

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

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No.3008/Ahd/2014  
Assessment Year: 2010-11**

Dy. Commissioner of Income Tax, vs. Gujarat State Financial Corpn.,  
Circle-4, Ahmedabad. BlockNo.10, Section-11,  
Udhyog Bhavan, Gandhinagar.  
[PAN – AABCG 2924 M]  
(Appellant) (Respondent)

Appellant by : Aparna M. Agrawal, CIT (D.R.)  
Respondent by : P.F. Jain, A.R.

Date of hearing : 21.02.2018  
Date of pronouncement : 23.02.2018

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER**

1. This appeal by the Revenue is directed against the order of CIT(A)-VIII 8, Ahmedabad dated 01.08.2014 pertaining to A.Y. 2010-11.
2. The first grievance of the Revenue relates to the deletion of addition of Rs.12.23 crores made on account of disallowance of penal interest paid to Government of Gujarat.
3. While scrutinising the return of income, the Assessing Officer noticed that the assessee has paid penal interest of Rs.12,23,58,512/- to Government of Gujarat. The Assessing Officer was of the opinion that the nature of expenditure is of penalty which is not allowable as per provisions of the Income Tax Act, 1961. The Assessing Officer accordingly disallowed an amount of Rs.12,23,58,512/-.
4. The assessee agitated the matter before the CIT(A) and strongly contended that the impugned payment is not penalty but only interest on delayed payment. Therefore, the disallowance is not justified. After considering the facts and the submissions, the CIT(A) was convinced with the nature of expenditure and directed the Assessing Officer to allow the same.

5. We find that an identical issue arose before the Tribunal in assessee's own case in Assessment Year 2006-07 in ITA No.483/Ahd/2011. The Tribunal, after considering the impugned issue, held as under :-

*“16. We have considered rival submissions. We find that a perusal of the Resolution no.JNV-1099-2023-A of the Govt. of Gujarat (supra) makes it clear that the Govt. of Gujarat has prescribed rates of interest on loans for the public sector undertakings, which is clearly in the nature of "penal interest" and not in the nature of penalty. The assessee is in the business of finance and interest was paid by the assessee-company on account of late payment of amount payable to the State Government. There is no infringement of law and there is no act on the part of the assessee which can be said to be against the public policy. The assessee has advanced finance by way of term loans, lease finance etc. for the industrial units in the State of Gujarat during the relevant period and has earned interest thereon. The penal interest in the nature of finance charges for late payment of installment/amount could not be equated with penalty imposable due to some infringement of law. The use of the word "penal interest" as a nomenclature does not mean any penalty for infringement of law. We find that the observations of the CIT(A) that such late payment is against the public policy and amount paid by the same could not be allowed as deductible expenses u/s.37(1A) in view of the explanation to section 37(1), is not sustainable in law. The interest charged at the rate of 2% per month for delayed payment of installment by the assessee-company could not be equated with payment made against the public policy or payment made in contravention of law. We are of the considered view that the interest paid by the assessee on delayed payment of installment to the State of Gujarat is in the nature of financial charges for late payment of installment. In this view of the matter, we hold that no case of disallowance by holding the payment of penal interest as against the public policy could be made out by the department, and accordingly, the issue is decided in favour of the assessee and the grounds of the appeal of the assessee are allowed.”*

6. Respectfully following the findings of the co-ordinate bench, we decline to interfere in the matter.

7. Ground no.1 is dismissed.

8. Ground no.2 relates to deletion of the addition of Rs.5,75,00,227/- made on account of disallowance of provision for bad and doubtful debts.

9. During the course of assessment proceedings, on verification of Profit & Loss account, the Assessing Officer noticed that the assessee has claimed provision for bad and doubtful debts amounting to Rs.5,75,00,227/-. The Assessing Officer was

of the firm belief that provisions of bad and doubtful debts cannot be allowed under section 36 of the Income Tax Act, 1961 and accordingly disallowed the same.

10. Before the CIT(A) the assessee strongly contended that the assessee has actually written off the bad debts and, therefore, the same cannot be construed as provision for bad and doubtful debts. The CIT(A) found that his predecessor in Assessment Year 2006-07 has allowed a similar claim and the Revenue has not preferred any appeal against the issue. Following the same, CIT(A) deleted the addition of Rs.5,75,00,227/-.

11. Before us learned Departmental Representative strongly relied upon the findings of the Assessing Officer. Per contra, learned counsel for the assessee drew our attention to the statement of accounts and pointed out that the assessee has actually reduced the asset by the provision which amounts to writing off of bad debts.

12. We have given a thoughtful consideration to the orders of the authorities below. It is true that the assessee debited Profit & Loss account by Rs.5,75,00,227/- and credited the provision for bad and doubtful debts. Hon'ble Supreme Court in the case of Vijaya Bank vs. CIT, 323 ITR 166 has observed and held that where assessee bank had written off the impugned bad debts in its books by way of a debit to profit and loss account, simultaneously reducing corresponding amount from loans and advances to debtors depicted on assets side in balance sheet at close of year, the assessee-bank was entitled to deduction under section 36(1)(vii) and for that purpose it was not necessary for it to close individual account of each of its debtors in its books.

13. In the light of aforesaid ruling of the Hon'ble Supreme Court, let us now consider the relevant schedule in the balance sheet of the assessee and the same is as under :-

Particulars	AS AT 31.03.2010 (Rs.)	AS AT 31.03.2009 (Rs.)
<b>SCHEDULE-7 : LOANS &amp; ADVANCES</b>		
A. PRINCIPAL AMOUNT (TERM LOAN, HIRE PURCHASE & LEASE FINANCE) (DTAILS AS PER SCHEDULE-17 ANNEXED)	5,544,259,614	5,697,616,497

LESS: 1. PROVISION FOR NPA	(4,069,881,387)	(4,259,761,864)
2. PROVISION FOR ASCERTAINED DEBTS	(1,470,065,617)	(1,412,559,140)
B. ADD: INTEREST ACCRFUED THEREON	3,781,134	4,164,840
	-----8,093,734	-----29,460,333
<b>TOTAL</b>	<b>8,093,743</b>	<b>29,460,333</b>

14. A perusal of the above shows that the assessee has reduced loans and advances by the provisions thereby fulfilling all the conditions laid down by the Hon'ble Supreme Court. Considering these facts in totality, we do not find any error or infirmity in the findings of the CIT(A).

15. Ground no.2 is dismissed.

16. In the result, appeal filed by the Revenue is dismissed.

(Order pronounced in the open Court on this 23<sup>rd</sup> day of February, 2018)

*Sd/-*  
**Rajpal Yadav**  
(Judicial Member)

*Sd/-*  
**N.K. Billaiya**  
(Accountant Member)

**Ahmedabad, the 23<sup>rd</sup> day of February, 2018**  
**PBN/\***

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

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*