IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI

ITA No.2181 to 2183/Del/2010
Assessment Years : 2002-03, 2005-06 & 2006-07

DCIT
CIRCLE 6 (1), ROOM NO.413
CR BUILDING, IP ESTATE, NEW DELHI

Vs

MARUTI COUNTRYWIDE AUTO FINANCIAL SERVICES PVT LTD
401-402, 4TH FLOOR,
AGARWAL MILLENNIUM TOWER
E-1,2,3, NETAJI SUBHASH PLACE, NEW DELHI
PAN: AAACM6101B

I P Bansal (AM) and K G Bansal (JM)

Dated : April 29, 2011

ORDER

Per: I P Bansal:

All these appeals are filed by the revenue. They are directed against the three separate orders passed by the CIT (A) dated 25th February, 2010, 24th February, 2010 and 26th February, 2010 for assessment years 2002-03, 2005-06 and 2006-07 respectively. The grounds of appeal in each of the appeal read as under:-

ITA No.2181/Del/2010

1. The order of the learned CIT (Appeals) is erroneous & contrary to facts and law.

2. On the facts and in the circumstances of the case and in law, the learned CIT (Appeals) has erred in deleting the addition of Rs.1,95,89,465/- made by the Assessing Officer on account of disallowing the loss on sale of repossessed assets.

2.1. The Ld. CIT (A) has ignored the fact that the vehicles in questions were sold earlier on hire purchase basis to other buyers.

3. On the facts and in the circumstances of the case and in law, the learned CIT (Appeals) has erred in deleting the addition of Rs.36,65,022/- made by the Assessing Officer on account of accrued interest on sticky loans.

3.1 The Ld. CIT (Appeals) has ignored that the assessee is following mercantile system of accounting and accrued interest is to be taxed in the year of accrual.

4. the appellant craves leave to add, to alter, or amend any grounds of the appeal raised above at the time of the hearing.

ITA No.2182/Del/2010

1. The order of the learned CIT (Appeals) is erroneous & contrary to facts and law.

2. On the facts and in the circumstances of the case and in law, the learned CIT (Appeals) has erred in deleting the addition of Rs.4,80,03,895/- made by the Assessing Officer on account of loss on sale of repossessed assets.

2.1. The Ld. CIT (A) has ignored the fact that the vehicles in questions were sold earlier on hire purchase basis to other buyers.

3. On the facts and in the circumstances of the case and in law, the learned CIT (Appeals) has erred in deleting the addition of Rs.3,15,24,257/- made by the Assessing Officer on account of disallowing 50% of expenses incurred on advertisement and business promotion expenses.

3.1 The Ld. CIT (Appeals) has ignored that the expenses were incurred for brand promotion and sustaining the brand 'Maruti' which does not belong to the assessee but to its sister concern i.e., Maruti Udyog Ltd.

4. the appellant craves leave to add, to alter, or amend any grounds of the appeal raised above at the time of the hearing.

ITA No.2183/Del/2010

1. The order of the learned CIT (Appeals) is erroneous & contrary to facts and law.

2. On the facts and in the circumstances of the case and in law, the learned CIT (Appeals) has erred in deleting the addition of Rs.5,00,59,438/- made by the Assessing Officer on account of loss on sale of repossessed assets.

2.1. The Ld. CIT (A) has ignored the fact that the vehicles in questions were sold earlier on hire purchase basis to other buyers.

3. On the facts and in the circumstances of the case and in law, the learned CIT (Appeals) has erred in deleting the addition of Rs.2,19,44,530/- made by the Assessing Officer on account of disallowing the 50% of expenses incurred on advertisement and business promotion expenses.

3.1 The Ld. CIT (Appeals) has ignored that the expenses were incurred for brand promotion and sustaining the brand "Maruti" which does not belong to the assessee but to its sister concern i.e., Maruti Udyog Ltd.

4. the appellant craves leave to add, to alter, or amend any grounds of the appeal raised above at the time of the hearing.

2. All these appeals were heard together. These involve common issue also, hence, for the sake of convenience, all these appeals are being disposed of by this

consolidated order. Ground No.1 in all the appeals is general, which needs no separate adjudication. In all the appeals ground No.2 represent one identical issue which is regarding loss on sale of repossessed assets. It is the contention of the assessee that for assessment year 2002-03 the Tribunal has decided this issue in the case of the assessee and copy of order is placed at pages 6-13 of the paper book. Briefly stated, the facts are that the assessee is a joint venture company between Maruti Udyog Ltd., Housing Development Finance Corpn. and GE Capital Services India. The assessee is a non-banking financial company (NBFC) engaged inter alia in the business of auto finance, lease and hire purchase. It was noticed by the Assessing Officer that the assessee had claimed certain expenses on account of loss on sale of repossessed assets. According to the Assessing Officer, such expenditure was capital in nature. It was explained that the assessee was providing financial assistance to customers in acquiring wide range of consumer and auto products. During the course of regular business, it has to provide from time to time certain auto/consumer loans and assets on hire purchase/lease. In the case of hire purchase transaction, the assessee does not claim any depreciation and reflects the hire purchase receivables from the hirers in the balance sheet as hire purchase receivables. In the case of secured auto or consumer loan, the loan is hypothecated against the auto/two wheeler or the consumer durable as a security which, in the event of default of the customer is repossessed. Similarly, in the case of hire purchase, in the event of default on the part of the hirer in the payment of installments the assessee repossesses the asset. As and when a hypothecated asset is repossessed under loan/hire purchase transaction, the same is included in the repossessed stock of the company under the current assets. Thereafter, the assessee takes a commercially prudent decision for selling those repossessed assets to the interested buyers. On sale, the excess/shortfall of the sale proceeds vis-a-vis the amount recovered from the hirer is booked as business profit/loss in the profit and loss account under the head 'loss on sale of repossessed assets.' The unsold repossessed stock lying in the possession of the assessee as at the end of the year continue to form part of the current assets. Accordingly, it is the case of the assessee that repossessed assets are not capital assets of the company. The loss arose consequent to the sale of repossessed assets which represent distribution of the realizable value/sale proceeds vis-avis the amount recoverable from the hirer which constitute the loss incurred by the assessee as business loss. On these facts, the Tribunal for assessment year 2003-04 has upheld the order of CIT (A) vide which the similar addition was deleted. The order of the Tribunal is dated 14th September, 2010 rendered in ITA No.3620/Del/2008. The observations of the Tribunal while deciding the issue in favour of the assessee are as under:-

"5. We have heard ld. Counsels of both the parties and perused the records. Ld. Departmental Representative fairly agreed that the issue is covered in favour of the assessee by the decision of Delhi Bench – B of the ITAT dated 13.11.2009 in the case of M/s Citi Corp. Maruti Finance Ltd. in ITA Nos.3749 & 3750/D/2009 for assessment years 2003-04 and 2004-05. The Tribunal in the said case has referred to the order of CIT (A) wherein the CIT (A) had held that deduction claimed by the assessee was admissible u/s 36 of the Income-tax Act. The observations of the CIT (A) in the said particular case are reproduced hereunder:-

"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.

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 clear cut case of write off of Bad Debts. Although the appellant company has used the nomenclature as "loss on Sale of Repossessed Assets" as provide 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 Repossessed 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 purposes. The claim of the assessee should be decided as per provision of law) see case of Burger Paints India Ltd., 254 ITR 503 (Cal) and Kedar Nath Jute Manufacturing Co. 82 ITR Supreme Court.

I have also gone through the provision of section 36(1)(vii) and section 36(2) of the Act which provide that write off made by the company which are in money lending business are admissible deduction under section 36 of the Act. The relevant extract of section 36 (2) of the Act inter alia provides as under:

In making any deduction for a bad debt or part thereof, the following provisions shall apply:

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 in 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……"

From perusal of the facts of the case and the legal position for it transpire that the appellant case is fully covered by section 36(1)(vii) read with section 36 (2) of the Act. It is not a case of trading loss u/s 28 of the Act as alleged by Assessing Officer following the case of Allahabad High Court supra.

Coming on the legal side, I have perused the case of M/s Motor General Sales Pvt. Ltd. 226 ITR 137 relied upon by Assessing Officer and I am of the view that facts of the case are different in the sense that there the issue was of trading loss claimed u/s 28 of the Act whereas in appellant case it is a case of write of debt (although) the nomenclature given is "loss on Sale of repossessed Assets."

It can be seen from the judgment of Allahabad High Court supra that case is squarely covered u/s 36(1)(ii) read with Section 36(2) of the Act. In fact, case relied upon by Assessing Officer on one way goes in favour of the appellant in much as the observation made therein clearly states that it is a case of deduction u/s 36(1)(vii)/36(2) of the Act and not of trading loss u/s 28 of the Act. The relevant observation of the Hon'ble Court is given as under:-

"The Tribunal has reached the conclusion that though the assessee's business is that of financing trucks on hire-purchase basis, actually it is a money lending business and as such any loss occasioned to the assessee on account of nonrecovery of

installments financed by it, would be a loss incidental to its money-lending business, and therefore, it must be allowed u/s 36(1)(vii) r/w section 36 (2) as a bad debt.

Accordingly, the Tribunal, while setting aside the order of the CIT (A), held that the loss caused to the assessee is not a trading loss claiming deduction u/s 28 of the Act. However, according to the Tribunal, the assessee's claim comes u/s 36 (1)(vii) r/w section 36(2) of the Act and accordingly benefit was given to the assessee holding that it is a bad debt and that debt become bad in the previous year."

Now, I come to cases relied upon by learned AR and found that cases referred support the view of the appellant. In case A.W. Figgles & C. Pvt. Ltd. (2002) 254 ITR 63 (Cal) relied upon it was held that "the amount advanced by the assessee during the course of business but could not be recovered was held allowable as bad debt u/s 36(2) of the Act." Similarly judgment Delhi ITAT in case of Poysha Oxygen Ltd. (2008) 19 SOT 711 as well other judgment of jurisdictional court cited in submission holding the similar view."

5.1 The Tribunal in the aforesaid case of M/s Citi Corp. Maruti Finance Ltd. (supra) deleted the impugned additions by observing in para 6 of its order as under:-

"6. On considering the submissions of both the parties, perusing the orders of the tax authorities below, we are of the opinion that the A.O. while disallowing the claim of the assessee has wrongly placed reliance on the decision of Hon'ble Allahabad High Court in the case of M/s Motor General Sales P. Ltd. (supra) and the same has been rightly analysed and distinguished by the CIT (A) in his order. We further find that the CIT (A) in his well reasoned order and relying upon the various decisions which were relevant to the issue under consideration before us has rightly deleted the impugned additions of Rs.1,56,04,644/- (in A.Y. 2003-04) and Rs.2,00,14,497/- (in A.Y. 2004-05) respectively. Accordingly, the well reasoned and well discussed orders of CIT (A) do not call for any interference from our side and the same are upheld. Ground Nos.1 and 2 of the appeals of the Revenue are rejected."

6. Facts in the present case being identical and both the ld. Counsel having fairly agreed that the issue stands covered in favour of the assessee, we uphold the order of ld. CIT (A) and decide the issue in favour of the assessee.

7. In the result, the appeal of the revenue is dismissed."

3. Though it has been the case of Ld. DR that the aforementioned decision is distinguishable on the ground that it is not coming out of the order of the Assessing Officer and CIT (A) that whether or not who was the owner of the repossessed vehicle and, therefore, the ratio of the decision in the case of M/s Citi Corp. Maruti Finance Ltd. could not be followed without ascertaining that fact. However, as against that it is the case of Ld. AR that all the facts have been considered and discussed in the order of Assessing Officer and CIT (A). It has clearly been brought out in the order of the Assessing Officer and CIT (A) that the assessee did not become the owner and no depreciation whatsoever was claimed by the assessee. After hearing both the parties, we find that no distinguishable feature has been brought on record by the ld. DR to deviate us from the decision taken by the Tribunal in assessee's own case for assessment year 2003-04. Therefore, the facts being identical, we are of the opinion that learned CIT (A) has rightly deleted the addition

and his order on this issue is upheld. The common ground taken in all the appeals regarding loss on sale of repossessed assets is dismissed.

4. Apropos ground No.3 for assessment year 2002-03, an amount of ` 36,65,022/- was disallowed by the Assessing Officer on account of non-offer of interest income on sticky loans and advances. According to the Assessing Officer the assessee has been following mercantile system of accounting, therefore, the assessee was under an obligation to offer interest accrued on loans and advances which may become sticky loans and advances. According to the assessee, even under the mercantile system of accounting income accrues only when there is a reasonable certainty of its collection. It was submitted that the recovery of the loan and advance itself was in dispute or was doubtful and the assessee is an NBFC and has to follow the norms prescribed by the RBI vide Notification No. DFC119/DG (SPT) –98 dated 31st January, 1998. It was submitted that on the default of non-receiving the payment of interest and installment, the asset will become nonperforming and the same required to be recognized only when it was actually realized. According to the Assessing Officer, RBI guidelines could not override the provisions of Income Tax Act which requires the assessee to offer income on the basis of accrual. The Assessing Officer observed that RBI as well as Income-tax Act are both independent regulatory system and, therefore, for the purpose of Income-tax Act, the provisions of Income-tax Act were to be followed. He, therefore, added the said amount to the income of the assessee. Learned CIT (A) has deleted the disallowance on the ground that the assessee is an NBFC and according to the norms prescribed by the RBI and the Institute of Chartered Accountants of India it was right in not recognizing the interest on accrual basis in respect of sticky loans and advances. The revenue is aggrieved, hence, in appeal.

5. Ld. DR, relied upon the observations of the Assessing Officer which states that the RBI guidelines and provisions of the Income-tax Act work in different fields and the RBI guidelines could not override the provisions of the Income-tax Act. Hence, relying upon the assessment order, it was pleaded by Ld. DR that learned CIT (A) has wrongly deleted the addition.

6. On the other hand, relying upon the order of CIT (A), it was pleaded by ld. AR that ld. CIT (A) has rightly deleted the addition. He submitted that jurisdictional High Court in the case of CIT vs. Vasisth Chay Vyapar Ltd. (2011) 196 Taxman 169 (Del.) has held that if in any enactment the provisions contained a non-obstante clause, that would override the provisions of the Income-tax Act and it was held that Section 45Q of RBI Act having a non-obstante clause will prevail over the Income-tax Act. He submitted that the decision in the case CIT vs. Vasisth Chay Vyapar Ltd. (supra) squarely cover the case of the assessee and, therefore, ld. CIT (A) was right in deciding the issue in favour of the assessee.

7. We have carefully considered the rival submissions in the light of the material placed before us. The disallowance has been made by the Assessing Officer only on the ground that the provisions of Income-tax Act could not be override by the provisions of the RBI Act. However, according to the aforementioned decision of Hon'ble Delhi High Court, Section 45Q of RBI Act will override the provisions of the Income-tax Act, therefore, the very basis of the disallowance made by the Assessing Officer is not in accordance with the aforementioned decision of Hon'ble Delhi High Court. Therefore, we find no infirmity in the order of the CIT (A) vide which the

disallowance has been deleted. The relevant observations of the Hon'ble Delhi High Court from the said decision are as under:-

"15. We have considered the respective submissions in their proper perspective. Before we embark on the discussion on these arguments, it would be useful to extract the relevant provisions of the RBI Act and NBFCs Prudential Norms (Reserve Bank) Directions, 1998. Section 45Q of the RBI Act, which starts with non obstante clause, reads as under : -

"45Q. Chapter IIIB to override other laws. - The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

16. It is not in dispute that on the application of the aforesaid provisions of the RBI and the directions, the ICD advanced to M/s Shaw Wallace by the assessee herein had become NPA. It is also not in dispute that the assessee company being NBFC is bound by the aforesaid provisions. Therefore, under the aforesaid provisions, it was mandatory on the part of the assessee not to recognize the interest on the ICD as income having regard to the recognized accounting principles. The accounting principles which the assessee is indubitably bound to follow are AS-9. Relevant portion of the said accounting stand reads as under : -

"9. Effect of Uncertainties on Revenue Recognition. -

9.1 Recognition of revenue requires that revenue is measurable and that at the time of sale or the rendering of the service it would not be unreasonable to expect ultimate collection.

9.2 Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, e.g., for escalation of price, export incentives, interest etc., revenue recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognize revenue only when it is reasonably certain that the ultimate collection will be made. Where there is no uncertainty as to ultimate collection, revenue is recognized at the time of sale or rendering of service even though payments are made by instalments.

9.3 When the uncertainty relating to collectability arises subsequent to the time of sale or the rendering of the service, it is more appropriate to make a separate provision to reflect the uncertainty rather than to adjust the amount of revenue originally recorded.

9.4 An essential criterion for the recognition of revenue is that the consideration receivable for the sale of goods, the rendering of services or from the use of others of enterprise resources is reasonably determinable. When such consideration is not determinable within reasonable limits, the recognition of revenue is postponed.

9.5 When recognition of revenue is postponed due to the effect of uncertainties, it is considered as revenue of the period in which it is properly recognized."

17. In this scenario, we have to examine the strength in the submission of learned counsel for the Revenue that whether it can still be held that income in the form of

interest though not received had still accrued to the assessee under the provisions of Income-tax Act and was, therefore, exigible to tax. Our answer is in the negative and we give the following reasons in support : -

(1) First of all we would discuss the matter in the light of the provisions of Income-tax Act and to examine as to whether in the given circumstances, interest income has accrued to the assessee. It is stated at the cost of repetition that admitted position is that the assessee had not received any interest on the said ICD placed with Shaw Wallace since the assessment year 1996-97 as it had become NPAs in accordance with the prudential norms which was entered in the books of account as well. The assessee has further successfully demonstrated that even in the succeeding assessment years, no interest was received and the position remained the same until the assessment year 2006-07. Reason was adverse financial circumstances and the financial crunch faced by Shaw Wallace. So much so, it was facing winding up petitions which were filed by many creditors. These circumstances, led to an uncertainty insofar as recovery of interest was concerned, as a result of the aforesaid precarious financial position of Shaw Wallace. What to talk of interest, even the principal amount itself had become doubtful to recover. In this scenario it was legitimate move to infer that interest income thereupon has not "accrued". We are in agreement with the submission of Mr. Vohra on this count, supported by various decisions of different High Courts including this court which has already been referred to above.

(2) In the instant case, the assessee company being NBFC is governed by the provisions of RBI Act. In such a case, interest income cannot be said to have accrued to the assessee having regard to the provisions of section 45Q of the RBI and Prudential Norms issued by the RBI in exercise of its statutory powers. As per these norms, the ICD had become NPA and on such NPA where the interest was not received and possibility of recovery was almost nil, it could not be treated to have been accrued in favour of the assessee.

18. As noted above, Mr. Sabharwal, argued that the case of the assessee was to be dealt with for the purpose of taxability as per the provisions of the Act and not the RBI Act which was the accounting method that the assessee was supposed to follow. We have already held that even under the Income-tax Act, interest income had not accrued. Moreover, this submission of Mr. Sabharwal is based entirely on the judgment of the Supreme Court in the case of Southern Technologies Ltd.'s (supra). No doubt, in first blush, reading of the judgment gives an indication that the Court has held that RBI Act does not override the provisions of the Income-tax Act. However, when we examine the issue involved therein minutely and deeply in the context in which that had arisen and certain observations of the Apex Court contained in that very judgment, we find that the proposition advanced by Mr. Sabharwal may not be entirely correct. In the case before the Supreme Court, the assessee a NBFC debited Rs. 81,68,516 as provision against NPA in the profit and loss account, which was claimed as deduction in terms of section 36(1)(vii) of the Act. The Assessing Officer did not allow the deduction claimed as aforesaid on the ground that the provision of NPA was not in the nature of expenditure or loss but more in the nature of a reserve, and thus not deductible under section 36(1)(vii) of the Act. The Assessing Officer, however, did not bring to tax Rs. 20,34,605 as income (being income accrued under the mercantile system of accounting). The dispute before the Apex Court centered around deductibility of provision for NPA. After analyzing the provisions of the RBI Act, their Lordships of the Apex Court

observed that insofar as the permissible deductions or exclusions under the Act are concerned, the same are admissible only if such deductions/exclusions satisfy the relevant conditions stipulated therefore under the Act. To that extent, it was observed that the Prudential Norms do not override the provisions of the Act. However, the Apex Court made a distinction with regard to "Income Recognition" and held that income had to be recognized in terms of the Prudential Norms, even though the same deviated from mercantile system of accounting and/or section 45 of the Income-tax Act. It can be said, therefore, that the Apex Court approved the 'real income' theory which is engrained in the Prudential Norms for recognition of revenue by NBFC. The following passage from the judgment of the Apex Court would bring out the distinction noticed by the Apex Court between permissible deductions/exclusions, on the one hand, and income recognition on the other : -

"31. Before concluding on this point, we need to emphasise that the 1998 Directions has nothing to do with the accounting treatment or taxability of "income" under the Income-tax Act. The two, viz., Income-tax Act and the 1998 Directions operate in different fields. As stated above, under the mercantile system of accounting, interest/hire charges income accrues with time. In such cases, interest is charged and debited to the account of the borrower as "income" is recognized under accrual system. However, it is not so recognized under the 1998 Directions and, therefore, in the matter of its Presentation under the said Directions, there would be an add back but not under the Income-tax Act necessarily. It is important to note that collectability is different from accrual. Hence, in each case, the assessee has to prove, as has happened in this case with regard to the sum of Rs. 20,34,605, that interest is not recognized or taken into account due to uncertainty in collection of the income. It is for the Assessing Officer to accept the claim of the assessee under the IT Act or not to accept it in which case there will be add back even under real income theory as explained hereinbelow.

38. The point to be noted is that the Income-tax Act is a tax on "real income", i.e., the profits arrived at on commercial principles subject to the provisions of the Income-tax Act. Therefore, if by Explanation to section 36(1)(vii) a provision for doubtful debt is kept out of the ambit of the bad debt which is written off then, one has to take into account the said Explanation in computation of total income under the Income-tax Act failing which one cannot ascertain the real profits. This is where the concept of "add back" comes in. In our view, a provision for NPA debited to Profit and Loss Account under the 1998 Directions is only a notional expense and, therefore, there would be add back to that extent in the computation of total income under the IT Act.

39. One of the contentions raised on behalf of NBFC before us was that in this case there is no scope for "add back" of the Provision against NPA to the taxable income of the assessee. We find no merit in this contention. Under the IT Act, the charge is on Profits and Gains, not on gross receipts (which, however, has Profits embedded in it). Therefore, subject to the requirements of the Income-tax Act, profits to be assessed under the Incometax Act have got to be Real Profits which have to be computed on ordinary principles of commercial accounting. In other words, profits have got to be computed after deducting Losses/Expenses incurred for business, even though such losses/expenses may not be admissible under sections 30 to 43D of the Income-tax Act, unless such Losses/Expenses are expressly or by necessary implication disallowed by the Act. Therefore, even applying the theory of Real Income, a debit which is expressly disallowed by Explanation to section 36(1)(vii), if

claimed, has got to be added back to the total income of the assessee because the said Act seeks to tax the "real income" which is income computed according to ordinary commercial principles but subject to the provisions of the Income-tax Act. Under section 36(1)(vii) read with the Explanation, a "write off" is a condition for allowance. If "real profit" is to be computed one needs to take into account the concept of "write off" in contradistinction to the "provision for doubtful debt".

40. Applicability of section 145. - At the outset, we may state that in essence RBI Directions 1998 are Prudential/Provisioning Norms issued by RBI under Chapter IIIB of the RBI Act, 1934. These Norms deal essentially with Income Recognition. They force the NBFCs to disclose the amount of NPA in their financial accounts. They force the NBFCs to reflect "true and correct" profits. By virtue of section 45Q, an overriding effect is given to the Directions 1998 vis-a-vis "income recognition" principles in the Companies Act, 1956. These Directions constitute a code by itself. However, these Directions 1998 and the Income-tax Act operate in different areas. These Directions 1998 have nothing to do with computation of taxable income. These Directions cannot overrule the "permissible deductions" or "their exclusion" under the Income-tax Act. The inconsistency between these Directions and Companies Act is only in the matter of Income Recognition and presentation of Financial Statements. The Accounting Policies adopted by an NBFC cannot determine the taxable income. It is well settled that the Accounting Policies followed by a company can be changed unless the Assessing Officer comes to the conclusion that such change would result in understatement of profits. However, here is the case where the Assessing Officer has to follow the RBI Directions 1998 in view of section 45Q of the RBI Act. Hence, as far as Income Recognition is concerned, section 145 of the Income-tax Act has no role to play in the present dispute."

(Emphasis supplied)

19. We have also noticed the other line of cases wherein the Supreme Court itself has held that when there is a provision in other enactment which contains a non obstante clause, that would override the provisions of Income-tax Act. Custodian appointed under the Special Court Act, 1992's case (supra) is one such case apart from other cases of different High Courts. When the judgment of the Supreme Court in Southern Technologies Ltd.'s case (supra) is read in manner we have read, it becomes easy to reconcile the ratio of Southern Technologies Ltd. (supra) with Custodian appointed under the Special Court Act, 1992 (supra).

20. Thus viewed from any angle, the decision of the Tribunal appears to be correct in law. The question of law is thus decided against the revenue and in favour of the assessee. As a result, all these appeals are dismissed."

8. Therefore, ground No.3 of departmental appeal for assessment year 2002-03 is dismissed.9. Ground No.3 of both the appeals for assessment year 2005-06 and 2006-07 is common i.e., disallowance of 50% of the expenses incurred on advertisement and business promotion expenses. We will discuss the facts relating to assessment year 2005-06 and the decision taken in respect of assessment year 2005-06 will be applicable to the other year. This issue has been discussed by the Assessing Officer in para 5 of the assessment order. It was noticed by the Assessing Officer that the assessee company has made a payment of ` 1,67,31,169/- to Maruti Udyog Ltd on account of royalty @ 0.35% of net loan value disbursed, payable three monthly in arrears. He noticed that apart from that payment, a further sum of `

7,20,02,851/- was incurred by the assessee on advertisement and sales promotion the details of which are as under:-

Particulars	Amount (in Rs.)
Print Media Advertisement	5,470,931
Advertising – Electronic/TV Media	33,382
Advertising – Media Production – Creative Expenses (TV)	8,468,142
Advertising Outdoor – Productions (Hoarding, Pole, Kiosks)	1,476,677
Other sales promotions	17,026,140
Canvasser's Charges	10,129,084
Exhibitions	2,889,661
Sales Incentives	17,554,496
Load Sales Shop – Management & other charges	8,954,340
TOTAL	72,002,853

10. From the details, it was observed by the Assessing Officer that a major part of the expenses have been spent on advertisement in print and electronic media which directly contribute towards brand promotion which relates to Maruti Udyog Ltd. A substantial amount has also been spent on various components, banners, photo sheet, display books, banners and catalogues which also is relating to brand promotion and these expenses have enhanced the Maruti brand in the eyes of general public and, as such, these expenditures do not belong to the assessee. Through such expenditure "Maruti Brand" has become beneficiary of the assessee company and, in this manner, he has disallowed 50% of an amount of ` 6,30,48,513/- by reducing the last amount of ` 89,54,340/- incurred on account of "Load sale shop – management and other charges'. Ld. CIT (A) has discussed this issue in para 9 of his order. Before CIT (A) it has been the case of the assessee that in order to establish and increase its market presence, the assessee was required to vigorously promote its financial business for which such expenditures were incurred. These expenditures are in the nature of sale incentives, gifts to dealers, exhibitions, Canvasser's charges, print media advertisement, etc., and these are the common ways to promote and increase the visibility of the products/services offered by an enterprise in today's competitive market scenario. It was submitted that such expenditure has no relation with the payment of royalty. The joint venture and shareholders agreement does not provide for any obligation cast upon the assessee to incur such expenditure. The genuineness and incurrence of such expenditure has not been doubted by the Assessing Officer. It was submitted that incidental benefit to third party does not disentitle the claim of the assessee if the said expenditure is incurred for the purpose of business of the assessee. If any expenditure is incurred on the ground of commercial expediency, it shall be treated as normal business expenditure even if somebody other than the assessee is also benefited by the said expenditure and reliance was placed on the following decisions:-

i) CIT v Chandulal Keshavial & Co. (1960) 38 ITR 601 (SC)

ii) Sassoon J. David and Co. P. Ltd. vs. CIT 118 ITR 261 (SC)

iii) ITC Ltd. vs. JCIT 95 TTJ 1017 (Cal)

iv) Commissioner of Income-tax vs. Sales Magnesite (Pvt.) Ltd. 214 ITR 1 (Bom)

v) CIT v Sabena Detergents (P) Ltd. (2007) 164 Taxman 17.

vi) Star India (P) Ltd. v. Addl. CIT 103 ITD 73 (ITAT Mumbai) (Mad)

11. It was submitted, in all the above cases the courts have opined that the question whether it was necessary for the commercial expediency or not is a question that has to be decided from the point of view of the businessman and not by the subjective standard of the Revenue. To hold any expenditure to be allowable as a deduction under section 37, it is not essential that it should be necessary, legally or otherwise, to incur the same or that it should directly and immediately benefit the business of the assessee. Even expenditure incurred voluntarily on the ground of commercial expediency and in order to facilitate the carrying on of the business would be deductible under Section 37 of the Act. On these submissions learned CIT (A) has returned a finding that these expenditures have been incurred by the assessee in order to establish and increase its market presence and promotion of its business. The Assessing Officer has not doubted the genuineness or correctness of these expenditures being revenue in nature. The disallowance has been made by the Assessing Officer only on the ground that the assessee by making such expenditure has promoted the Maruti brand which did not belong to the assessee, but belong to Maruti Udyog Ltd. According to the decision relied upon by the assessee, those expenditures could not be disallowed and the disallowance has been deleted. Against such deletion, the revenue is aggrieved, hence, in appeal.

12. Relying upon the order of Assessing Officer, it was vehemently pleaded by Ld. DR that the assessee by incurring these expenditures has promoted Maruti Brand, therefore, these expenditures cannot be said to have been incurred wholly and exclusively for the purpose of business of the assessee. He, therefore, pleaded that the Assessing Officer was right in making 50% disallowance thereof and learned CIT (A) has wrongly granted the relief to the assessee. He submitted that the order of the CIT (A) should be set aside and that of Assessing Officer be restored. He submitted that the facts of the assessment year 2006-07 on this issue are similar except difference in figure.

13. On the other hand, relying upon the order of CIT (A), it was pleaded by ld. AR that the disallowance has rightly been deleted and his order should be upheld.

14. We have carefully considered the rival submissions in the light of the material placed before us. The genuineness and the actual incurrence of these expenditures have not been doubted by the Assessing Officer. The reason assigned by the Assessing Officer to make the disallowance is that the assessee by incurring these expenditures has promoted the brand belonging to Maruti Udyog Ltd. In our opinion, the Assessing Officer is not right in holding so. The assessee has been authorized to deal, finance the automobile produced by the Maruti. The promotion of the brand name ‘Maruti’ will directly promote the business of the assessee. It cannot be said that the assessee for the purpose of benefiting Maruti Udyog Ltd. had incurred those expenditures. According to the case law relied upon by the assessee before the CIT

(A), it has been clearly laid down that if the expenditures are incurred for the purpose of business of the assessee and if incidentally those expenditure benefit the other party, then also no part of those expenditures could be disallowed on the ground that the assessee did not incur such expenditure wholly and exclusively for the purpose of its business. Therefore, we find no infirmity in the order of the CIT (A) vide which the impugned disallowance has been deleted. We, therefore, uphold his order on this issue for both the years i.e., 2005-06 and 2006-07. The ground No.3 in respect of both these years are dismissed.

15. In the result, all the three appeals filed by the revenue are dismissed in the manner aforesaid.

The order pronounced in the open court on 29.04.2011.