IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "C" NEW DELHI

BEFORE SHRI I.C. SUDHIR, JUDICIAL MEMBER AND
SHRI J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

ITA no.2444/Del/2007
A.Y. 2002-03

ITA No.1941/Del/2008
A.Y. 2003-04

ITA No: 2123/Del/2009
A.Y.: 2004-05

G.E.Money Financial Services Ltd. (Formerly known as GE Countrywide Consumer Financial Services Ltd.) 401, 402, 4th floor, Aggarwal Millennium Tower E 1, 2, 3, Netaji Subhash Place Pitampura Delhi 110 034	Vs.	DCIT, Circle 12(1) New Delhi
PAN: AAACC0642 F		
(Appellant)		**(Respondent)**

Appellant by : Sh. Sanjeev Sabharwal, Sr.Adv.
Sh. Sachit Jolly, Adv.
Sh. Rahul Salaja, Adv.
Sh. Gautam Swarup, Adv.

Revenue by: Smt.Sulekha Verma, CIT, D.R.

O R D E R

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

All these appeals are filed by the assessee directed against separate orders passed u/s 263 of the Act by the CIT- Delhi IV for the Assessment Years (A.Y.) 2002-03, 2003-04 and 2004-05.

ITA 2444/Del/07 is an appeal filed against the order passed by the Ld.CIT, Delhi-IV for the A.Y. 2002-03 on 21.3.2007, u/s 263 of the Act.

ITA 1941/Del/2008 is directed against the order passed by the Ld.CIT-IV for the A.Y. 2003-04 on 31.3.2008 u/s 263 of the Act.

ITA 2123/Del/09 is filed by the asssessee directed against the order passed by the Ld.CIT-IV, Delhi u/s 263 of the Act on 27.3.2009 for the A.Y. 2004-05.

1.1. As the issues arising in all these appeals are common, for the sake of convenience, they are heard together and disposed of by way of this common order.

2. We first take up assessee's appeal in ITA 2444/Del/2007 for the A.Y. 2003-03.

3. Facts in brief:- The assessee company is a Non-Banking Finance Company (NBFC) and is engaged in the business of financing consumer and auto products. It filed its return of income on 31.10.2002, for the A.Y. 2002-03, declaring total income of Rs.96,28,250/- under the normal provisions of the Act. Book profits u/s 115 JB of the Income Tax Act 1961 (the Act) was declared at Rs.7,35,87,254/-. The assessment was completed u/s 143(3) of the Act on 25.2.2005. The Ld.CIT, Delhi –IV revised the order, passed by the Assessing Officer u/s 143(3) of the Act on 25.2.2005, by invoking his powers u/s 263 of the Act. The revision was made on the following issues.

(a) Allowability of loss incurred on sale of repossessed assets, as business loss.

(b) Allowability of loss on sale of bad loan portfolio as business loss.

(c) Allowability of excess provision of securitized assets.

3.1. The Ld.CIT(A) set aside the assessment to the file of the A.O., for the limited purpose of verification of the correctness of deduction claimed at Rs.497.77 lakhs, on account of sale of the repossessed stock and at Rs.209.05 lakhs on account of sale of bad loan port folio, as also for carrying out the verification of the claim that, the excess provision of Rs.32 lakhs on securitised assets was in fact, added back to the total income of the assessee company itself and hence no further disallowance was called for. The AO was directed to dispose of these issues as per law.

3.2. Aggrieved the assessee is in appeal before us on the following grounds.

> *"1. That on the facts and in the circumstances of the case and in law, the impugned order u/s 263 of the Income Tax Act, 1961 (the Act) is beyond jurisdiction, bad in law and void ab-initio.*
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> *2. That on the facts and in the circumstances of the case and in law, the Ld.CIT erred in alleging that the assessment order was erroneous and prejudicial to the interest of revenue without specifying any actual error and in directing the A.O. to carry out a further proceeding to ascertain whether at all there was any error in the assessment order.*
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> *3. That on the facts and in the circumstances of the case and in law, the Ld.CIT-IV, Delhi (CIT) erred in alleging that the assessment order u/s 143(3) of the Act was erroneous in allowing deduction of Rs.494.77 lacs towards loss on sale of repossessed assets and Rs.209.05 lacs towards loss on sale of loan portfolios.*
>
> *3.1. That on the facts and in the circumstances of the case and in law, the Ld.CIT erred in not appreciating that the Assessing Officer, having accepted that these losses were business losses, could not be said to be in error for relying upon the audited accounts of the appellant for quantification thereof.*
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> *4. That on the facts and in the circumstances of the case and in law, the Ld.CIT erred in holding that the A.O. has not verified whether the excess provision for securitised assets of Rs.32 lacs was offered to tax by the appellant."*

3.3. We have heard Shri Sanjeev Sabharwal, Ld.Sr.Counsel on behalf of the assessee and Smt.Sulekha Veram, Ld.CIT, D.R. on behalf of the Revenue.

4. The Ld.Sr.Counsel for the assessee Mr.Sanjeev Sabharwal submitted as follows.

(a) There is no loss to the Revenue on any of these issues on which revision has been done by the Ld.CIT for the reason that, the assessee could have claimed 100% of the debt as bad debt, but instead had claimed only a limited amount by way of loss on sale of repossessed assets and had rightly claimed business loss, on sale of bad loan portfolio. As far as the allowability of excess provision made on securitised assets is concerned, he submitted that there was total non application of mind by the Ld.CIT for the reason that, the assessee himself had disallowed this amount while computing its income.

(b) For the A.Y. 2004-05 and 2003-04 the allegation of "lack of enquiry by the A.O." during assessment proceedings is factually incorrect. Attention was drawn to the order sheet entry dt. 17th August, 2006, written submissions of the assessee dt. 4th October, 2006, which proves that an enquiry was made by the A.O. and detailed replies were furnished by the assessee. Just because the A.O. did not reflect the fact of verification, in the assessment order, it ipso facto does not lead to a conclusion that there was no enquiry by the A.O.

(c) What are the proper, requisite and desired enquiries in relation to, various matters during the course of assessment proceedings is at best left to the discretion of the A.O. and the presumption is that the officer involved acted in a bonafide and diligent manner.

(d) The Ld.CIT has not based his conclusions on any material, which could lead to a conclusion that the acceptance of the assessee's version by the A.O. was not warranted either in law or on facts.

(e) The A.O. not only asked specific question on the allowability of these items of loss as business loss, but had also applied his mind to the detailed

submissions made by the assessee and after perusing the audited annual accounts, which have clearly reflected these claims, accepted the contention of the assessee. This is neither non enquiry nor lack of application of mind and it is a possible view taken by the A.O.

(f) When the A.O. has drawn inferences after making enquiries, the Ld.CIT does not have any jurisdiction u/s 263 of the Act, to cancel the assessment order. The object of S.263 of the Act is not to make rowing and endless enquiries.

(g) There is a distinction between lack of enquiry and inadequate enquiry. Reliance is placed on the judgement of Hon'ble Delhi High Court in the case of M/s Sun Beam Auto Ltd. in ITA no.1399/2006 dt. 11.9.2009.

(h) Reliance was placed on the judgement of Hon'ble Allahabad High Court in the case of Motor and General Sales P.Ltd. reported in 226 ITR 137 (All), by the Ld.CIT, is bad in law as, in fact this case law supports the claims made by the assessee.

(i) The Ld.CIT has in principle, for the A.Y. 2002-03, came to a conclusion that the loss in question is a business loss. Under the circumstances, setting aside for the limited purpose of verification of quantification of the loss is uncalled for, as the A.O. relied upon the audited accounts of the assessee for quantification and this cannot be faulted with.

(j) The Ld.CIT has not specified anywhere in his order passed u/s 263 of the Act, as to what is the prejudice caused to the interest of the Revenue and hence the revision is bad in law.

(k) For the A.Y. 2004-05 one more issue arises i.e. the allowability of the claim for depreciation @ 15% of lease hold improvements, instead of the rate of 10% allowable on the presumption that, such improvements were made to the buildings. He submitted that the depreciation was claimed on furniture and fixtures and the Ld.CIT has merely set aside the matter to the file of the A.O. for verification, which act is not in accordance with law. He relied on the following case laws.

(i) CIT vs. Vikas Polymers reported in 341 ITR 537 (Del)

(ii) CIT vs. Sunbeam Auto Ltd. Reported in 332 ITR 167 (Del.)

(iii) CIT vs. Max India Ltd. Reported in 295 ITR 282 (SC)

(iv) Hindustan Coca Cola Beverages P.Ltd. vs. DCIT in ITA 2274/Del/07 and 2038/Del/08 – ITAT Delhi Bench order dt. 25.8.2009

(v) CIT vs. Citi Financial Consumer Finance Ltd. Reported in 335 ITR 29 (Del.)

(vi) Malabar Industrial Co.Ltd. vs. CIT reported in 243 ITR 83 (S.C.)

5. Smt.Sulekha Verma, Ld.CIT, D.R. on the other hand vehemently controverted the submissions of Shri Sanjeev Sabharwal, the Ld.Senior Counsel for the assessee. She argued that:

(a) The Ld.CIT has not in principle, accepted that the loss on sale of repossessed assets and loss on sale of bad loan port folio, is business loss as claimed by the assessee. She relied on the order of the Ld.CIT and submitted that no such finding has been given.

(b) That the assessee has not produced any evidence on actual sale of repossessed assets and that the assessment order is silent on these issues, and hence the Ld.CIT has come to a conclusion that the loss is not allowable.

(c) That in Schedule 20 of the annual accounts along with Schedule VII, read with the Notes thereto, has not been examined by the A.O. That the A.O. has simply collected replies but has not applied his mind to the issues in question and had simply accepted the replies of the assessee. That the A.O. has kept mum on the reply given by the assessee and hence it is a case of no enquiry due to non application of mind.

(d) That before the Ld.CIT, voluminous data has been filed by the assessee, the Ld.CIT cannot by himself come to a conclusion and hence the matter

was remanded back to the file of the A.O. for fresh adjudication de novo and in such circumstances, no fault can be found with the order of the Ld.CIT.

Reliance was placed on the following case laws.

(i) Gee Vee Enterpirses reported in 99 ITR 375 (Del.)
(ii) Duggal & Co. Reported in 220 ITR 456 (Del.)
(iii) Malabar Industries Co.Ltd. reported in 243 ITR 83 (SC)

For the A.Y. 2002-03, she submitted that admittedly there is no verification by the A.O. and hence the revision has to be upheld.

(e) On the issue of claim on depreciation of improvements to lease hold property it was submitted that the A.O. has not conducted any verification and hence there is no application of mind and the assessee should have no grievance as it is an open remand to the A.O.

(f) It was further submitted that the Ld.CIT has come to a conclusion that the order of the AO is erroneous and prejudicial to the interest of the Revenue for the reason that, these claims have been allowed either without verification or without due application of mind.

(g) The Hon'ble Allahabad High Court in the case of Motor and General Sales P.Ltd. reported in 226 ITR 137 has held that loss incurred on actual sale of repossessed assets is not allowable because, at the time of sale the asset remained registered in the name of hire purchaser and the repossessed assets can never be treated as part of the stock of the assessee.
(h) That the assessee has not furnished any evidence to prove actual loss on sale of bad loan portfolio.

(i) She relied on the orders of the Ld.CIT u/s 263 of the Act for all the three A.Ys and prayed that the same be upheld.

6. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, on perusal of material available on record, orders of lower authorities and case laws cited, we hold as follows.

7. We first take up the appeals for the A.Y. 2004-05 and 2005-06. Before we go into the legal arguments on the correctness of the action of the Ld.CIT, in invoking his powers u/s 263 of the Act, we cull out the facts from records.

"Loss on sale of repossessed assets amounting to Rs.497.77 lakhs:

The assessee, an NBFC, is engaged in the business of providing financial assistance to customers in acquiring wide range of consumer and auto products. During the course of its regular business assessee had given certain auto/consumer loans and assets on hire purchase/lease during the previous year relevant to the A.Y. under consideration.

In the case of hire purchase transactions the company does not claim any depreciation and reflects the hire purchase receivables from the hirers in the balance sheet as hire purchase receivables (refer schedule 10 of the audited accounts on record). In case of hire purchase, in the event the hirer defaults in payment of instalments, the company repossesses the stock given by it on hire purchase. Similarly in case of auto or consumer loans the loan is hypothecated against the auto/two wheeler or the consumer durable as a security which, in the event of default by a customer, is repossessed.

As and when an asset is repossessed under a hire purchase and/or consumer loan transaction, the same is included in the "repossessed stock" of the company under the current assets. The same is done by debiting the repossessed stock account and crediting the debtors account. In other words by passing this entry there is only a balance sheet movement not affecting the profit and loss account and consequently having nil effect on the taxable income.

Thereafter, assessee taking a commercially prudent decision sells these repossessed assets to interested buyers. On sale the excess/shortfall of the sale proceeds vis a vis the amount recoverable from the hirers is booked as business profit/loss in the profit and loss account under Schedule 21: operating expenses under the head loss on sale of repossessed assets. The

unsold repossessed stock lying in the possession of the company in the year end continues to form part of current assets. So it is evident that no loss on these assets is booked/claimed by the company. (Emphasis ours)

7.1. The Ld.CIT in his order u/s 263 of the Act for the A.Y. 2002-03 has concluded as follows.

"The claim of the assessee company with regard to deduction of loss of Rs.497.77 lakhs incurred on sale of repossessed stocks and loss of Rs.209.05 lakhs incurred on sale of bad loan portfolios as business loss cannot be disputed because such loss has been incurred in the course of the business of the assessee company which is to provide financial assistance to the customers in acquiring wide range of consumer and auto products besides selling vehicles and other consumer products under hire purchase scheme and giving assets on lease. In his report furnished vide his letter F.No.DCIT/Cir.12(2)/2006-07/1702 dt. 7.2.2007, the A.O., DCIT 12(1), New Delhi has also expressed similar view. The fact, however, remains that it does not emerge from a perusal of the assessment records that as to whether the quantum of deductions claimed at Rs.497.77 lacs on account of loss on sale of repossessed stocks and of Rs.209.05 lacs on account of loss on sale of bad loan portfolios is correct and based on the actual sale of repossessed stocks and bad loan portfolios during the year under consideration. Similarly, the AO also does not appear to have verified the fact as to whether the excess provision of Rs.32 lakhs on securitised assets was added back to the total income by the assessee company itself as is being claimed in the present proceedings before me. Accordingly, the assessment order dt. 25.2.2005 u/s 143(3) of the Act for the AY 2002-03 is held to be erroneous and prejudicial to the interests of revenue. In the circumstances, it is considered fair and reasonable to set aside the assessment on the limited point for verification of correctness of deductions claimed at Rs.497.77 lacs on account of loss on sale of repossessed stocks and of Rs.209.05 lacs on account of loss on sale of bad loan portfolios as also for carrying out verification of the claim that the excess

provision of Rs.32 lacs on securities assets was added back to the total income by the assessee company itself. The AO is directed to decide these issues afresh as per law and after giving reasonable opportunity to the assessee company of being heard."

7.2. A perusal of the above findings of the Ld.CIT, clearly demonstrates that the allowability of the claim of loss on sale of re-possessed assets and loss on sale of bad loan portfolio per se, as a business loss, is not disputed by the Ld.CIT. He only doubts whether the quantification of the claim is correct or not. This is because the A.O. has not enquired into these aspects during the course of assessment proceedings. Thus he sets aside the assessment to the file of the A.O. for the limited purpose of verification of the correctness of the quantification of the deduction claimed. Hence we need not labour much on the issue whether the claims in question are allowable or not as business loss.

7.3. The Ld.D.R. has relied on the judgement of Hon'ble Allahabad High Court in the case of Motor and General Sales (Pvt.)Ltd. Vs. CIT 226 ITR 137. In our considered opinion, the facts of the current case are different from the facts considered by the Hon'ble High Court in the case of M/s Motor and General Sales P.Ltd. (supra). In that case the factual position was, that the assessee was not the owner of the vehicles, which were registered in the name of hire purchaser and the repossessed assets sold were not taken into the assessee's stock in trade. The assessee had claimed loss on revaluation and not loss on actual sale. Under such circumstances the Hon'ble High Court held that any loss in revaluation of the said vehicles did not arise. The Hon'ble Court was considering the allowability of the estimated possible loss on revaluation of these repossessed assets. In the case on hand the assessee has repossessed the assets and disclosed the same as its stock in trade by crediting the debtor's account to the extent of the value of the repossessed assets. Thus it records recovery of part loan. In other words recovery of the amount from the debtor is recorded and the repossessed assets comes to stock in trade of the assessee company. Loss/profit is not

claimed on revaluation but on actual sale of such re-possessed assets. Wherever profit was disclosed, the assessee has offered the same to tax.

7.4. On the loss incurred on sale of loan portfolio, the claim of the assessee is that, this is in the nature of bad debts written off and hence allowable u/s 36(1)(vii) r.w.s.36(1) of the Act. It was submitted that out of business prudence and commercial expediency, the assessee sold part of its loan portfolio consisting mainly of non-performing assets, as otherwise the assessee would have suffered higher losses. The loss incurred on sale of loan portfolio represents the outstanding dues from defaulting customers less the sale proceeds recovered, which is written off and claimed as business loss by the assessee.

8. We now consider the specific arguments on the jurisdiction of the Ld.CIT to invoke the powers u/s 263 of the Act.

8.1. For the A.Y. 2003-04 and 2004-05, the A.O. has, during the course of assessment proceedings raised specific queries on these issues on allowability of business loss in both these issues from the assessee and thereafter accepted its claim.

8.2. For the A.Y. 2004-05 the A.O. vide order sheet entry dt. 17th August, 2006 had raised a specific query in respect of allowability of loss on sale of repossessed assets amounting to Rs.11,14,37,000/-. The assessee vide reply dt. 4th October,2006, made detailed factual and legal submissions on the allowability of the claim. A copy of these are furnished as part of the paper book. We have perused the same.

8.3. After considering these submissions of the assessee in response to the query which included, party wise details of loss incurred on sale of repossessed assets, the A.O. accepted the claim of the assessee. Similarly for the A.Y. 2003-04 a query was raised by the A.O. and after considering the details furnished and the submissions, the claim was accepted. The question before us is, whether under such circumstances the Ld.CIT can

invoke his powers u/s 263 of the Act when this is not a case of lack of enquiry but merely a case of inadequate enquiry as per the Ld.CIT.

8.4. The Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd. (supra) has held as follows.

Held, dismissing the appeal, :

(i) That the AO allowed the claim on being satisfied with the explanation of the assessee. Such decision of the A.O. could not be held to be erroneous simply because in his order he did not make an elaborate discussion in that regard. The AO had called for explanation on the very item from the assessee and the assessee had furnished its explanation. This fact was conceded by the Commissioner himself in his order. This showed that the AO had undertaken the exercise of examining as to whether the expenditure incurred by the assessee, in the replacement of dies and tools was to be treated as revenue expenditure or not. Therefore, it could not be said that it was a case of lack of inquiry. The accounting practice followed for a number of years had the approval of the income tax authorities. Even for future AYs the very same accounting practice was accepted.

(ii) That the dies were components of the machines. They needed constant replacement, as their life was not more than a year. The assessee also explained that since the parts were manufactured for the automobile industry, which had to work on complete accuracy at high speed for a longer period, replacement of the arts at short intervals becomes imperative to retain the accuracy. With the replacement of tools and dies no new asset comes into existence nor was their benefit of enduring nature. They did not even enhance the life of the existing machine of which the tools and dies were only parts. Therefore, the view taken by the AO was one of the possible views and the assessment order passed by him could not be held to be prejudicial to the interests of Revenue. The opinion of the AO in

treating the expenditure as revenue expenditure was plausible and thus there was no material before the Ld.CIT to vary that opinion and ask for fresh enquiry.

8.5. The Hon'ble High Court in the case of CIT vs. Anil Kumar Sharma reported in 335 ITR 83 (Del) has held as follows.

" Held, dismissing the appeal, that the present case would not be one of 'lack of inquiry' even if the inquiry was termed inadequate. The Tribunal found that complete details were filed before the AO and that he applied his mind to the relevant material and facts, although such application of mind was not discernible from the assessment order. The Tribunal held that the Ld.CIT in proceedings u/s 263 also had all these details and material available before him, but had not been able to point out defects conclusively in the material, for arriving at a conclusion that particular income had escaped assessment on account of non application of mind by the AO. The Tribunal was right and the order of revision was not valid."

8.6. The Hon'ble Delhi High Court in the case of CIT vs. Vikas Polymers reported in 341 ITR 537 (Del) has held as follows.

"Held, that the Commissioner had mentioned that the A.O. had not examined the cash credits of the partners or deposits of chit fund. Assuming this to be so, this might make the order erroneous, but how it was prejudicial to the interest of the Revenue had not been stated by the Ld.CIT as he did not deal with the explanation given by the assessee in the course of S.263 proceedings. The Commissioner observed in his order that the assessee had not filed certain documents on the record at the time of assessment. Assuming this was so it did not justify the conclusion arrived at by the Commissioner that the AO had shirked his responsibility of examining and investigation of the case. More so, in view of the fact that the assessee explained that the capital investment made by the partners, which had been called into question by the Commissioner, and this was duly reflected in the respective assessments of the partners who were income tax assesses and the unsecured loan taken from the chit fund was duly reflected in the

assessment order of the chit fund which was also an assessee. The order of revision was not valid."

8.7. Applying the propositions laid down in the above judgements, we hold that this is not the case of lack of enquiry. The Ld.CIT cannot invoke his powers u/s 263 of the Act on the ground that, in his opinion it is a case of of inadequate enquiry.

8.8. On this sole ground itself these orders passed u/s 263 of the Act for both the A.Ys have to be quashed.

8.9. Further more, in our opinion, the Ld.CIT has not demonstrated as to what is the prejudice caused to the Revenue in the above cases. The loss in question is admittedly a business loss, and as the Ld.CIT in his order u/s 263 of the Act for the A.Y. 2002-03 has accepted this position. As submitted by the Ld.Sr.Counsel for the assessee, if these N.P.As are written off as bad debts then 100% of such write off would have to be allowed and that the assessee was conservative in its claim.

9. Applying the propositions laid down in the above judgements to the facts of the case we hold that the invoking of powers u/s 263 of the Act for both the A.Ys is bad in law on the issue of (a) loss on sale of repossessed assets; (b) loss on sale of bad loan portfolio.

10. Coming to the issue that arises, only in the A.Y. 2004-05 i.e. depreciation on improvements to leasehold assets, we find that the Ld.CIT has gone on a wrong presumption that the depreciation is claimed for renovation of building. When the clarification has been given by the assessee that it is only depreciation of furniture and fixtures he remanded the issue to the file of A.O. for verification, without pointing out as to what is the prejudice caused to revenue. This in our opinion is bad in law.

10.1. The Hon'ble Delhi High Court in the case of CIT vs. Kelvinator of India Ltd. (2002) reported in 256 ITR p.1.(Del)(FB), held as follows: "it is well known that a presumption can also be raised to the effect that in terms of clause (e) on S.114 of the Indian Evidence Act, judicial and official Acts have

been regularly profound. If it be held that the order which has been passed purportedly without application of mind would itself confer jurisdiction upon the A.O. who reopen the proceedings without anything further, the same would amount to be a prejudicial authority exercising quasi judicial function to take the benefit of its own wrong."

10.2. In this case, the Ld.CIT has not referred to any material from which it could be said that the acceptance of the assessee's submissions and details by the A.O. was not warranted, either in law or on facts. The Ld.CIT has not given any material or evidence which would contradict the assessee's version and which aspect has not been adverted to by the A.O. while completing the assessment. For all these reasons we allow both these appeals by the assessee for the A.Y. 2003-04 and A.Y. 2004-05, by holding that the Ld.CIT has erroneously invoked his powers u/s 263 of the Act.

10.2. Coming to the A.Y. 2002-03, admittedly there is lack of enquiry on the part of the A.O. In the S.263 proceedings, the Ld.CIT has come to a definite conclusion that the loss in question is a business loss. This does not mean that the lack of enquiry by the A.O. would not be considered as erroneous and prejudicial assessment order passed by the A.O. The A.O. has not verified either (a) the allowability of the loss in principle or (b) where the claim is factually correct as quantification of the loss has not been verified by the A.O. In our opinion such exercise of powers u/s 263 of the Act is in accordance with law. Just because the Ld.CIT has come to a conclusion that in principle the loss in question is a business loss, it does not lead to a conclusion that the quantification has to be accepted based on audited accounts, though the A.O. has not made any enquiry on this issue. It is well settled that in case of no enquiry, it would be a case of non application of mind, resulting in an error in the assessment order which causes prejudice to the interest of the Revenue. The Ld.CIT has held the first issue in favour of the assessee and on the second issue, set aside the order for fresh adjudication.

10.3. For this year the decision of the Hon'ble Delhi High Court in the case of Duggal & Co. Reported in (supra) is squarely applicable. The Hon'ble Delhi High Court in the case of Duggal & Co. (supra) held as follows.

"Held, the Commissioner is perfectly competent to exercise his powers u/s 263 whenever he has found, prima facie, that there is need to enquire, if the interest of the revenue has suffered by an order of assessment. In the instant case, he had given certain reasons. The basis for the order of the Commissioner was a question of fact and whether it was correct or not would have to be found out after enquiry by the AO. The Commissioner had found that the AO had omitted to enquire into this question found by the Commissioner implicit in the manner in which the amounts were borrowed and advanced by the assessee company. It was incumbent on the AO to further investigate the facts stated in the return, when circumstances would make such an inquiry prudent and the work 'erroneous' in s.263 included the failure to make such an enquiry. The order became erroneous because such an enquiry had not been made and not because there was anything wrong with the order if all the facts stated therein were assumed to be correct.

Thus, the Tribunal was justified in upholding the action of the Commissioner in invoking the provisions of s.263 of the Act and sustaining his order."

10.4. Coming to the third ground of revision i.e. excess provision of securitised assets, the Ld.CIT could have verified whether the assessee had suo moto disallowed the provision and the revision on this count would result in a double disallowance. Without coming to a firm conclusion on this issue, despite the submissions and evidences submitted by the assessee, it is wrong on the part of the Ld.CIT to simply set aside the matter to the file of the A.O. for fresh adjudication.

10.5. In any event as we have upheld the order passed u/s 263 of the Act on the first two issues, we dismiss the appeal filed by the assessee for the A.Y. 2002-03.

11. In the result the appeal of the assessee is dismissed for the A.Y. 2002-03 and allowed for the A.Y. 2003-04 and 2004-05.

Order pronounced in the Open Court on 30th October, 2015.

Sd/-	Sd/-
(I.C. SUDHIR) JUDICIAL MEMBER	(J.SUDHAKAR REDDY) ACCOUNTANT MEMBER

Dated: the 30th October, 2015

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Copy of the Order forwarded to:
1. Appellant;
2.Respondent;
3.CIT;
4.CIT(A);
5.DR;
6.Guard File

By Order

Asst. Registrar