

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD 'B' BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM and Mahavir Prasad JM]

ITA No.2099/Ahd/2014
Assessment Year: 2006-07

National Dairy Development Board,**Appellant**
Anand – 388 001.
[PAN: AABCN 2029 C]

Vs.

Dy. Commissioner of Income Tax,**Respondent**
Anand Circle, Anand.

Appearances by:

S.R. Shah *for the appellant*
James Kurian *for the respondent*

Date of concluding the hearing : 28.04.2017
Date of pronouncing the order : 31.05.2017

O R D E R

Per Pramod Kumar AM:

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 21st March 2014, passed by the learned CIT(A) in the matter of appeal effect order under section 143(3) r.w.s. 254 of the Income Tax Act,1961 for the assessment year 2006-07.

2. In the first ground of appeal, the assessee has raised the following grievance:

The CIT(A) has erred in not granting deduction under section 36(1)(xii) of the Act of Rs.1077728/-. It is submitted that in the facts and circumstances, CIT(A) ought to have allowed the deduction on merits. It be so held now.”

3. So far as this grievance of the assessee is concerned, the material facts and circumstances of the case are similar to that of the appeal for assessment year 2003-04 which we had heard alongwith this appeal. The only material difference is that in this assessment year the disallowance is with respect to grants of Rs 6,66,000 in respect of Tiruvananthpuram Regional Cooperative Milk Producers Union Limited and Rs 4,11,728 in respect of Ernakulam. There was no dispute that these amounts have not come back. In this case, the assessee did try to file an additional evidence, which indicated that the fund utilization report was received by the assessee and based thereon release note was signed, but CIT(A) declined to admit the additional evidence. The assessee has also filed these evidences, including the fund utilization report, before us.

4. Learned representatives agree that whatever we decide for the assessment year 2003-04 will, in principle, apply for this assessment year as well. Vide our order of even date, we have upheld grievance of the assessee in the assessment year 2003-04 and observed as follows:

3. To adjudicate on this appeal, only a few material facts need to be taken note of. The assessee before us is a company, though without any share capital, set up under National Dairy Development Board Act, 2017, and this is second round of proceedings before this Tribunal. In the first round of proceedings, the assessee's claim of deduction of Rs 10,31,34,920 under section 36(1)(xii) of the Act, in respect of grants to various cooperative societies, came up for consideration before this Tribunal. The precise ground, raised by the assessee before the Tribunal, was as follows:

"7. The learned Commissioner of Income-tax (Appeals) has erred in confirming that grant of Rs.10,31,34,920/- given to various cooperative societies is not deductible expenditure u/s.36(1)(xii) of the I.T. Act on the ground that the same are not in the nature of expenditure. Appellant submits that the grant given were in the nature of expenditure and allowable in accordance with section 36(1)(xii) of the I.T. Act. It be so held now.

7.1 The learned Commissioner of Income-tax (Appeals) has failed to appreciate the object of the appellant and confirmed the disallowance. Under the facts and circumstances grants given were in pursuance of the objects and therefore, ought to have been allowed as deduction u/s.36(1)(xii) of the Act. It be so held now.

7.2 In any event the same is allowable u/s. 28/37 of the I.T. Act and therefore, the same ought to have been allowed as deduction. It be so held now.”

4. The Tribunal, vide order dated 21st April 2011, remitted the matter to the file of the Assessing Officer with the directions as below:

“7. Having heard both the sides, we have carefully gone through the orders of authorities below. We find considerable force in justification of the Id. Counsel of the assessee whether the alleged non-refundable grants given in the previous year, relevant to the assessment year under appeal are from grants received or not needs verification at the end of the Assessing Officer. In this context, we may point out that as per decision of the ITAT, Delhi ‘E’ Bench in the case of Oil Industry Development Board (supra), relied on by the Id. Counsel of the assessee, expenditure incurred by way of disbursement of grants for objects and purposes authorised by the Act is allowable as deduction under section 36(1)(xii) of the I.T. Act, 1961. The plea of the Id. Counsel of the assessee that non-refundable grants sanctioned, are claimed 8 ITA No. 454-AHD-2006 as deduction only when funds are already utilized/Fund Utilisation Report (FUR) are received, also needs verification at the end of the Assessing Officer. We, therefore, set aside the order of the Learned Commissioner of Income Tax(Appeals) on this issue and restore the matter back to the file of Assessing Officer with the direction that Assessing Officer may verify both the aforesaid contentions and re-adjudicate the disallowance of Rs.10,31,34,920/- afresh, after giving opportunity of being heard to the assessee. The assessee is also directed to furnish complete details to Assessing Officer, in this regard, for verification.

5. When the matter thus once again came up before the Assessing Officer, he made a disallowance of Rs.61,08,550/- in respect of perspective plan expenditure in the case of Sabarmati Salt Farmer’s Society, Dhrangandhra. His justification of the disallowance was as follows:

“3. The assessee was requested to furnish various details like to fund utilization reports (FUR), grant agreements, loan agreements, evidences as to satisfaction of spent of grant, director’s report of recommendation and auditor’s certificates etc. in support of the claim of perspective plan expenditure claim. However on verification, it was found that no any details as to fund utilization report (FUR), grant agreement, loan agreement, evidences as to satisfaction of spent of grant, director’s report of recommendation and auditor’s certificates was not produced in respect of claim of perspective plan expenditure of Rs.6108550/- in respect of

Sabarmati Salt Farmers Society, Dhrangadhra inspite of various and sufficient opportunities of being heard provided. The assessee failed to furnish the sufficient evidences in justification of the claim of Rs.6108550/- . Therefore, the claim of Rs.6108550/- for perspective plan expenditure in respect of Sabarmati Salt Farmers Society, Dhrangadhra was not found to be acceptable and therefore it is disallowed and added in the total income of the assessee.”

6. *Aggrieved by the disallowance so made, assessee carried the matter in appeal before the CIT(A) but without any success. Learned CIT(A)'s short reasoning for confirming the disallowance is reproduced below for ready reference :-*

“4.3.1 Thus, the issue involved before the ITAT was the claim of deduction made by the appellant u/s. 36(l)(xii) of the IT Act, 1961. The directions given by the ITAT were also in relation to this section only. In a remand proceeding undertaken in pursuance of direction of the appellate tribunal, the scope of action is limited to the matter remanded by the tribunal and it is to be carried out as per the direction issued only. Accordingly, only the applicability of section 36(l)(xii) can be decided during the proceeding undertaken as per the direction of ITAT. The appellant has tried to introduce a new argument that Rs.61,08,550/- given to M/s. Sabarmati Salt Farmers Society can be allowed as bad debt u/s. 36(1)(vii) also. This argument had never been taken during the course of original assessment proceedings and related appellate proceedings. Hence such argument is not acceptable at this stage and accordingly is not admitted.

4.3.2 So far as allowability of this amount as a deduction u/s. 36(l)(xii) is concerned, the Assessing Officer has given a categorical finding that the appellant did not submit any details like Fund Utilization Report (FUR), grant agreement, loan agreement, evidences as to satisfaction of spending of grant, Director's report of recommendation and auditor's certificate in relation to such perspective plan expenditure. The Assessing Officer had provided sufficient opportunities of being heard to the appellant. Even during the course of appellate proceedings, no such documents have been submitted by the appellant. The appellant has only submitted copy of Board's approval dated 23/05/2003. This approval also says that this amount is to be treated as grant from the date of release. Under such circumstances, as per the direction of ITAT, the appellant was required to submit utilization report of such grant. Since, no such fund utilization report is available hence the action of the Assessing Officer of disallowing this amount is upheld and this ground of appeal is dismissed.”

7. *The assessee is not satisfied by the stand so taken by the CIT(A) and is in further appeal before us.*

8. *We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.*

9. *As we deal with the grievance of the assessee, it is essential to bear in mind the fact that the reason of disallowance, in the original assessment proceedings, was that there was, according to the Assessing Officer, a possibility of the amount coming back to the assessee, and, for that reason, amount could not be treated as having been spent. This aspect of the matter will be clear from the following observations made in the Tribunal's order dated 21st April 2011:*

"3.2 During the course of assessment proceedings, vide letter dated 01.09.2004, the assessee justified the claim. The Assessing Officer examined the various contentions attached for making disbursements and came to the conclusion that amount given to various cooperative unions were not expenditure for the purpose of allowing deduction under section 36(1)(xii) of the Act but were basically grants. The Assessing Officer further observed that in the agreements, there is an in-built condition that if the utilization of disbursements made by the assessee is not as per the objectives/terms laid down in the agreement, then such grants/disbursements would be converted either into interest free loan or interest bearing loan. He, therefore, held that there was a possibility of money coming back to the assessee and therefore such disbursements to various cooperative units were not expenditure. The Assessing Officer accordingly disallowed the claim."

10. *It was in this context that the Tribunal remitted the matter to the file of the Assessing Officer for primarily ensuring that the grants given by the assessee did not come back to the assessee. The directions of the Tribunal need to be seen in this perspective. Therefore, merely because the assessee has not been able to file the fund utilization report cannot be ground enough to disallow the claim of the assessee. There is no dispute that the amounts were advanced in the course of the business of the assessee, and it has not even been case of the Assessing Officer either, and, there is also no dispute that this amount is no longer recoverable from the Sabarmati Salt Farmer's Society as it has been wound up. In these circumstances, the objection taken by the Assessing Office, in the original assessment proceedings, does not hold good any longer. In any case, as the assessee rightly claims, it is at best, even going by the improvised version of the Assessing Officer, a case of bad debt or a loss incidental to business which is allowable anyway. Learned CIT(A)'s action of upholding the disallowance, for want of fund utilization report, is thus unsustainable in law and on the facts of this case. The approach adopted by the authorities below in interpreting the terms of remand is too pedantic and hyper technical to meet our approval. The directions given by the Tribunal are to be interpreted in the light of its object and context. That consistently has been approach of the Hon'ble Courts above.*

11. *In view of the above discussions, as also bearing in mind entirety of the case, we uphold the plea of the assessee and direct the Assessing*

Officer to delete the impugned disallowance of Rs.61,08,550/-. The assessee gets the relief accordingly.”

5. In the present case, documents, which were not admitted as additional evidence by the CIT(A) and which are included in the paperbook at pages 45 to 68, clearly show that the amounts were received by the respective bodies and that the funds have been used for the purpose for which these grants were given. The monies have not, in any case, come back to the assessee. The plea of the assessee has been rejected only on the technicalities regarding additional evidences. As held by a coordinate bench of this Tribunal, in the case of Electra (Jaipur) Ltd Vs IAC [(26 ITD 236 (Del)], We are of the view that the assessee should not be disqualified from producing this evidence merely on the ground that the evidence was not placed before the authorities below. The sole purpose of judiciary as well as of the Revenue is to get at the truth. There should be no objection to consider any evidence produced to test its authenticity relevance and then to act on it. If the evidence is genuine, reliable, proves the assessee's case, then the assessee should not be denied the opportunity. The earlier inability to lead evidence should not be held against the assessee unless it is known to the Court or suggested to the Court or there was evidence to suspect that the evidence was fabricated. There is no such suggestion in this case. On merits, on examination of this evidence, there cannot be any dispute about admissibility of this case. In view of these discussions, as also bearing in mind entirety of the case as also our decision for the assessment year 2003-04, we are inclined to uphold the plea of the assessee. Accordingly, we direct the Assessing Officer to delete the impugned disallowance of Rs.10,77,728. The assessee gets the relief accordingly.

6. Ground no. 1 is thus allowed.

7. In ground no. 2, the assessee has raised the following grievance:

The CIT(A) has erred in not upholding that section 14A was not applicable to the appellant's case as the investments in securities yielding tax free income were made from own funds of the appellant and no expenses are incurred in relation to the exempt income. It is submitted that it be so held now.

The CIT(A) has erred in confirming the disallowance to the extent of Rs.240647/- without any evidence of expenditure being incurred to earn tax free income. It be so held now."

8. To adjudicate on this grievance, it is sufficient to take note of the fact that the interest free funds available to the assessee were far in excess of the investments made in income yielding tax exempt income. Yet, the disallowance was made by allocating interest paid on a proportionate basis, in addition to the disallowance made by the assessee for the administrative expenses. Aggrieved, assessee did carry the matter in appeal before the CIT(A) but without any success in principle, though, in quantum, the disallowance stood reduced from Rs 27,68,970 to Rs 2,40,647 due to change in the computation mechanism. The assessee is not satisfied and is in appeal before us.

9. Having heard the rival contentions and having perused the material on record, we find that the plea of the assessee does indeed deserve acceptance- particularly as there is no dispute that the assessee did have sufficient interest free funds so as to cover the investments yielding tax exempt income. It is by now a well settled a legal position that as long as assessee has sufficient interest free funds in excess of the investments yielding tax exempt income, presumption is required to be taken that the investments have been made out of interest free income. No part of the interest expenses can, therefore, be

attributed to investment yielding tax exempt income. It is also not in dispute that so far as the assessment year before us is concerned, rule 8D is not in play. In view of these discussions, as also bearing in mind entirety of the case, we uphold the plea of the assessee and direct the Assessing Officer to delete the impugned disallowance of Rs.2,40,647 as well.

10. Ground no. 2 is thus allowed.

11. In the result, the appeal is allowed. Pronounced in the open court today on the 31st day of May, 2017.

Sd/-

Mahavir Prasad
(Judicial Member)

Sd/-

Pramod Kumar
(Accountant Member)

Ahmedabad, the 31st day of May, 2017

Copies to: (1) The appellant
(2) The respondent
(3) Commissioner
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad