आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' 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 अपीलसं./**ITA Nos.:847/CHNY/2020 & 384/CHNY/2023**

निर्धारण वर्ष/Assessment Years: 2012-13 & 2017-18

Cholamandalam Investment & Finance Company Ltd., No.2, Dare House, NSC Bose Road, Parrys, Chennai – 600 001. **PAN: AAACC 1226H**	vs.	**The Deputy Commissioner of Income Tax,** Corporate Circle 1(2), Chennai.
(अपीलार्थी/Appellant)		(Respondent)

&

आयकर अपीलसं./**ITA Nos.:514 & 515/CHNY/2023**

निर्धारण वर्ष/Assessment Years: 2017-18 & 2018-19

The Joint Commissioner of Income Tax (OSD), Corporate Circle-1(1), Chennai.	vs.	**Cholamandalam Investment & Finance Company Ltd.,** No.2, Dare House, NSC Bose Road, Parrys, Chennai – 600 001. **PAN: AAACC 1226H**
(अपीलार्थी/Appellant)		(Respondent)

निर्धारिती की ओर से/Assessee by	: Shri Ajit Jain, CA (Through Virtual) & Shri Kunal Shah, CA
राजस्व की ओर से /Revenue by	: Shri Nilay Baran Som, CIT
सुनवाई की तारीख/Date of Hearing	: 02.08.2024
घोषणा की तारीख/Date of Pronouncement	: 14.08.2024

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee, in ITA No.847/CHNY/2020 for the assessment year 2012-13 is arising out of the order of the Commissioner of Income Tax (Appeals)-1, Chennai in ITA No.74/CIT(A)-1/2015-16 dated 19.02.2020 and the appeals by the assessee & Revenue in ITA Nos.384/CHNY/2023 & 514/CHNY/2023 for the assessment year 2017-18 are arising out of the order of the National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2022-23/1049050726(1) dated 24.01.2023 and the appeal by the Revenue in ITA No.515/CHNY/2023 for the assessment year 2018-19 is arising out of the order of the National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2022-23/1049150445(1) dated 27.01.2023. The impugned assessments were framed by the DCIT / ACIT, Corporate Circle 1(2), Chennai u/s.143(3) of the Income-tax Act, 1961 (hereinafter the 'Act') vide orders dated 18.03.2015 & 31.12.2019 for the assessment years 2012-13 & 2017-18 respectively and by the National e-Assessment Centre, Delhi u/s.143(3) r.w.s. 144B of the Act vide order dated 20.04.2021 for the assessment year 2018-19. The facts and circumstances and the

issue involved in all these appeals are common and hence, by way of this common order, these appeals are being disposed off.

ITA No.847/CHNY/2020, Assessment year 2012-13

2. At the outset, it is noticed that the appeal filed by the assessee is barred by limitation by 185 days as noted by the Registry. It is noticed from Form 36 thatthe order of CIT(A) dated 19.02.2020was communicated to the assessee on 19.02.2020itself. The assessee has to file appeal before the Tribunal against the impugned order on or before 19.04.2020 but assessee actually filed this appeal on 21.10.2020, thereby there was a delay of 185 days. The assessee has filed condonation application for condonation of delay stating that the period is falling under the pandemic period of Covid-19 and the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 has given directions that the delay are to be condoned during this period 15.03.2020 to 14.03.2021 and they have condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022. Since the Hon'ble Supreme Court has condoned the delay during said period, respectfully following the same, we condone the delay and admit the appeal.

ITA No.847/CHNY/2020

3. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the disallowance made by AO in relation to prepaid finance charges amounting to Rs.19,96,29,043/-. For this, assessee has raised following grounds:-

1. Disallowance made for prepaid finance charges amounting to INR 19,96,29,043

On the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in upholding the disallowance in relation to prepaid finance charges amounting to INR 19,96,29,043 relying on the decision of Hon'ble Supreme Court of India in case of Madras Industrial Corp. Ltd vs. CIT.

On the facts and in the circumstances of the case, and in law, the learned CIT(A) erred indistinguishing the decision of Hon'ble Supreme Court of India in case of Madras Industrial Corp. Ltd vs CIT which was dealing with the subject of discount on issue of the debentures, having a different nexus as compared to payment of prepaid finance charges.

On the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in concluding, that, the liability to make the payment for finance charges occurred in the current year but the payment was made to secure the benefit over the tenure of loan.

On the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in appreciating the fact that the prepaid finance charges were to be paid as a pre-condition to obtain the borrowing and were not a contingent liability to be incurred at a future date.

Without prejudice to the above and on the facts and circumstances of the case, and in law, the learned CIT(A) erred in considering the submissions filed by the Appellant to direct the learned AO, that, a deduction to the extent of proportionate prepaid finance charges disallowed in the preceding year is ought to be allowed in the current year to the Appellant."

4. Brief facts are that the AO noticed that the assessee in its computation of income claimed prepaid finance charges amounting to Rs.19,96,29,043/- and he asked to clarify or show-cause as to how the prepaid finance charges are allowable. The assessee submitted amortization schedule of such expenses over the subsequent financial years and claimed that the finance charges are in respect of payments made for availing loan such as processing charges, bank charges and stamping charges. It was also claimed that loan period covers more than one financial year and therefore, on payment basis, the same has been claimed in the computation of income. It was claimed that during the year under consideration, the company has incurred expenses as finance charges paid at the time of obtaining such loss and since the tenure of the loan may extent to more than one financial year, the company amortizes such expenditure in its books of accounts over the tenure of the loan. The assessee drew our attention to Annexure-1 of amortization schedule for addition made in assessment year 2012-13 as under:-

Particulars	Amount (INR)	Amount (INR)
Total payment for prepaid finance charges made in AY 2012-13		39,49,89,459
Amortisation in respective assessment year		
AY 2012-2013	6,25,33,320	
AY 2013-2014	5,43,43,174	
AY 2014-2015	4,61,13,639	
AY 2015-2016	3,93,81,726	

AY 2016-2017	3,37,59,602	
AY 2017-2018	3,37,54,885	
AY 2018-2019	3,33,54,602	
AY 2019-2020	2,71,47,556	
AY 2020-2021	2,55,87,516	
AY 2021-2022	2,55,87,516	
AY 2022-2023	1,34,25,929	
Total amortization for all years		39,49,89,465
Difference		**0**

It was claimed that the entire amount of finance charges was claimed u/s.37(1) of the Act, since it represents the amount expended over the year for the purpose of business of the assessee company. Out of this amount, the assessee company has already debited the prepaid finance charges of Rs.1,953.60 lakhs in its books of accounts and balance amount has been claimed as additional deduction in the tax computation amounting to Rs.1,996.29 lakhs and the detailed working and relevant extract of the computation of income was filed during the course of hearing. But the AO has not accepted the explanation of the assessee and disallowed the prepaid finance charges claimed by the assessee in the computation statement amounting to Rs.19,96,29,043/-. Aggrieved, assessee preferred appeal before CIT(A).

5. The CIT(A) also confirmed the action of the AO by observing in para 6 as under:-

6. Disallowance of Prepaid Finance Charges:

6.1 Assessee claimed prepaid finance charges amounting to Rs.19,96,29,043/-. Assessing Officer noticed that the finance charges were in respect to payments made for availing loans such as processing charges, bank charges and stamping charges and the loan period covers more than one financial year but the assessee claimed the same on payment basis.

Assessing Officer observed that though the liability to pay the finance charges occurred in the year of availing loan facility, yet the payment was to secure a benefit over a number of years. Hence the Assessing officer concluded that the liability should be spread over the period and disallowed the Prepaid finance charges claimed by the assessee amounting to Rs. 19,96,29,043/-.

6.2 In the grounds of appeal, the appellant contested that for the financial books purposes, the expenditure incurred by the appellant was amortised over the tenure of the loan facility but for tax purposes, the amount which is expended during the year is claimed as a deduction and it is not justified to hold that the prepaid finance charges claimed as expenditure pertains to a subsequent period and does not pertains to the previous year in which it is claimed.

6.3 In [1997]91 Taxman 340 (SC) Madras Industrial Investment Corpn Ltd vs Commissioner of Income-tax, Hon'ble Supreme Court of India held issuing debentures at a discount is another such instance where ,although the assessee has incurred the liability to pay the discount in the year of issue of debentures, the payment is to secure a benefit over a number of years. There is a continuing benefit to the business of the company over the entire period. The liability should, therefore, be spread over the period of the debentures.

6.4 Similarly in present appeal, though the liability to pay the finance charges occurred in the year of availing loan facility, yet the payment was to secure a benefit over a number of years. Hence respectfully following the above stated decision of the Hon'ble Supreme Court of India the disallowance of the Prepaid finance charges claimed by the assessee amounting to Rs.19,96,29,043/- is upheld."

Aggrieved, assessee is in appeal before the Tribunal.

6. Before us, the ld.AR for the assessee made arguments, apart from made before the AO and CIT(A) that similar treatment has been given on year on year basis for which workings and extracts of computation of income have been submitted for subsequent years in Annexure 2B, 2C & 2D filed along with the written submissions. Hence, it was claimed that the amount claimed as deduction in assessment year 2012-13 has not been claimed again in future years and this would not result in any loss to the Revenue. The ld.AR for the assessee drew our attention to the Tribunal's order in assessee's own case in ITA No.846/CHNY/2020 for the assessment year 2011-12, dated 27.09.2023 and took us through the finding recorded by the Tribunal exactly on identical facts in para 10, which reads as under:-

> *"10. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the appellant has amortized finance and other charges in the books of accounts over a period of loan and wherever finance charges pertains to subsequent financial year, the same has been accounted as prepaid finance charges and debited under the head current assets. But, for the purpose of income tax the appellant has claimed total finance charges including prepaid finance charges as deduction, on the ground that said expenditure has been incurred wholly and exclusively for the purpose of business and further expenditure needs to be allowed as deduction in the year for payment. We find that the Hon'ble Supreme Court has considered an identical issue in the case of Taparia Tools Ltd vs JCIT*

(Supra), and held that once actual payment is made towards any expenditure, merely because a different treatment was given in the books of accounts, could not be factor, which would deprive assessee from claiming the entire payment of interest as deduction in the year of payment. The Hon'ble Supreme Court in the case of Kedarnath Jute Mfg. Co Ltd vs CIT [1971] 82 ITR 363, held that entries in books of accounts is not relevant to decide the issue of deductibility of any expenditure. In the present case, there is no dispute with regard to the fact that the assessee has incurred the expenditure towards finance charges and also paid during the impugned assessment year itself. Since, the assessee has already paid finance charges, in our considered view, deduction should be allowed towards finance charges including prepaid finance charges, if any, in the year of payment itself, even though, said expenditure has been treated as deferred revenue expenditure or prepaid expenditure in the books of accounts and claimed over a period of loan. The ld. CIT(A), without appreciating relevant facts simply sustained additions made by the Assessing Officer and thus, we set aside the findings of the ld. CIT(A) and direct the Assessing Officer to delete additions made towards disallowance of prepaid finance charges."

7. On the other hand, the ld.CIT-DR relied on the assessment order and that of the order of CIT(A), wherein the AO came to the conclusion regarding disallowance of prepaid finance charges on the basis of decision of Hon'ble Supreme Court in the case of Madras Industrial Corporation Ltd., vs. CIT reported in (1997) 225 ITR 802 (SC). The ld.CIT-DR pointed out that during the last hearing in this case, the Tribunal directed the assessee to clarify that there is no overall loss to the Revenue so far as its claim for prepaid finance charges are concerned. He argued that while the details submitted by the assessee do reflect the basis of claim appearing in the P & L account, it falls short of unequivocal demonstration of revenue

neutral effect of such claim, in a definite timeline of financial years. Hence, he argued that the stand taken by the AO for all the years and decision taken by the CIT(A) for assessment years 2012-13 to 2016-17 be upheld.

8. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the Tribunal in assessment year 2011-12 has recorded a clear finding that assessee for the purpose of income tax computation claimed total finance charges including prepaid finance charges on the ground that the said expenditure has been incurred wholly and exclusively for the purpose of business and further, expenditure needs to be allowed as deduction in the year of payment. Since the assessee has already paid finance charges, respectfully following the Tribunal's decision in assessee's own case for assessment year 2011-12 cited supra, we are of the view that deduction should be allowed towards finance charges including prepaid finance charges, if any, in the year of payment itself, even though, said expenditure has been treated as deferred revenue expenditure or prepaid expenditure in the books of accounts and claimed over a period of loan. Accordingly, we delete the disallowance and allow the appeal of assessee on this issue.

9. The next common issue in assessee's appeal in ITA No.847/CHNY/2020 for assessment year 2012-13 and Revenue's appeals in ITA Nos.514 & 515/CHNY/2023 for assessment years 2017-18 & 2018-19 is as regards to the addition made by the AO for excess interest spread income earned on assignment of receivables. Since the issue is common in all these years, we will take the facts from assessment year 2012-13 in ITA No.847/CHNY/2020 and will decide the issue. The relevant ground No.2 in regard to the above issue reads as under:-

2.Addition made for excess interest spread (EIS') income earned on assignment of receivables amounting to INR 26,99,20,000

On the facts, and in the circumstances of the case, and in law, the learned CIT(A) erred in upholding the addition of the present value of excess interest spread as appearing in the securitisation agreement, in the year in which the loan receivables are securitised as against accruing it over the life of the underlying receivables.

On the facts, and in the circumstances of the case, and in law, the learned CIT(A) has erred in upholding that the Appellant had transferred all the substantial risks and rewards in the receivables on signing the securitization agreement.

On the facts, and in the circumstances of the case, and in law, the learned CIT(A) ha serred in appreciating the fact that the interest spread is pertaining to future years and its accrual and receipt was contingent on conditions which cannot be reasonably estimated on the date of agreement.

On the facts and in the circumstances of the case, and in law, the learned CIT(A) has erred in ignoring the principle of real income and subjected the assessee to pay tax on amount for which the assessee has no right to receive.

Without prejudice to the above and on the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in not considering the submissions filed by the Appellant to direct the learned AO, that, the relief of the present value of excess interest spread disallowed in the current year is ought to be allowed in the respective subsequent year to the Appellant."

10. Brief facts are that the AO during the course of scrutiny assessment proceedings noticed that the assessee company has sold receivables, assigning receivables to various banks as under:-

Name of the bank	Sale Consideration (Rs.) (Amount is in lakhs)
HSBC	3006155439
ING Vysa	2070273564
ICICI	2011916382
Total	7088390385

The assessee company was asked to clarify the change in accounting policy and the impact on revenue recognition for the assessment year 2012-13 and also, the assessee company was asked to furnish copy of agreement entered into these banks and the workings of income recognition. The assessee submitted the agreement and the working of profit / income recognition. The assessee company was asked to furnish as to why the entire profit of Rs.4120.94 lakhs was not recognized during the year. The assessee submitted change in accounting policy and this change is in compliance of specific directions from Reserve Bank of India (RBI)

to the company to amortise the income spread vide their letter DNBS(Che) No./1077/13.23.500/2011-12 dated 04.10.2011. It was also informed that this is also in line with the draft revised guidelines issued on securitisation transaction issued by RBI in September 2011. The assessee submitted that the accounting policy adopted by assessee company in consonance with well-accepted business practices, is rationale and scientific and has been applied consistently in the succeeding years as well. But, the AO was not convinced and stated that the assessee company follows mercantile system of accounting and in order to determine the accrual of income on account of assignment of receivables with reference to the method of accounting adopted, i.e., Accounting Standard 1 ('AS-1') of ICAI, AS-1 defines the term 'accrual' stating that accrual refers to assumption that revenues and costs are accrued, that is, recognized as they are earned or incurred and recorded in the financial statements of the period to which they relate. Hence, according to AO, once the date of accrual is identified then income has accrued and same cannot be deferred by the accounting entries. Hence the differential amount of Rs.26,99,20,000/- was brought to tax and added to the returned income of the assessee. Aggrieved, assessee preferred appeal before CIT(A).

11. The CITA) after considering the submissions of the assessee confirmed the action of the AO by observing in para 10 as under:-

"10. Income from assignment of receivables:

10.1 During the year the assessee company sold receivables/assigned receivables to various banks for consideration of Rs.708,83,90,385/-. During the year under consideration, the assessee changed its accounting policy or recognizing interest spread arising from selling loan receivables under bilateral assignment. Earlier such interest was recognised upfront whereas from the current year the interest is being recognised over the residual tenor of the receivables, Thus the assessee did not offer interest of Rs 2699.20 lakhs for tax stating that the same is to be recognized in future.

Assessing Officer verified the agreements with banks and noticed that the assessee company is servicing the assignment in collecting the receivables for which a service fee is also paid to the assessee company and the agreement also provides scope for alternate servicer which means the assignee can also appoint another servicer in case of default by the assessee company.

Therefore the Assessing Officer concluded that the company transferred substantially all the risk and rewards of the ownership of the said receivables and hence the assessee should have offered the entire profit on the assignment of receivables including Rs 2699.02 lakhs to tax during A.Y. 2012-13 only.

10.2 In the grounds of appeal, the appellant contested that the change in the accounting policy is bonafide and in line with the guidelines issued by RBI and the differential interest cannot be taxed in the year under appeal.

10.3 If the income has accrued, the incidence of taxation cannot be postponed to future years by making entries in the books of account. If the year of accrual of income is identified then the income has to be assessed in the year of accrual and the same cannot be deferred by the accounting entries. Hence the addition of Rs.26,99,20.000/- is upheld."

Aggrieved, assessee is in appeal before the Tribunal.

12. Before us, the ld.AR for the assessee filed complete details of excess interest spread of income earned on assignment of receivables on the basis of assessment year 2013-14, 2014-15 & 2015-16. For assessment year 2013-14, under revenue from operations an amount of Rs.5,655.26 lakhs has been reported as interest spread on assignment / securitisation which pertains to EIS income from securitisation arrangement. The complete breakup of said EIS income was given in Annexure 4A, which showcase that EIS income for various past years have been offered to tax in this year. Similarly, an amount of Rs.12,148.06 lakhs and Rs.14,346.28 lakhs has been reported as interest spread on assignment / securitisation for assessment years 2014-15 & 2015-16 and details are enclosed in Annexure 4B & 4C. According to ld.AR, this clearly demonstrates that income of past years received in subsequent years has been diligently offered to tax by assessee resulting in no loss to the Revenue. The assessee also argued that assessee being NBFC governed by RBI norms and Accounting Standards for the purpose of disclosures in the books of accounts and assessee is mandated to follow the norms issued by RBI in respect of securitisation transaction and income arising thereon. He argued that for the tax purpose, the assessee has required to adhere to the provisions of the Act and the taxability of income is governed by the

principles of accrued or arise as per section 4 or 5 of the Act. Thus, only when the income accrues to the company, the company is obligated to offer the same to tax. The income in respect of EIS is contingent upon various conditions and hence, the recognized revenue at the time of sale or rendering of services and offering the same to tax thereof has no reasonable certainty of ultimate collection. Hence, he argued that the Tribunal in assessee's own case for assessment year 2016-17 in ITA No.848/CHNY/2020 has considered this issue in great detail and finally held in paras 7 to 9 as under:-

> *"7. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the ld. CIT(A), the assessee has reiterated its arguments made before the Assessing Officer, in light of certain judicial precedents and argued that the treatment in the books of accounts is not relevant to decide allowability of any expenditure, but what is required to be seen is whether the expenditure has been incurred wholly and exclusively for the purpose of business and further said expenditure pertains to relevant financial year or not. The ld. CIT(A), after considering relevant submissions of the assessee and also taken note of the decision of Hon'ble Apex Court in the case of Madras Industrial Investment Corpn. Ltd vs CIT (supra), rejected arguments of the assessee and sustained additions made by the AO towards disallowance of prepaid finance charges, on the ground that said payment was to secure benefit over the number of years and thus, same cannot be allowed as deduction in the year of payment. Aggrieved by the CIT(A) order, the assessee is in appeal before us.*
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> *8. The ld. Counsel for the assessee, Shri. Ajit Kumar Jain, CA and Shri. Kunal Shah, CA, submitted that the ld. CIT(A) erred in upholding the disallowance in relation to prepaid finance charges amounting to Rs. 12,27,11,592/-, by relying upon the decision of Hon'ble Supreme Court in the case of Madras Industrial Investment Corpn. Ltd., vs CIT (supra),*

without appreciating the fact that, said judgment was dealing with the subject of discount on issue of debentures, having a different nexus as compared to payment of prepaid finance charges. The Ld. Counsel for the assessee, further submitted that there is no dispute with regard to the fact that the assessee has incurred expenditure. Although, for books of accounts, the same has been amortized over the period of loan and classified as prepaid finance charges, but because expenditure was incurred wholly and exclusively for thepurpose of business, the same has been claimed as deduction in the year of payment, and in this regard he relied upon the decision of Hon'ble Supreme Court in the case of Taparia Tools Ltd vs JCIT [2015] 372 ITR 605 and its decision in the case of Indian Cements Ltd vs CIT [1966] 60 ITR 52.

9. The ld. DR, Shri. R. Mohan Reddy, CIT, supporting the order of the ld. CIT(A) submitted that, there cannot be different treatment for any expenditure, i.e., one for the purpose of book and one for the purpose of computation of profits and gains from business and profession. In the present case, there is no dispute with regard to the fact that the assessee itself has classified said expenditure as prepaid and does not pertain to impugned assessment year. Once, the expenditure does not pertains to impugned assessment year, then the question of deduction towards said expenditure does not arise, because as per matching principal of accounting, expenditure corresponding to income earned for the relevant period alone needs to be accounted. The Assessing Officer and CIT(A), after considering relevant facts has rightly disallowed prepaid finance charges and their order should be upheld."

13. On the other hand, the ld.CIT-DR argued that the assessee company has been selling / assigning its receivables to various banks as a matter of its business policy and only assessment year 2012-13, it used to disclose the profit earned on such assignment upfront but from assessment year 2012-13, it started to amortise the profit over several years depending on the terms of receivables.

He argued that in the last hearing before ITAT for the assessment year 2016-17, it was pleaded that the assessee is following consistent method of accounting to recognize revenue in this manner, but assessee had changed its method of accounting in assessment year 2012-13 and this was not disclosed before the ITAT during hearing of assessment year 2016-17. It was alleged that the assessee obtained a favourable order from ITAT from suppression of facts. In this context, it was argued that the Tribunal in the previous date of hearing, directed the assessee to provide clarifications regarding its revenue recognition over the years to ascertain that there is no loss to revenue on an overall basis. Although, revenue is of the view that income does accrue to the assessee on the year of assignment/ securitization of the debts the 'clarification' submitted by the assessee on this issue on the 09.02.2024 is nothing but a general description about its offer of EIS income in different assessment years. The 'clarification' mentions that the same showcases that EIS income for various past years has been offered to tax in this year. However, the clarification is a very generalisied one and it does not identify EIS income of which year has been disclosed in which subsequent year. In effect, the assessee is not forthcoming in its reply to establish unequivocally that there is no loss to revenue on an overall basis.

He further submitted that the assessee has been using the terms assignment/ securitization interchangeably, although the two terms are different in financial parlance and may even have different tax implications in accordance with the accounting policy adopted by the assessee. The above is mentioned notwithstanding the stand of the department that in either case, the assessee should disclose the income in the year of assignment/securitization of the loans. The ld.CIT-DR further stated that the assessee has mentioned that it has changed its accounting policy in order to follow RBI Guidelines. He stated that the RBI norms may be applicable in respect of disclosure of profit to the shareholders as a part of conservative accounting principle. However, the same is not applicable in respect of disclosure of income for tax purposes. This principle has been upheld by the Hon'ble Supreme Court in the case of Southern Technologies reported in 320 ITR 577. In the said case, it has been observed, in the context of the 1998 RBI Directive on NPA, *"we need to emphasise that the 1998 Directions has nothing to do with the accounting treatment or taxability of "income" under the IT Act. The two, viz., IT Act and the 1998 Directions operate in different fields."* Also, the Assessing officers, in their assessment orders have relied on the following rulings upholding the principle that the RBI Guidelines are for the purpose of the effective supervision,

management and control of monetary and credit system of country and not for taking interest income accrued as per section 5 of the Act:

i) JCIT Spl Range 2 vs India Equipment Leasing Ltd (2008) 111 ITD 37

ii) ITO versus Trade Link Securities Ltd (2014) 46 Taxmann.com 190 (Kolkata)

The ld.CIT(DR) further submitted that when it comes to expenditure, the assessee claims whole of the finance charges on the footing of 'having incurred the expenditure' in respect of its claim for deduction on account of prepaid finance charges, which the department denies on the basis of "matching principle". It is therefore, interesting to note that while the assessee is canvassing for deferment of taxing its revenue, it is taking a contrary stand in respect of staking its claim for pre-paid finance charges on the basis of 'actual payment'. The ld.CIT-DR placed reliance on the Co-ordinate Bench decision of ITAT, Hyderabad in the case of Asmitha Microfin Ltd., in ITA No.137/HYD/2013, wherein the Tribunal held as under:-

> *"12. This system of account being done by assessee is more or less similar to the bill discounting system, which is generally followed by many in the business. In the bill discounting system, a person who discounts the bill takes the interest amount upfront when he discounts the bill by way of 'front end discount', the income accrues at that point of time. What is material is the certainty of the date of discount. In this case, assessee contends that the*

gain on the transaction has not accrued as the future interest receivable is not an accrued income. However, this aspect cannot be accepted as assessee has received the discounted amount as a part of sale consideration. Even though, there are certain deposits kept with the banks for the purpose, the fact is that out of the total portfolio including the future interest of Rs.25.75 Crores, Assessee did receive Rs.24.33 Crores as can be seen in the transaction stated above. Therefore, at the time of sale of portfolio, there is a gain of Rs.1.54 Crores. This amount received by assessee is in a way discounted interest on the future receivables. Since this amount is already received by assessee, question of postponing the accrual does not arise. Had assessee been accounting the interest receivables as and when accrued, without sale of the portfolio, it has to be admitted that future interest cannot be taken as income. However, when assessee bundles it and sells it as a portfolio for a discount, the amount did accrue and received on the date of entering agreement. As can be seen from the above example, out of the total amount of Rs.2,96,16,526/- receivable in a later year, assessee discounted Rs.1,41,74,070/- and has received an amount of Rs.1,54,42,456/- as gain, out of the total price received of Rs.24,33,76,256/- [that total amount Rs.24,33,76,256 - Rs.22,79,34,100 = 1,54,42,456]. Thus, in a way, out of the book value of Rs.22.79 Crores of portfolio, assessee did receive Rs.24.33 Crores thereby having the gain of Rs.1.54 Crores. Since the transaction happened on 19th March, the entire amount is to be accounted as income on that transaction as a gain.

13. Similar issue was considered by the Hon'ble Madras High Court in the case of TVS Finance and Services Ltd., Vs. JCIT [318 ITR 435 (Mad)] on the issue of accrual of income and timing of accrual on discounting of bills. The Hon'ble Madras High Court held as under:

> "Where bills are discounted the accrual of interest is certain and arises on the date of discount.
>
> The assessee was a non-banking finance company engaged in lease, hire purchase, bills discounting and mortgage loans. The Assessing Officer held that the whole of the income from bill discounting accrued at the time of discounting the bill. This was confirmed by the Tribunal. The assessee claimed the provision it had made towards bad debts under the RBI norms was deductible. The Assessing Officer and the Tribunal rejected the claim.

Held, (i) that the Tribunal was right in concluding that the uncertainty regarding the discharge of the bill or rediscounting has no relevance. The transaction of discounting is complete at the moment the customer is given 90 per cent of the value of the bill. The discount is equivalent to the interest and it accrued at that point.
(ii) That the debts were shown as written off on the basis of the formula given by the Reserve Bank of India. Writing off the debt as bad requires judgment on the part of the person carrying on the business but in the present case, the debts had been 'written off' merely on the basis of the RBI norms and nothing more. Thus, they were not deductible under section 36.

14. Since, principles of bill discounting and accounting entries are similar to the portfolio sale/securitization of loan portfolios, being the method involved being same, we uphold the orders of Assessing Officer and CIT(A) on the issue. In fact, both Assessing Officer and CIT(A) analyzed the accounting principles, agreements and came to conclusion that the amounts have accrued at the time of sale of portfolio. We affirm the same and hold that the amount of Rs.13,09,44,315/- being the amount of discounted future interest received by assessee during the year is taxable in the year. Accordingly, we uphold the orders of Assessing Officer and reject the ground of assessee."

Hence, the ld.CIT-DR argued that the decision of ITAT for assessment year 2016-17 may not be taken as precedence and the matter of changing accounting policy was not at all disclosed before ITAT.

14. In rebuttal, the ld.AR for the assessee submitted that the assessee is governed by RBI norms and Accounting Standards for the purpose of disclosure in the books of accounts and hence, to

follow the norms issued by RBI in respect of securitisation transaction and income arising thereon was disclosed accordingly.

15. We have heard rival contentions and gone through facts and circumstances of the case. We noted that this issue fully stands covered by the Tribunal decision in assessee's own case for assessment year 2016-17 and the facts being identical, we respectfully following the same, delete the addition and allow the appeal of assessee.

16. Similar are the facts in assessment years 2017-18 & 2018-19, hence taking a consistent view, we find no infirmity in the order of CIT(A) deleting the addition made by AO towards excess interest spread income. Therefore, we confirm the orders of CIT(A) on this issue for both the assessment years and dismiss the Revenue's appeals for both the years.

ITA No.384/CHNY/2023

17. The next issue in the assessee's appeal in ITA No.384/CHNY/2023 for the assessment year 2017-18 is as regards to the order of CIT(A) confirming the action of the AO in disallowing

the excess provision for bad and doubtful debts. For this, assessee has raised following Ground No.1:-

1. Ground no. 1 - Disallowance of excess deduction in relation to provision for bad and doubtful debts under section 36()(via)(d) of the Act:

On the facts and circumstances of the case, and in law, the learned CIT(A) has erred in upholding the disallowance of excess deduction in relation to provision for bad and doubtful debts amounting to INR 13,87,96,281 under the provisions of section 36(1)(viia)of the Act.

On the facts and in the circumstances of the case, and in law, the learned CIT(A) has erred in upholding the fact that the Appellant had rightly disallowed the net provision debited to the profit and loss account amounting to INR 49,45,71,365 (including reversal of provision for standard assets and reversal of provision for diminution in value of investments) and appropriately claimed a deduction for provisions for bad and doubtful debts to the extent of five percent of total income amounting to INR 63,33,67,646 as allowable under section36(i)(via) of the Act.

On the facts and in the circumstances of the case, and in law, the learned CIT(A) has erred in appreciating the detailed submissions and arguments made by the Appellant that the reversal of provision for items other than provision for bad and doubtful debts i.e., reversal of provision for standard assets amounting to INR 33,11,27,770 and reversal of provision for diminution in value of investments amounting to INR 5,00,00,000, should not be considered as they are not covered under section 36(i)(viia) of the Act while computing the total deduction on account of provision for bad and doubtful debts.

On the facts and in the circumstances of the case, and in law, the learned CIT(A) has merely relied on the impugned argument made by the learned Assessing officer that the net disallowance of INR 49,45,7 1,365 is entirely towards provisions for bad and doubtful debts whereas it consists of various other reversal of provisions, which are not covered under section 36(i(viia) of the Act and thus to be ignored while computing the threshold for the purpose of section 36(1)(viia) of the Act. On considering the actual amount of provision for bad and doubtful debts, the threshold limit shall stand at INR 87,56,99,134.

The appellant craves leave to add to, or alter, by deletion, substitution, modification or otherwise, the above ground of appeal, either before or during the hearing of the appeal.

18. Brief facts relating to this issue of provision for bad and doubtful debts claimed by assessee are that the assessee had debited an amount of Rs.49,45,71,365/- on account of provision of bad and doubtful debts. However in the computation of income, the assessee has made claim of deduction of Rs.63,33,67,646/- u/s.36(1)(viia)(d) of the Act at 5% of total income and instead added back the said provision of Rs.49.45 crores in the computation of income. The AO, on perusal of computation of income and the accounts of the assessee asked the assessee as to why the excess claim of Rs.13.88 crores over and above the original provision created should not be disallowed. The assessee made a simpliciter claim that as per the provisions of section 36(1)(viia)(d) of the Act, the assessee is entitled for claim of deduction for provision of bad and doubtful debts to the extent of 5% of total income before claiming any deduction under the above said clause and chapter VIA of the Act. The AO did not agree with the arguments of the assessee for the reason that the assessee has originally debited only a sum of Rs.49.45 crores but the provision of section 36(1)(viia)(d)

of the Act stipulates that only an amount not exceeding 5% of the total income is allowable as deduction but the assessee is wrongly interpreting it as equal to 5% rather than not exceeding 5%. There is upper limit of 5% of total income and deduction is accordingly allowable as per the provisions of section 36(1)(viia)(d) of the Act. According to AO, the assessee's claim is that 5% of total income is arrived at Rs.63.33 crores whereas it has made actual provision and debited to P&L account is only Rs.49.45 crores and the same is not exceeding 5% of total income. Hence, according to AO, the assessee is eligible for claim of deduction only to the extent of Rs.49.45 crores as against claim at Rs.63.33 crores. Hence, differential amount of Rs.13.87 crores was disallowed and added to the income of the assessee. Aggrieved, assessee preferred appeal before CIT(A).

19. The CIT(A) also confirmed the action of AO after considering the submissions of the assessee and the provisions of section 36(1)(viia)(d) of the Act, by observing as under:-

> *"From plain reading of the section, it is crystal clear that section specifically states that in respect of any provision for bad and doubtful debts, only an amount NOT EXCEEDING 5% of the total income is allowable as deduction. In the instant case, the appellant has made provision for bad and doubtful debts at Rs.49.45 cr.only but has claimed deduction at Rs.63.33 crores which is equal to five percent of total taxable*

income which means that the appellant is claiming excess deduction of Rs.13.87 cr. For which it has not made any provision at all. The appellant has wrongly interpreted the clause sub-clause (d) of clause (viia) of section 36(1) of the Act as the amount allowable being equal to five percent whereas the amount allowable is actually "not exceeding five percent". In the instant case, the actual provision debited to P&L was only Rs.49.45 crores and since the same is not exceeding 5% of the total income, Rs.49.45 crores was rightly allowed by the AO as a deduction as against Rs.63.33 crores claimed by the appellant. Thus, it is held that the AO rightly disallowed difference of Rs.13,87,96,287/- being ineligible claim, the addition made on this account is sustained. The ground no.5 raised by the appellant regarding this issue is dismissed."

Aggrieved, now assessee is in appeal before the Tribunal.

20. We have heard rival contentions and gone through facts and circumstances of the case. Before us also, the ld.AR for the assessee repeated the same arguments as was made before the AO and CIT(A). On the other hand, the ld.CIT-DR supported the order of AO and CIT(A) and stated that the provision of section 36(1)(viia)(d) of the Act are clear and assessee has made provision only to the extent of Rs.49.45 crores and only to that extent as per this provision is allowable because it is not that 5% of the total income, it has to claim. The assessee has to claim upto 5% to the extent the provision is created in the books of accounts. We have perused the provision of section 36(1)(viia)(d) of the Act, which reads 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—

……

……..

(viia) in respect of any provision for bad and doubtful debts made by—

……..

…….

(d) a non-banking financial company, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VI-A).

We have gone through the facts and noted that the assessee has debited only a sum of Rs.49.45 crores in its books of accounts but claimed deduction u/s.36(1)(viia)(d) of the Act in respect of provision for bad and doubtful debts to the extent of 5% of total income and claimed a sum of Rs.63.33 crores. In our view, the provision the way the assessee is interpreting as equal to 5% rather not exceeding 5%. This interpretation will lead to absurd results. In our view, the upper limit is 5% of the total income and deduction is allowable as per section 36(1)(viia)(d) of the Act is not equal to 5% but that is upper limit only. Hence, as originally debited in the books of accounts the provision for bad and doubtful debts of Rs.49.45 crores, the assessee is eligible and AO has rightly added the differential amount of Rs.13.87 crores, as the assessee is not eligible for the same and the CIT(A) has also rightly confirmed the same.

20.1 However, alternatively claimed by assessee before CIT(A) that the proposed disallowance by the AO u/s.36(1)(viia)(d) of the Act is in relation to provision for bad and doubtful debts, reversal of provision for standard assets and diminution in value of investments has no barring and correlation with section 36(1)(viia)(d) of the Act, the same has not been examined neither by AO nor by CIT(A). It was claimed before CIT(A) and CIT(A) although has reproduced the submissions of the assessee including the chart of reversals and diminution of investments which reads as under:-

Particulars	*Amount (INR)*
Provision for sub-standard and doubtful receivables under financing activity	*284,65,91,965*
Less: Reversal of sub-standard and doubtful receivables under financing activity	*(197,08,92,831)*
Less: Reversal of provision for standard assets	*(33,11,27,770)*
Less: Reversal of provision for diminution in value of investments	*(5,00,00,000)*
Amount of provision of bad and doubtful debts as per Profit and Loss Account (A)	*49,45,71,365*
Amount claimed as deduction under section 36(1)(viia)(d) (B)	*63,33,67,646*
Amount disallowed by the learned AO (B-A)	*13,87,96,287*

As regards to the alternative claim, since the facts are not examined and the legal position for claim of provision for bad and doubtful debts, what is the impact of this reversal, the AO will examine and decide the issue as per law and hence, the alternative plea of the

assessee is remanded back to the file of the AO for fresh adjudication. In term of the above, this issue of assessee's appeal is allowed for statistical purposes.

21. In the result, the appeals filed by the assessee in ITA No.847/CHNY/2020 is allowed and ITA No.384/CHNY/2023 is allowed for statistical purposes and the appeals filed by the Revenue in ITA Nos.514 & 515/CHNY/2023 are dismissed.

Order pronounced in the open court on 14th August, 2024at 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 August, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:
1. निर्धारिती /Assessee
2. राजस्व /Revenue
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.