IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "A" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 2127/Mum/2024 : A.Y. : 2016-17

C.O. No. 123/Mum/2024 : A.Y. : 2016-17
(Arising out of ITA No. 2127/M/24)

Asst. Commissioner of Income Tax, Circle-6(1)(2), 5th Floor, Aayakar Bhavan, M.K.Road, Mumbai.	Vs.	Asset Reconstruction Company (India) Ltd., 10th Floor, The Ruby, 29, Senapati Bapat Marg, Dadar (W), Mumbai. PAN : AAECA3878M
(Appellant)		**(Respondent/Cross Objector)**

For Assessee : Shri Dhanesh Bafna &
Shri Yogesh Malpani &
Ms. Tejal Saraf

For Revenue : Dr. K.R. Subhash, CIT-DR

Date of Hearing : 12-02-2025
Date of Pronouncement : 25-03-2025

O R D E R

PER B.R. BASKARAN, A.M :

The appeal filed by the Revenue and the Cross Objection filed by the assessee are directed against the order dated 23-02-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['Ld.CIT(A)'] and they relate to AY. 2016-17. The Revenue is aggrieved by the decision of the Ld.CIT(A) in granting relief to the assessee on the following issues:

a. Write-off of security receipts;

b. Partial relief in respect of addition of Upside Income relating to recovery from Non-Performing Assets (NPAs);

c. Protective addition in respect recoveries from NPAs pertaining to others investors.

2. The facts relating to the case are discussed in brief. The assessee-company is registered with Reserve Bank of India (RBI) u/s. 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') as "securitisation and reconstruction company". This terminology was later changed into "Asset Reconstruction Company". The business model of the assessee is described by the AOas under: -

"A. Business Model of the assessee:-

- *The assessee company is an asset reconstruction company (ARC) which acquires Non- Performing Assets(NPAs) from the banks. To acquire such NPAs, ARCIL sets up various trusts in which ARCIL holds a certain minimum percentage of beneficial ownership and balance is owned by other Investors.*

- *Trust issues Security Receipts to all such Investors including ARCIL (having compulsory a minimum holding 15%) and other Investors. Therefore, ARCIL, as well as other Investors are called as Security Receipts Holders (SRHs). Out of these funds received from ARCIL as SRH and other Investors as SRH, the trust acquires NPAs from the bank and payments are made to the banks*

- *Subsequently, ARCIL being the sole trustee, manager and recovery agent, manages such NPAs towards recovery and accordingly for such services, ARCIL charges "Management Fees" and "Portfolio Recovery fees" being Trustee and Manager of the trust. This income of ARCIL. is independent and exclusive of any distribution from surplus or any recovery out of NPAs lying in such trusts.*

- *Further, when recovery of NPA takes places, trust first reduces its running cost expenditure from the Realisation including payment of Management fees and Portfolio Recovery fees to ARCIL, and then the balance available funds out of realisation are distributed to all* *the SRHs which are ARCIL (as SRH) and other Investors (as other SRHs). In this regards, it is important to note that, such trust merely act as pass-through entities and whatever income is to be offered for tax out of such realisations from NPAs, is offered in the hands of ARCIL and other SRHs.*

- *As on 31.03.2016, the assessee has formulated as well as made investments in more than 150 such trusts and all such trusts are solely managed by the assessee itself. The assessee is the sole settler, sole trustee, and one of the main beneficiaries. The assessee coordinates all such recoveries from NPAs lying in all such trusts on a day to day basis. Unlike the pure investor, it is the assessee who manages each and every affair of the trust and also derives income from such trust for such management other than the share of surplus recovery distributed as beneficiary SRH."*

(Note:- "NPAs are referred as "financial asset" in the SARFAESI Act)

3. During the course of assessment proceedings, the AO -

(a) disallowed claim relating to write off of Security Receipts;

(b) Added Upside Income not offered to tax by the assessee;

(c) made protective addition of upside income relating to other Security Receipt holders (SRH's).

The Ld.CIT(A) deleted the first and third additions fully and granted partial relief in respect of second addition mentioned above. Hence the revenue has filed this appeal challenging the relief granted by Ld CIT(A) and the assessee has filed cross objection objecting to the addition sustained by Ld CIT(A).

4. The first issue relates to the disallowance of claim of write off of security receipts. The assessee had written off Security receipts to the tune of Rs.82.87 crores during the year under consideration and claimed the same as deduction. When questioned about the same by the AO, the assessee submitted that, as per RBI guidelines, the unrealised security receipts have to be written off within a maximum

period of 8 years. Hence the assessee claimed deduction of amount so written off as business loss. The AO however took the view as under:-

> *"At the outset the legal submission of the assessee is not at all acceptable. The SR write off is not allowable at all. Unless and until, there are compelling reasons and documentary evidence which could establish beyond doubt that there will be no recovery in future, only then such write off is allowable. However, in the instant, there are recoveries and that too of significant amount in subsequent years of write off (which is evident from the fact that in the current year itself, there was a recovery of Rs.47.19 crores out of such write off made in the earlier years). Further, the guidelines of RBI are for the purpose of NPA resolution and not for determination of income and tax liability thereon under the Income tax Act."*

The AO also examined the Trust deed and financial statements of certain Trusts. He noticed that the trusts are stated to be Pass through entities and further, they were also making impairment provisions in respect of NPAs. Accordingly, he took the view that there is no case for making adhoc provisions, which do not have any scientific basis. Accordingly, he held that the claim of the assessee that it was writing off the Security Receipts after expiry of statutory limit of 8 years prescribed by RBI is not factually correct and also misleading. Accordingly, he held that the claim of write off security receipts of Rs.82.87 crores is not allowable u/s 37(1) of the Act. Accordingly, he disallowed the same.

4.1. Before the Ld.CIT(A), the assessee furnished detailed explanations with regard to the above said claim and also in respect of other additions. The assessee also furnished certain additional evidences. Hence, the Ld.CIT(A) called for a remand report from the AO. However, the AO did not send any remand report. Hence the Ld.CIT(A) sent several reminders to him, but the AO still did not furnish the report. Hence, the Ld.CIT(A) proceeded to adjudicate the grounds on the basis of materials available before him.

4.2. The Ld.CIT(A) noticed the following:-

(*a*) *The assessee's accounting policy is to write off outstanding investments in Security Receipts after expiry of resolution period, which was minimum of 5 years and maximum of 8 years or closure of concerned Trust, whichever is earlier.*

(b) The impairment provisions are done in the books of the Trusts and not in the books of the assessee. Hence the said provision made in the books of the Trusts should not impact the determination of income of the assessee.

Accordingly, by placing reliance on the decision rendered by Hon'ble Supreme Court in the case of TRF Ltd vs. CIT (323 ITR 397)(SC), the Ld. CIT(A) held that it is enough if the irrecoverable debt is written off in the books of accounts. Accordingly, he deleted this disallowance.

4.3. The Ld.DR supported the order passed by the AO.

4.4 The Ld.AR, however, submitted that the assessing officer has disallowed the above said claim of the assessee without properly appreciating the business model of the assessee. He explained the business model of the assessee.

(a) He submitted that the assessee first identifies financial asset (NPAs) that can be purchased by it.

(b) Then it negotiates with the concerned banks and finalises the purchase price of the financial assets.

(c) Under sec. 7 of SARFAESI Act, 2002, the assessee can raise funds from 'qualified buyers'. Once the qualified buyer(s) are identified, separate trusts are formed under Indian Trusts Act, 1882 for acquiring the above said NPAs from banks. For this purpose, the trusts shall issue "security receipts" for raising funds required to acquire financial assets.

(d) The assessee shall purchase minimum of 15% of the security receipts issued by the trusts as per SARFAESI Act and the qualified buyer(s) shall invest remaining amounts.

(e) By utilising the funds mobilised by issuing Security Receipts, the asset reconstruction companies (assessee herein) shall acquire stressed financial assets (NPAs) from the banks through the Trust.

(f) The trusts shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified buyer.

Hence the assessee has formed various trusts, through which the assessee has acquired various financial assets. In each of the trusts, the assessee has subscribed to the Security Receipts issued by the concerned trust for minimum amount of 15% and the remaining Security receipts were subscribed by qualified investors. The amount so invested by the assessee in subscribing security receipts is treated as an "investment" by the assessee in its books of accounts.

4.5. Thus, the trusts have issued Security Receipts to the assessee as well as to other investors. It is stated that the trusts are only Pass through entities. However, for the purpose of administration and realisation of financial assets, the trusts are treated as separate entities and they have also maintained proper accounts.

4.6. So far as the assessee is concerned, it is charging management fees for management of trusts. As noticed earlier, the Trusts shall endeavour to realise the NPAs. The amounts so realised is first used to incur its own expenditure, which would include the management fees payable to the assessee. Then the remaining amount would be distributed to the Security Receipt Holders either as income or as repayment of principle portion of Security receipts. The assessee would be offering income portion to tax and the principal portion is credited to the Security Receipts accounts.

4.7. As per the requirement of RBI Act, the outstanding Security receipts have to be written off either after the expiry of a minimum period of five years or maximum period of eight years from the date of formation of the trusts or the closure of the trusts, whichever period comes earlier. Accordingly, the outstanding Security Receipts have been written off by the assessee after expiry of eight years, even though the RBI permits such write off after expiry of five years also. The Ld A.R submitted that any amount realised from the amount so written off is offered as income in the year of realisation. The Ld A.R submitted that the assessee is following the very same method of accounting every year. He further submitted that the Security receipts so written off in the earlier years has been allowed as deduction. He submitted that the AO has not given any reason for taking different stand in this year alone. He submitted that the making such kind of investments for acquiring NPAs is the core business of the assessee and it is usual practice to write off unrealised investments as bad debts, which is also forms part and parcel of the business. Accordingly, he submitted that there is no reason to disallow the said claim and hence the Ld CIT(A) has rightly deleted this addition.

4.8. We heard the parties and perused the record. It appears that the assessing officer has not correctly appreciated the business model and the manner of functioning of the assessee company. The assessee herein is a “Asset reconstruction Company’ registered under SARFAESI Act. We notice that section 7 of SARFAESI Act permits the assessee to issue “security receipts” for raising funds. Section 7 referred above reads as under:-

"7. Issue of security by raising of receipts or funds by [asset reconstruction company] [Substituted by Act No. 44 of 2016.].

(1) Without prejudice to the provisions contained in the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992), any [asset reconstruction company] [Substituted by Act No. 44 of 2016.] may, after acquisition of any financial asset under sub-section (1) of section 5, offer security receipts to [qualified buyers] [Substituted by Act No. 44 of 2016.] [or such other category of investors including non-institutional investors as may be specified by the Reserve Bank in consultation with the Board, from time to time,] [Substituted 'other than by offer to public' by Act No. 44 of 2016.] for subscription in accordance with the provisions of those Acts.

(2) A [asset reconstruction company] [Substituted by Act No. 44 of 2016.] may raise funds from the [qualified buyers] [Substituted by Act No. 44 of 2016.] by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a [qualified buyer] [Substituted by Act No. 44 of 2016.] and ensure that realisations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

[(2-A)(a) The scheme for the purpose of offering security receipts under sub-section (1) or raising funds under sub-section (2), may be in the nature of a trust to be managed by the [asset reconstruction company] [Inserted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 6, (w.e.f. 11.11.2004.] and the [asset reconstruction company] [Substituted by Act No. 44 of 2016.] shall hold the assets so acquired or the funds so raised for acquiring the assets, in trust for the benefit of the [qualified buyers] [Substituted by Act No. 44 of 2016.] holding the security receipts or from whom the funds are raised.

(b) The provisions of the Indian Trusts Act, 1882 (2 of 1882) shall, except in so far as they are inconsistent with the provisions of this Act, apply with respect to the trust referred to in clause (a) above.]

(3) In the event of non-realisation under sub-section (2) of financial assets, the [qualified buyers] [Substituted by Act No. 44 of 2016.] of a [asset reconstruction company] [Substituted by Act No. 44 of 2016.] holding security receipts of not less than seventy-five per cent. of the total value of the [security receipts issued under a scheme by such company] [Substituted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 6, for "security receipts issued by such company" (w.e.f. 11.11.2004).], shall be entitled to call a meeting of all the [qualified buyers] [Substituted by Act No. 44 of 2016.] and every resolution passed in such meeting shall be binding on the company.

(4) The [qualified buyers] [Substituted by Act No. 44 of 2016.] shall, at a meeting called under sub-section (3), follow the same procedure, as nearly as

possible as is followed at meetings of the board of directors of the [asset reconstruction company] [Substituted by Act No. 44 of 2016.] as the case may be."

The above said section further provides that the assessee shall keep and maintain separate and distinct accounts for funds raised for in respect of each of the scheme framed for acquiring the financial asset (NPAs acquired by it). It is further provided in that section that the scheme framed for the purpose of offering security receipts or raising funds may be in the nature of trust, which shall be managed by the assessee. Further, the assessee shall hold the assets acquired and funds raised in trust for the benefit of qualified buyers of security receipts.

4.9. Accordingly, the assessee has formed separate Trusts for stressed financial assets (NPAs) acquired under one scheme. For raising funds, the concerned Trusts have issued Security Receipts, in which the assessee has invested a minimum amount of 15% of the value of the Security Receipts issued by the trust and the rest of the security receipts have been purchased by the qualified buyers. The Ld.AR submitted that the Trust is treated as a pass through entity, since they are formed as per the requirement of SARFAESI Act and further it is so formed for the purposes of management of each of the financial assets separately and also comply with the requirement of sec.7 of SARFAESI Act, which requires the assessee to keep and maintain separate and distinct accounts for each of the Trusts. It is also provided under the above Act that the assessee also should ensure that the realisations of the financial asset are applied towards redemption of the Security receipts and payment of returns assured thereon.

4.10. The Ld A.R submitted that the assessee has followed the practice of treating the investments made by it in the Security Receipts as one of the Investments in its books of accounts, just like any other investments made by the assessee. He submitted that the assessee has adopted following accounting system in respect of investment made in the Security Receipts:-

(a) Since the assessee is the trustee of the Trust and since those trusts are managed by it and since the major investments have been made by the qualified buyers, the Trusts have been notionally treated as separate entities. Since the trust is managed by the assessee on behalf of itself (minimum investment) and qualified buyers (maximum investment), it has collected management fees from the trusts. The amount so collected is treated as income of the assessee and offered to income tax by the assessee.

(b) Since the investments have been made in the form of Security Receipts, the assessee has disclosed the Security receipts as an Investment. The income distributed by the Trusts on the Security Receipts is offered as income from investments and the principal portion distributed is treated as realisation of the capital portion of Security receipts.

We notice that the Reserve Bank of India is empowered to issue guidelines and directions to Asset Reconstruction Companies under the SARFAESI Act. Accordingly, the RBI has issued "The Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003. The guidelines issued by RBI in respect of Security Receipts are mentioned in Clause 6(ii) and (iii) of the above guidelines. They read as under:-

> *"(ii) SC/RC** shall formulate the policy of realisation of financial assets under which the period for realisation shall not exceed five years from the date of acquisition of the financial asset concerned.*
>
> *(iii) The Board of Directors of the SC/RC may increase the period of realisation of financial assets so that the total*

period of realisation shall not exceed eight years from the date of acquisition of financial assets concerned."

(** Securitisation Companies/Reconstruction Companies)

Further, as per clause 12 of the Guidelines, the financial assets including the Security Receipts will be classified as non-performing, if it is outstanding for a period exceeding 36 months. They shall be treated as "LOSS ASSETS", if the Security receipts are not realised within the period mentioned in clause 7(ii) and (iii) of the Guidelines mentioned above. Further, it is provided that the assessee should provide for write off of 100% of the value of Security receipts if it is classified as Loss assets. Accordingly, the assessee chose to write off the value of unrealised Security Receipts after expiry of maximum period of 8 years in the books of accounts, instead of the minimum period of five years.

4.11. However, it is pertinent to note that the concerned Trusts shall hold the financial assets till it is realised or till the trust itself is wound up. Hence the assessee, as the trustee of the concerned trusts, shall be continuing its efforts, on behalf of the Trusts, to realise money from the financial assets acquired by the Trusts, even if the Security receipts are written off in its books of accounts. Accordingly, if any amount is realised by the Trusts and distributed to the Security Receipts holders (including the assessee), the same shall be offered as income by the assessee, if the said distribution is after the write off of the Security receipts. We notice that the assessing officer himself has acknowledged that the assessee has offered the recovery made from security receipts as its income, after it was written off.

4.12. It was stated that the assessee has been consistently following the above discussed accounting method in the past years and the same has been accepted by the tax authorities. Thus, we also notice that the assessee is following a systematic procedure for accounting for investments and its realisation. We noticed that the assessee was raising funds from the qualified buyers, but the same was raised through the issuing of Security receipts by the Trusts and not directly by the assessee. Further, as per the requirement of SARFAESI Act, the assessee is required to form separate trusts for issuing Security receipts and for acquiring and managing financial assets. Further, accounts relating to those trusts are also required to be kept and maintained separately. Since major portion of investments is generated through Security receipts issued to qualified buyers, for effective management of the acquisition and realisation of the financial assets, the trusts are notionally treated as separate and distinct entities, even though they are considered as Pass through entities. This is done so in order to protect the interests of qualified buyers of security receipts.

4.13. We noticed earlier that the Trusts are required to maintain separate accounts and, in that case, it is necessary to follow proper accounting principles for determining the income of the Trusts and for distribution of that income to the security receipts holders. Hence, the concerned trusts have made provision for bad debts in order to determine the quantum of its income. Hence, the provision for bad debts, if any, created by the Trusts is for the purpose of determining the income of the trusts as per the accounting principles and hence, it is nothing to do with the accounting methodology followed by the assessee. So far as the assessee is concerned, it has treated the investment made in Security Receipts as a separate investment and the income generated there from is offered to tax. Unrealised Security receipts were written off after the expiry of eight years. If any amount is realised after it was so written off, such realisation is offered to tax.

4.14. As noticed earlier, the AO has misdirected himself in understanding the concept of forming trusts, the accounting system followed by the trusts and assessee. There is no dispute with regard to the fact that the assessee has to follow the guidelines issued by the RBI for accounting the Security Receipts and it has to treat the Security receipts as “Loss assets” if it is not realised within five years. Accordingly, the assessee has chosen to write it off the unrealised portion of the security receipts after expiry of eight years. There should not be any dispute that, if any security receipts was not realised within a period of eight years, then its recovery is doubtful. Accordingly, we do not find any infirmity in the claim made for deduction of Security receipts written off by the assessee. Accordingly, we confirm the order passed by Ld CIT(A) on this issue.

5. The next issue relates to the addition of upside income not offered to tax by the assessee. Since the Ld.CIT(A) has granted partial relief, both the parties are challenging the decision rendered by the Ld.CIT(A) on this issue. The Ld A.R submitted that the upside income would consist of “Income by way of management fees/incentive” and “income from investments”.

5.1. The facts relating to this issue are discussed in brief. The AO noticed that the trusts, sometimes, acquire multiple “Non Performing Asset” (NPA) under one assignment agreement entered with the banks. It is possible that the assignment agreement may consist of one financial asset (NPA) or it may consist of multiple financial assets (NPAs). It was noticed by the AO that the trusts have considered all the financial assets acquired by them under one Assignment agreement as “single investment”. Accordingly, they have determined the profit or loss on realisation of those investments by putting all the financial assets purchased through one Assignment agreement together as cluster. However, the AO was of the view that the above said method would allow the assessee to defer the income. In this regard, he has given following example to support his point.

> For example, a Trust has purchased 10 NPAs of different borrowers under four ‘Assignment agreements’. viz.,
>
> 1st Assignment agreement with 2 NPAs - 3.00 crores

2nd Assignment agreement with 2 NPAs	-	4.00 crores
3rd Assignment Agreement with 3 NPAs	-	1.00 crore
4th Assignment Agreement with 3 NPAs	-	2.00 crores
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Total		10.00 crores
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It is assumed that a sum of Rs.5.00 crores was realised from out of one of the NPAs purchased in 4th Assignment. The Trust would be treating it as realisation against 10 crores only and consequently, no income will be computed out of the above said realisation. It is the case of the AO that the realisation of 5 crores in 4th assignment agreement is in excess of its cost of investment of 2 crores and hence the trust should have computed 3 crores as its income.

5.2. The assessee submitted that the AO has failed to appreciate the distinction between the realisations effected by the Trusts and distribution of amount by the trusts to the Security Receipt holders. He submitted that the realisation made by the trusts have been considered as realisation made by the assessee himself, which is not correct. He submitted that, only when any amount is distributed by the trust to the Security Receipt holders, the incidence of tax would arise in the hands of the security receipt holders (including assessee, being one of the security receipt holders). The assessee submitted that the investments made by it in Security receipts are akin to Mutual fund investments. Hence the assessee is not concerned with the realisation made by the trusts from the financial assets (NPAs). During the course of assessment proceedings, the AO did not accept the above said submissions of the assessee. Accordingly, he took the view that a sum of Rs.153.77 lakhs relating to upside income has not been offered to tax. Accordingly, the AO assessed the same.

5.3. The Ld.CIT(A) examined the number of financial assets acquired through each of the assignment agreement. He noticed that only 41 trusts (out of 319 trusts) are having multiple assignment agreements and hence the analogy drawn by the AO will apply to those 41 trusts only. The realisation out of 41 trusts was seen at Rs.68.92 crores. Accordingly, he directed the AO to examine the above said amount of 68.92 crores and assess the income after deducting the corresponding cost of investments.

5.4. We heard the parties on this issue. We noticed earlier that the Trusts are notionally treated as separate entities for the purpose of accounting treatment. Hence, the assessee would be offering income only when it receives any money against the Security Receipts. We also noticed that the trusts will be distributing money either in the form of income on the Security Receipts or as return of investments made in the security receipts. The major portion of security receipt holders are qualified buyers and the assessee holds only a small portion of security receipts (minimum of 15%). Hence the assessee cannot be considered as the owner of the entire investments made in the Trusts or the financial assets acquired through trusts. In view of the above said position, and also as per the requirements of the SARFAESI Act, the Trusts are required to be considered as separate entities notionally for accounting purposes. Hence, the realisation of NPAs made by the trusts cannot be considered to be the income of the assessee. We notice that the tax authorities have misdirected themselves in understanding the manner of functioning of the assessee and the trusts. We are of the view that the assessee was right in comparing the investments made by it in Security receipts with the investments made by general public in Mutual fund investments. The investors of mutual funds are not concerned with the financial activities carried on by the mutual fund and the incidence of tax shall arise in the hands of investors, only when they receive any money from the Mutual fund. In our view, the position of the assessee in respect of Security receipts is akin to the investment made in the mutual funds for the purpose of accounting and taxation, in view of the requirements provided under SARFAESI Act. Accordingly, we are of the view that the AO was not right in assessing any realisation made by the concerned trusts as income of the assessee and the Ld.CIT(A) was not justified in partially confirming a part of the said additions. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition relating to upside income recovery.

6. The next issue relates to the protective addition in respect of upside income relating to other Security receipt holders, viz., the other beneficiaries of the Trust. We noticed earlier that the AO had taken the view that the methodology adopted by the assessee to declare upside income was not correct and accordingly added a sum of Rs.153.77 crores. Following the same analogy, the AO took the view that the income pertaining to other Security Receipt holders should have been offered to tax. The AO made his own computation by drawing certain presumptions and accordingly made protective addition of Rs.245.51 crores in the hands of the assessee.

6.1. Since the income estimated by the AO is not related to the assessee, but other investors, the Ld.CIT(A) deleted this addition.

6.2. We heard the parties on this issue and perused the record. In our view, the reasoning given by us for deleting the addition of upside income of Rs.153.77 crores would equally apply to this addition also. The realisation made by the trusts cannot be considered as income of either the assessee or other investors. In any case, any income pertaining to other investors cannot be considered as income of the assessee. Hence, we are of the view that the AO was not justified in making protective addition of upside income relatable to the other investors in the hands of the assessee, since the realisations made by the Trusts cannot be considered as income of either the assessee or other investors, unless they are distributed between the security receipts holders. Accordingly, we affirm the decision rendered by the Ld.CIT(A) on this issue on the above said reasoning also.

7. In the result, the appeal filed by the Revenue is dismissed and the Cross Objection filed by the assessee is allowed.

Order pronounced in the open court on 25-03-2025

Sd/-	Sd/-
[ANIKESH BANERJEE]	[B.R. BASKARAN]
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai,
Dated: 25-03-2025

TNMM

Copy to :

1) The Appellant
2) The Respondent
3) The CIT concerned
4) The D.R, ITAT, Mumbai
5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai