* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

{ITA 1712/2010
&
{ITA 1714/2010}

Date of order: November 9, 2010

ITA 1712/2010

COMMISSIONER OF INCOME TAX . . . APPELLANT
Through: Ms. Prem Lata Bansal, Sr. Standing Counsel

VERSUS

CITICORP MARUTI FINANCE LTD. . . .RESPONDENT
Through: Mr. C.S. Aggarwal, Sr. Advocate with Mr. Prakash Kumar, Advocate.

ITA 1714/2010

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CORAM:-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J (ORAL)

1. Following questions of law are proposed in this appeal:-

> "(i) Whether ITAT was correct in law in allowing loss of ₹ 1,56,04,644/- to the assessee on sale of repossessed assets u/s 36(1) (vii) r/w Section 36 (2) of the Act?

(ii) Whether assessee had satisfied the conditions as prescribed in Section 36(2) of the Act so as to allow deduction of loss of ₹ 1.56 crore u/s 36 (1) (vii) of the Act.?

(iii) Whether loss on sale of repossessed assets is a capital loss or it is a bad debt allowable u/s 36(1) (vii) R/W Section 36 (2) of the Act.?

(iv) Whether ITAT was correct in law in allowing depreciation @ 60% to the assessee on computer acce3ssories and peripherals like printers etc.?

(v) Whether order passed by ITAT is perverse in law and on facts?"

2. These questions primarily raise two issues which can be summarized as under:-

(1) The respondent assessee is in the business of financing automobile cars/lease finance etc. Various persons to whom this finance was given were the defaulters and the cars financed were repossessed by the assessee. After repossessing, those cars were sold to third persons. Money realized on the sale of those cars were much less the amount outstanding and payable by the debtors to whom the cars were given on lease rentals. In this way, the assessee claimed loss of ₹ 1,56,04,644/- as bad debt and allowable under Section 36 (1) (vii) of the of the Income-Tax Act. The Assessing Officer, however, refused to allow the said claim on the ground that these repossessed vehicles cannot be construed as stock-in-trade. He relied upon the judgment of Allahabad High Court in the case of ***Motor & General Sales Pvt. Ltd*** *Vs.* ***CIT****, 226 ITR 137* in taking the aforesaid view. The CIT (A), however, reversed this order of the Assessing Officer holding that the claim was covered by Section 36 (1) (vii) read with Section 36 (2) of the Act. He was also of the view that it was not a case of trading loss under Section 28 of the Act. According to him, on the facts of this case, judgment of Calcutta High Court in the case of

A.W.Figgies & Co. Pvt. Ltd. *254 ITR 63* was directly applicable. The ITAT has affirmed the aforesaid view.

(2) The assessee had also claimed depreciation at the rate of 60% of computers accessories and peripherals purchased by the assessee during this year. The Assessing Officer, however, allowed the depreciation at the rate of 25%. The CIT (A) reversed this part of the order of the Assessing Officer holding that on computer accessories 60% depreciation was allowable under the Act. This order is also upheld by the Tribunal.

3. In so far as second issue is concerned, it should not be disputed by the learned Counsel for the Revenue that this issue is now settled by the judgment of this Court in the case of ***Commissioner of Income-Tax*** *Vs.* ***BSES Yamuna Powers Ltd***. (ITA 1267/2010 decided on 31.8.2010), holding that on computers and peripherals, depreciation at the rate of 60% is allowable.

4. Coming to the first issue, as pointed out above, the Assessing Officer was of the opinion that an identical issue had been examined by the High Court of Allahabad in ***Motor General Sales Pvt. Ltd.*** Vs***. CIT***, 226 ITR 137, wherein it had been held by the Court that deduction could not be allowed to the assessee, when the assessee had taken the possession of vehicles on the default committed by the borrowers and it had merely revalued such assets. The Assessing Officer took a view that it has been held by the High Court that as the assessee remains the owner and as such there arises no question of revaluation of assets and as such an assessee is not entitled to claim the loss on mere revaluation of assets u/s 36(1) (vii) read with section 36(2) of the Act. The CIT (A), however, took the view that the facts of the instant case are distinguishable and the aforesaid judgment of Allahabad High Court has no application. According to

him, the assessee is entitled to the deduction of the amount of 'bad debts written off' by it, in the year, when it became irrecoverable, since the repossessed assets were sold and was not a case of mere revaluation of the assets leased and were taken merely possession thereof. In holding so, he relied upon the following decisions:-

1. CIT Vs. Morgan Securities Credit Ltd. 292 ITR 339 (Del).
2. Auto Meter Ltd. 210 CTR 339
3. Poysha Oxygen (P) Ltd. Vs. Asst. CIT (2008) 19 SOT 711 (Del)

5. The CIT (A) noted that, the assessee being a non-banking Financial Company (NBFC) is in the business of money lending giving finance for purchase of vehicle under hire purchase Scheme. He further noted that the owner of the vehicle is the purchaser, and appellant is the lender of money, which itself is a distinguishable factor, as the facts before the High Court of Allahabad in the case of M/s Motor General & Sales Pvt. Ltd. reported in 226 ITR 137, as is relied by the Assessing Officer in his order were different. In that case the assessee had merely revalued the assets, whereas the assessee in the instant case had also sold the same and did not claim the loss on mere revaluation of repossessed assets as was the situation in the case before the Allahabad High Court.

6. We find from the order of CIT (A) that there is a detailed discussion on this aspect in para 1.3 of his order where following admitted facts are taken note of:-

> "i) There is no dispute that the appellant is a NBFC and is in the business of money lending giving finance for purchase of vehicle under hire purchase scheme. The owner of the vehicle is the purchaser and appellant is only lender of money.

ii) I have gone through the modus-operandi of transaction and the model of entries passed in connection with the transaction starting with the finance and its logical end. From perusal of the entries it is abundantly clear that it is clearly cut case of write off of Bad Debts. Although the appellant company has used the nomenclature as "Loss on Sale of Reprocessed Assets" as provided under NBFC norms but the fact of the matter is that it is a "write off of bad debts". When the customer makes default in payment of loan the vehicle is reprocessed and sold. The amount realized on sale is credited to the customer a/c and balance left in the account of customer is written off as "Loss on Sale of Reprocessed Assets" which is nothing a write off of Bad Debts. Nomenclature does not change the real character of the transaction. The court have invariably held that nomenclature given to the transaction and the treatment given to expenditure in particulars manner or the accounting entries does not change the real character of transaction and are not determinative and decisive for tax purpose. The clam of the assessee should be decided as per provision of law (See case of Bur Paints India Ltd. 254 ITR 503 (Cl.) and Kedar Nath Jute Manufacturing Co. 82 ITR SC."

7. The CIT (A) thereafter applied the provisions of Section 36 (1) (vii) and 36 (2) of the Act on the aforesaid facts. The case was fully covered by these provisions. Relevant portion of section 36 (2) of the Act provides as under:-

"in making any deduction for a bad debt or part thereof, the following provisions shall apply-

i)"No such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year n which the amount of such debt or part thereof is written off **or of an earlier**

previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee….".

8. From the aforesaid it becomes clear that the CIT (A) was right in his conclusion. We are also of the view that the CIT (A) as well as ITAT rightly held that the judgment of Allahabad High Court in ***Motor & General Sales Pvt. Ltd*** *(supra)* was not applicable to the facts of this case.

9. On the other hand, the facts were identical in ***A.W.Figgies*** case *(supra)* and the judgment passed by the Calcutta High Court in that case is applicable here. In that case the Court held that the amount advanced by the assessee during the course of business could not be recovered would be treated as bad debt allowable under Section 36 (2) of the Act.

10. We thus are of the opinion that no question of law arises for determination and this appeal is dismissed accordingly.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

NOVEMBER 29, 2010.
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