

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI P.M. JAGTAP, ACCOUNTANT MEMBER
AND SHRI VIVEK VARMA, JUDICIAL MEMBER**

ITA No. 3006/Mum/2001

ITA No. 4892/Mum/2003

(Assessment year: 1996-97)

Development Credit Bank Ltd., Trade Point, First Floor, Kamala Mills, Lower Parel,/ 301, Veer Sarvakar Marg, Prabhadevi, Mumbai-400 013/25 (Appellant)	Vs	Dy. CIT, Cen. Cir. 22, Room no. 403/465, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai -400 020 (Respondent)
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ITA No. 3620/Mum/2001

(Assessment year: 1996-97)

Dy./Asst. CIT; Cen. Cir. 22, Mumbai -400 020 (Appellant)	Vs	Development Credit Bank Ltd., Mumbai-400 013/25 PAN: AAACD 1461 F (Respondent)
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The appeals shown below are interconnected to the above three appeals which were heard together:

Sr No	ITA No./ Int. tax A.No.	A.Y.	Whose appeal
4	5840/M/2003	1997-98	Assessee
5	5813/M/2004	1998-99	Assessee
6	51/M/2005	1999-00	Assessee
7	52/M/2005	2000-01	Assessee
8	53/M/2005	2001-02	Assessee
9	3303/M/2005	2000-01	Assessee
10	3304/M/2005	2001-02	Assessee
11	4104/M/2005	2002-03	Assessee
12	151/M/2007	2003-04	Assessee
13	7348/M/2007	2004-05	Assessee
14	7171/M/2011	2008-09	Assessee
15	6010/M/2003	1997-98	Revenue
16	5814/M/2004	1998-99	Revenue
17	9611/M/2004	1999-00	Revenue
18	9657/M/2004	2000-01	Revenue
19	370/M/2005	2001-02	Revenue
20	3979/M/2005	2002-03	Revenue
21	549/M/2007	2003-04	Revenue
22	7625/M/2007	2004-05	Revenue
23	7001/M/2011	2008-09	Revenue

24	Interest Tax A.	1996-97	Revenue
25	40 and 41/Mum/2003	1997-98	Revenue
26	Interest Tax A. 8	1998-99	Revenue
27	Interest Tax A.	1999-00	Revenue
28	9 & Int.Tax10/M/ 2005	2000-01	Revenue

Assessee-appellant by: Shri Satish Mody
Respondent-revenue by: Shri S.D. Srivastava

Date of Hearing : 21-01-2013
Date of Pronouncement : 20-03-2013

ORDER

PER BENCH:

These twenty eight appeals out of which eight are cross appeals and out of remaining twelve appeals five are filed by the revenue on Interest-tax, which arises from the different orders of CIT(A), Mumbai, in the relevant years, in the captioned assessment years. As most of the issues involved in these appeals are identical hence these are clubbed and heard together and are being disposed off by this consolidated order for the sake of brevity and convenience.

2. In this batch of appeals, lead assessment year is assessment year 1996-97, for which there are three appeals, two are cross appeals and one appeal, filed by the assessee, which emanate from the order passed by the AO in the set aside proceedings under section 143(3) read with section 251 on certain issues.

3. Being lead year, we take up the said appeals for assessment year 1996-97, first.

4. The cross appeals filed for assessment year 1996-97 are directed against the order of CIT(A) IV, Mumbai, dated 12.03.2001, wherein several ground along with several sub grounds were originally raised

by the assessee. At the time of hearing, the AR however has, submitted concise grounds of appeal, which have been perused and accepted in substitution of the original grounds of appeal.

Assessment year 1996-97 :

ITA no. 3006/Mum/2001 : Assessee's appeal

ITA no. 3620/Mum/2001 : Department's appeal

5. Ground no. 1 raised in assessee's appeal and both the grounds, i.e. grounds no. 1 & 2 raised in the department's appeal involve common issue relating to assessee's claim for depreciation on various assets given on lease.

6. The brief facts of the case are that, the assessee is a private bank, which came into existence on 31.05.1995 by taking over the business of Development Cooperative Bank Ltd. The assessment was framed by the AO at Rs. 30,37,61,270/-, which was challenged by the assessee. At the time of hearing before the CIT(A), on various dates, not only representatives of the assessee were present, but the AO and the AO who had framed the assessment were also present.

7. One of the business functions of the assessee bank is that, it leases assets to its clients under two segments,

- (i) the assessee purchases assets from its clients and leases it back to them for actual usage i.e., sale and lease back (SLB) and
- (ii) assets are purchased by the bank from suppliers and then give those assets to its clients for actual usage, i.e. under normal lease agreement.

8. During the year under consideration, the assessee put on lease, assets in 16 transactions in either segment, known as, (i) Sale and lease back (SLB) and (ii) lease of assets, which are as under,

Sr. No.	Name of Lessee	Depreciation claimed Rs	Remarks
i	Renewable Energy	2,35,00,000	Sale and Lease back
ii	Jain Plastics and Chemicals	46,39,500	- do -
iii	Jain Chiquita & Foods	20,24,655	- do -
iv	Datar Switchgear	99,97,781	- do -
v	Datar Switchgear	49,98,088	- do -
vi	Bellary Steel	77,00,000	- do -
vii	Asian Electronics	1,45,75,887	- do -
viii	A.V.S. Industries	1,65,00,000	
ix	Prakash Industries	3,61,00,000	
x	Prakash Industries	73,59,000	
xi	N.R.C. Ltd.	98,84,700	
xii	Stellar Modular System	4,53,758	
Xiii	Uniflex Cables		
xiv	Uniflex Cables	11,15,383	
xv	J.B.F. Industries	3,85,30,000	
xvi	Mardia Chemicals	1,42,77,990	

9. As the assessee had claimed its ownership over the assets leased, it had claimed depreciation. The AO in the assessment proceedings held that depreciation, as claimed by the assessee on all the leased assets was not allowable on different counts. According to the AO transactions

at serial nos. i to vii were pertaining to SLB, transactions at serial nos. viii to xiv were not genuine and transactions at serial nos. xv and xvi, the relevant assets leased out by the assessee were not put to use by the lessee.

10. The AO, therefore, disallowed depreciation as claimed by the assessee on all the leased assets targeted by him. In so far as transactions under SLB, i.e. serial no. i to vii were concerned, the AO observed that the transactions were an eyewash and the assessee had used them as colorable device to lower its taxable income. Even in the proceedings before the CIT(A), a circular was confronted, bearing no. F.No. 225/186/2000-ITA-II, dated 9.2.2001, which referred to the impugned issue, "in case of sale and lease back of assets without any alteration in the situation of assets and its working the denial of depreciation claimed has to be considered, keeping in view the principle

laid down by the Supreme Court in the case of McDowell & Co. Ltd."

The basic reply of the assessee was :


- a) *technically it is sale and lease back but actually it is regular lease of new equipment, acquired within the financial year, wherein the lessee has already bought the equipment before the lease arrangement. In which case, the equipment is sold by the lessee to lessor and takes its back on lease;*
- b) *Circular dated 09.02.2001 is bereft of the fact that all lease arrangements are not colorable devices. The decision of McDowell & Co. Ltd. is on colorable devices and will not be applicable on genuine transactions;*
- c) *that there are several judgments of UK & US Courts where sale and lease back transactions, based on facts have been regarded as genuine commercial transactions and domestically also, the transactions have been approved as genuine in the following cases :*
Unimed Technologies Ltd. vs DCIT, reported in 73 ITD 150 (Ahm),
K & Co. vs DCIT reported in 56 ITD 448(Del),
Indian Management Advisors & Leasings (Pvt.) Ltd. vs DCIT, reported in 51 ITD 566 (Del)

11. The CIT(A), did not find merit in the argument of the assessee bank and sustained the observation of the AO, who held that the claim of depreciation on SLB transaction, is a colorable device to increase depreciation and reduce tax effect. The CIT(A) observed that the role of the bank is to lend money and earn interest and not to own the asset and claim depreciation, thereby reducing taxable income. He, therefore, rejected the appeal of the assessee with regard to transactions no. i to vii, pertaining to SLB transactions.

12. With regard to transactions at serial no. viii to xiv, the AO was of the view that the transactions were not genuine and, he, therefore, disallowed the depreciation claimed thereon and added it back.

13. Before the CIT(A), the assessee reiterated its arguments and to examine the strength of the AO's observations, the CIT(A) not only discussed each point with the AO (*para 16 of CIT(A) order*), he also made the present AO and the AO who framed the assessment order, party to the proceedings before him.

14. The CIT(A), then took up each transaction and examined the same with respect to the genuineness and after examining each of the transaction, the CIT(A) concluded that the genuineness of the so called tainted/non-genuine transactions, could not be doubted. *The department is in appeal against these observations of the CIT(A), pertaining to transaction at serial no. viii to xiv, in ITA No. 3680/Mum/2001.*



With regard to transactions at serial nos. xv and xvi, the AO observed that the depreciation could not be allowed because the assets leased out by the assessee, had not been put to use by the lessees.

16. Before the CIT(A), it was reiterated that the moment the leased asset is sent to the lessee, the asset is put to use, so far as the lessor is concerned, i.e. the assessee in the present case.

17. This argument did not find favour with the CIT(A), who sustained the disallowance of the depreciation claimed by the assessee in transactions at serial nos. xv and xvi.

18. *The CIT(A), therefore concluded that*

- a) transactions at serial nos. i to vii in SLB transactions, on which depreciation was claimed, the disallowance was sustained*
- b) transactions at serial no. viii to xiv on which depreciation was claimed was allowed (the department is appeal in ITA No. 3620/Mum/2001)*
- c) transactions at serial no. xv & xvi, depreciation could not be allowed on the ground that the assets put on lease by the assessee bank had not been put to use by the lessees, depreciation as disallowed was sustained.*

19. Against these observations by the CIT(A) in (a) and (c), as above, the assessee is in appeal.

20. The AR pointed out that the issue of sale and lease back had been an issue of dispute and the Special Bench of the ITAT in the case of IndusInd Bank, ITA no. 6566/Mum/2002 that only in the case of genuine cases, the depreciation could be allowable. This decision, by the Special Bench has now been reversed in the case of Cosmo Films Ltd. ITA no. 1404 of 2008, wherein Hon'ble Delhi High Court had allowed the claim. The AR also pointed out that Hon'ble Madras High Court in the case of CIT vs High Energy Batteries (India) Ltd., reported in 348 ITR 578, held that sale and lease back were not sham transactions. The AR also relied on the decision of CIT vs Zuari Finance Ltd., reported in 271 ITR 538 and West Coast Paper Mills Limited reported in 100 TTJ 833.

21. The AR pleaded that transactions entered into by the assessee are as per banking regulation and as per accepted norms.

22. The AR also referred to the transactions with JBF Industries and Mardia Chemicals, wherein the depreciation has been disallowed

simply on the basis of assets not having been put to use by the lessees. The AR pointed out that the issue now stands covered by the decision of Hon'ble Bombay High Court in the case of CIT vs Kotak Mahindra Finance Ltd., reported in 317 ITR 236, wherein the Hon'ble Bombay High Court held *that machinery had been supplied by the end of the financial year and the assessee had received lease rental. Whether the lessee had put to use the leased equipment would be irrelevant as long as the machinery in fact had been given on lease and would be said that the assessee for the purpose of business had used the leased equipment, hence the assessee was entitled to depreciation.* The AR also cited the cases of CIT vs Sundram Finance Ltd. wherein the Hon'ble Madras High court took the same view of the Hon'ble Bombay High court taken in Kotak Mahindra (*supra*). The AR, therefore, submitted that the assessee was entitled to depreciation on SLB transactions and also on transactions, where assets have not been put to use by the lessees.

23. The DR pointed out that so far as sale lease back transaction concerned, issue had been decided by the two Special Benches of the ITAT in the cases of MidEast Portfolio Management, reported in 87 ITD 537 and very recently in the case of IndusInd Bank, reported in 135 ITD 165, wherein the transactions in the nature of sale lease back have been dissected and tests have been laid and it was then held that the transactions lacked the character of sale lease back and hence depreciation was disallowed. The DR pleaded that the tests have to be applied on the transactions impugned by the AO to finally come to a conclusion for allowance of the depreciation.

24. With regard to the transaction held to be not genuine by the AO and which has been reversed by the CIT(A), i.e. in favour of the assessee, the DR pointed out that the report of the Court Receiver was not available to the AO, which in itself was violation of natural justice

and a good ground for the issue to be restored to the AO for fresh adjudication.

25. On the issue of assets not put to use by the lessees, the DR relied on the observations of the AO.


26. In the rejoinder, the AR submitted that the ratio laid down by the Tribunal in the cases relied upon by the revenue authorities and the DR, i.e. IndusInd and MidEast, has now been impliedly overruled by Hon'ble Delhi High Court in the case of Cosmo Films Ltd. (*supra*) and the same therefore cannot be relied upon in view of the decision of Hon'ble Delhi High Court.

27. With regard to CIT(A) not allowing the AO to have access to the Court Receiver's report, the AR pointed out that during the course of hearing, the CIT(A) had not only discussed the issues with the AO but the present AO and the AO who had passed the orders were made to be present in the course of hearing. The AR, therefore, submitted that this cannot be the case of violation of natural justice.

28. We have heard the arguments of both the sides and we are of the view that cross appeals on the issue of allowance of depreciation in the current year have to be decided simultaneously. In so far as disallowance of depreciation on the assets involved in SLB transactions, the issue stands settled in favour of the assessee. From the synopsis filed by the AR, it is seen that the assessee provided the AO with all the information as was asked for, i.e. lease agreements, copies of bills for purchase of assets, inspection reports, copies of insurance cover etc., which, in our considered opinion, was identical circumstance, which was before the Hon'ble Delhi High Court in the case of Cosmo Films (*supra*), i.e. SLB transactions, revenue authorities applying McDowell's case and arguing that it is a device for lowering

the tax effect and relying on the Board's circular (*supra*), and more importantly, that, that case also pertained to assessment year 1996-97. The Hon'ble Delhi Court took the view that SLB transactions are genuine and cannot be considered to be sham.

29. On appreciation of the records, as produced before us, the decision of Hon'ble Delhi High Court in the case of Cosmo Films Ltd. (*supra*) has arguments of the assessee on the impugned issue, thereby, impliedly, reversed the ratio in the decisions of MidEast (*supra*) and IndusInd (*supra*). We find that tests laid down in MidEast case was primarily to ascertain the genuineness of the transaction entered by the assessee with its lessee, which was done by the CIT(A) in each case.



30. When we take up the transactions held not to be genuine by the the same were dealt with by the CIT(A), in consultation, assistance and present of the AO and AO passing the order and thereafter holding the transactions could not be held to be non genuine, because the Court Receiver had dealt with the transaction and that report could not be further put to test on the issue of genuineness of the transaction. The genuineness of the transaction also gets affirmity from the fact that the lessee, M/s Prakash Industries Limited filed a suit in the Civil Court with regard to the very transactions, which have been impugned here. The order became the subject matter before the Single Judge, before the Hon'ble Bombay High Court, which was later referred to the Hon'ble Double Bench of the Hon'ble Bombay High Court. The fact that the issue impugned before us was a matter of civil dispute between the lessor and lessee, itself goes to prove the genuineness of the transaction.

31. In any case, the issue of SLB transaction and in particular the issue of ownership of asset, also has been laid to rest by the Hon'ble


Apex Court in the case of ICDS Ltd. Vs CIT, in CA No. 3286 to 3290 of 2008, wherein the question that was sought to be answered was *"Whether the appellant (assessee) is the owner of the vehicles which are leased out by it to its customers"*. The Hon'ble Supreme Court of India, concluded, *extracted from para 28, "From a perusal of the lease agreement and other related factors, as discussed above, we are satisfied of the assessee's ownership of the trucks in question"* (para 28, page 28).

32. Coming to the issue of finance lease, wherein the CIT(A) sustained the disallowance because the usage of the equipment lease out could not be substantiated. On going through the decision of the jurisdictional High court of Bombay, we find that the issue now is at rest, in so far as the lessor is concerned, because, while dealing the case of the lessor, i.e. the assessee in the instant case, the asset has left its corridors for being utilized, and in return, rent had been received by the assessee. The Hon'ble Bombay High Court in the case of Kotak Securities Ltd. has held that what is to be seen is that the asset has been given on lease and the lease rent has been received, then in that case, so far as lessor is concerned, the asset has been used".

- 3) *In AY 1996-97, the question of additional evidence ground does not arise as the AO was present during the course of hearing before CIT (A) which is evident from page 2 of the CIT (A) order*
- 4) *The appellant agreement is different from IndusInd Bank (Mumbai Tribunal - Special Bench) as in the case of appellant repossession is permitted and sale price is not determined in the agreement at the end of lease period..*
- 5) *Certain cases, depreciation has been disallowed on the ground that asset has not been put to use by the lessee. In the nature of business of the assessee once the asset has reached the premises of other side and rent has been received and offered for taxation comply with the requirement of claim of depreciation and depreciation ought to be allowed. (Kotak Mahindra 317 ITR 236).*
- 6) *In the case of Prakash Industries vs. Development Credit Bank Limited (DCB Bank), the Bombay High Court examined the entire lease agreement and held that DCB Bank is the owner of the assets.*
- 7) *The lessee has not claimed depreciation.*

- 8) *In the case of ICDS Ltd vs. CIT (civil appeal 3282 of 2008), the Supreme Court held that in the case of finance lease transaction, the lessor is eligible to claim the depreciation. The court further stated that depreciation is allowed on the basis of the following two conditions:*
 a) *Ownership*
 b) *Used for purpose of business*
In the case of appellant, the ownership has been confirmed by the Bombay High Court in the case of Prakash Industries vs. Development Credit Bank and since the appellant is using it for its leasing business, therefore, second condition is also satisfied.
- 9) *In the case of Prakash Leasing Ltd. vs. Dy. CIT (208 Taxman 204) Karnataka High Court held that in the case of finance lease transaction, the lessor is eligible to claim depreciation.*
- 10) *Without prejudice to the above, if depreciation on leased asset is not allowed then capital recovery (principal amount included in lease rental income) should be allowed".*

33. We also find that the last two transactions are also covered by the decision of the coordinate Bench in the case of Indian Management Advisors & Leasings Pvt. Ltd. vs DCIT, reported in 51 ITD 566 (Del), as mentioned earlier.



After having examined all the transactions which have been brought before us, we are of the opinion that the assessee is entitled to the claim of depreciation under all the three circumstances, i.e. Sale lease back, genuineness of transaction and asset having being put to use. We, therefore, allow ground no. 1 the assessee's appeal and dismiss both the grounds of the department's appeal.

35. Ground no. 2, raised in the grounds of appeal of the assessee is not pressed at the time of hearing before us. The same is therefore, dismissed.

36. Ground no. 3 is on account of disallowance of Rs. 7,03,390/- incurred by the assessee for ATM link up. The revenue authorities held the expense to be of capital in nature but did not result in the creation of new asset.

37. From the impugned order, we find that the assessee made the payment of Rs 9,20,000/- to Indian Bank Association for participating in Shared Payment Network Systems (SPNS). This facility provides connectivity facility of ATM of one bank to another bank and Rs. 2,83,390/- was paid on computer software, aggregating to Rs. 67,03,390/-. It was argued by the assessee that the entire expenditure was in the revenue stream, but the auditors in TAR had classified them to be as capital expenditure. The CIT(A), while dealing with the issue did not give any finding as to whether the expense was capital or revenue but, he in any case, sustained the disallowance, on an unrelated technical point.

38. Before us, the AR reiterated that the expense was revenue in nature, placing reliance on the decisions of CIT vs Asahi India Safety Glass Ltd., reported in 15 Taxman.com 383, Hon'ble Delhi High court and Amway India Enterprise vs. CIT, reported in 346 ITR 341, Hon'ble Delhi High Court. On the other hand, the DR reiterated the observation of the CIT(A) in the impugned order and submitted that the auditor has qualified the expense to be of capital in nature and therefore could not be held to be revenue now.

39. In the rejoinder, the AR submitted that if at all the expense has to be accepted to be of capital in nature, then the assessee should be allowed depreciation.

40. After having heard the rival contentions, we are of the view that getting the SPNS facility is of an enduring nature, with which not only the banks are hooked to each other, but, a great amount of facility is provided to the customers, whereby any customer can go to any ATM of any bank to withdraw the cash, deposit cash and avail sundry facilities. With acquiring this facility, the bank has placed services to the customers and in any case, so far as the assessee is concerned it is

definitely of an enduring nature, for which, we are of the opinion, the assessee bank is entitled to get depreciation.

41. We, therefore, uphold the observations of the revenue authorities that acquisition of SPNS facility is capital in nature. While holding so, we direct the AO to allow depreciation thereon as per law.

42. Ground no. 3 of the assessee's appeal is thus partly allowed.

43. Ground no. 4 pertains to disallowance of stamp duty of Rs. 2,89,745/-.

44. The AR pointed out that stamp duty was paid on lease agreement on capital asset, which was added back in the computation, which might have escaped attention of the revenue authorities. The disallowance has resulted in double disallowance.

45. The DR relied upon the observations of the revenue authorities.

46. We have gone through the computation and we find that the assessee had added back the expense in its computation. Since the amount has already been added back, the revenue authorities erred in making a further disallowance, which has resulted in the double disallowance.

47. We, therefore, set aside the order of the CIT(A) confirming the disallowance of Rs. 2,89,745/- and direct the AO to delete the same.

48. The ground no. 4 is, therefore, allowed.

49. Ground no. 5 is not pressed, hence it is dismissed.

50. Ground no. 6 pertains to disallowance of Rs. 12,00,000/- paid to CCI for membership.

51. The revenue authorities have held the expense to be of capital in nature and have disallowed the same.

52. Before us, the AR submitted that the expense is only with regard to subscription on corporate membership, pertaining to the company and does not pertain to an individual and it does not involve any element of entertainment and, therefore, the expenditure incurred for the purpose of enhancing the business, and therefore cannot be taken to be capital or otherwise disallowable.

53. The AR placed reliance on the orders of the revenue authorities.

54. We have heard the rival contentions and we are in agreement with the submissions of the AR, placed before the CIT(A) and reiterated before us, which are extracted as,

"The corporate membership itself meant it was for the benefit of the assessee and not for any particular employee as it had a right to nominate and substitute an employee at any point of time. In these circumstances, it could be concluded that since membership allowed the employees to interact with its customer/corporate bodies the expenses were for business purposes and, therefore was no reason to disallow the expenditure.

2. The amount paid towards corporate membership is an expenditure incurred wholly and exclusively for the purposes of business and not towards capital account as it only facilitates smooth and efficient running of a business enterprise.

3. We also rely on:

CIT vs Samtel Colour Ltd (326 ITR 425 - Delhi High Court), Otis Elevator Co. (India) Ltd vs CIT (195 ITR 682 - Bombay High Court) & Bank of America Securities (India) P. Ltd (128 ITD 386)".

55. We, therefore, set aside the order of the CIT(A) on this issue and direct the AO to delete the disallowance.

56. Ground no. 6, therefore, allowed.



57. Ground no. 7 is not pressed, hence it is dismissed.

58. Ground no. 8 pertains to disallowance of depreciation claimed at Rs. 3,72,000/- on premises acquired by the assessee.

59. The fact is that the assessee paid Rs. 39,00,000/- for re-acquiring of its premises given on rent.

60. The revenue authorities disallowed the depreciation claimed on repossessed property.

61. The AR reiterated the submissions made before the revenue authorities and submitted that the rented property was repossessed and actually the expenditure incurred was for the purposes of betterment of its own title and the expense should be allowed, or, at least depreciation as claimed should be allowed, as it has been held to be capital in nature.

62. The DR placed reliance on the observations of the revenue authorities.

63. Having heard the rival contentions, it is not disputed that the property was repossessed from tenant after paying it off, and it is for the betterment of title of a capital asset, therefore, the expense has to be held to be of capital in nature. In the light of these observations, we set aside the order of the CIT(A) on this issue and direct the AO to allow depreciation as per law after verification of the dates of payment for repossession, because, the date of repossession itself would indicate the asset having put to use by the assessee, because till such time, the tenanted property cannot be held to be used by the assessee for the purposes of its business.

64. Grounds no. 9 & 10 are not pressed, hence, the same are dismissed.

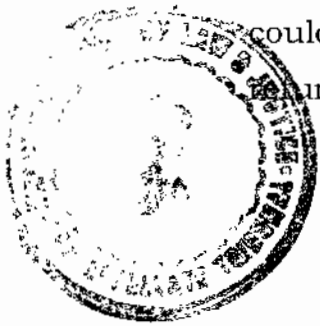
65. Ground no. 11 is against the levy of interest u/s 234A, therefore the return of income admittedly filed in time but was signed by the General Manager and Chief Manager and not by the Managing Director. The revenue authorities, thus held the return to be invalid and levied interest u/s 234A.

66. The AR submitted that the dispute is not whether the return was not filed late but was not verified by the Managing Director or Director as per section 140(c) read with 139(1).

67. The AR pleaded that the defect as noted by the revenue authorities was never called upon to be rectified. The defect, as such, was not of the nature to being fatal to the return. The AR pleaded that not once, the assessee was called upon to rectify the defect which could have been removed, in any case, it is nobody's case that the return was delayed. The AR, therefore, placed reliance on,


"In the case of Bharat Nidhi Ltd. vs Commissioner of Income Tax (306 ITR 230) – Delhi High Court, the assessee filed original return of income which was signed by its secretary, but, on being pointed out by the AO removed defect and filed fresh return duly signed by its Managing Director. The AO while completing assessment, held that original return was invalid. The CIT(A) held that original return suffered from a curable defect, which was cured by the assessee by filing a return duly signed by its Managing Director. Delhi High Court held that since assessee had made an error in nature of a defect which was removed by filing a fresh return signed by its MD, therefore, Tribunal was wrong in treating initial return as invalid return on ground that it had not been signed in accordance with provisions of section 140(c) to the Act.

In the case of CIT vs Haryana Sheet Glass Ltd (318 ITR 173), the assessee filed original return of income which was not signed and verified in accordance with provision of section 140 inasmuch as the same was signed by company secretary. Subsequently, assessee filed a revised return properly signed by Managing Director but same was belated. Assessing Officer took date on which revised return was filed as date of filing return for first time and since said revised return was filed belatedly, he did not take same into consideration. On appeal, Tribunal held that signing of return by secretary was a curable irregularity and therefore when managing director — had signed and filed revised return, it should relate back to date when original return was filed under signature of company secretary. On appeal filed by the



revenue, the Delhi High Court dismissed the appeal and held that the irregularity was curable and doctrine of relation back was rightly applied.

The appellant submits that it is now well settled principal of law that an opportunity ought to be given by the assessing officer to rectify the defect in the return of income and if the appellant rectifies such defect it relates back to the original date of filing of the return. The defect in appellants case was rectifiable however the AO without giving opportunity to the appellant declared the return void. He the AO is not justified in levying the interest u/s 234A of the Act".



68. We have heard the rival contentions and are of the opinion that the return was merely defective not invalid and the defect was of such a nature that it could have been removed, but the revenue authorities harped themselves on technicalities. Placing reliance on the cited cases and the decision of Collector, Land Acquisition vs Mst. Katiji and others, reported in 167 ITR 471, wherein the Hon'ble Supreme Court observes, "*When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred,.....*", the Hon'ble Court further observes, "*There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk*". Taking note of the cited cases, as above, we are of the opinion, that the revenue authorities erred in charging interest under section 234A, where without a spec of doubt, the return was filed well within time.

69. We, therefore, set aside the order of the CIT(A) on this issue and direct the AO to cancel the interest, as in our opinion the defect as noted was not fatal to the return and the defect as pointed out could have been removed.

70. In the result,

The appeal no. 3006/Mum/2001 filed by the assessee is partly allowed.

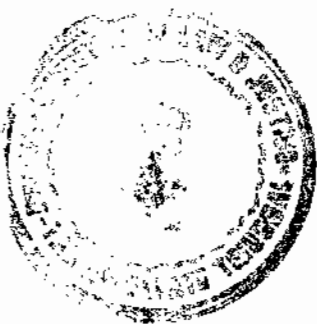
The appeal filed by the department in ITA no. 3620/Mum/2001 is dismissed.

ITA no. 4892/Mum/2003 – Assessee's appeal:

71. While disposing off the appeal, the CIT(A), vide order dated 12.03.2001, set aside certain issues to the file of the AO for reconsideration. Accordingly, the said issues were decided by the AO, vide his order under section 143(3) read with section 251. Against this order, the assessee filed appeal before the CIT(A) in second round, which was disposed off vide order dated 06.05.2003. Against this order of the CIT(A), the instant appeal has been filed by the assessee.

72. The issues raised therein are relating to the disallowance of Rs. 24,73,000/- and Rs. 1,11,262/-, on account of expenses incurred on professional/legal fees.

73. The AR reiterated its submissions made before the revenue authorities and submitted,



"The appellant before AY 1996-97 was a co-operative bank. Subsequently under Part IX of the Companies Act it became a public limited company. The said conversion was undertaken to expand the scope of the business as there were several restriction on cooperative bank to expand business, hence the conversion to corporate entity was undertaken for the benefit of business.

After conversion, certain shareholder of the erstwhile co-operative bank filed various suits. In order to protect the title of the bank in such suits the appellant incurred various expenditure by way of fees to professional etc.

The appellant submits that the conversion was undertaken for the benefit of business and hence the expenses incurred for the protection of title of its business is an allowable expenses. The appellant submits that there was threat to very existence. The appellant relies on:

CIT vs Bombay Dyeing & Mfg. Co. Ltd (219 ITR 521) - Supreme Court

CIT vs Mahindra & Mahindra Ltd (284 ITR 679 - Bombay High Court

CIT vs Birla Cotton Spinning & Weaving Mills Ltd (82 ITR 166 - Supreme Court

CIT vs Jagatjit Distilling and Allied Industries Ltd (41 ITR 328) Punjab High Court

All India Reporter Ltd vs CIT (49 ITR 196) - Bombay High Court".

74. The DR placed reliance on the decision of the revenue authorities and after we have heard the arguments of both the parties, we are of the considered opinion that the amounts so paid were in fact for the purposes of sooth running of the business and withdrawal of

the cases by the litigants. On going through the cases cited before us, respectfully following them, we allow the expenses as claimed by the assessee.


75. We, therefore, set aside the case of the CIT(A) on this issue and direct the AO to allow the expenses as revenue.

76. In the result, appeal filed by the assessee in ITA no. 4892/Mum/2001 is allowed.

ITA no. 5840/Mum/2003 :Assessee's appeal for AY 1997-98:

ITA no. 6010/Mum/2003 : Revenue's appeal for AY 1997-98:

77. These Cross appeals filed for AY 1997-98 are directed against the order of Ld. CIT(A)-Central IV, Mumbai dated 26.06.2003.



The common issue involved in Ground no. 4 of the assessee's appeal and all the six grounds of the revenue's appeal relates to the assessee's claim for depreciation on the various assets given on lease.

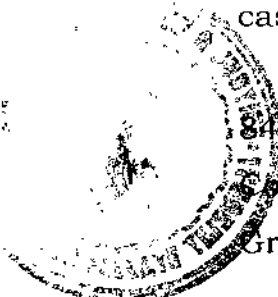
79. A similar issue involved in Cross appeals filed for AY 1996-97 has already been decided by us in the foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow ground no. 4 of the assessee's appeal and dismiss ground no. 1 to 6 of the revenue's appeal.

80. Ground no. 1 raised in the appeal of the assessee involving issue relating to disallowance of law charges aggregating to Rs. 28,14,050/-, which has not been pressed by the Ld. Counsel for the assessee at the time of hearing before us. The same is accordingly dismissed as not pressed.

81. An issue raised in ground no. 2 relating to assessee's claim for depreciation on the expenditure incurred for re-acquiring the premises given on rent is similar to the one involved in Ground no. 8 of assessee's appeal for AY 1996-97 which has already been decided in foregoing paras of this order, following our conclusion drawn in AY 1996-97, we allow the claim of the assessee on this issue and allow ground no. 2 of the assessee's appeal.

82. As regards the issue raised in ground no. 3 of the assessee's appeal relating to the taxability of the amount of Rs. 50 lakhs received by the assessee in respect of premises as capital gains.

83. The Ld. Counsel for the assessee has fairly and frankly conceded that the same is covered against the assessee by the decision in the case of CIT vs TATA Services Ltd., reported in 122 ITR 594 (Bom).



84. Respectfully following the decision of the jurisdictional High Court, we uphold the impugned order of Ld. CIT (A) and dismiss Ground no. 3 of the assessee's appeal.

85. In the result:

Assessee's appeal stands partly allowed and
Revenue's appeal stands dismissed.

ITA 5813/Mum/2004 : Assessee's appeal for AY 1998-99:

ITA 5814/Mum/2004 : Revenue's appeal for AY 1998-99:

86. These Cross appeals filed for AY 1998-99 are directed against the order of Ld. CIT(A)-Central IV, Mumbai dated 11.06.2004. The assessee has raised the following grounds:

"GROUND NO.1:

The learned Commissioner of Income Tax(Appeals), (hereinafter referred to as CIT(A)) erred in confirming the disallowance of depreciation of Rs.3,32,74,086/- on leased assets made by the Deputy Commissioner of Income Tax, Central Circle- 22, (hereinafter referred to as DCIT).

GROUND NO.2

The learned CIT(A) erred in confirming disallowance of Rs.4,58,39,519/- out of the total depreciation of Rs. 12,70,02,180/-, being depreciation claimed on the year end stock of government and other approved securities.

GROUND NO.3

The learned CIT(A) erred in confirming disallowance of law charges of Rs.1,97,500/- made by the DCIT, on the ground that they were in the nature of capital expenditure as they, in his opinion were incurred for the purpose of creating, procuring or completing appellant's title to the banking business. The expenditure pertained to legal expenses incurred by the Bank in defending cases in respect of certain shareholder disputes.

GROUND NO.4

The learned CIT(A) erred in confirming disallowance of depreciation of Rs.3,15,900/- claimed as depreciation on premises on the ground that no new asset was acquired. The depreciation was claimed on the amount paid as part of expenses incurred towards acquisition of premises.

GROUND NO.5

The learned CIT(A) erred in not allowing deduction of provision made for bad & doubtful debts aggregating to Rs.1,10,37,350.50/- claimed under the provision of section 36(1)(vii-a) of the Income Tax Act.

GROUND NO.6

The learned CIT(A) erred in directing the assessing officer to disallow Rs. 3,55,09,806 (85.63%) of exempt income) out of total expenditure under the provisions of Section 14A of the Income Tax Act."

87. In its grounds of appeal, the revenue has raised following grounds:

"On the facts and circumstances of the case and in law,

1. The Ld. CIT(A) has erred in allowing the assessee's claim of depreciation of Rs. 17,19,180/- in respect of assets leased to M/s. Stellar Modular System and Unified Cables ignoring the facts that the real nature of transactions are purely one of finance rather than lease.
2. The Ld. CIT(A) has erred in allowing the assessee's claim of depreciation of Rs. 71,67,209/- in respect of assets leased to Neelachal Auto Ltd., Shell Hotels, Satyam Computers and Savai Printers ignoring the fact that the real nature of the transactions are purely one of finance rather than lease.
3. The Ld. CIT(A) has erred in allowing the assessee's claim of depreciation of Rs. 65,73,021/- in respect of assets leased to M/s. N.K. Industries, M/s. Neelachal auto ignoring the fact that the real nature of the transactions are purely one of finance rather than lease.
4. The Ld. CIT(A) has erred in allowing the assessee's claim of depreciation of Rs. 7,82,91,329/- in r/o the case of Neelachal Auto, Dasggar Fast Tools Ltd., Indogulf Fertilizers Ltd., and Bhansali Organics Ltd., without considering that these transactions were purely finance in nature."

88. The common issue involved in Ground no. 1 of both the assessee's as well as revenue's appeal relates to the assessee's claim for depreciation on the various assets given on lease.

89. A similar issue involved in Cross appeals filed for AY 1996-97 has already been decided by us in the foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow ground no. 1 in the assessee's and dismiss the grounds raised in revenue's appeal.

90. The issue involved in Ground no. 2 of the assessee's appeal is not pressed, the ground is therefore, dismissed.

91. The issue involved in Ground no. 3 of the assessee's appeal is not pressed, the ground is therefore, dismissed.



The issue involved in Ground no. 4 of the assessee's appeal pertains to disallowance of depreciation claimed at Rs. 3,15,900/- on premises acquired by the assessee.

93. A similar issue has already been decided by us in ground no. 8 of the assessee's appeal for AY 1996-97 in foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow ground no. 4 of the assessee's appeal for statistical purposes.

94. The issue involved in Ground no. 5 of the assessee's appeal is not pressed, the ground is therefore dismissed.

95. The issue involved in ground no. 6 of the assessee's appeal is with regards to disallowance of Rs. 3,55,09,806/- (85.63% of exempt income) out of total expenditure under the provisions of section 14A of the Income Tax Act.

96. We find that the disallowance was made by the CIT(A) on the basis of a letter written to him by the AO at the time of prosecution of the appeal before him. We find that issue was neither an issue at the time of assessment proceedings, nor was an issue impugned by the assessee in appeal before the CIT(A). On the basis of the letter, the CIT(A), sought the assessee's response with regard to enhancement on the issue. The assessee, pleaded that the impugned issue was never an issue at the time of assessment and was never the issue in appeal. It was also pleaded that the appellate authority did not have the power to enhance the scope of its jurisdiction, on an issue which was not an issue before the authority. The CIT(A) negated the arguments of the assessee and proceeded to enhance the income of the assessee by making a disallowance under section 14A, as contemplated by the newly inserted provision. The CIT(A), therefore made a disallowance under section 14A at Rs. 3,55,09,806, being 85.63% of exempt income of Rs. 2,23,30,110/- as dividend and Rs. 1,91,35,110/- aggregating to Rs. 4,14,65,220/-

97. The assessee, is therefore, in appeal before the ITAT.

98. Before us the AR reiterated the submissions made before the CIT(A), that the CIT(A) exceeded the jurisdiction and scope of appeal, by introducing a new source of income/disallowance, which, he cannot do. The AR placed reliance, amongst others, on the decisions of *Shahpoorji Pallonji Mistry vs CIT* 34 ITR 343, *Prabhudas Ramji vs CIT* reported in 62 ITR 621 (Guj), *Hardutroy Motilal Chamaria* reported in 66 ITR 443 (SC), *Sardarilal & Co.* 251 ITR 864 (Del).

99. The DR, on the other hand, supported the order of the CIT(A). The DR submitted that the newly inserted provision has been introduced with effect from 01.04.1962, which only meant that the legislature always wanted the provision to be there right from the inception. The DR also supported the arguments of the CIT(A), pleading that making an enhancement, was within the powers of the CIT(A). The DR, therefore, pleaded that CIT(A) did not do anything which was beyond either his jurisdiction or power.

100. We have heard the arguments of both the sides on the issue impugned before us. It is an undenied fact that the issue did not find part of the regular assessment. It was only in the course of appeal proceedings before the CIT(A), that the AO, through a letter, asked the CIT(A) to consider the issue of 14A. Considering the fact that the provision was introduced with effect from 01.04.1962, we are of the opinion that the CIT(A), exercising co-terminus powers vested in him, that of an assessing officer, informed the assessee, with the letter received by him from the AO. This is not the case, where the CIT(A) has made an addition without informing the assessee. We are, therefore, in agreement with the action of the CIT(A), seeking comments from the assessee and then making the statutory disallowance, as contemplated in the newly inserted section. However, we find that the disallowance, as made by the CIT(A) is excessive. In these circumstances, we accept the suggestion of the AR that disallowance at 10% of the exempt income would suffice. We, therefore, set aside the order of the CIT(A) and direct the AO to compute the disallowance at 10% of the income claimed as exempt

101. The ground of appeal, is, therefore, partly allowed.

102. In the result: appeal of the assessee stands partly allowed &
appeal of the revenue stands dismissed.

ITA 51/Mum/2005 : Assessee's appeal for AY 1999-2000:**ITA 9611/Mum/2004 : Revenue's appeal for AY 1999-2000 :**

103. These Cross appeals filed for AY 1999-00 are directed against the order of Ld. CIT(A)-Central IV, Mumbai dated 08.11.2004. The assessee has raised the following grounds:

"GROUND NO.1:

The learned Commissioner of Income Tax(Appeals), (hereinafter referred to as CIT(A)) erred in confirming the disallowance of depreciation of Rs.5,89,37,184/- on the leased assets.

GROUND NO.2

The learned CIT(A) erred in confirming disallowance of Rs.3,25,39,610/- out of the total depreciation of Rs.8,47,53,033/- claimed on the year end stock of government securities and other approved securities.

GROUND NO.3

The learned CIT (A) erred in confirming the addition of Rs.3,15,900/- claimed as depreciation on premises on the ground that no new asset was acquired. The depreciation was claimed on the amount paid as part of expenses incurred towards acquisition of premises.

GROUND NO.4

The learned CIT(A) erred in not allowing deduction u/s 36(l)(vii-a) of the Income Tax Act on the ground that the similar claim was not allowed in the earlier year and further no submission of any substance was made before him in writing or verbally in the course of appellate proceedings.

GROUND NO.5

The learned CIT(A) erred in directing the DCIT to disallow Rs.8,41,96,260/- (85.16% of exempt income) out of the total expenditure under the provisions of section 14A of the Income Tax Act and in enhancing appellant's total income to that extent.."

104. In its grounds of appeal, the revenue has raised following ground:

"On the facts and circumstances of the case and in Law the Ld. CIT(A) has erred in allowing the assessee's claim of Depreciation of Rs. 8,67,53,551/- in respect of assets leased to parties mentioned herein below:

		Amt. in Rs.
1	Uniflex Cables	10,97,956
2	Stellar Modular Systems Ltd.	1,91,429
3	Neelachal Auto Ltd.	5,91,488
4	Shell Hotel I	6,82,414
5	Shell Hotel II	1,43,137
6	Satyam Computers	30,95,515
7	Savai Printers	8,62,853
8	N.K. Industries	33,79,688
9	Neelachal Auto Ltd.	9,33,858
10	Neelachal Auto Ltd.	18,51,364
11	Dagger Forst Tools P. Ltd.	15,37,818

12	<i>Indo Gulf Fertilisers</i>	6,88,62,531
13	<i>Bhansali Organics Ltd.</i>	6,82,172
14	<i>Dagger Forst Tools P. Ltd.</i>	28,41,328
		8,67,53,551

105. The common issue involved in Ground no. 1 of the assessee's appeal as well as the sole ground involved in revenue's appeal relates to the assessee's claim for depreciation on the various assets given on lease.

106. A similar issue involved in Cross appeals filed for AY 1996-97 has already been decided by us in the foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow ground no. 1 of the assessee's and dismiss the ground involved in revenue's appeal.

107. An issue involved in Ground no. 2 of the assessee's appeal is not pressed, the ground is therefore, dismissed.

An issue involved in Ground no. 3 of the assessee's appeal pertains to disallowance of depreciation claimed at Rs. 3,15,900/- on premises acquired by the assessee.

108. A similar issue has already been decided by us in ground no. 8 of the assessee's appeal for AY 1996-97 in foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow this ground for statistical purposes.


109. An issue in Ground no. 4 is with regards to deduction u/s 36(l)(viia), which is not pressed, the ground is therefore, dismissed.

110. Ground no. 5: The issue pertains to the disallowance of Rs. 8,41,96,260/- under section 14A of the Income Tax Act.

111. As per the introduction of the new provision under section 14A, the AO made a disallowance of Rs. 8,41,96,260/-, on an aggregate income of Rs. 9,77,18,388/-, claimed to be exempt. This was sustained by the CIT(A).

112. The assessee is now before the ITAT.

113. Before us the AR submitted that the disallowance may be called for, in case the assessee uses interest bearing funds, but in case the assessee has funds on its own and there is no need for the assessee to use interest bearing funds, disallowance is not called for. The AR placed reliance on the decision of Reliance Utilities, reported in 313 TR 340 (Bom).



114. The AR also submitted that the onus is on the department to prove that the assessee used borrowed funds for the purposes of making investments, which the department has not discharged, and relied on the decision of Maharashtra Seamless Ltd., in ITA No. 4063/Del/2006.

115. Without prejudice to the above arguments, the AR submitted that, in case his submissions are not acceptable, then, to meet the ends of justice, the assessee is prepared to accept the disallowance at 10% of the exempt income.

116. The DR on the other hand, vehemently supported the arguments of the revenue authorities.

117. We have heard the arguments of both the parties and have perused the orders and the newly inserted section, which has become a bone of contention in the instant case. The issue is not that of discharge on onus by the department, neither is it a case, where, we or the department has to examine the financial position of the assessee and take a decision on the availability of non interest bearing funds with the assessee. This is a case of compulsory disallowance to be made, if the assessee has an income, which he claims to be exempt. For the year in question, we can take a decision on the quantum of disallowance, which may vary.

118. In the instant case, the AR, in the synopsis filed before us has agreed to accept a disallowance of *10% on the income claimed as exempt*. We find that the above suggestion made by the assessee/AR is quite reasonable.

119. We, therefore, set aside the order of the CIT(A) on the issue and direct the AO to compute the disallowance at 10% of the income claimed as exempt.

120. The ground of appeal, is, therefore, allowed for statistical purposes.

121. In the result:

appeal of the assessee stands partly allowed &
appeal of the revenue stands dismissed.

ITA No. : 52/Mum/2005 : Assessee's appeal for AY 2000-2001 :

ITA No. : 9657/Mum/2004 : Revenue's appeal for AY 2000-2001 :

122. These Cross appeals filed for AY 2000-01 are directed against the order of Ld. CIT(A)-Central IV, Mumbai dated 23.11.2004. The assessee has raised the following grounds:

"GROUND NO.1:

The learned Commissioner of Income Tax(Appeals), (hereinafter referred to as CIT(A)) erred in confirming the disallowance of depreciation of Rs.4,42,02,889/- on leased assets made by the Deputy Commissioner of Income Tax, Central Circle- 22.

GROUND NO.2

The learned CIT(A) erred in confirming disallowance of Rs.52,62,078/- out of the total depreciation of Rs.4,21,96,588/-, being depreciation claimed on the year end stock of government and other approved securities.

GROUND NO.3

The learned CIT(A) erred in confirming disallowance of depreciation of Rs.2,84,310/- claimed as depreciation on premises on the ground that no new asset was acquired. The depreciation was claimed on the amount paid as part of expenses incurred towards acquisition of premises.

GROUND NO.4

The learned CIT (A) erred in confirming disallowance of Rs.14,81,57,360/- (78.98 % of exempt income) out of total expenditure under the provisions of Section 14A of the Income Tax Act and in enhancing appellant's total income to that extent."

123. In its grounds of appeal, the revenue has raised following ground:

"On the facts and circumstances of the case and in Law the Ld. CIT(A) has erred in allowing the assessee's claim of Depreciation of Rs. 1,63,10,509/- in respect of assets leased to parties mentioned herein below:

		Amt. in Rs.
1	Uniflex Cables	8,23,467
2	Stellar Modular Systems Ltd.	1,43,572
3	Neelachal Auto Ltd.	4,43,616
4	Shell Hotel I	511,810
5	Shell Hotel II	1,07,353
6	Satyam Computers	23,21,636
7	Savai Printers	6,47,140
8	N.K. industries	25,34,766
9	Neelachal Auto Ltd.	7,00,393
10	Neelachal Auto Ltd.	13,88,523
11	Dagger Forst Tools P. Ltd.	11,53,363
12	Dagger Forst Tools P. Ltd.	49,72,325
13	Bhansali Organics Ltd.	5,62,545
		1,63,10,509

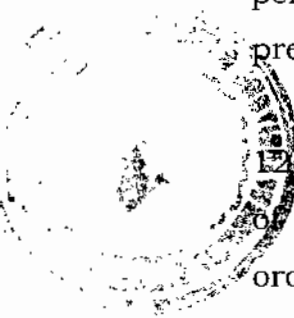
124. The common issue involved in Ground no. 1 of the assessee's appeal as well as the sole ground involved in revenue's appeal relates

to the assessee's claim for depreciation on the various assets given on lease.

125. A similar issue involved in Cross appeals filed for AY 1996-97 has already been decided by us in the foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow ground no. 1 of the assessee's appeal and dismiss the sole ground raised by the revenue.

126. The issue involved in Ground no. 2 of the assessee's appeal is not pressed, the ground is therefore, dismissed.

127. The issue involved in Ground no. 3 of the assessee's appeal pertains to disallowance of depreciation claimed at Rs. 2,84,310/- on premises acquired by the assessee.



128. A similar issue has already been decided by us in ground no. 8 of the assessee's appeal for AY 1996-97 in foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow this ground for statistical purposes.

129. Ground no. 4 The issue pertains to the disallowance of Rs. 14,81,57,360/- under section 14A of the Income Tax Act.

130. Identical issue has been decided by us in ITA No. 51/Mum/2005, in the preceding year. Since the issue is the same, we do not intend to deviate from our own decision and we restore the

issue to the file of the AO with similar directions, as given by us in assessment year 1998-99.

131. The ground of appeal, is, therefore, allowed for statistical purposes.

132. In the result, appeal of the assessee for AY 2000-01 is partly allowed.

133. In the result:

- appeal of the assessee is partly allowed &
- appeal of the revenue stands dismissed

ITA No. 3303/Mum/2005 : Assessee's appeal for AY 2000-01:

134. This appeal of the assessee arise out of order u/s 263 of CIT, Mumbai, dated 22nd March, 2005. The assessee has raised the following ground of appeal, in its appeal:

"In the only ground of appeal the learned Commissioner of Income Tax erred in coming to the conclusion that the proviso to clause (vii) of section 36(1) of the Income Tax Act was attracted in the instant case and further erred in directing the Assessing Officer to revise the assessment order for disallowing the claim of bad-debts of Rs. 62,82,437/-."

135. The facts are that, in the year under consideration, the assessee created a provision for bad debts at Rs. 254.80 lacs and claimed bad debts under section 36(1)(vii) at Rs. 62,82,437/-. The CIT, invoking the provisions of section 263 of the Income Tax Act, held that the claim has to be adjusted against the bad debts provision and then the balance can only be allowed.

136. The AR, before us submitted that the observations of the CIT were correct but, the provision has to be made from the opening balance and not from the closing balance, as suggested by the CIT and

also as held by Hon'ble Gujarat High Court in the case of CIT vs UTI Bank Ltd. in ITA No. 1077 to 1080 of 2010 (copy submitted).

137. The AR places on record a complete working, as submitted before the AO, as to how the bad debts have been claimed by the assessee, and allowed by the AO in the regular assessment.

138. Since the issue has been dealt with by the AO and also that the issue is neither erroneous nor prejudicial to the interests of the revenue, the issue falls outside the parameters of section 263.

139. The DR supported the order of the CIT.

140. We have heard the arguments of the assessee and the department and perused the orders of the revenue authorities and the working submitted before us. We find that the issue was dealt with by the AO and also the working suggested by the CIT. We find that the working suggested by the CIT is plainly a change of an opinion, which only renders the issue outside the scope of revision proceedings under section 263 of the Income Tax Act.

In the light of the above observation, we cancel the revision proceedings and restore the order of the AO.

142. In the result, the appeal filed by the assessee is allowed.

ITA 53/Mum/2005 : Assessee's appeal for AY 2001-02:

ITA 370/Mum/2005 : Revenue's appeal for AY 2001-02:

143. These Cross appeals filed for AY 2001-02 are directed against the order of Ld. CIT(A)-Central IV, Mumbai dated 23.11.2004. The assessee has raised the following grounds:

"GROUND NO.1

The learned Commissioner of Income Tax(Appeals), (hereinafter referred to as CIT(A)) erred confirming the disallowance of depreciation of Rs.3,34,50,815/- on leased assets made by the Deputy Commissioner of Income Tax, Central Circle- 22.

GROUND NO.2

The learned CIT(A) erred in confirming disallowance of Rs.32,68,902/- out of the total depreciation of Rs.7,25,60,537/-, being depreciation claimed on the year end stock of government and other approved securities.

GROUND NO.3

The learned CIT(A) erred in confirming disallowance of depreciation of Rs.2,55,880/- claimed as depreciation on premises on the ground that no new asset was acquired. The depreciation was claimed on the amount paid as a part of expenses incurred for acquisition of premises.

GROUND NO.4

The learned CIT (A) erred in confirming disallowance of Rs.17,66,12,371/- (84.25 % of exempt income) out of total expenditure under the provisions of Section 14A of the Income Tax Act and in enhancing appellant's total income to that extent."

144. In its grounds of appeal, the revenue has raised following ground:

"On the facts and circumstances of the case and in Law the Ld. CIT(A) has erred in allowing the assessee's claim of Depreciation of Rs. 1,22,32,881/- in respect of assets leased to parties mentioned herein below:

		Amt. in Rs.
1	Uniflex Cables	617,600
2	Stellar Modular Systems Ltd.	107,679
3	Neelachal Auto Ltd.	332,712
4	Shell Hotel I	383,858
5	Shell Hotel II	80,515
6	Satyam Computers	1,741,227
7	Savai Printers	485,355
8	N.K. industries	1,901,074
9	Neelachal Auto Ltd.	525,295
10	Neelachal Auto Ltd.	1,041,392
11	Dagger Forst Tools P. Ltd.	865,022
12	Dagger Forst Tools P. Ltd.	3,729,243
13	Bhansali Organics Ltd.	421,909
		12,232,881

145. The common issue involved in Ground no. 1 of the assessee's appeal as well as the sole ground in revenue's appeal relates to the assessee's claim for depreciation on the various assets given on lease.

146. A similar issue involved in Cross appeals filed for AY 1996-97 has already been decided by us in the foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow ground no. 1 of the assessee's and dismiss the sole ground raised in revenue's appeal.

147. The issue raised in Ground no. 2 of the assessee's appeal is not pressed, the ground is therefore, dismissed.

148. The issue raised in Ground no. 3 of the assessee's appeal pertains to disallowance of depreciation claim of Rs. 2,55,880/- on premises acquired by the assessee.

149. A similar issue has already been decided by us in ground no. 8 of the assessee's appeal for AY 1996-97 in foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow this ground for statistical purposes.

150. Ground no. 4 Identical issue has been decided by us in ITA No. 51/Mum/2005, in the preceding year. Since the issue is the same, we do not intend to deviate from our own decision and we restore the issue to the file of the AO with similar directions, as given by us in assessment year 1998-99.

151. The ground of appeal, is, therefore, allowed for statistical purposes.

152. In the result:

appeal of the assessee is partly allowed &

appeal of the revenue stands dismissed

ITA no. 3304/Mum/2005 : Assessee's appeal for AY 2001-02:

153. This appeal of the assessee arise out of order u/s 263 of CIT, Mumbai, dated 30th March, 2005. The sole ground raised by the assessee reads as under:

"In the only ground of appeal the learned Commissioner of Income Tax erred in coming to the conclusion that the proviso to clause (vii) of section 36(1) of the Income Tax Act was attracted in the instant case and further erred in directing the Assessing Officer to revise the assessment order for disallowing the claim of bad-debts of Rs. 2,37,09,343/-."

154. In the current assessment year, the AO passed the order, as per the direction of the CIT in consequential proceedings. We were seized with identical issue in the preceding year, in ITA No. 3303/Mum/2005, wherein we held that the proceedings under section 263 of the Income Tax Act, were bad in law in so far as the application of legal principles were concerned. Since the issue is the same, i.e. claim of the bad debts from the provisions, as directed to be made from the closing balances. We do not intend to deviate from our own decision and we cancel the revision proceedings initiated by the CIT and restore the order of the AO

155. In the result, appeal filed by the assessee is allowed.

ITA 4104/Mum/2005 : Assessee's appeal for AY 2002-03:

ITA 3979/Mum/2005 : Revenue's appeal for AY 2002-03:

156. These Cross appeals filed for AY 2002-03 are directed against the order of Ld. CIT(A)-Central IV, Mumbai dated 31.03.2004. The assessee has raised the following grounds:

"GROUND NO.1:

The learned Commissioner of Income Tax(Appeals), (hereinafter referred to as CIT(A)) erred in confirming the disallowance of depreciation of

Rs.2,57,86,961/- on leased assets made by the Deputy Commissioner of Income Tax, Central Circle- 22.

GROUND NO.2

The learned CIT(A) erred in confirming disallowance of Rs.4,59,34,579/- out of the total depreciation of Rs. 10,81,74,078/-, being depreciation claimed on the year end stock of government and other approved securities.

GROUND NO.3

The learned CIT(A) erred in confirming disallowance of depreciation of Rs.2,30,291/- claimed as depreciation on premises on the ground that no new asset was acquired. The depreciation was claimed on the amount paid as a part of expenses incurred for acquisition of premises.

GROUND NO.4

The learned CIT (A) erred in confirming disallowance of proportionate interest expenditure Rs. 13,32,31,440/- (71.14 % of exempt income) under the provisions of section 1 4A of the Income Tax Act.

GROUND NO.5

The learned CIT(A) erred in confirming disallowance of bad debts of Rs.6,80,3 1,892/- written off during the year and claimed as deduction u/s 36(1)(vii) of the Act on the ground that proviso to section 36(1)(vii) was applicable in the instant case."

157. In its grounds of appeal, the revenue has raised following ground:

"1. On the facts and circumstances of the case and in law the Ld. CIT(A) has erred in allowing the assessee's claim of depreciation of Rs.91,74,660/- in respect of assets leased to various parties ignoring the fact that the real nature of transaction with the parties are purely one of finance rather than lease.

2. On the facts and circumstances of the case and in law the Ld. CIT(A) has erred in allowing the assessee's claim of loss on revaluation of investment of Rs 10.36 crores ignoring the fact that any loss arising out of revaluation of capital assets is not allowable as revenue expenditure."

158. The issue involved in Ground no. 1 of the assessee's appeal is with regards to assessee's claim for depreciation of Rs. 2,57,86,961/- on the various assets given on lease.

159. A similar issue has already been decided by us in ground no. 1 of the assessee's appeal for AY 1996-97 in foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow ground no. 1 of the assessee's appeal.

160. The Issue in Ground no. 2 of the assessee's appeal is not pressed, the ground is therefore, dismissed.

161. Issue involved in Ground no. 3 of the assessee's appeal pertains to disallowance of depreciation claimed at Rs. 2,30,291/- on premises acquired by the assessee.

162. A similar issue has already been decided by us in ground no. 8 of the assessee's appeal for AY 1996-97 in foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow this ground for statistical purposes.

163. Ground no. 4: Identical issue has been decided by us in ITA No. 51/Mum/2005. Since the issue is the same, we do not intend to deviate from our own decision and we restore the issue to the file of the AO with similar directions, as given by us in assessment year 1998-99.

164. The ground of appeal, is, therefore, allowed for statistical purposes.

165. Ground no. 5 is not pressed, the ground is therefore, dismissed.

166. In the result, appeal is partly allowed.

Assessment year 2002-03 : Department's appeal :

167. Issue in Ground no. 1 is with regards to assessee's claim for depreciation on the various assets given on lease.

168. A similar issue has already been decided by us in ground no. 1 of the assessee's appeal for AY 1996-97 in foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and dismiss ground no. 1 of the revenue's appeal.

169. Issue involved in Ground no. 2 is with regards to allowance the assessee's claim of loss on revaluation of investment of Rs. 10.36 crores. The basic facts are that within the instant year, as per the directives of the Reserve bank of India, the assessee holding stocks of UTI US 64, as Available for Sale (AFS), i.e SIT, to Held for Maturity (HTM), i.e. investments. As the assessee made the transfer on the directions of RBI, it revalued the securities at market rate, which, at that point of time was less than the book value, which resulted in the loss. This loss, the AO treated to be notional loss and disallowed.

170. The CIT(A), placing reliance on the decision of the coordinate Bench in the case of State bank of Mysore vs DCIT, reported in 33 SOT 7 (Blore).

171. The department is in appeal before the ITAT

172. Before us the DR supported the observations of the AO, whereas, the AR supported the observations of the CIT(A) and placed reliance on the above decision.

173. After hearing both the parties, we do not intent to disturb the findings of the CIT(A) and consequentially reject the ground, as raised by the department.

174. In the result, appeal of the revenue is dismissed.

175. In the result:

appeal of the assessee is partly allowed &
appeal of the revenue stands dismissed.

ITA 151/Mum/2007 : Assessee's appeal for AY 2003-04:

ITA 549/Mum/2007 : Revenue's appeal for AY 2003-04:

176. These Cross appeals filed for AY 2003-04 are directed against the order of Ld. CIT(A)-Central IV, Mumbai dated 07.11.2006. The assessee has raised the following grounds:

“GROUND NO.1:

The order of learned Deputy Commissioner of Income Tax (hereinafter, referred to as DCIT) must be annulled and quashed, since it is capricious in nature and has been made, ignoring the established and undisputed facts, with an intention to punish the appellant.

GROUND NO.2

The learned Commissioner of Income Tax (Appeals) (hereinafter, referred to as CIT(A) erred in confirming disallowance of depreciation of Rs 1,43,24,789/- on leased assets made by the DCIT.

GROUND NO.3

The learned CIT(A) erred in confirming disallowance of Rs.22,84,83,313/-, being depreciation claimed on the year end stock of government and other approved securities.

GROUND NO.4

The learned CIT (A) erred in confirming disallowance of depreciation of Rs. 2,07,262/- claimed as depreciation on premises on the ground that no new asset was acquired. The depreciation was claimed on the amount paid as a part of expenses incurred for acquisition of premises.

GROUND NO.5

The learned CIT(A) erred in confirming disallowance of Rs. 3,97,64,250/-, as proportionate interest expenditure attributable towards earning of tax free income aggregating to Rs. 4,63,59,643/-, under the provisions of Section 14A of the Income Tax Act.”

177. In its grounds of appeal, the revenue has raised following ground:

- “1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the claim of the assessee of bad debts amounting to Rs. 108.33 Crores merely on the basis of RBI directive and in contrary to the provision of section 36(2)(v) of the IT ACT as applicable to a Banking Company.
2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the assessee's claim of depreciation to the extent of Rs. 63,82,461/- in respect of assets leased to various parties ignoring the fact that the real nature of transaction with the parties are purely one of finance rather than lease.”

178. The issue involved in Ground no. 1 of the assessee's appeal is general in nature and, as such, no adjudication is called for.

179. The issue involved in Ground no. 2 of the assessee's appeal is with regards to assessee's claim for depreciation of Rs. 1,43,24,789/- on the various assets given on lease.

180. A similar issue has already been decided by us in ground no. 1 of the assessee's appeal for AY 1996-97 in foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow ground no. 2 of the assessee's appeal.

181. Issue involved in Ground no. 3 is not pressed, the ground is therefore, dismissed

182. Issue involved in Ground no. 4 of the assessee's appeal pertains to disallowance of depreciation claimed at Rs. 2,07,262/- on premises acquired by the assessee.

183. A similar issue has already been decided by us in ground no. 8 of the assessee's appeal for AY 1996-97 in foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow this ground for statistical purposes.

184. Ground no. 5 is with regard to disallowance made under section 14A of the Income Tax Act, wherein on the aggregate income of Rs.


4,63,59,643/-, claimed by the assessee as exempt, the AO computed the disallowance of Rs. 3,97,64,250/-.

185. Identical issue has been decided by us in ITA No. 51/Mum/2005. Since the issue is the same, we do not intend to deviate from our own decision and we restore the issue to the file of the AO with similar directions, as given by us in assessment year 1998-99.

186. The ground of appeal, is, therefore, allowed for statistical purposes.

Assessment year 2003-04 : Department's appeal :

187. Ground no. 1 is with regards to bad debt written off of Rs. 108.33 crores.



188. The assessee in its accounts had claimed bad debts, which the AO disallowed. On appeal to the CIT(A), the assessee, reiterated its arguments and claimed that the write off of bad debts was rightly done by the assessee.

189. The CIT(A), taking into consideration the relevant facts that the assessee had written off the bad debts, allowed the claim.

The department is in appeal before the ITAT.

190. The DR supported the order of the AO and the AR supported the arguments of the CIT(A).

191. On hearing both the parties, and going through the evidence brought on record and taking into account the relevant provision of law, we are of the opinion that the assessee is only required to take

into account the amounts which according to the assessee are irrecoverable.

192. In the instant case, the CIT(A) found that the assessee has debited the accounts, with the aggregate of amounts, which are irrecoverable, and allowed the claim made by the assessee. As he CIT(A) has strictly gone by the provisions of law, we do not find any infirmity in the impugned order and therefore, we sustain the same.

193. As a consequence, the ground raised by the department is rejected.

194. Ground no. 2 of the revenue's appeal relates to assessee's claim for depreciation on the various assets given on lease.

195. A similar issue has already been decided by us in ground no. 1 of the assessee's appeal for AY 1996-97 in foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and dismiss ground no. 2 of the revenue's appeal.

196. In the result:

appeal of the assessee stands partly allowed.

appeal of the revenue stands dismissed.

ITA 7348/Mum/2007 : Assessee's appeal for AY 2004-05:

ITA 7625/Mum/2007 : Revenue's appeal for AY 2004-05:

197. These Cross appeals filed for AY 2004-05 are directed against the order of Ld. CIT(A)-Central IV, Mumbai dated 11.10.2007. The assessee has raised the following grounds:

"GROUND NO.1:

The learned Commissioner of Income Tax(Appeals) (hereinafter, referred to as CIT) erred in confirming disallowance of depreciation of Rs 1,07,84,267/- on leased assets made by the DCIT.

GROUND NO.2

The learned CIT (A) erred in confirming disallowance of Rs. 1,13,72,526/- out of the total depreciation of Rs 26,02,49,768/-, being depreciation claimed on the year end stock of government and other approved securities.

GROUND NO.3

The learned CIT(A) erred in confirming disallowance of depreciation of Rs.1,86,536/- claimed as depreciation on premises on the ground that no new asset was acquired. The depreciation was claimed on the amount paid as a part of expenses incurred for acquisition of premises.

GROUND NO.4

The learned CIT (A) erred in confirming disallowance of Rs. 2,34,29,550/-, as proportionate interest expenditure attributable towards earning of tax free income aggregating to Rs. 4,38,12,058/-, under the provisions of Section 14A of the Income Tax Act."

198. In its grounds of appeal, the revenue has raised following ground:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the claim of the assessee of bad debts amounting to Rs. 27.64 Crores merely on the basis of RBI directive and in contrary to the provisions of section 36(2)(iv) of the I.T. Act, as applicable to banking company.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the assessee's claim of depreciation of Rs. 1,07,84,267/- in respect of assets leased to various parties ignoring the fact that the real nature of transaction with the parties are purely one of finance rather than lease.*
3. *The appellant craves to leave to add, to amend and/or alter any of the grounds of appeal, if need be.*
4. *The appellant therefore prays that on the ground stated above, the order of the CIT(A)-IV, Mumbai may be set aside and that of the Assessing Officer restored."*

199. The common issue involved in Ground no. 1 of the assessee's appeal as well as the sole ground no. 2 of the revenue's appeal relates to the assessee's claim for depreciation on the various assets given on lease.

200. A similar issue involved in Cross appeals filed for AY 1996-97 has already been decided by us in the foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we

follow our decision rendered in AY 1996-97 and allow ground no. 1 of the assessee's appeal and dismiss ground no. 2 raised in revenue's appeal.

201. Issue involved in Ground no. 2 of the assessee's appeal is not pressed, the ground is therefore, dismissed.

202. Issue involved in Ground no. 3 of the assessee's appeal pertains to disallowance of depreciation claimed at Rs. 1,86,536/- on premises acquired by the assessee.

203. A similar issue has already been decided by us in ground no. 8 of the assessee's appeal for AY 1996-97 in foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow this ground for statistical purposes.

204. Issue involved in Ground no. 4 of the assessee's appeal pertains to disallowance under section 14A. Identical issue has been decided by us in ITA No. 51/Mum/2005. Since the issue is the same, we do not intend to deviate from our own decision and we restore the issue to the file of the AO with similar directions, as given by us in assessment year 1998-99.

205. The ground of appeal, is, therefore, allowed for statistical purposes.

Assessment year 2004-05 : Department's appeal :

206. Issue involved in ground no. 1 is with regards to the claim of bad debts of Rs. 27.64 crores. On identical facts, we have already given our

findings in ITA No. 549/Mum/2007, wherein we have dismissed the ground of appeal filed by the department.

207. Ground no. 2 : We have already opined in para 200, we do not intent to take a contrary view in the instant ground of appeal.

208. As a result, the ground raised by the department is dismissed.

209. Ground no. 2 is with regards to assessee's claim for depreciation of Rs. 1,07,84,267/- on the various assets given on lease.

210. A similar issue has already been decided by us in ground no. 1 of the assessee's appeal for AY 1996-97 in foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and dismiss ground no. 2 of the revenue's appeal.

211. Grounds no. 3 & 4 are general in nature, hence, no adjudication is called for, therefore, both these grounds are accordingly dismissed.

212. In the result:

appeal of the assessee stands partly allowed and
appeal of the revenue stands dismissed.

ITA 7171/Mum/2011 : Assessee's appeal for AY 2008-09:

ITA 7001/Mum/2011 : Revenue's appeal for AY 2008-09:

213. These Cross appeals filed for AY 2008-09 are directed against the order of Ld. CIT(A)-Central IV, Mumbai dated 29.07.2011. The assessee has raised the following grounds:

"GROUND NO.1:

The order of the learned DCIT which has been upheld by the Hon. CIT(Appeals) must be annulled and quashed, since it is capricious in nature and has been made, ignoring the established and undisputed facts, with an intention to punish the appellants.

GROUND NO.2:

The learned DCIT has made additions to the total income of the appellant, and which has been upheld by the Hon. CIT (Appeals) in his Appellate order without a proper consideration of the underlying facts and in the provisions of the Act and the following additions made to the total income of the appellant must be deleted.

	<u>Rs.</u>
• Depreciation on leased assets	37,50,717
• Depreciation on premises	1,43,938
• Expenses of capital nature	5,69,216
• Disallowance u/s 14A	10,09,11,791"

214. In its grounds of appeal, the revenue has raised following ground:

- a) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing depreciation of Rs. 37,50,717/- on leased assets.*
- b) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing claim of loss of Rs. 2,54,00,885/- on revaluation of foreign exchange.*
- c) *The appellant craves to add, to amend and/or to alter any of the grounds of appeal, if need be.*
- d) *The appellant, therefore, prays on the grounds stated above, the order of the CIT(A), Central-39, Mumbai may be set aside and that of the Assessing Officer restored."*

215. The issue involved in Ground no. 1 of the assessee's appeal is general in nature and did not call for any interference.

216. The common issue involved in Ground no. 2(i) of the assessee's appeal as well as Ground no. (a) of the revenue's appeal relates to the assessee's claim for depreciation of Rs. 37,50,717/- on the various assets given on lease.


217. A similar issue involved in Cross appeals filed for AY 1996-97 has already been decided by us in the foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow ground no. 2(i)

of the assessee's appeal and dismiss ground (a) of the revenue's appeal.

218. Issue involved in Ground no. 2(ii) of the assessee's appeal and grounds c & d of the revenue's appeal are not pressed, hence, same are dismissed as not pressed.

219. Issue involved in Ground b of the revenue's appeal is with regards to addition on account of notional loss of Rs. 2,54,00,885/- on the revaluation of foreign exchange.

220. The facts are that the assessee booked a loss on revaluation of outstanding contracts on net basis (gross loss of Rs. 6,66,41,881 – gross gain of Rs. 4,12,40,996). The AO observed that such a loss on notional basis could not be allowed.



221. The assessee took the issue before the CIT(A), before whom the assessee reiterated its submissions made before the AO and placed reliance on the ITAT Special Bench decision in the case of DCIT vs Bank of Bahrain & Kuwait, reported in 132 TTJ 505 (Mum-SB), as extracted by the CIT(A) are, “..... (v) As per AS-11, when the transaction is not settled in the same accounting period as that in which it occurred, the exchange difference arises over more than one accounting period. (vi) The forward foreign exchange contracts have all the trappings of stock in trade. (vii) In view of the decision of the Hon'ble Supreme Court in the case of Woodward Governor India (P) Ltd. (supra), the assessee's claim is allowable. (viii) In the ultimate analysis, there is no revenue effect and it is only the timing of taxation of loss/profit.

We, accordingly, hold that where a forward contract is entered into by the assessee to sell the foreign currency at an agreed price at a future date falling beyond the last date of the accounting period, the loss is incurred to the assessee on account of evaluation of the contract on the


last date of the accounting period, i.e. before the date of maturity of the forward contract”.

222. The CIT(A), thus following the decision of the ITAT SB, who relied on the decision of the Hon'ble Supreme Court of India, allowed the assessee's claim of loss of Rs. 2,54,00,885/-.

223. The department is in appeal before the ITAT.

224. Both the parties supported the orders of their favour.

225. On perusal of the order of the CIT(A), we find that the CIT(A) has followed the ratio laid down by the Hon'ble Apex Court and directed the AO to allow the loss, as claimed.



226. Respectfully following the order of the Special Bench, as referred (supra) and following the ratio laid down by the Hon'ble Supreme Court, we do not find any reason to deviate from the order of the CIT(A), which we sustain.

227. The ground of appeal (b), therefore, rejected.

228. Issue involved in Ground no. 2(iii) of the assessee's appeal pertains to disallowance of depreciation claimed at Rs. 1,43,938/- on premises acquired by the assessee.

229. Similar issue has already been decided by us in ground no. 8 of the assessee's appeal for AY 1996-97 in foregoing portion of this order. Since all the material facts relevant thereto as well as arguments raised by the Ld. Representatives of both the sides are similar, we follow our decision rendered in AY 1996-97 and allow Ground no. 2(iii) of the assessee's appeal.

230. Issue involved in Ground no. 2(iv) of the assessee's appeal is with regards to disallowance u/s 14A. The facts are that the assessee, during the year under consideration computed the disallowance, *suo moto*, at Rs. 15,84,000/-. The AO, applying Rule 8D, computed the disallowance of Rs. 10,09,11,791/-

231. The assessee, approached the CIT(A), who sustained the observations and working of the AO for making the disallowance under section 8D of the Income Tax Rules.

232. The assessee is in appeal before the ITAT

233. Before us the AR pointed out that the assessee had *suo moto* made a disallowance and a further disallowance would only add to the disallowance already made.

234. The DR supported the views of the revenue authorities.


235. We have heard the arguments and perused the material on record. In the present case, the assessee had made a disallowance, which the AO did not consider to be incorrect. The legislature has used the words, "*.....if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure*". This only means that the AO cannot simply brush aside the claim made by the assessee, but, first the AO must give cogent reasons for his not being satisfied with the correctness of the claim of the assessee in respect of such expenditure.

236. In our considered opinion, the road leading to application of Rule 8D of the Income Tax Rules, goes through section 14A(2) of the

Income Tax Act, 1961. This is so because, unless the AO gives a reasoned finding that the expenditure shown or even not shown in its/his books are incorrect, he cannot proceed to compute the disallowance, as prescribed.

237. In the present set of circumstances, we find that there is no reasoned finding against the disallowance computed and shown by the assessee and the AO has computed the disallowance by applying Rule 8D mechanically, without meeting the claim of the assessee in support of its computation.

238. In these circumstances, we set aside the order of the CIT(A) on this issue and direct the AO to compute the disallowance, by giving a reasoned finding for not accepting the disallowance made by the assessee *suo moto*. The disallowance to be computed by the AO shall be as per law, needless to observe, after affording reasonable opportunity to the assessee to present its case.



239. Issue involved in Ground c & d of the revenue's appeal are general in nature and hence, did call for any adjudication.

240. In the result:

appeal of the assessee stands partly allowed.

appeal of the revenue stands dismissed.

Interest tax Appeal no. 40/Mum/2003 : Revenue's appeal
for AY 1996-97:

241. This appeal of the revenue arises out of order of the CIT(A) Central IV, Mumbai, dated 11.08.2003. The revenue has raised following grounds:

- "1. The Ld. CIT(A) has erred in deleting the addition made by the AO without appreciating that the leasing transactions entered into by the assessee is purely in the nature of finance transactions.
2. The Ld. CIT(A) has erred in deleting the addition of Rs. 1,41,01,462/- which has been held by the AO as chargeable interest income."

242. Since the issue of interest itself has been deleted, no question of levy of interest tax survives, as the assessee was held to be the owner. Accordingly, we dismiss ground 1 & 2 of the revenue's appeal.

243. In the result, revenue's appeal stands dismissed.

Interest tax Appeal no. 41/Mum/2003 : Revenue's appeal
for AY 1997-98:

244. This appeal of the revenue arise out of order of the CIT(A) Central IV, Mumbai, dated 11.08.2003. In its appeal, the revenue have raised following grounds:

- "1. The Ld. CIT(A) has erred in fact and in law in allowing relief of an amount of Rs. 2,05,28,954/- without considering
 - a) That the leasing transaction pertaining to AVS Industries, Prakash Industries, NRC Ltd., Stellar Modular Systems and Uniflex Cables amounting to Rs. 2,05,28,954/- were found to be of financial transactions ought to be taxed as interest income.
 - b) That the leasing transaction pertaining to JBF Industries and mardia Chemicals amounting to Rs. 1,78,44,015/- were found to be of financial transactions and not genuine lease transactions and therefore, the income earned from such transactions ought to be taxed as interest income.
2. The Ld. CIT(A) has erred in facts and in law in directing the Assessing Officer to reduce the amount of Rs. 2,64,00,000/-, being the interest @ 3% charged by the assessee from the customers over and above the interest income, from gross interest chargeable to tax."

245. Since the issue of interest itself has been deleted, no question of levy of interest tax survives, as the assessee was held to be the owner. Accordingly, we dismiss ground a & b of the revenue's appeal.

246. Ground no. 2 Interest tax should not be levied on the interest collected by the appellant i.e. there should not be grossing up. The

issue stands covered by the decision of Madras High Court in case of Bank of Madura, reported in 215 ITR 928 (Mad). In fact in AY 2000-01, the AO relying on the RBI circular has himself not levied interest tax on the interest collected by the assessee from its customer in light of RBI circular referred therein.

247. On these facts, we reject the ground taken by the department on the issue impugned before us.

248. In the result, revenue's appeal is dismissed.

Interest tax Appeal no. 08/Mum/2005 : Revenue's appeal
for AY 1998-99:

249. This appeal of the revenue arises out of order of the CIT(A) Central IV, Mumbai, dated 09.11.2004. In its appeal, the revenue have raised following grounds:

- "1. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in directing the AO to reduce an amount of Rs. 1,84,50,000/- from chargeable interest.
2. On the facts and circumstances of the case and in law the Ld. CIT(A) failed to appreciate that the entire leasing income shown by the assessee are nothing but income arising out of financial transactions and hence should be treated as interest income and thereby erred in deleting the amount of Rs. 1,07,77,637/- attributable to such transactions from the chargeable interest.
3. On the facts and circumstances of the case and in law the Ld. CIT(A) failed to appreciate that the lease transactions entered into by the assessee are nothing but financial transactions in view of the RBI's circular no. FSC.BC.18/24/-01-20001/93-94 dated 19.2.1994 and hereby erred in deleting the amount of Rs. 1,07,77,637/- arising out of such transactions treated as chargeable interest by the AO."

250. Since the issue of interest itself has been deleted, no question of levy of interest tax arises, as the assessee was held to be the owner. Accordingly, we dismiss grounds 1, 2 & 3 of the revenue's appeal.

251. In the result, revenue's appeal stands dismissed.

Interest tax Appeal no. 09/Mum/2005 : Revenue's appeal
for AY 1999-00:

252. This appeal of the revenue arises out of order of the CIT(A) Central IV, Mumbai, dated 09.11.2004. In its appeal, the revenue have raised following grounds:

- "1. On the facts and circumstances of the case and in law the Ld. CIT(A) failed to appreciate that the entire leasing income shown by the assessee are nothing but income arising out of financial transactions and hence should be treated as interest income and thereby erred in deleting the amount of Rs. 1,06,08,238/- attributable to such transactions from the chargeable interest.
3. On the facts and circumstances of the case and in law the Ld. CIT(A) failed to appreciate that the lease transactions entered into by the assessee are nothing but financial transactions in view of the RBI's circular no. FSC.BC.18/24/-01-20001/93-94 dated 19.2.1994 and hereby erred in deleting the amount of Rs. 1,06,08,238/- arising out of such transactions treated as chargeable interest by the AO."

253. Since the issue of interest itself has been deleted, no question of levy of interest tax arises, as the assessee was held to be the owner. Accordingly, we dismiss grounds 1 & 3 of the revenue's appeal.

254. In the result, revenue's appeal stands dismissed.

Interest tax Appeal no. 10/Mum/2005 : Revenue's appeal
for AY 2000-01:

255. This appeal of the revenue arises out of order of the CIT(A) Central IV, Mumbai, dated 23.11.2004. In its appeal, the revenue have raised following grounds:

- "1. On the facts and circumstances of the case and in law the Ld. CIT(A) failed to appreciate that the entire leasing income shown by the assessee are nothing but income arising out of financial transactions and hence should be treated as interest income and thereby erred in deleting the amount of Rs. 1,07,77,637/- attributable to such transactions from the chargeable interest.
2. On the facts and circumstances of the case and in law the Ld. CIT(A) failed to appreciate that the lease transactions entered into by the assessee are nothing but financial transactions in view of the RBI's circular no. FSC.BC.18/24/-01-20001/93-94 dated 19.2.1994 and hereby erred in deleting the amount of Rs. 1,07,77,637/- arising out of such transactions treated as chargeable interest by the AO."

256. Grounds 1 & 2 are dismissed as interest not chargeable as assessee held to be owner.

257. In the result, revenue's appeal stands dismissed.

To sum up:

Sr. no.	Appeal ITA/ Int. Tax no.	A.Y.	Revenue's/ Assessee's	Result
1	3006/M/2001	1996-97	Assessee	Partly allowed
2	4892/M/2003	1996-97	Assessee	Allowed
3	3620/M/2001	1996-97	Revenue	Dismissed
4	5840/M/2003	1997-98	Assessee	Allowed
5	6010/M/2003	1997-98	Revenue	Dismissed
6	5813/M/2004	1998-99	Assessee	Partly allowed
7	5814/M/2004	1998-99	Revenue	Dismissed
8	51/M/2005	1999-00	Assessee	Partly allowed
9	9611/M/2004	1999-00	Revenue	Dismissed
10	3303/M/2005	2000-01	Assessee	Allowed
11	52/M/2005	2000-01	Assessee	Partly allowed
12	9657/M/2004	2000-01	Revenue	Dismissed
13	53/M/2005	2001-02	Assessee	Partly allowed
14	370/M/2005	2001-02	Revenue	Dismissed
15	3304/M/2005	2001-02	Assessee	Allowed
16	4104/M/2005	2002-03	Assessee	Partly allowed
17	3979/M/2005	2002-03	Revenue	Dismissed
18	151/M/2007	2003-04	Assessee	Partly allowed
19	549/M/2007	2003-04	Revenue	Dismissed
20	7348/M/2007	2004-05	Assessee	Partly allowed
21	7625/M/2007	2004-05	Revenue	Dismissed
22	7171/M/2011	2008-09	Assessee	Partly allowed
23	7001/M/2011	2008-09	Revenue	Dismissed
24	Int. Tax A 40/2003	1996-97	Revenue	Dismissed
25	Int. Tax A 41/2003	1997-98	Revenue	Dismissed
26	Int. Tax A 08/2005	1998-99	Revenue	Dismissed
27	Int. Tax A 09/2005	1999-00	Revenue	Dismissed
28	Int. Tax A 10/2005	2000-01	Revenue	Dismissed

Order pronounced on in the open court on 20th of March, 2013.

Sd/-
(P.M. JAGTAP)
ACCOUNTANT MEMBER

Sd/-
(VIVEK VARMA)
JUDICIAL MEMBER

Mumbai: **20th March, 2013**

Copy to:

- ~~1) The Appellant~~
- 2) The Respondent
- 3) The CIT (A) C.IV/I _____ concerned, Mumbai.
- 4) The CIT, CC-II/ _____ concerned, Mumbai
- 5) The DR, "J" Bench Mumbai

By Order



Asst. Registrar,
ITAT, Mumbai

*Chavan