

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No.815/Ind/2024
Assessment Year:2011-12

C.I. Finlease Private Limited, 182, Zone-I, M.P. Nagar, Bhopal	<u>बनाम/</u> <u>Vs.</u>	ITO 1(3) Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AABCC6164B		
Assessee by	Shri R.K. Mangal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	15.05.2025	
Date of Pronouncement	16.05.2025	

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first-appeal dated 17.10.2024 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 29.12.2016 passed by learned ITO-1(3), Bhopal ["AO"] u/s 143(3) r.w.s. 263 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2011-12, the assessee has filed this appeal on following grounds:

"1. That the learned CIT(A), NFAC erred in not holding that the order was bad in law. It was perverse; (2) it was based on irrelevant material; (3) it was un-reasonable; (4) there was mis-application of the provisions of law; (5) the authority misdirected.

2. That the learned CIT(A), NFAC erred in not holding that the party order passed u/s 143(3) r.w.s. 263 of the Income Tax Act, 1961 by the A.O. was without considering the appellant company submission made on 14/03/2024 and without following rule of natural justice and fair play and was therefore a nullity and the same may be declared null and void.

3. That the learned CIT(A), NFAC erred in confirming the addition of Rs. 54,14,512/- made by the learned A.O. u/s 68 of the Income Tax Act, 1961 towards advance against AMC.

4. That the learned CIT(A), NFAC erred in confirming the addition of Rs. 1,00,00,185/- on account of excess stock found during survey operation u/s 133A of the Income Tax Act, 1961.

5. That the learned CIT(A), NFAC erred in confirming the addition of Rs. 56,44,071/- towards disallowance of interest on account of diversion of borrowed funds.

6. That in the alternative and without prejudice to the grounds stated above, the additions and disallowances made and assessed as income of the appellant be held to be high, unreasonable and unjustified and be suitably reduced."

2. Ld. AR for assessee straightaway drew us to the impugned order passed by Ld. CIT(A), the same is scanned and re-produced below:



भारत सरकार / GOVERNMENT OF INDIA
वित्त मंत्रालय / MINISTRY OF FINANCE
आयकर विभाग / INCOME TAX DEPARTMENT
राष्ट्रीय पहचानविहीन अपील केन्द्र / NATIONAL FACELESS APPEAL CENTRE (NFAC)
दिल्ली / DELHI

To, C.I. FINLEASE PRIVATE LIMITED 182 ,Zone - I M.P. Nagar BHOPAL 462011 ,Madhya Pradesh India	
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PAN: AABCC6164B	AY: 2011-12	Dated: 17/10/2024	DIN & Order No : ITBA/NFAC/S/250/2024-25/1069738343(1)
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Order u/s 250 of Income Tax Act, 1961

Instituted on 27/01/2017 from the order of ITO 1(3), BHOPAL dated 29/12/2016

Appeal No	CIT (A), Bhopal- 1/11131/2016-17
Status/Deductor Category	Company
Residential Status	Resident
Nature of Business	Others
Section under which the order appealed against was passed	143(3)r.w.s263
Date of Order under which the order appealed against was passed	29/12/2016
Income/Loss Assessed (in Rs.)	6248440
Tax/Penalty/Fine/Interest Demanded (in Rs.)	10087190
Present for the appellant	Not Applicable
Present for the Department	Not Applicable

1. This appeal was filed by the assessee electronically on 27.01.2017 against the order of ITO-1(3), Bhopal, passed u/s 143 r.w.s 263 on 29.12.2016. The appeal filed by the assessee is disposed off as under after taking into consideration the materials available on record.

2. Ground no. 1 objects to addition of Rs.54,14,512 u/s 68 being advance against claims settlement. It was seen from the reply submitted by the assessee that out of total advance of Rs.1,76,50,094/- from customers, an amount of Rs.43,15,500/- and Rs.10,99,012/- were received by the company as advance against Claims Settlement and advance from customers (AMC) respectively. It was found that the assessee did not furnish the specific details of customers like

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name and address of assessee and model of vehicle purchased/booked by the customer in support of above amounts received by the company as advance from customers. In the absence of complete information/supporting documents/proof, the contention of assessee cannot be accepted with regard to above advances from customers claimed by the assessee company. Hence, out of total advance of Rs.1,76,50,094/-, the amount of Rs.43,15,500/- and Rs.10,99,012/- totalling to Rs.54,14,512/- [Rs.43,15,500 + Rs.10,99,012] claimed by the assessee company as against advance against Claims Settlement and advance from customers (AMC) respectively are disallowed and added back to the total income of the assessee u/s 68 of IT Act as unexplained credits in the books of assessee.

The addition of Rs.5,41,512/- u/s 68 confirmed.

3. Ground no. 2 objects to addition of Rs.1,00,00,185/- being excess stock.

A survey operation u/s 133A of the Income Tax Act, 1961 had been carried out in this case on 15/04/2010 and during the course of survey proceeding on 15/04/2010, the assessee was requested to explain the difference of Rs.1,00,00,185/- on account of excess stock. Vide note sheet entry dated 26/03/2014, the assessee was requested to explain why the difference of Rs.1,00,00,185/- should not be added in the income of the assessee company more particularly when the difference was accepted as unexplained during the survey proceedings. No reply against such notice was received by the AO nor any clarification has been given by the assessee. Hence the excess stock of Rs.1,00,00,185/- found during survey proceedings is added back in the income of the assessee.

The addition of Rs.1,00,00,185/- being excess stock is confirmed.

4. Ground no. 3 objects to addition of Rs.56,44,071/- u/s 37(1) on account of diversion of borrowed fund.

It was found that during the year an amount of Rs.56,44,071/- was paid as interest to HMIL (Hyundai Motors India Limited). It was further seen that assessee company has advanced interest free unsecured loan of Rs.2,65,10,000/- to M/s Central India Gases(P) Ltd which is a sister concern. Since interest free funds are advanced to the sister concern it amount to diversion of borrowed funds and hence the interest paid to HMIL Rs.56,44,071/- is not allowable u/s 37(1) of the Income Tax Act. Hence Rs.56,44,071/- is disallowed and added back to the income of the assessee.

The addition of Rs.56,44,071/- u/s 37(1) is confirmed.

5. The appeal filed by the assessee is dismissed.

Commissioner of Income-tax (Appeals)
Income Tax Department

3. Ld. AR next submitted that the CIT(A) has passed impugned order on 17.10.2024 without considering the submission e-filed by assessee on 14.03.2024 on the designated portal of Income-tax Department. Ld. AR has filed the Acknowledgement No. 142814981140324 downloaded from portal. The Acknowledgement contains a complete list of documents filed by assessee to CIT(A), the same is scanned and re-produced below for an immediate reference:

Acknowledgement Number : 142814981140324

e-Proceedings Response Acknowledgement				
INCOME TAX DEPARTMENT				
PROCEEDING DETAILS				
PAN/TAN	AABCC6164B			
Name	C.I. FINLEASE PRIVATE LIMITED			
Financial Year	2010-11			
Assessment Year	2011-12			
Proceeding Name	First Appeal Proceedings ✓			
Notice/Communication Reference ID	100057001053			
Notice Section	250			
Description	[ITBA]Hearing Notice u/s 250of Income Tax Act 1961.			
Notice Issue Date	29-Feb-2024 ✓			
Due Date for Submission	15-Mar-2024 ✓			
Communication Sent date				
Document Reference ID	ITBA/NFAC/F/APL_1/2023-24/1061719496(1)			
RESPONSE SUBMITTED				
Remarks	please find attached Appeal submission along with enclosures for your kind consideration.			
Hash * Value Of Remarks	90e5e1965aa191cc564743e3da42d871836616abfc0e821d90951d466b77d0d1			
SI No	Attachment Name	Description	Size(bytes)	Hash * value of Attachment
1	1.CI Finlease Appeal Letter Reply.pdf	reply	3179769	cfb11779f20094b28d96083618adc5974a1b785f13b994bc05242528c2e060f9
2	2. Exchange Loyalty Corp Claims.pdf	claim ledger	30101	e14666514e8b8fd90615766fc95c0830ef19b594359fb4aa96ebb67ebc9641b
3	3. Advance Against Service (AMC).pdf	amc ledger	153687	98453c4b21a033d4ae06ce313a532c3d553169672ca1b99e756fcc26f3169eb
4	4. Central India	central india gases	1907	cbaf4f8a059362fe6

Sl No	Attachment Name	Description	Size(bytes)	Hash * value of Attachment
	Gases FY 2008-09.pdf	ledgers		96546ec0f224963a 9a20b5ab219460c9 5ce49d61bccee6a
5	5. Central India Gases FY2009-10.pdf	central india gases ledgers	10103	e7e9d06ab668394f5 c198db08fbf61c31f 82a7a045a9be8566 b23ef3f2730691
6	10.icici account no 3272.pdf	icici bank account 3272	4870683	6eb8f165de53e6cc 72f1231c9c4b892c 5c65a6b4f58685fa c8255a304037b5c4
7	12. ICICI Bank CIF FY 2009-10_compressed (1).pdf	bank statement	2409022	f4d047d55abf321b 01ee8d2bd38f134b 02351246d5c44419 6e2845c4b6655596
8	13. CA Certificate.pdf	imran khan- order and CA CERTIFICATE	342170	3a6bcdbac8588cca1 bdeb7bc1879ee29f0 372980ee087a9aff8 4f5423bb3f64e
9	6. Finlease BS FY2008-09_compressed.pdf	audited balance sheet	2152749	a5f6138322f9d113d f4968cf9f9f14a983 935f371588ea1af78 1fb8d826a3f16
10	8. Finlease BS FY2010-11_compressed.pdf	audited Balance Sheets	3122269	b1ce0e961f94b2c5b 1ef3e3099fb65e415 d80126040c26f9fe3 ab7c77dec3413
11	9. ITL imran.pdf	imran khan- order and CA CERTIFICATE	4907	9c0c0b97e9e96cd9 99cb9b0b507f6f9e6 a7e7cdfd7387fb5a cdcd6506ba2b913
12	10.icici account no 3272.pdf	bank statement	4870683	6eb8f165de53e6cc 72f1231c9c4b892c 5c65a6b4f58685fa c8255a304037b5c4
This is a system generated acknowledgement and does not require signature				
* Hash : This value will uniquely identify the uploaded files and remarks.				

Ld. AR has also filed copies of above documents filed to CIT(A), in the form of a spiral book Pages 8 to 219.

4. Ld. AR, while placing above facts for consideration, prayed that the order passed by CIT(A) is not a sustainable order, the same must be set aside. After deliberations in open court, learned Representatives of both sides were *ad idem* that it is a fit case for remand to the file of CIT(A) for afresh adjudication of assessee's first-appeal after considering submission of assessee. We agree to same and accordingly remand this matter to CIT(A) for a fresh adjudication. Needless to mention that the CIT(A) shall give necessary opportunities of hearing to assessee and pass an appropriate order uninfluenced by his earlier order. The assessee is also directed to remain vigilant and ensure participation in the hearings as may be fixed by CIT(A) and do not seek unnecessary adjournments failing which the CIT(A) shall be at liberty to pass appropriate order in accordance with law. Ordered accordingly.

5. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 16/05/2025
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Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 16/05/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore