. This ground stand allowed.

Conclusion

22. 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 in the open court on 28th June, 2024 at Chennai.

Sd/-	**Sd/-**
(एबी टी वर्की**)**	**(**एस**.**आर**.**रघुनाथा**)**
(ABY T VARKEY)	**(S. R. RAGHUNATHA)**
न्यायिक सदस्य**/Judicial Member**	लेखासदस्य**/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated, the 28th June, 2024
JPV
आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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