

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "H", MUMBAI**

BEFORE SHRI JASON P.BOAZ (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No.7174 to 7176/MUM/2010
Assessment Year: 2000-01 to 2003-04**

&

**ITA 5531/MUM/2013
Assessment Year: 2006-07**

&

**ITA 7177/Mum/2010
Assessment Year: 2007-08**

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| Mafatlal Finance Company Ltd. (Now Known as Hybrid Financial Services Ltd.) Unit No. 17, 2 nd Floor, 'A' Wing, Raj Industrial Estate Premises, Marol Military Road, Marol, Andheri (E), Mumbai- 400059. PAN : AAACM2824M | Vs. | The Asst. CIT- 10 (3), Room No. 451, Aayakar Bhavan, M.K.Road, Mumbai- 400020. |
| (Appellant) | | (Respondent) |

Appellant by : Shri. Nitesh Joshi
Respondent by : Shri. Neil Philip

Date of Hearing: 27/05/2016
Date of Pronouncement: 26/08/2016

ORDER

PER BENCH

These five appeals have been preferred by the appellant/assessee against separate orders passed by the Ld. CIT(A) Mumbai, for Assessment Year 2000-2001 to 2003-04 and 2006-07 to 2007-08. Since all the appeals pertain to the same assessee for different assessment years and the issues involved are

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common in all the appeals, the same were clubbed and heard together and are being disposed of by this combined order for the sake of convenience.

ITA 7174/Mum/2010 Asst. year 2000-01

Since, all these appeals pertain to the same assessee and most of the grounds are common in all the appeals, we take the brief facts of the appeal pertaining to the assessment year 2000-01. The assessee, engaged in the business of leasing, hire purchase, financing, bill discounting and advancing loan etc., filed its return of income for the assessment year 2000-01, declaring total net loss of Rs. 9,64,12,318/-. The AO completed the assessment u/s 143(3) of the Income Tax Act, 1961 (for short 'The Act), after making various disallowances and additions. The assessee challenged the assessment order before the CIT(A), who after hearing the assessee upheld the findings of the AO. Aggrieved by the impugned order, the assessee is in appeal before the Tribunal.

2. The assessee has challenged the impugned order on the following effective grounds:

“1. The learned Commissioner (Appeals) erred in confirming disallowance of interest u/s 14A amounting to Rs.9,31,500/- attributable to investments when the appellant had not borrowed any funds and did not make any investments out of the same during the year.

2. The learned Commissioner (Appeals) erred in directing the Assessing Officer to apply Rule 8D for the purpose of disallowance u/s 14A when the

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Rule 8D is applicable only from the assessment year 2008-09 and there is no proximate cause for disallowance as the appellant has not incurred any expenditure in relation to dividend income earned.

3. The learned Commissioner (Appeals) erred in confirming the disallowance of Rs.10,87,92,000/- being the income reversal which is nothing but a 'bad debts and ought to have been allowed u/s 36(1)(vii) r.w.S 36(2) of the Income Tax Act, 1961.

4. The learned Commissioner (Appeals) ought to have appreciated that the appellant reversed the income of Rs.10,87,92,000/- during the year as the same was not accrued in view of the principal amount itself not received. The learned Commissioner (Appeals) ought to have considered the deduction alternatively u/s 28/20 or u/s 37(1) of the Income Tax Act, 1961.

5. The learned Commissioner (Appeals) erred in confirming the disallowance of Rs.4,25,000/- towards investments written off which ought to have been considered as 'capital loss' or alternatively as 'bad debts'.

6. The learned Commissioner (Appeals) erred in confirming the addition made by the Assessing Officer towards 'notional interest' amounting to Rs.6,55,89,889/- when the amount advanced to the sister/associated companies were considered as 'bad debts' / 'non-performing assets (NPA)'

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which includes Rs.45,02,499/- in respect to Mafatlal Industries Limited which was a company referred to BIFR.

7. The learned Commissioner (Appeals) erred in appreciating that the notional interest calculated @15% on the amount advanced to sister/associated companies were all provided as NPA and the same was disallowed in the respective assessment years as and when provision were made for the NPA, therefore 'notional interest' considered and confirmed as 'income' is not justifiable.

8. The learned Commissioner (Appeals) erred in confirming the disallowance of income tax depreciation on WDV of the leased assets amounting to Rs.25,44,28,462/- based upon the disallowance made by the Commissioner (Appeals) vide its consolidated order dated 18th June, 2009 for the assessment years 1993-94 to 1998-99, treating the earlier years lease transactions as 'finance transactions'.

9. The learned Commissioner (Appeals) ought to have allowed the depreciation on the WDV of the leased assets subject to the rectification and/or determination of WDV as on 1st April, 1999.

10. The learned Commissioner (Appeals) erred in confirming long term capital gains at Rs.22,24,000/- where as the appellant claimed long term capital loss of

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Rs.44,00,000/- (Net) after considering profit /loss on sale of shares /government securities.

11. The learned Commissioner (Appeals) confirmed the disallowance of Rs.66,24,000/- treating the same as 'capital gains' considering the brokers note as bogus and failed to appreciate the justification given by the appellant for the same.”

3. Ground No 1 & 2 pertain to disallowance of interest expenditure under section 14 A read with Rule 8D of the Income Tax Rules. The Ld. Counsel for the assessee submitted that during the A.Y. under consideration, the assessee earned dividend of Rs. 9,94,000/-. AO made interest disallowance of Rs. 9,31,500/-. In appeal the Ld. CIT(A) directed the AO to apply Rule 8D, contrary to the decision of Hon'ble jurisdictional High Court passed in *Godrej and Boyce Mfg. Co Ltd. vs. DICT*. The Ld. Counsel further submitted that the investments in question were made in the earlier year and since no disallowance for interest was made in the earlier years, it will be presumed that the assessee has made investments out of its own funds.

4. On the other hand the Ld. Departmental representative relying upon the findings of the Assessing Officer and CIT(A) submitted that the Rule 8D is only formula and principle of estoppels is not applicable to the Income Tax cases. Therefore, the order passed the CIT(A) does not suffer from any infirmity.

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5. We have heard the rival submissions and also perused the material on record including the cases relied on by the parties. AO has disallowed Rs. 9,31,500/-working out @ 1.5% of the interest bearing funds relatable to investment in shares which is 17.68%. The assessee has contended that it had not incurred any expenditure directly or indirectly, on earning dividend income since, the investments therein were made from its own funds in the early years. This contention of the assessee, it appears, has not been controverted by the authorities below. However, even then it cannot be said that no expenses at all were incurred for earning exempt income. In this view of the matter, and going by the decisions of the coordinate Bench, we direct the AO to restrict the disallowance u/s 14A of the Act to 10% of the dividend income. Hence, ground No 1 of the appeal is partly allowed as indicated above.

6. So far as ground No 2 is concerned, in the light of the decision of the Hon'ble Jurisdictional High Court, in *Godrej and Boyce Mfg.Co. Ltd. vs. DCIT 328 ITR 81*, the provisions of Rule 8D of the Income Tax Rules are applicable w.e.f. A.Y. 2008-09. Therefore, the Rule cannot have application in respect of A.Y. 2000-01 which is the year under consideration in this case. Hence, the direction given by the Ld. CIT(A) to the AO to compute disallowance under Rule 8D of the Act, is not in accordance with the decision rendered by the jurisdictional High Court in *Godrej and Boyce Mfg. Co. Ltd. vs. DCIT (supra)*. We, therefore, set aside the findings of the CIT(A) and allow ground No 2 of the appeal.

7. As regards ground no 3 and 4 the Ld. Counsel submitted that the Ld.CIT(A) has upheld the findings of the AO for the reason that the assessee has failed to

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establish that the debt had become bad. The Ld. Counsel further submitted that in view of the ratio laid down by the Hon'ble Supreme Court in *TRF Ltd. Vs. CIT 323 ITR 397*, after 01/04/1989, it is not necessary for the assessee to establish that the debts has become irrecoverable. Deduction has to be allowed u/s 37(1)(vii) of the Act if the bad debts is written off as irrecoverable in the accounts of the assessee. Therefore, the Ld. CIT(A) has no jurisdiction to confirm the disallowance merely on the ground that the assessee has filed suit for recovery against some of the debtors which are pending adjudication in the court or the assessee has written off some of the debts within a period of one year. On the other hand the Ld. DR submitted that there must be a gap of at least 1 year and debts cannot become bad within the same year.

8. We have heard the rival submissions. The Ld CIT(A) has confirmed the disallowance holding that the assessee has failed to establish that the debts in question, in fact, have become irrecoverable. In some of the cases the assessee did not even wait till the next year to write off the debts. The Ld. CIT(A) relying on the decision of the Hon'ble Bombay High Court in the case of M/s Oman International Bank, has held that the assessee has failed to prove that its decision to write off the debts was bona fide.

9. The Hon'ble Supreme Court has held in *TRF vs. CIT (supra)* that after 1st April, 1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. The relevant para of the judgment reads as under:-

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“This position in law is well-settled. After 1st April, 1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. However, in the present case, the AO has not examined whether the debt has, in fact, been written off in accounts of the assessee. When bad debt occurs, the bad debt account is debited and the customer's account is credited, thus, closing the account of the customer. In the case of companies, the provision is deducted from sundry debtors. As stated above, the AO has not examined whether, in fact, the bad debt or part thereof is written off in the accounts of the assessee. This exercise has not been undertaken by the AO. Hence, the matter is remitted to the AO for de novo consideration of the above-mentioned aspect only and that too only to the extent of the write off.”

10. In the present case, admittedly, the debt in question has been written off as irrecoverable in the accounts of the assessee. Hence, in our considered view, this issue is covered by the ratio laid down by the Hon'ble Supreme Court in TRF vs. CIT (supra). We, therefore, set aside the findings of the Ld. CIT(A) and allow ground No 3 and 4 of the appeal filed by the assessee.

11. As regards the ground no. 5, the Ld. Counsel submitted that the CIT(A) has wrongly confirmed disallowance on the ground that the assessee has failed to produce any proof that the market value of shares have become Nil. The Ld. Counsel further submitted that Nil value was adopted based on the evaluation of the market value by its management and in the later years nothing was

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realized. The Ld. DR relying on the concurrent findings of the authorities below submitted that the impugned order does not suffer from any legal infirmity.

12. In the light of the rival submission we have perused the material on record. During arguments, the Ld. Counsel submitted that the management evaluated the market value of the shares in question, however, no proof thereof was furnished either before the AO or before the CIT(A) or even before us. Hence, in our considered view, there is no merit in the contention of the assessee. We, therefore, uphold the findings of the Ld. CIT(A) and dismiss ground No 5 of the assessee's appeal.

13. As regards the ground No. 6-7 the Ld. Counsel submitted that the debtor from whom interest was not charged during the year fall into 2 categories , i.e., (a) Mafatlal Industries Ltd., though interest was charged during the year as the said company has become a sick company and referred to BIFR. It has also become a non-performing asset as no lease rentals were received by it for A.Y. 1999-2000.

(b) The other category of debtors listed at page 7 of the assessment order where loans were advanced to the said companies on an interest free basis.

14. With respect to category (a) no interest was accrued from them. The Ld. Counsel placed reliance on the decision of Hon'ble jurisdictional High Court in CIT vs. of KEC Holdings Ltd.(ITA No 221 of 2012 dated 11.6.14) wherein the assessee was held justified in not accruing interest in respect of debtors which had become NPA. With respect to category (b), the Ld. Counsel submitted that

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as per the books of account placed on record, no interest was charged from them at any point of time. Relying upon the decisions in India Finance and Construction Co. Pvt. Ltd. vs. DCIT 200 ITR 710(Bom), CIT vs. A. Raman & Co. 67 ITR 11 and Shivnandan Buildcon P. Ltd. vs. CIT 233 Taxman 297 (Del), Ld. Counsel submitted as per the ratio laid down in the aforesaid cases, when no interest has been charged by an assessee, then, it cannot be assessed on the basis of any notional accrual of such interest. The Ld. DR on the other hand, relying on the concurrent findings of the authorities below submitted that the cases relied upon by the assessee is not applicable to the present case as the facts of the said cases are not similar to the facts of the present case.

15. We have heard the rival submissions and perused the material placed before us. The assessee has filed summary of ledger extracts along with ledgers for the advances given to the Associates/Group Companies of the appellant/assessee being non-interest bearing advances for the period from 1.4.1996 to 31.3.2000 along with an application for allowing admission of the same as additional evidence in support of its claim. Since these documents were not produced either during assessment or during first appellate proceedings, we are of the considered view that the same are required to be examined by the assessing officer for deciding this issue. Hence, we admit the additional evidence filed and remit this issue back to the file of the AO to decide the issue afresh after taking into consideration the additional evidence. Needless to say, that the AO shall afford an opportunity of being heard to the assessee before passing such order. We decide the issue involved in ground No 7 and 8 accordingly.

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16. As regards the ground no. 8-9 the Ld. Counsel submitted that this issue is covered in favour of the assessee by the order of the Tribunal in assessee's own case for A.Y. 1993-94. Since no new asset has been acquired during the year no addition in respect of the asset taken on lease. On the other hand, the Ld. DR. submitted that since each and every case under income tax is required to be decided on its own merit, the Ld. CIT(A) has rightly confirmed the additions towards notional interest.

17. We notice that the coordinate Bench of the ITAT has decided the identical issue in favour of the assessee in assessee's own case ITA No 3991/Mum/2009 for the assessment year 1994-95. The issue before the tribunal was whether the assessee is eligible for the claim of depreciation in case of assets put on lease, and have entered sale and lease back agreement with its clients. The coordinate Bench decided this issue in favour of the assessee holding as under:-

“23. We have heard the arguments at length and have also considered the case laws cited before us. The factum of repossession of equipments have not been disputed by the revenue authorities. This clearly means that lessor is the owner and it is he who can make the legal claim for ownership and depreciation.

24. We, therefore are of the considered view that despite the fact that the complete facts were before the CIT(A), the CIT(A) either did not consider them or that he did not go into the facts, which were brought

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out by the AO in the remand report. We further hold that there was no question of sham transaction, because, the assessee was dealing with corporates as well as State Government agencies. In these circumstances, the claim of the assessee cannot be held to be same and have to be taken to be genuine, and therefore allowable.

Respectfully following the view taken by the coordinate bench of the Tribunal, we allow this ground of appeal of the assessee.

18. As regards the ground no. 10-11 the Ld. Counsel submitted that Assessing Officer as well as CIT(A) holding the long term capital loss as bogus as the brokers note though related to April 1999 indicated 8 digit telephone number which was implemented in Mumbai by MTNL in the year 2003 only. Since the original broker note had been misplaced, the assessee asked for duplicate broker note from the company concerned the company used the stationery containing 8 digits telephone number. We have heard the rival contentions. Since the assessee is unable to establish its claim and has failed to control the findings of the authorities below that the long term capital loss is bogus in view of the brokers note produced not being genuine, we uphold the findings of the learned CIT (A) and consequently dismissed these grounds raised by the assessee.

19. In the result, appeal filed by the assessee for the assessment year 2000-01 is partly allowed.

ITA 7175/Mum/2010 for Asst. Year 2001-02

1. The assessee has preferred this appeal raising the following grounds are as under:-

1. The learned Commissioner (Appeals) erred in confirming disallowance of interest u/s 14A amounting to Rs.12,60,000/- attributable to investments when the appellant had not borrowed any funds and did not make any investments out of the same during the year.

2. The learned Commissioner (Appeals) erred in directing the Assessing Officer to apply Rule 8D for the purpose of disallowance u/s 14A when the Rule 8D is applicable only from the assessment year 2008-09 and there is no proximate cause for disallowance as the appellant has not incurred any expenditure in relation to dividend income earned.

3. The learned Commissioner (Appeals) erred in confirming the disallowance of income-tax depreciation on WDV of the leased assets amounting to Rs.15,94,90,000/- based upon the disallowance made by the Commissioner (Appeals) vide its consolidate order dated 18th June, 2009 for the assessment years 1993-94 to 1998-99, treating the earlier years lease transactions as 'finance transactions'.

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4. *The learned Commissioner (Appeals) ought to have allowed the depreciation on the WDV of the leased assets subject to the rectification and/or determination of WDV as on 1st April, 2000.*

5. *The learned Commissioner (Appeals) erred in confirming the disallowance of bad debts written off Rs.13,01,04,000/- consisting the lease rentals credited to profit and loss account Rs.7,99,36,043/- in earlier years and inter-corporate deposits of Rs.5,01,67,957/- being the 'bad debts' written off on the ground that capital portion of the finance lease which does not form part of the assessee's trading receipts could not be written of as 'bad debts'.*

6. *The learned Commissioner (Appeals) erred in confirming that bad debts written off is to be allowed in the year of write off and failed to appreciate the elaborate justification given for 'bad debts' written off.*

7. *The learned Commissioner (Appeals) erred in not allowing the deduction u/s 36(1)(vii) r.w.s 36(2) and/or u/s 28/29 and u/s 37(1) for the total amount of Rs.13,01,04,000/-.*

8. *The learned Commissioner (Appeals) erred in confirming the addition made by the Assessing Officer towards 'notional interest' amounting to Rs.41,62,500/- when the principal amount was provided as non performing assets (NPA) for the assessment year 2002-03 and disallowed in the computation itself.*

9. *The learned Commissioner (Appeals) failed to understand the justification given by the appellant as to no 'notional interest' could be added to the total income of the appellant during the year.*

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10. *The learned Commissioner (Appeals) erred in accepting the claim of 'bad debts' of Rs.6,55,89,889/- as deduction from the total income which was considered for the assessment year 2000-01 as 'notional income' by the Assessing Officer and confirmed by the Commissioner (Appeals).*

11. *The learned Commissioner (Appeals) failed in appreciating the fact that no interest income on notional basis can be taken when principal amount itself was taken a NPA from time to time and disallowed in the computation in the respective assessment years.*

12. *The penalty proceedings initiated u/s 271 (1) (C) should have been dropped as there is no concealment of income.*

13. *Each one of the above grounds is without prejudice to the other.*

14. *The appellant reserves the right to amend, alter or add to the grounds of the appeal.*

2.1 Ground No 1 and 2 of the present appeal is identical to ground No 1 and 2 of the appeal for the A.Y. 2000-01. Since, we have decided the identical issue partly in favour of the assessee in appeal for the assessment year 2000-01, we direct the AO to restrict the disallowance u/s 14A of the Act to 10% of the dividend income and partly allow ground No 1 of the appeal. Similarly since we have allowed ground No 2 of the assessee in appeal for the assessment year 2000-01, we also decide ground number 2 of this appeal in favour of the assessee.

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2.2 Similarly ground No 3 and 4 of the present appeal regarding disallowance of depreciation on WDV of leased assets are identical to the ground No 8 and 9 of the assessee's appeal for the A.Y. 2000-01. Since we have decided these grounds in favour of the assessee in assessee's appeal for the assessment year 2000 – 01 aforesaid, we allow ground number 3 and 4 of this appeal.

2.3 Ground No 5 to 7 regarding disallowance of bad debts, in the present appeal are identical to grounds 3-4 of assessee's appeal for the A.Y. 2000-01. Since we have decided these grounds in favour of the assessee in assessee's appeal for the assessment year 2000 – 01 aforesaid, we allow ground number 5 to 7 of this appeal.

2.4 Similarly, ground no 9-10 regarding addition of notional interest are identical to ground No 6-7 of the assessee's appeal for A.Y. 2000-01. Since we have admitted the additional evidence filed by the assessee and remitted this issue back to the file of AO to decide the issue afresh, we remit this issue back to the file of AO to decide the issue afresh after taking into consideration the additional evidence.

2.5 Ground No 10-11 regarding disallowance of bad debts in respect of notional income assessed in A.Y. 2000-01. Ld. Counsel for the assessee submitted that these grounds are consequential to ground nos. 6 & 7 of the appeal pertaining to A.Y. 2000-01. Since we have already remitted the grounds number six and 7 to the file of the assessing officer for reconsideration in the

light of additional evidence filed consequentially these grounds would also be remitted to the file of the AO.

2.6 In the result the assesses appeal for the A.Y. 2001-02 is partly allowed.

ITA 7176/Mum/2010 for A.Y. 2003-04

1. The assessee has preferred this appeal raising the following grounds are as under:-

1. The learned Commissioner (Appeals) erred in confirming the disallowance of 'bad debts' amounting to Rs.5,48,95,406/- towards ICD / loans and advances when the appellants had made elaborate submissions / justifications to the Assessing Officer / Commissioner (Appeals) for the 'bad debts' written off.

2. The learned Commissioner (Appeals) erred in not allowing the deduction u/s 36(1)(vii) r.w.s 36(2) and/or u/s 28 / 29 and u/s 37(1) for the total amount of Rs.5,48,95,406/- written off to the profit and loss account.

3. The learned Commissioner (Appeals) erred in confirming the disallowance of income-tax depreciation on WDV of the leased assets amounting to Rs.8,36,92,390/- based upon the disallowance made by the Commissioner (Appeals) vide its consolidated order dated 18th June,

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2009 for the assessment years 1993-94 to 1998-99, treating the earlier years lease transactions as 'finance transactions'.

4. The learned Commissioner (Appeals) ought to have allowed the depreciation on the WDV of the leased assets subject to the rectification and/or determination of WDV as on 1st April, 2002.

5. The learned Commissioner (Appeals) erred in dismissing the penalty proceedings u/s 271 (C) stating that the same is premature when the appellant had demonstrated that the claims were bonafide after making full disclosure and therefore, penalty initiated is unwarranted and should be dropped.

6. Each one of the above grounds is without prejudice to the other.

7. The appellant reserves the right to amend, alter or add to the grounds of the appeal.

2.1 Ground nos. 1& 2 regarding disallowance of bad debts are identical to grounds 3 &4 of the appeal for the A.Y. 2000-01. Since we have allowed the assessee's appeal on this issue for A.Y. 2000-01, we hold this issue in favour of the assessee in this year also.

2.2 The grounds 3-4 regarding disallowance of depreciation on WDV of leased assets are identical to Ground No.s 8-9 of the appeal for the A.Y. 2000-01. Since we have allowed the assessee's appeal on this issue for A.Y. 2000-01 ,

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following the same we allow the assessee's appeal on this issue for this year also.

2.3 Regarding ground no 5 initiation of penalty proceedings under section 271 (1)(c). Since no penalty u/s271 (1)(c) of the Act has been levied on the assessee, no cause of grievance arises to the assessee by mere initiation of penalty proceedings. This ground being premature is not maintainable and we therefore dismiss the same.

2.4 In the result assessee's appeal A.Y. 2003-04 is partly allowed.

ITA 5521/Mum/2010 for A.Y. 2006-07

1. The assessee has preferred this appeal raising the following grounds are as under:-

1. The learned Commissioner (Appeals) erred in confirming the disallowance of Income- tax depreciation on WDV of the leased assets amounting to Rs. 2,42,18,008/- based upon the disallowance made by the Commissioner (Appeals) vide its consolidated order dt. 18th June, 2009 for the earlier assessment years i.e. assessment years 1993-94 to 1998-99, treating lease transactions as 'finance transactions'.

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2. The learned Commissioner (Appeals) ought to have allowed the depreciation on the WDV of the leased assets subject to the rectification and/ or determination of WDV as on 1st April, 2005.

3. The learned Commissioner (Appeals) erred in not directing the Assessing Officer for brought forward losses and allowances as per previous assessment records to be set off against future profits.

4. The appellant reserves the right to amend, alter or add to the grounds of the appeal.

2.1 Ground nos 1-2 regarding disallowance of depreciation of WDV of leased assets are identical to ground nos 8-9 of the appeal for the A.Y. 2000-01. Since we have held this issue in favour of the assessee for A.Y. 2000-01, we allow the assessee's appeal on this issue for this year also.

2.2 As regards the ground no. 3, the Ld. Counsel submitted that the assessee is only seeking consequential reliefs that Assessing Officer after determining the brought forward losses and unabsorbed depreciation for the earlier years should carry them forward to the subsequent years of set off against future profits. The Assessing Officer is accordingly directed to examine a claim put forward by the assessee in this ground while giving effect to this order.

2.3 In the result assessee's appeal for A.Y. 2006-07 is partly allowed.

ITA 7177/Mum/2010 for A.Y. 2007-08

1. The assessee has preferred this appeal raising the following grounds are as under:-

1. The Learned Commissioner (Appeals) erred in confirming the disallowance of Income-tax depreciation on WDV of the leased assets amounting to Rs.2,01,38,381/- based upon the disallowance made by the Commissioner (Appeals) vide its consolidated order dt. 18th June, 2009 for the assessment years 1993-94 to 1998-99, treating the earlier years lease transactions as 'finance transactions'.

2. The learned Commissioner (Appeals) ought to have allowed the depreciation on the WDV of the leased assets subject to the rectification and/ or determination of WDV as on 1st April, 2006.

3. The learned Commissioner (Appeals) erred in dismissing the penalty proceedings u/s 271(c) stating that the same is premature when the appellant had demonstrated that the claims were bonafide after making full disclosure and therefore, penalty initiated is unwarranted and should be dropped.

4. Each one of the above grounds is without prejudice to other.

ITA No.7174 to 7176/MUM/2010
Assessment Year: 2000-01 to 2003-04
&
ITA 5531/MUM/2013
Assessment Year: 2006-07
&
ITA 7177/Mum/2010
Assessment Year: 2007-08

5. The appellant reserves the right to amend, alter or add to the grounds of appeal.

2.1 Ground nos 1-2 regarding disallowance of depreciation of WDV of leased assets are identical to ground nos 8-9 of the appeal for the A.Y. 2000-01. Since we have held this issue in favour of the assessee for A.Y. 2000-01, we allow the assessee's appeal on this issue for this year also.

2.2 As regards the ground no. 3, the Ld. Counsel submitted that the assessee is only seeking consequential reliefs that Assessing Officer after determining the brought forward losses and unabsorbed depreciation for the earlier years should carry them forward to the subsequent years of set off against future profits. The Assessing Officer is accordingly directed to examine a claim put forward by the assessee in this ground while giving effect to this order.

2.3 In the result assessee's appeal for A.Y. 2007-08 is partly allowed.

Order pronounced in the open court on 26th August, 2016.

Sd/-

(JASON P. BOAZ)

JUDICIAL MEMBER

Sd/-

(RAM LAL NEGI)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :26/08/2016

ITA No.7174 to 7176/MUM/2010
Assessment Year: 2000-01 to 2003-04

&
ITA 5531/MUM/2013
Assessment Year: 2006-07

&
ITA 7177/Mum/2010
Assessment Year: 2007-08

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

Pramila