

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH, AHMEDABAD**

**[Coram: Pramod Kumar AM and Mahavir Prasad JM]**

ITA No. 2596/Ahd/2013  
Assessment Year: 2010-11

**Asst. Commissioner of Income-tax**  
Circle-12,  
Ahmedabad

.....Appellant

**Vs.**

**Gujarat State Seeds Corporation**  
BIJ Bhavan, Sector-10A,  
Gandhinagar

.....Respondent

**Appearances by:**

**VK Singh** for the appellant

**MJ Shah** for the respondent

Date of concluding the hearing : 10.08.2017

Date of pronouncing the order : 27.10.2017

**O R D E R**

**Per Pramod Kumar AM:**

1. By way of this appeal, the Assessing Officer has challenged correctness of the order dated 16.08.2013 passed by the learned CIT(A), Gandhinagar, Ahmedabad, in the matter of assessment under Section 143(3) of the Income-tax Act, 1961, for the assessment year 2010-11.

2. In ground no. 1, the Department has raised following grievance:-

*The learned CIT(Appeals) has erred in law and on facts in deleting the addition made on account of revolving fund of Rs.40,00,000/-*

3. Learned representatives fairly agree that the above grievance is covered, in favour of the assessee, by the decision dated 29.06.2015 of the Co-ordinate Bench in assessee's own case for the assessment years 2008-09 and 2009-10 wherein the Tribunal has, *inter alia*, observed as follows:-

*“5.3 After considering the rival submissions and going through the material on record we find that the issue before us is treatment of revolving funds received from Government of Gujarat. The purpose of the funds is to augment the trading activity of the assessee meaning thereby if it was a case of non returnable grant or subsidy it would have been a revenue receipt. The Assessing Officer failed to appreciate that the fund is returnable on demand. The nature of this fund is that of a loan without interest. A loan can never partake the form of income. The amount given was neither returnable and nor a liability. It is utilized for the purpose it is given. So, this cannot be held to be of the nature of income. In this background, the addition made by the Assessing Officer was rightly deleted by the CIT(A). Same is upheld. This take care of this issue in both years i.e. Asst. Years 2008-09 & Asst. Year 2009-10.”*

4. We see no reason to take any other view of the matter than the view so taken by the co-ordinate bench. Respectfully following the same, we approve the order of the CIT(A) in this regard and decline to interfere in the matter.

5. Ground no. 1 is thus dismissed.

6. In ground no. 2, the grievance raised by the Department is as follows:-

*The learned CIT(Appeals) has erred in law and on facts in deleting the addition made on account value of seeds of Rs.1,43,85,925/-*

7. Learned representatives fairly agree that this issue is also covered, in favour of the assessee, by the decision dated 29.06.2015 of the Co-ordinate Bench in assessee's own case for the assessment years 2007-08 and 2009-10 wherein the Tribunal has, *inter alia*, observed as follows:-

*“3.3. After going through the material on record, we find that Assessing Officer has added Rs.1,61,88,935/- i.e. 50% of ‘jangad’ stock of Rs.3,23,77,870/- He observed that the assessee has neither shown seeds of Rs.3,23,77,870/- as purchases nor has included in its closing stock. The stand of the assessee has been that goods are received on approval basis. Till the goods are certified to be of reliable quality, the same remains property of farmers and are kept in the godown of assessee. Only after certification of the seeds by the concerned certifying agencies, the above seeds are taken into purchase account of assessee. Only then that would form closing stock at the end of the year. The Assessing Officer has further observed that assessee was making adhoc payment of 50% of the stock to the farmers as advances on receipt of goods on approval while as per the balance sheet, the assessee has not shown such advances on the asset side of the balance sheet. The assessee gave detailed bifurcation in this regard and had stated that it is evident from the annual accounts of the assessee. As per Schedule “J” of loans and advances, advances recoverable in cash or kind are shown at*

*Rs.3,18,56,035/- in balance sheet. The grouping of Sch. "J" shows advances to producers (farmers against Jangad purchases) at Rs.56,64,882/- which is supported by the detailed statement of part payment made of 'Jangad Stock' farmer-wise. The assessee fully explained its stand as taken in its account. The assessee has been following this system of accounting in a consistent manner. Same has been accepted by the department as evident from the orders passed u/s 143(3) of the Act in the earlier years. The books of the assessee are audited by tax auditors, government auditors and statutory auditors. The assessee's reliance on provisions of Section 24 of the Sale of Goods Act and Accounting Standards in this regard was found appropriate. Keeping in view of our discussion, we find that CIT(A) was justified in deleting the addition of Rs.1,61,88,935/-. No interference is called for in the well reasoned order of CIT(A). Accordingly same is upheld."*

8. Respectfully following the views so expressed by the co-ordinate bench, we approve the conclusions so arrived at by the learned CIT(A) in this regard and decline to interfere in the matter.

9. Ground no. 2 is thus dismissed.

10. The grievance raised by the Revenue in Ground No.3 is as follows:-

*The learned CIT(Appeals) has erred in law and on facts in deleting the disallowance made from salary arrears of Rs.2,48,03,028/-, ignoring the fact that such arrears pertain to period from 01.01.2006 onwards and that the actual payment is also made in subsequent years.*

11. Briefly stated, the relevant material facts are like this. During the course of assessment proceedings, the Assessing Officer noted that the assessee has claimed Rs.3,11,02,010/- as provision of salary. When asked to justify the claim so made, assessee submitted before the Assessing Officer that, as per the direction of the Government of Gujarat, the arrears were to be paid to the employees in five instalments starting from FY 2009-10; however, Assessing Officer noticed that assessee has made actual payment of Rs.62,98,982/- being the first instalment in FY 2009-10 and claimed the excess amount of Rs.2,48,03,028/-. Therefore, the Assessing Officer disallowed the excess amount so claimed as the same was not pertained to the year under consideration.

12. Aggrieved by the order of the Assessing Officer, the assessee went in appeal before the Id. CIT(A), who deleted the addition by following observations:-

*"4.3 I have gone through the assessment order, facts of the case, submissions made and the case laws relied upon. The AO disallowed and made an addition of excess amount of Rs.2,48,03,028/- holding it not*

*pertaining to the year under consideration except 1/5th actual payment of Rs.62,98,982/- as per the directions of Government of Gujarat. It is perused that the provision of salary of Rs.3.11 crore is claimed based on the directions as per the guidelines "Approval letter dated 01/12/2009" issued by the Government of Gujarat. The AO has not disputed the accrual of liability for payment of arrears of salary as worked out by the 6th Pay Commission and approved by the Government of Gujarat. The appellant is following the mercantile system of accounting. The liability of payment of arrears of salary crystallized in the year under consideration as is evident from the Government Resolution, approval letter etc., issued by the Government of Gujarat. In the Mercantile System of Accounting - if expenditure relating to earlier years is claimed for the Liability arising in relevant previous year, expenditure is deductible U/s. 37 of Income Tax, 1961, as decided by Hon'ble Gujarat High Court in the case of Saurashtra Cement & Chemicals Industries Vs. C.I.T. (Gujarat) 213 ITR 523. The Hon'ble Supreme Court in the case of Bharat Earth Movers Vs. CIT 248 ITR 429 has held that if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are the liability is not a -contingent one. The liability is- in present though it will be discharged at a further date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain. Similar is the view of the Hon'ble Supreme Court in the case of Metal Board Co. of India Ltd vs Their Workmen (1969) 73 ITR 53(SC). The Hon'ble Gujarat High Court in the case of Saurashtra Cement & Chemicals Industries vs CIT reported at 213 ITR 523 has held that if expenditure relating to earlier years is claimed for the liability arising in the relevant previous year, expenditure is deductible u/s, 37 of the IT Act.*

*Following the above judicial pronouncements, since the liability has been crystallized during the year under consideration, I direct the AO to delete the addition of Rs. 2,48,03,028. This ground of appeal is allowed."*

13. The Revenue is aggrieved by the deletion of addition of Rs.2,48,03,028/- and is now in appeal before us.

14. 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.

15. We find that there is no dispute that the liability to pay these salary arrears existed as at the relevant point of time, even though it was to be discharged later, as a result of a policy decision of the Government. The fact that it pertained to an earlier period is of no consequence, so far as deduction is concerned, since it could not have been visualized earlier. The revision of salaries, in the present situation, is with retrospective effect and therefore it could not have been visualized earlier. As

the liability is a real liability, can be reasonably quantified and has not been claimed as deduction earlier, the assessee was justified in its claim for deduction. The mere fact that it was to be discharged later does not come in the way of deductibility of such liability. As the accounting principle of conservatism, which has the approval of Hon'ble courts above from time to time, requires, all expenses are to be accounted as soon as there can be reasonably quantified and anticipated. In view of these discussions, we approve the well reasoned relief granted by the CIT(A) and decline to interfere in the matter.

16. Ground No.3 is thus dismissed.

17. In the result, the appeal is dismissed. Pronounced in the open court today on the 27<sup>th</sup> day of October, 2017.

Sd/-

**Mahavir Prasad**  
(Judicial Member)

**Ahmedabad, the 27<sup>th</sup> day of October, 2017**

*\*\*/t*

Sd/-

**Pramod Kumar**  
(Accountant Member)

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

By order

TRUE COPY

Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad