

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'D' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री रमित कोचर, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.468/Chny/2017**

**निर्धारण वर्ष /Assessment Year: 2011-12**

M/s.L&T Housing Finance Ltd.,  
Direct Taxation Team, 2<sup>nd</sup> Floor,  
Brindavan, CST Road, Kalina,  
Santacruz (E),  
Mumbai – 400 098.

**v.** The Deputy Commissioner of  
Income Tax,  
Company Circle-II (3),  
Aayakar Bhawan  
Nungabakkam, Chennai-  
600034

**[PAN: AAACW 1328 G]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

Assessee by	:	Mr.Sandeep Bagmar.R, Adv.
Department by	:	Ms.R.Anitha, JCIT
सुनवाई की तारीख/Date of Hearing	:	05.11.2019
घोषणा की तारीख /Date of Pronouncement	:	27.01.2020

**आदेश / ORDER**

**PER RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal filed by assessee is directed against common appellate order dated 22.12.2016 passed by learned Commissioner of Income Tax (Appeals)-8, Chennai (hereinafter called "the CIT(A)"), in ITA Nos.29/12-13, 92/14-15 & 79/15-16 for assessment years (ay's) 2010-11 to 2012-13. We are presently concerned with ay: 2011-12 and shall restrict our discussions to issues raised by assessee in its appeal filed with Income-Tax Appellate Tribunal , Chennai( hereinafter called "the tribunal") for ay: 2011-12. The appellate proceedings before learned CIT(A) for ay: 2011-

12 had arisen from assessment order dated 28.03.2014 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by assessee in memo of appeal filed with the tribunal read as under:-

*"1. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ['CIT(A)'] erred in upholding the action of the assessing officer of disallowing the actual loss of Rs.8,61,13,095/- arising due to payments made by appellant towards premature termination of the securitization agreement with Axis Bank (earlier UTI Bank), an unrelated party.*

*2. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in holding that sufficient documents to support Appellant's claim were not furnished during the hearing.*

*3. The appellant company craves leave to add to, alter or modify any of the above grounds of appeal."*

3. Briefly stated , facts of the case are that the assessee is engaged in business of providing housing finance. This is second round of litigation before tribunal. In the first round of litigation, tribunal has adjudicated the appeal filed by assessee vide its common order dated 10.10.2017 for ay: 2010-11 to 2012-13, wherein, tribunal was pleased to dismiss the appeal filed by assessee for ay: 2011-12 in ITA No. 468/Mds/2017 by upholding the findings of Ld.CIT(A) mainly on the ground that the assessee has not brought evidences on record to substantiate its case before authorities below as well before the tribunal and thus no case is made out by assessee for restoring the issue back to the file of AO for denovo determination of the issue. The tribunal also recorded in its order that no evidences were brought on record by assessee to substantiate that income in respect of securitization of loan was offered to tax by assessee

in relevant years in which securitization agreement was entered into by assessee. The tribunal also recorded that no agreement entered into by assessee with Axis Bank for pre-closure of securitization has been brought on record by assessee. The tribunal recorded its decision in para 6.2 and 6.3 of its appellate order dated 10.10.2017 wherein appeal filed by assessee in ITA no. 468/Mds/2017 for ay: 2011-12 stood dismissed by tribunal, by holding as under:

*".....6.2 We have considered the rival submissions. A perusal of the Assessment Order and also the order of the Ld.CIT(A) clearly shows that no evidence as called for by the AO to substantiate the case has been produced before the AO or before the Ld.CIT(A). Nor has it been produced even before us. Admittedly, if evidences had been produced or referred to, admittedly, natural justice would require, the issue to be restored to the file of the AO for examination of all the evidences, if the same have not been properly considered by him. However, this could be done only if such evidences are at least placed before the Tribunal along with the reasons as to why the same had not been produced before the AO in the course of the original proceedings or before the Ld.CIT(A) in the course of the appeal proceedings. Unfortunately, no evidence as called for by the AO or as has been referred to by the Ld.CIT(A) are produced by the assessee. This being so, we are unable to understand as to what purpose would be served in restoring the issue to the file of the AO as the assessee has also not given any reason as to why the evidence was not produced before the lower authorities nor such evidence has been brought to the attention of the Tribunal. In these circumstances, we are not inclined to restore to the file of the AO for re-adjudication. On merits, the assessee has produced no evidence to substantiate his case that the income in respect of the securitization of the said loans has been offered during the relevant assessment years. The assessee is also not in a position to show the agreement with the Axis Bank in respect of the pre-closure of the securitization or the mutually agreed to computation. This being so, we are of the view that the findings of the Ld.CIT(A) on this issue is on right footing and does not called for any interference.*

*6.3 In the result, the appeal filed by the assessee in ITA No. 468/Mds/2017 stands dismissed....."*

3.2 The assessee being aggrieved by aforesaid decision dated 10.10.2017 passed by tribunal filed appeal with the Hon'ble Madras High Court u/s 260A of the 1961 Act which was listed as Tax Case Appeal No.376 of 2018. The Hon'ble Madras High Court was pleased to dispose off the aforesaid appeal filed by assessee u/s 260A of the 1961 Act, vide

judgment dated 24.07.2018 by remitting the matter back to the file of the tribunal for re-adjudication , by holding as under:

*"2.The above appeal has been filed by the assessee challenging the order passed by the Income Tax Appellate Tribunal 'D' Bench Chennai, dated 10.10.2017, in ITA No.468/Mds/2017 for the assessment year 2011-12.*

*3.The appeal has been filed raising the following two substantial questions of law:-*

*"1.Whether the Tribunal's finding that none of the papers in the paper books filed by the Appellant have been referred and not taken on record is a perverse finding and contrary to the facts on record and overlooking the relevant material while upholding the denial of deduction in respect of loss arising on premature termination of securitization agreement on the ground of absence of supporting documents?*

*2.Whether on the facts and in the circumstances of the case and in law the Tribunal ought to have held that the Appellant is entitled to claim deduction in respect of loss arising on premature termination of securitization agreement?"*

*4.After hearing the learned counsels for the parties for a considerable length of time, we do not propose to answer substantial question of law no.2 as framed by the appellant for the reasons set out in the following paragraphs.*

*5.The appellant's case is that the Tribunal overlooked the paper books filed by the appellant and has not referred nor taken on record those materials, which were placed before the Tribunal.*

*6.The learned counsel for the appellant / assessee has drawn the attention of this Court to the observations contained in paragraph 6 of the impugned order wherein, the Tribunal has noted that there was no evidence placed by the assessee before the Assessing Officer to substantiate their case nor any documents were placed before the Tribunal.*

*7.The learned counsel for the appellant would contend that the Chartered Accountants, who had appeared for the assessee before the Tribunal, have evidence to show that paper books were filed and they are duly acknowledged by the Tribunal.*

*8.Furthermore, the learned counsel submits that the authorised representative of the assessee has filed a miscellaneous application before the Tribunal requesting it to decide the matter on merits by taking into consideration the paper books submitted by the assessee. The said miscellaneous application has been numbered as M.A.No.87/CHNY-2018.*

*9.Considering the grounds raised and the facts and circumstances of the case and also taking note of the fact that the authorised representative of the appellant has filed an application before the Tribunal, for considering the documents placed, this Court is of the opinion that it is a fit and proper case where the matter is to be remanded for fresh consideration before the Tribunal to be taken up along with the application filed by the authorised representative of the appellant in M.A.No.87/CHNY-2018.*

*10.As rightly pointed out by the learned Standing Counsel for the Revenue, the second substantial question of law, which has been raised by the assessee, is touching upon the merits of the case.*

*11.As pointed out earlier, we have not taken up the substantial questions law for consideration, as we are of the considered opinion that the matter requires to be heard afresh after taking note of the documents filed by the assessee.*

*12.In the result, the tax case appeal is allowed, the impugned order, dated 10.10.2017, is set aside and the matter is remanded to the Tribunal for fresh and to be heard along with M.A.No.87/CHNY-2018. It is made clear that this Court has not made any observation touching upon the merits of the matter to canvass all issues before the Tribunal.*

*13.The learned Standing Counsel for the Revenue pointed out that it is not automatic that the assessee will be permitted to rely upon the documents in the paper books said to have been filed. In any event, the miscellaneous application is filed by the assessee and it is for the Tribunal to take a decision.*

*14.In response to the above submissions, the learned counsel for the assessee submitted that adequate grounds have been raised in the appeal before the Commissioner of Income Tax (Appeals) as well as the Tribunal with regard to the merits of the contention, which are sought to be supported by the documents filed in the paper books.*

*15.The Tribunal is directed to take note of the submissions on either side and take a decision in accordance with law. No costs."*

3.3 As could be seen that the assessee has argued before Hon'ble Madras High Court that the assessee had filed paper books before tribunal but tribunal has overlooked these Paper Books filed by assessee and has not referred to the documents filed in paper book and also not taken on record these paper books which were placed before tribunal, while passing an appellate order dated 10.10.2017 which has caused prejudice to assessee by way of dismissal of its appeal by tribunal vide order dated 10.10.2017 without considering documents filed by it to substantiate its case. The assessee had also filed Miscellaneous Petition No.87/Chny/2018 with tribunal against appellate order dated 10.10.2017 of the tribunal in ITA No.468/Chny/2017 stating that non consideration of documents filed by assessee in its defense , by tribunal while deciding the issue against the

assessee has led to perversity in the appellate order passed by tribunal which is a mistake apparent from record . Later , Miscellaneous Petition filed by assessee with tribunal was withdrawn by assessee and tribunal was pleased to dismiss aforesaid miscellaneous petition filed by assessee as withdrawn , vide its orders dated 15.02.2019. The Hon'ble Madras High Court has now remitted matter back to the file of tribunal for fresh adjudication by tribunal on merits after considering all documents claimed to have been filed by assessee, vide judgment in TCA No. 376 of 2018, dated 24.07.2018. That is how, we are now seized of this appeal filed by assessee before tribunal in ITA No. 468/Chny/2017 for ay: 2011-12 in second round of litigation.

4. The only effective issue raised by assessee in its appeal filed with tribunal in ITA No. 468/Chny/2017 for ay: 2011-12 which is before us for adjudication is with respect to disallowance of loss to the tune of Rs. 8,61,13,095/- on pre-closure of securitization agreement with Axis Bank Limited(Formerly UTI Bank Limited) with respect to assessee's loan portfolio securitized with Axis Bank Limited (Formerly UTI Bank Limited) . During the course of assessment proceedings conducted by learned Assessing Officer u/s 143(3) read with Section 143(2) of the 1961 Act, it was observed by AO that assessee had debited in its Profit & Loss A/c a sum of Rs. 8,61,13,095/- under the head 'Loss on pre-closure of securitization'. The AO asked assessee to explain the expenditure booked in its P&L A/c. The assessee submitted before AO that total profit on

securitization of loans has been computed on the assumption that securitization agreement will run for full tenure and is booked, but when loan is pre-terminated, the profits pertaining to the unexpired portion of the tenure of the loan, is reversed or paid back to the bank which is termed as loss on pre-termination. The assessee explained before AO that since total profit on securitization was already offered for tax in the year of securitization, the loss arising on pre-termination of securitization is an allowable expenditure, by submitting before the AO as under:

*"At the time of securitization of a total profit arising from such securitization, which is computed on the assumption that the agreement will run for the full tenure, is booked but when the loan is pre-terminated the profit pertaining to the unexpired portion of the tenure of the loan, is reversed or paid back to the bank. This is called loss on pre-termination. Since the total profit on securitization was already offered for tax in the year of securitization, the loss arising on pre termination of securitized agreement is an allowable expenditure".*

4.2 The AO rejected aforesaid contention of the assessee, vide assessment order dated 28.03.2014 passed by AO u/s 143(3) of the 1961 Act by disallowing said loss of Rs. 8,61,13,095/- claimed by assessee as business loss, on pre-termination of securitization agreement which stood added to income of the assessee by AO, by holding as under:

*"There is no revenue loss incurred since the outstanding principle amount alone is claimed as loss on pre closure of securitization agreement. It was not explained or proved that these amounts were already offered for taxation. Moreover the nature of the outstanding principle can partake the character of Capital loss only and not a revenue loss. Hence this claim of the assessee is not allowed and the amount claimed as "Loss on Pre closure of securitization agreement" of Rs.8,61,13,095/- is added to the income of the assessee".*

5. The assessee being aggrieved by an assessment framed by AO u/s 143(3) of the 1961 Act disallowing said loss on pre-termination of securitization agreement with Axis Bank Limited, filed first appeal with

Ld.CIT(A), which was dismissed by Ld.CIT(A) vide appellate order dated 22.12.2016, by holding as under:

**"4.3. Disallowance of Loss on Pre-closure of Securitization (AY 2011-12)**

*The Assessing Officer disallowed an amount of Rs.8,61,13,095/- claimed as Loss on Pre-closure of Securitization Agreement by the appellant in A.Y. 2011-12 stating that no proof was furnished that these amounts were already offered to taxation and that the nature of outstanding principal can only partake the character of capital loss.*

*On the other hand, the appellant contends that the profit on Securitization of loan was credited to the P&L Account and offered to tax at the time of entering into such Securitization Contract, i.e. in the Returns of Income of A.Y. 2003-04 to A.Y. 2006-07. Due to the cancellation of Securitization Contract in September 2010, the appellant has made a payment of Rs.8.61 crores to the Axis Bank Limited towards pre-closure charges and claimed the same as deduction u/s.37 of Income Tax Act in the A.Y. 2011-12. The appellant further contends that this loss incurred by them is related to their business transactions and is a real loss and not capital in nature because it does not provide any enduring benefit.*

*4.3.1. The appellant securitized their loan portfolio with Axis Bank Limited (formerly UTI Bank) during the period September 2002 to November, 2005 in six tranches as under:*

<b>F.Y.</b>	<b>Asset Value</b>	<b>Purchase consideration</b>	<b>Securitization income</b>	<b>Loss on pre-closures</b>	<b>Net securitization income</b>
2002-03	Details not available	Details not available	6,40,50,932	-	6,40,50,932
2003-04	16,41,12,138	24,48,08,224			
	2,00,43,331	2,05,41,546			
	18,41,55,469	26,53,49,770	8,11,94,301	1,19,76,822	6,92,17,479
2004-05	27,08,28,229	35,47,37,281	8,39,09,052	82,99,825	7,56,09,227
2005-06	21,16,77,080	29,66,50,918	8,49,73,838	2,20,26,494	6,29,47,344
<b>Total</b>					<b>27,18,24,982</b>

*However, the income of Rs.27,13,66,826/- was offered to tax for the A.Ys 2003-04 to 2006-07 as follows:*

<b>Assessment year</b>	<b>Amount (Rs.)</b>
2003-04	6,40,50,932
2004-05	6,87,19,264
2005-06	7,56,49,296
2006-07	6,29,47,334
<b>Total</b>	<b>27,13,66,826</b>



*In the submissions made before me, the appellant explained the mechanism of Securitization as under:*

*The Company had created a housing loan portfolio by lending to the borrowers with tenure of 10-15 years over a period of time. Since, the Company requires funds for the expansion of the business of housing finance, future receivables from selected housing loan portfolio was discounted at an agreed rate with Axis Bank (formerly known as UTI Bank) and the said bank had paid a consideration which is 'the discounted value of future receivables from the borrowers.*

*As far as borrowers are concerned, they continue to make their monthly installment payment to the Company who collects all proceeds and passes on to the said Axis Bank. The entire arrangement is with recourse which means in the event of any default by the borrowers, the Company is responsible to make good such defaults to Axis Bank, since Axis Bank has already paid in advance, the discounted value of the entire future receivables on the selected loan portfolio.*

*The discounting of future receivables on such long term finance portfolio have been restricted for a period of 10 years of loan tenure, even though the loan tenure is for more than 10 years. At the end of the ten year period, the bank is to return all the original collateral securities to the Company. The interest receivables to be collected beyond 10 years received by the Company need not to be passed on to the Axis Bank.*

*Such discounted value of the future receivables which are nothing but future interest income discounted to the present value at the agreed discounting rate have been appropriately accounted as income in the books of accounts on the basis of receipt of an actual amount. Since, instead of accounting such discounted value of future receivables on an annual basis, but recording the entire future income in the year of discounting itself, the same has been reflected as securitization income in the Audited Accounts and fact of such arrangement have been brought out in the notes to Accounts.*

*The arrangement is with recourse i.e., the Company continues to bear the risk of default, prepayment and interest rate fluctuation. The Company continues to collect the monthly installment from the borrowers for passing on to the bank. In fact by offering to tax, the entire income emanating from discounting of future receivables for tenure up to 10 years of the long term finance, Company had offered for tax an income for a period of more than one year.*

*The securitization agreements between Axis Bank and the appellant were cancelled in September, 2010 on a mutually agreed basis and as per the understanding between the parties the conditions for pre-payment of outstanding securitization amounts were as under:*

*6. As on August 31, 2010, Rs.276,202,443 was the total outstanding principal of all the six tranches payable by AIGHFIL to Axis Bank. Axis Bank and AIGHFIL have agreed that the Outstanding Securitization amount will be pre-paid by AIGHFIL to Axis Bank in the following manner subject to the*

*understanding of executing an indemnity agreement by Axis Bank as described in Paragraph 9 below;*

*(i) The September, 2010 monthly installment of Rs.70,47,094, comprising of principal (Rs.5,196,101) and interest (Rs. 1,850,993) will be paid by AIGHFIL in the normal course of business on or before September, 2010;*

*(ii) The balance outstanding principal after the payment of the above installment, being Rs.271,006,342 will be paid by AIGHFIL as follows:*

*(a) AIGHFIL will pay the first installment of Rs.184,893,256 to Axis Bank, on September 24, 2010;*

*(b) Axis Bank will release all the lien marked fixed deposits of AIGHFIL and credit the proceeds to the AIGHFIL current account maintained with Axis Bank along with interest up to date on September 24, 2010;*

*(c) AIGHFIL will pay the second and last installment of Rs.86,113,086, to Axis Bank, on September 27, 2010;*

*7. Subsequent to the above payments being made by AIGHFIL, there would be no other outstanding dues to be paid by AIGHFIL to Axis Bank pertaining to the six tranches of securitization deals with Axis Bank entered into under the Agreements. Axis Bank will release a "No dues / Nil Dues" certificate on September 27, 2010, to AIGHFIL. Axis Bank will release all Customer Documents to AIGHFIL, as described in Paragraph 8 below.*

*However, no Agreement with regard to pre-closure of securitization was furnished either before the Assessing Officer or before me. The evidence furnished by the appellant only give the details of what happened consequent to the pre-closure without revealing any details with regard to the actual terms and conditions for pre-closure of the securitization agreement.*

*4.3.2 To begin with the appellant admitted an amount of Rs.27,13,66,826/- as against Rs.27,18,24,982/- as income from securitization for the A.Ys. 2003-04 to 2006-07. No reason has been given for the shortfall in admitting income of Rs.4,58,156/- (Rs.27,18,24,982 - Rs.27,13,66,826) by the appellant.*

*Secondly, at the time of securitizing the loans the appellant (earlier Weizmann Homes Ltd. - the Sellers) entered into an asset purchase agreement with Axis Bank (earlier UTI Bank - the Purchaser) on 19.09.2002 wherein the consequences in the event of default are mentioned at Article XIII Clause (iii) as follows:*

*(iii) to protect and enforce its rights and remedies under the Agreement, foreclose or otherwise realize on the security for Sellers obligation under this Agreement or the Service Agreement and exercise any of the rights and remedies available to it at law of equity.*

*It is seen from the Securitization Agreement furnished by the appellant that in case of foreclosure the Agreement does not authorize re-computation of interest.*

*Thirdly, the appellant furnished the computation of the loss of Rs.8.61 crores incurred on premature termination of the securitization agreement in September, 2010 as under:*

	As per Indo Pacific Housing Finance Ltd.				As per Securitizing Agreement				
Column	A	B	C	D	E	F	G	H	I=(B-F)
Date	EMI	Interest	Principle	Outstanding Principle Amount	EMI	Interest	Principle	Outstanding Principle Amount	Difference in Interest portion
31-Mar-10	-	-	-	209,086,042	-	-	-	301,652,176	-
30-Apr-10	7,114,238	3,060,198	4,054,040	205,032,002	7,114,238	2,023,819	5,090,419	296,561,758	-
31-May-10	7,108,058	3,057,683	4,050,375	200,981,628	7,108,058	2,055,559	5,052,499	291,509,259	-
30-Jun-10	7,078,069	3,045,478	4,032,591	196,949,037	7,078,069	1,954,935	5,123,134	286,386,124	-
31-Jul-10	7,064,877	3,040,109	4,024,768	192,924,269	7,064,877	1,984,144	5,080,733	281,305,392	-
31-Aug-10	7,051,426	3,034,635	4,016,791	188,907,478	7,051,426	1,948,486	5,102,940	276,202,452	-
30-Sep-10	7,047,094	3,032,872	4,014,222	184,893,256	7,047,094	1,850,993	5,196,101	271,006,352	-
31-Oct-10	7,030,259	3,026,020	4,004,239	180,889,018	7,030,259	1,876,249	5,154,010	265,852,341	1,149,772
30-Nov-10	7,022,240	3,022,757	3,999,483	176,889,535	7,022,240	1,780,739	5,241,501	260,610,840	1,242,018
31-Dec-10	7,001,961	3,014,504	3,987,457	172,902,077	7,001,961	1,803,338	5,198,623	255,412,217	1,211,166
31-Jan-11	6,989,009	3,009,232	3,979,777	168,922,301	6,989,009	1,766,877	5,222,132	250,190,086	1,242,355
28-Feb-11	6,969,421	3,001,260	3,968,161	164,954,140	6,969,421	1,562,816	5,406,605	244,783,481	1,438,444
31-Mar-11	6,925,218	2,983,271	3,941,947	161,012,193	6,925,218	1,692,361	5,232,857	239,550,624	1,290,909
30-Apr-11	6,903,582	2,974,465	3,929,117	157,083,076	6,903,582	1,602,272	5,301,310	234,249,314	1,372,193
31-May-11	6,896,974	2,971,776	3,925,198	153,157,878	6,896,974	1,618,538	5,278,436	228,970,879	1,353,238
30-Jun-11	6,868,555	2,960,210	3,908,345	149,249,533	6,868,555	1,530,538	5,338,017	223,632,861	1,429,672
31-Jul-11	6,857,110	2,955,552	3,901,558	145,347,974	6,857,110	1,544,178	5,312,932	218,319,929	1,411,374
31-Aug-11	6,849,835	2,952,591	3,897,244	141,450,730	6,849,835	1,506,978	5,342,857	212,977,072	1,445,613
30-Sep-11	6,826,241	2,942,989	3,883,252	137,567,478	6,826,241	1,422,160	5,404,081	207,572,991	1,520,829
31-Oct-11	6,804,795	2,934,261	3,870,534	133,696,944	6,804,795	1,431,725	5,373,070	202,199,920	1,502,536
30-Nov-11	6,786,020	2,926,619	3,859,401	129,837,543	6,786,020	1,349,153	5,436,867	196,763,054	1,577,466
31-Dec-11	6,771,175	2,920,578	3,850,597	125,986,946	6,771,175	1,356,092	5,415,083	191,347,971	1,564,486
31-Jan-12	6,767,861	2,919,229	3,848,632	122,138,134	6,767,861	1,318,217	5,449,644	185,898,327	1,601,012
29-Feb-12	6,721,251	2,900,260	3,820,991	118,317,323	6,721,251	1,197,515	5,523,736	180,374,590	1,702,745
31-Mar-12	6,682,396	2,884,446	3,797,950	114,519,373	6,682,396	1,241,478	5,440,918	174,933,672	1,642,969
30-Apr-12	6,651,151	2,871,730	3,779,421	110,739,952	6,651,151	1,164,602	5,486,549	169,447,123	1,707,128
31-May-12	6,611,151	2,855,451	3,755,700	106,984,252	6,611,151	1,165,067	5,446,084	164,001,039	1,690,383
30-Jun-12	6,573,349	2,840,066	3,733,283	103,250,969	6,573,349	1,090,664	5,482,685	158,518,354	1,749,403
31-Jul-12	6,547,457	2,829,528	3,717,929	99,533,040	6,547,457	1,088,754	5,458,703	153,059,650	1,740,775
31-Aug-12	6,540,154	2,826,556	3,713,598	95,819,443	6,540,154	1,050,681	5,489,473	147,570,177	1,775,876
30-Sep-12	6,570,324	2,818,486	3,751,838	92,067,605	6,570,324	979,733	5,590,591	141,979,586	1,838,753
31-Oct-12	6,106,557	2,548,344	3,558,213	88,509,392	6,106,557	973,313	5,133,244	136,846,342	1,575,031
30-Nov-12	6,102,404	2,546,654	3,555,750	84,953,642	6,102,404	907,931	5,194,473	131,651,869	1,638,723
31-Dec-12	6,091,813	2,542,344	3,549,469	81,404,173	6,091,813	902,658	5,189,155	126,462,714	1,639,686
31-	6,083,698	2,539,041	3,544,657	77,859,516	6,083,698	867,158	5,216,540	121,246,174	1,671,883

Jan-13									
28-Feb-13	6,078,439	2,536,901	3,541,538	74,317,977	6,078,439	751,006	5,327,433	115,918,741	1,785,895
31-Mar-13	6,065,595	2,531,673	3,533,922	70,784,056	6,065,595	795,023	5,270,572	110,648,169	1,736,651
30-Apr-13	6,023,919	2,514,712	3,509,207	67,274,849	6,023,919	734,482	5,289,437	105,358,732	1,780,230
31-May-13	5,971,981	2,493,574	3,478,407	63,796,442	5,971,981	722,776	5,249,205	100,109,527	1,770,798
30-Jun-13	5,845,031	2,441,908	3,403,123	60,393,319	5,845,031	664,706	5,180,325	94,929,202	1,777,202
31-Jul-13	5,820,424	2,431,893	3,388,531	57,004,788	5,820,424	651,414	5,169,010	89,760,192	1,780,479
31-Aug-13	5,750,615	2,403,482	3,347,133	53,657,655	5,750,615	616,043	5,134,572	84,625,620	1,787,439
30-Sep-13	5,582,783	2,335,177	3,247,606	50,410,049	5,582,783	562,165	5,020,618	79,605,003	1,773,012
31-Oct-13	5,191,297	2,122,942	3,068,355	47,341,694	5,191,297	546,536	4,644,761	74,960,242	1,576,405
30-Nov-13	5,131,699	2,098,686	3,033,013	44,308,681	5,131,699	498,121	4,633,578	70,326,664	1,600,565
31-Dec-13	5,052,693	2,066,532	2,986,161	41,322,521	5,052,693	482,990	4,569,703	65,756,961	1,583,543
31-Jan-14	4,987,498	2,039,999	2,947,499	38,375,022	4,987,498	451,690	4,535,808	61,221,152	1,588,310
28-Feb-14	4,920,552	2,012,753	2,907,799	35,467,223	4,920,552	379,914	4,540,638	56,680,514	1,632,839
31-Mar-14	4,805,897	1,966,091	2,839,806	32,627,417	4,805,897	389,514	4,416,383	52,264,131	1,576,577
30-Apr-14	4,351,500	1,770,984	2,580,516	30,046,901	4,351,500	347,671	4,003,829	48,260,302	1,423,314
31-May-14	4,222,509	1,718,487	2,504,022	27,542,879	4,222,509	331,809	3,890,700	44,369,602	1,386,678
30-Jun-14	4,160,110	1,693,092	2,467,018	25,075,861	4,160,110	295,286	3,864,824	40,504,778	1,397,806
31-Jul-14	4,070,006	1,656,421	2,413,585	22,662,277	4,070,006	278,623	3,791,383	36,713,395	1,377,798
31-Aug-14	4,003,488	1,629,350	2,374,138	20,288,138	4,003,488	252,617	3,750,871	32,962,524	1,376,733
30-Sep-14	3,886,799	1,581,859	2,304,940	17,983,199	3,886,799	219,566	3,667,233	29,295,291	1,362,294
31-Oct-14	3,819,815	1,554,598	2,265,217	15,717,982	3,819,815	201,719	3,618,096	25,677,194	1,352,879
30-Nov-14	3,765,952	1,532,677	2,233,275	13,484,706	3,765,952	171,185	3,594,767	22,082,427	1,361,492
31-Dec-14	3,697,582	1,504,851	2,192,731	11,291,976	3,697,582	152,226	3,545,356	18,537,072	1,352,625
31-Jan-15	3,627,266	1,476,234	2,151,032	9,140,943	3,627,266	127,902	3,499,364	15,037,708	1,348,332
28-Feb-15	3,559,867	1,448,804	2,111,063	7,029,880	3,559,867	93,841	3,466,026	11,571,681	1,354,963
31-Mar-15	2,082,726	847,633	1,235,093	5,794,787	2,082,726	80,120	2,002,606	9,569,075	767,513
30-Apr-15	2,013,245	819,356	1,193,889	4,600,898	2,013,245	64,153	1,949,092	7,619,983	755,203
31-May-15	1,951,490	794,222	1,157,268	3,443,630	1,951,490	52,827	1,898,663	5,721,320	741,395
30-Jun-15	1,920,894	781,770	1,139,124	2,304,506	1,920,894	38,430	1,882,464	3,838,856	743,341
31-Jul-15	1,895,507	771,438	1,124,069	1,180,437	1,895,507	26,709	1,868,798	1,970,058	744,729
31-Aug-15	995,846	405,292	590,554	589,883	995,846	13,804	982,042	988,015	391,488
30-Sep-15	994,715	404,832	589,883	0	994,715	6,700	988,015	-	398,132
									86,113,095

*The appellant failed to explain why two sets of computation were made for calculating the interest payable to Axis Bank, Nor was any explanation adduced with regard to the basis on which interest payable to Axis Bank was revised which resulted in payment of Rs.8.61 crores. Moreover, this computation of interest was not authorized by the original Securitization Agreement entered with the Axis Bank.*

*Lastly, although the appellant furnished copies of the letter dated 24.09.2010 to Axis Bank with regard to in-principle understanding for execution of indemnity agreement, letter with regard to No Due certificate dated 27.09.2010 received from Axis Bank and Indemnity Agreement dated 12.10.2010 with Axis Bank, no agreement copy in connection with the termination of Securitization Agreement was furnished in support of their contention. In the absence of such an agreement, the computation of the amount of Rs.8.61 crores stands totally on a shaky ground. Even if the argument of the appellant with regard to allowing the payment is accepted, there is no way the quantification of amount at Rs.8,61,13,095/- can be accepted.*

*In view of the above, the disallowance of Rs.8.61 crores made by the Assessing Officer is sustained in the absence of any evidence to the contrary. The appellant fails on this ground."*

5.2 Thus, as could be seen that Ld.CIT(A) was of the view that assessee has not filed agreement entered into by assessee with Axis Bank Limited for pre-closure of securitized portfolio of loan, before AO as well before him. Secondly, Ld.CIT(A) was also of the view that securitization agreement did not provide for re-computation of interest in case of pre-termination of securitization agreement. Thirdly, Ld.CIT(A) was also of the view that assessee has failed to explain as to why two sets of computation were made for calculating interest payable to Axis Bank and no basis on which interest payable to Axis Bank was revised which resulted in payment of Rs. 8.61 Crs. was brought on record by assessee and this computation of interest was not authorized by original securitization agreement entered into by assessee with Axis Bank. Thus, the appeal of the assessee stood dismissed by learned CIT(A), vide appellate order dated 22.12.2016 passed by learned CIT(A).

6. Aggrieved by an appellate order dated 22.12.2016 passed by learned CIT(A), the assessee has filed an appeal before tribunal. An elaborate contentions were made by Ld.Counsel for the assessee. The learned

counsel for the assessee brought to our notice entire background of the case and it is explained that this is second round of litigation before tribunal. It is explained before us by learned counsel for assessee that assessee had filed Paper Book for the year under consideration before the tribunal in first round of litigation containing 467 pages, for impugned assessment year 2011-12. The said paper book is placed in file. The certificate is also attached with said paper book signed on behalf of assessee certifying that documents listed at Page Nos. 10 to 467 were submitted before lower authorities , except documents listed at Page Nos.66-69. The said documents listed at page numbers 66-69 are memo of appeal filed by assessee in Form No. 36 with tribunal along with Grounds of Appeal. Documents listed at Page Nos. 1-9 are written submissions filed before the tribunal . The documents listed at page 10-467(except listed at page 66-69) are assessment order passed by AO u/s 143(3) of the 1961 Act; submissions filed by assessee before learned CIT(A); financial statement of the assessee for ay: 2011-12;agreement for securitization entered into by assessee with UTI Bank (presently Axis Bank) in six tranches; extract of income schedule to financial statements , computation of total income and copy of acknowledgment of return of income for ay 2003-04 to 2006-07 ; income tax return for ay: 2011-12, in-principal understanding for execution of indemnity agreement between Axis Bank and AIG Home Finance India Limited ( presently L&T Housing Finance Limited) ; indemnity agreement between Axis Bank and the assessee and statement of loss computed on account of pre-closure of

securitization agreement. The assessee has also filed another Paper Book containing in all 649 pages. The certificate is also annexed with this paper book certifying that documents listed at page 80 to 649 were filed before lower authorities. The documents listed at page number 1-79 are memo of appeals along with grounds of appeal filed before tribunal by assessee for ay: 2011-12 and by Revenue for ay's: 2010-11 to 2012-13; common appellate order dated 22.12.2016 passed by learned CIT(A) for ay: 2010-11 to 2012-13; and assessment order's passed by the AO u/s 143(3) for ay: 2010-11 to 2012-13. We are presently concerned with assessee's appeal for ay: 2011-12. The documents which were filed by assessee before lower authorities as certified in this second paper book, listed at page nos. 80-649 are financial statements of assessee for the year ended 31.03.2010, 31.03.2011 and 31.03.2012; submissions before learned CIT(A) for ay's: 2010-11 to 2012-13. The said second paper book is also placed in file. The Ld.Counsel for the assessee submitted that only issue to be decided by tribunal in this appeal filed by assessee for ay: 2011-12 is with regard to allowability of loss to the tune of Rs. 8.61 Crs. on pre-termination of securitization agreement entered into by the assessee with Axis Bank(Formerly UTI Bank). It was submitted by learned counsel for assessee that this is the second round of litigation before tribunal. It was submitted that in first round of litigation, the tribunal decided the issue against the assessee vide order dated 10.10.2017, wherein the tribunal refused to set aside the matter back to AO because as per tribunal there

was no evidence to justify setting aside the matter back to the lower authorities for re-adjudication. It was submitted that assessee filed Miscellaneous Petition against said order of the Tribunal bringing on record mistakes apparent from record in the said order in not considering the paper books filed by assessee which has led to perversity in the order dated 10.10.2017 passed by tribunal, which Miscellaneous Petition was later withdrawn by assessee and hence stood dismissed by tribunal on 15.02.2019. It was submitted that Hon'ble Madras High Court in TCA No.376/2018 vide its judgment dated 24.07.2018 has set aside the matter back to the file of Tribunal for re-adjudication after considering documents filed by assessee and contentions of the both the parties. Our attention was drawn to the appellate order passed by Ld.CIT(A). It was submitted that Ld.CIT(A) has commented that assessee has not filed documents/evidences before Ld.CIT(A), which as per learned counsel for the assessee is not correct as it is claimed that the assessee had filed all relevant documents/evidences before the Ld.CIT(A), which were not considered by Ld.CIT(A) while adjudicating appeal of the assessee. It was submitted that all documents/evidences were filed before tribunal in first round of litigation, which were not considered by Tribunal and hence perversity crept into appellate order passed by tribunal. The Ld.Counsel for the assessee drew our attention to Page No.74 onwards of the Paper Book which are agreements entered into by assessee for securitization of housing loan portfolio, in six tranches . We have elaborated on preceding para of this order and it was submitted that Ld.CIT(A) and also tribunal



did not consider these documents which were filed by assessee. It was submitted that assessee is in the business of providing housing loans and these portfolio of housing loans granted by assessee to various borrowers were securitized in six tranches by entering into an agreement with UTI Bank( now Axis Bank) from financial year 2002-03 to 2005-06. It was submitted that no termination agreement was entered into by the assessee with Axis Bank on pre-termination of these securitization agreement. It is claimed that there is no necessity to enter into termination agreement with Axis Bank Limited , as there are on record other agreements entered into by assessee with Axis Bank Limited at the time of pre-closure of securitization loans. It was brought to our notice that assessee has entered into in-principal understanding for execution of indemnity agreement with Axis Bank on 24.09.2010 ( pb-page 447-449)and the said Axis Bank has issued No due certificate in favour of assessee on 27.09.2010(pb-page 450) . It was also brought to our notice that indemnity agreement was executed by Axis Bank Limited in favour of assessee on 12.10.2010 (page 451-460/pb). It was also brought to the notice of the Bench by learned counsel for assessee that AO considered this loss on pre-termination of securitization agreement as a capital loss. Our attention was drawn to Page No.74 of the Paper Book onwards , which are an asset purchase agreement entered into by the assessee with Axis Bank with respect to six tranches of securitization of loan portfolio . Our attention was drawn to Page No.93 of the Paper Book, wherein, general terms and conditions with respect to asset purchase agreement entered

into by assessee with Axis Bank Limited are specified , wherein, it is stipulated that Axis Bank has provided the funds to assessee at discounted rates of 13.50% in the case of consumer finance assets and @10.25% in the case of housing finance assets to the assessee. It was submitted that assessee has offered for taxation income on securitization of loans in earlier years when securitization agreement was entered into by assessee with Axis Bank Limited and our attention was drawn to Page Nos.388-402/ Paper Book wherein copies of extract of audited accounts , computation of income , copy of ITR acknowledgment, extract of notes to accounts for ay's 2003-04 to 2006-07, are placed . At this stage it will be relevant to note that the assessee has not produced complete set of audited financial statements for ay's 2003-04 to 2006-07 and only partial extracts of accounts are filed in the paper book. As we will see later, these incomplete filing of evidences by assessee certainly had the bearing on our decision making process, which in the event of non submission of completed documents has led us not to come conclusively to take decision that entire income arising on securitization of housing loan suffered taxation in the year of entering into securitization agreement . The Ld.DR, on the other hand, relied upon appellate order passed by Ld.CIT(A). Without prejudice, it was submitted by learned DR that the principle of matching concept needs to be applied and as the income by way of interest from housing loans availed by borrowers is to be received in future years, the loss on pre-termination of securitization agreement be also spread over the said relevant future years.

7. We have considered rival contentions and perused the material on record. We have observed that assessee is engaged in business of providing housing finance. The assessee has provided housing finance to various borrowers with repayments to be made by borrowers in Equated Monthly Installments(EMI) spread over a long period of time upto 10-15 years depending upon terms and conditions of sanction of said housing loan with each of the borrower . The assessee in order to securitize its housing loan portfolio has entered into an asset purchase agreement with Axis Bank(Formerly UTI Bank) wherein said Axis Bank securitize housing loan by purchasing housing loan portfolio of the assessee at discounted rate of 10.25% and providing upfront payment to assessee of outstanding principle and discounted interest to present value , to unlock its housing loan portfolio to make available fresh money for granting new housing loans etc. , consequently the securitized housing loan portfolios held by assessee were assigned in favour of Axis Bank(Formerly UTI Bank). These assignment of housing loan by assessee is co-terminus with asset purchase agreement. The assessee remains responsible under these securitization agreements for collection of EMI's from borrowers and hand over the same to Axis Bank( Formerly UTI Bank) from month to month till the end of securitization period and any risks associated with defaults/delay by borrowers in repayment of housing loans over its contracted duration are to be borne by assessee under the terms of these agreements. The disbursements were made in six tranches by Axis Bank (Formerly UTI Bank) to assessee from financial year 2002-03 to 2005-06.

The Asset Purchase Agreements, deed of assignment and collection agreements are placed in Paper Book, , from Page No.73 onwards till Page No.387. These agreements clearly reveal that the assessee has securitized its loan portfolio with Axis Bank and upfront payments were made by Axis Bank to assessee of outstanding principle and interest , which is at discounted rates of 13.50% in the case of consumer finance assets, and is at the rate of 10.25% in case of housing finance assets to the assessee. In the normal course , the borrowers of housing loan would have repaid housing loan availed by them to assessee over a long period of time ranging from 10-15 years based on terms and conditions of loan agreements . The assessee got the upfront payment for these entire housing loan portfolio from Axis Bank at discounted rate of 10.25%, while obviously it would have got higher interest income if it would have waited for repayments to have come from borrowers in normal course in 10-15 years. Thus, the assessee in order to expand its housing finance business has realized and unlocked its housing loan portfolios by getting upfront payments from Axis Bank at discounted cash flow rates which enabled it to get liquidity in the locked housing loan portfolios, which liquidity can be used by the assessee for creating new housing loan portfolios with new set of borrowers. On the other hand , Axis Bank has placed their en-block funds in purchasing housing loan portfolio from assessee at discounted rate of 10.25% while it will get back its return in 10 years when the borrowers will pay back EMI's. The assessee will collect at its risk and responsibility these EMI's from borrowers and transfer proceeds of EMI's

to Axis Bank, over a period spread over 10 years. This is a win-win situation for both the parties from perspective of a business man. It is illustrated by way of an simple example, If Assessee has gives an housing loan of Rs. 100 repayable in 10 years @12% per annum. The borrower has to pay the principle of Rs. 100 in 10 years along with interest at contracted rate in equated monthly installments. The assessee in normal course will get back its entire money in 10 years along with interest by way of EMI's paid over 10 years by borrower, but cash flow will come to assessee spread over 10 years. Let us say that at above contracted rate of interest , say for example the assessee will get Rs. 180 back in 10 years wherein Rs. 100 is principle amount while Rs.80 is interest component. Now, the Axis Bank steps in and purchases housing loan portfolio of Rs. 100 at discounted rate of interest @10.25% and say makes upfront payment to assessee of Rs. 125 computed based on above discounted rates to represent present value. The assessee has earned Rs.25 upfront by assigning housing loan portfolio in favour of Axis Bank while Axis Bank will earn Rs. 55 spread over 10 years. So, it is a win win situation for both the parties as the assessee got upfront income as well upfront cash realization of principle component of housing loan portfolio , which will enable it to expand its asset portfolio by granting fresh housing loans to borrowers while for Axis Bank it will get assured return of income over a period of securitization agreement with risks for delay and default being taken by assessee in case of default/delays by borrowers. Now, the assessee has claimed that it offered for taxation income arising on

securitization of housing loan in the assessment year in which asset purchase agreement was entered into by assessee with Axis Bank. It is claimed that following incomes arising from securitization of housing loan was offered for taxation in the year of entering into an agreements when payments were made by Axis Bank to assessee under these agreements, the details of income claimed to be offered for taxation by assessee are as under:

<b>Assessment year</b>	<b>Amount (Rs.)</b>
2003-04	6,40,50,932
2004-05	6,87,19,264
2005-06	7,56,49,296
2006-07	6,29,47,334
<b>Total</b>	<b>27,13,66,826</b>

The assessee has brought on record acknowledgment copy of Income Tax Returns and extracts of its financial statements for aforesaid ay's when securitization of housing loan with Axis Bank took place from financial year 2002-03 onwards, which are placed in Paper Book at Page Nos.388-402 for ay's 2003-04 to 2006-07. The assessee has claimed that these information were before authorities below and is available even before the tribunal, but all the authorities have held that the assessee did not brought on record evidences to substantiate that income has suffered taxation in those years. We are presently in second round of litigation and are seized of this appeal under the direction of Hon'ble Madras High Court. Under these circumstances, It become absolutely essential for us to thread bare analyse these vital piece of evidences to come to conclusion whether assessee has beyond any doubt brought on record sufficient evidences to discharge its onus that income from securitization of housing loan portfolio

suffered taxation upfront in those years in which the assessee entered into asset purchase agreement with Axis Bank ( Formerly UTI Bank) viz. financial year 2002-03 to 2005-06. Page 388 placed in paper book is stated to be Schedule 10 of financial statement for financial year 2003-04 which also had figures for financial year 2002-03, which is a schedule of operating income. As per this document, Securitization income on Housing Loans ( Net of loss on pre-closure ) were to the tune of Rs. 6,40,50,932/- for year ended 31.03.2003 and Rs. 6,87,19,264/- for year ended 31.03.2004, which is shown to be part of operating income . It refers to note number 13b. There is neither Profit and Loss Account nor Balance Sheet attached by assessee in paper book for the years when securitization agreement was entered into by assessee with Axis Bank , and income was claimed by assessee to have been offered to tax in those year. Then , there is a computation of income filed by assessee in paper book which starts with Profit Before tax as per P&L Account and various adjustments are made to book profit to arrive at taxable income. There is no adjustment in the said computation of income so far as income from securitization of loans is concerned. The acknowledgement of return of income filed by assessee in paper book shows that income was offered to tax as per computation of income prepared by assessee. So far so good. Now, we have to refer to crucial notes to accounts, being note no. 13b which is referred to in schedule 10. There is no note number 13b , while there is note number 12b which is stated to be attached with financial statement for year ended 31.03.2004, which refers to securitization of

housing loan portfolio and consumer finance portfolio, which reads as under:

*"12 a. The company has entered into Asset backed Securitization by way of assigning its housing loan assets and consumer loan assets with banking companies and financial services company and accordingly the housing loan portfolio and stock on hire in respect of the same have been reduced.*

*b. During the current financial year the Company has securitized individual housing loan assets amounting to Rs. 16,41,12,138/- with a banking company for which the purchase consideration of Rs. 24,48,08,224/- was received, being the present value of future receivable for a period of ten years discounted at the rate mutually agreed.*

*c. During the current financial year, the Company has securitized consumer loan assets amounting to Rs.2,00,43,331/- with a banking company for which the purchase consideration of Rs. 2,05,41,546 was received, being the present value of future receivables at the rates mutually agreed.*

*d. The company has transferred Rs. 1,61,66,818/- net to Reserves for contingencies in respect of assets securitized during the year."*

Thus, the assessee has prima facie demonstrated that assessee has included income on securitization of housing loans in its operating income in the year when securitization agreement was entered into by it with Axis Bank . while no adjustments were made to its income while computing income chargeable to tax as is reflected in computation of income filed by assessee but since complete documents are not filed by assessee as it did not filed P&L account nor Balance Sheets were filed, it could not be said by us conclusively that entire income arising from securitization of housing loan suffered taxation in the year of securitization of housing loan for which we are inclined to remand the matter back to the file of AO with directions as are hereinafter contained in this order. The assessee is directed to file complete set of audited financial statements including P&L account , Balance Sheet before the AO to demonstrate that entire income from securitization of housing loan suffered taxation in the year of



securitization of housing loan by assessee with Axis Bank, wherein operating income as per schedule 10 which included in securitization income found its place in the credit side of P&L account and the total of Profit before tax which was adopted in computation of income for tax purposes had this component of income for paying taxes for those ay's. Moreover, the carving of the Reserves on Contingencies in respect of assets securitized has also not been properly explained by assessee nor is looked by authorities below vis-à-vis its impact on taxability or tax neutrality which AO will look into in set aside proceedings . In our considered view, in order to have completeness and to arrive at concrete/conclusive decision as to the entire income arising from securitization of asset having suffered taxation in the year of securitization itself, the matter requires to be remanded back to AO with direction to verify the completed audited financial statements as well the computation of income to come to concrete conclusion that income from securitization actually suffered taxation with due taxes paid by assessee , including taxability, if any of Reserves for contingency as carved out by assessee and its impact on tax payable by assessee or whether it is tax-neutral. The learned CIT(A) in its appellate order in para 4.3.2 has also remarked that Rs.4,38,156/- was shortfall in income which was claimed to be offered to tax in those years in which securitization agreement was entered into by assessee with Axis Bank. The assessee is also directed to give explanation to this effect before AO in set aside remand proceedings. Now, the income has already claimed to have suffered taxation for the entire

duration of securitization in the hands of the assessee in the year of securitization as prima-facie demonstrated by assessee, as detailed by us above for which we remanded matter to AO to arrive at conclusive decision as above. The assessee is in business of providing housing loan to various borrowers. The securitization of these housing loan cannot by any stretch of imagination be considered to be on capital account and any amount paid at the time of pre-termination has to be on revenue account so far it pertains to interest on unexpired period of securitization agreement which got pre-terminated . The assessee is responsible under terms of asset purchase agreement to collect these payments and pass over these payments to Axis Bank and all risks associated with default/delay by borrower are assumed by assessee. The assessee has received consideration under securitization agreement from Axis Bank which included principle outstanding along with present value of interest on housing loan at discounted rate @10.25% in case of housing loan and @13.5% in the case of consumer loans, at the time of entering of the agreement itself. Obviously, there will be differential in the principle amount in the books of the assessee as advanced to borrowers and principle as is reflected by way of securitization amount received by assessee as it got upfront payments of the principle amounts along with discounted interest rate @10.25% in the case of housing loan portfolios (13.5% in case of consumer loans) for entire duration of loan or 10 years which ever is less, in the year in which securitization of housing loan took place. The assessee has demonstrated with evidences that these

securitization agreements were pre-terminated owing to fact that there was a change in shareholding of the assessee company and terms and condition of these securitization agreements provided that in case of change of shareholding, the said change can only take place only with consent of Axis Bank . The Axis Bank directed assessee to pre-close four out of six tranches of securitization amounts, but assessee on its part requested Axis Bank that it want to pre-close/pre-terminate entire six tranches of securitization loans, the evidence to that effect is by way of principal understanding dated 24.09.2010 between Axis Bank and assessee, which is placed in paper book at page 447-449/paper book . The assessee pre-closed all six securitization loans and No Dues Certificate was issued by Axis Bank on 27.09.2010, which is placed in Paper Book at Page No.450/paper book. There was an Indemnity Agreement dated 12.10.2010 , which was entered into by both the parties to keep each other harmless and entire understanding has been duly recorded in said Indemnity Agreement, which is placed in the Paper Book at Page No.451 onwards. Thus, keeping in view the entire factual matrix of the case, the transaction for entering into securitization agreement and its fore-closure are undoubtedly transactions in Revenue field and by no stretch of imagination can be taken to be transaction on capital field as held by the AO, the assessee being engaged in the business of providing housing loan. Thus, if it is finally held by AO in remand proceedings after verification that entire income on securitization of housing loan has suffered taxation in the year in which securitization of loan portfolio took place , then in that

eventuality the payments made by assessee to Axis Bank at the time of pre-termination of securitization agreement so far as interest for unexpired period of securitization owing to pre-termination has to be allowed as loss/deduction on Revenue account. The assessee had received present value of interest income on housing loan for the entire duration of 10 years upfront from Axis Bank on securitization of loans which is claimed to be offered to tax in the year of receipt, thus, when pre-termination took place, the assessee is obviously required to pay back, inter-alia, the interest income received by it upfront for the unexpired period which has to be allowed as business deduction. The Revenue cannot sit in arm chair of businessman to question each and every business decision, unless malice, fraud or is a tax evasion device is shown by Revenue. The onus is on AO to show that this loss claimed by assessee is tainted with malice, fraud or is a tax evasion device adopted by assessee. Thus, we are remitting this matter back to the AO for limited verification of working computation of claim of loss of Rs. 8.61 crores claimed by assessee. We hold that this loss has to be allowed as business loss unless the AO is able to demonstrate that the said computation of said loss is suffering from vice of being a tax-evasion device, malafide or fraud being perpetrated by assessee to evade taxes. The onus is on AO to prove that these working of loss is suffering and tainted with malice, fraud or is a tax evasion device to defraud Revenue. Thus, the appeal filed by the assessee is allowed for statistical purposes with aforesaid directions and the orders passed by the lower authorities are set aside. Thus, in the

result matter is remitted back to the file of AO for limited purposes for verification , firstly that entire profit on securitization of loan portfolio suffered taxation in the year in which assessee entered into an securitization agreement with Axis bank and secondly to verify the computational working of loss of Rs. 8.61 crores on pre-closure of securitization agreement by assessee in the impugned assessment year under consideration. Needless to say that the AO shall give proper and adequate opportunity of hearing to the assessee in set aside proceedings and the explanations/evidences filed by assessee in its defense shall be admitted by the AO in the interest of justice. We order accordingly.

8. In the result, the appeal filed by assessee in ITA No.468/Chny/2017 for ay: 2011-12 is allowed for statistical purposes.

Order pronounced on the 27<sup>th</sup> day of January, 2020 in Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(रमित कोचर)

**(RAMIT KOCHAR)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 27<sup>th</sup> January, 2020.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

- |                              |                         |
|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant       | 4. आयकर आयुक्त/CIT      |
| 2. प्रत्यर्थी/Respondent     | 5. विभागीय प्रतिनिधि/DR |
| 3. आयकर आयुक्त (अपील)/CIT(A) | 6. गार्ड फाईल/GF        |