

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.5231/M/2016  
Assessment Year: 2012-13**

M/s. Grameen Capital India Ltd., 402, 5 <sup>th</sup> Floor, 36 Turner Road, Opp. Tawa Hotel, Bandra (W), Mumbai - 400 051 <b>PAN: AACCG9490K</b>	Vs.	Asst. Commissioner of Income Tax 12(2)(2), Mumbai
(Appellant) (Respondent)		

**Present for:**

Assessee by : Shri Sashank Dundu, A.R.  
Revenue by : Shri Pooja Swaroop, D.R.

Date of Hearing : 22.02.2018  
Date of Pronouncement : 28.03.2018

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 17.03.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The only issue raised in both the grounds of appeal is against the confirmation of disallowance of salary to employees cost to the extent of Rs.62,88,551/- by Ld. CIT(A) as made by the AO by restricting the employees cost to 91%

of the receipts which resulted into disallowance of Rs.62,88,551/-.

3. At the outset, the Ld. Counsel of the assessee submitted before the Bench that the case of the assessee is covered in its favour by the decision of the co-ordinate bench of the Tribunal in its own case in ITA No.783/M/2016 for A.Y. 2011-12 vide order dated 13.12.17 wherein identical issue has been decided in favour of the assessee. The Ld. A.R. prayed that since the identical issue has been decided in favour of the assessee the same ratio should be followed in the current year and the appeal of the assessee may be allowed.

4. The Ld. D.R. fairly agreed to the contention of the Ld. A.R. that the issue is covered in favour of the assessee.

5. We have heard the rival submissions of both the parties and perused the relevant material placed before us. We find that the identical issue has been decided by the co-ordinate bench of the Tribunal in ITA No.783/M/2016 for A.Y. 2011-12 vide order dated 13.12.17 in assessee's own case. The relevant para is reproduced as under:

"4. We have heard the rival contentions and gone through the facts and circumstances of the case. After going through the case records and arguments of both the sides, we find that the AO has simply held the employees cost unreasonably without pointing out any defect. The assessee produced complete bills and vouchers and genuineness of payment of employee cost is not doubted by the Assessing Officer. By applying the formula of receipt/ expenses ratio of AY 2010-11 i.e. at 91% of the receipts and applying the same, he disallowed the employee cost at ₹ 41,84,901/-. No doubt the assessee is incurring losses year after year, but that it does not mean the salary cannot be allowed to the assessee. We find that this company was incorporated in the year 2007 as part of global Grameen Family; it involves the business of promoting micro finance In India and enabling access to capital for micro finance institutions. This way, this company earns

advisory fees from adviser micro finance institutions. In earlier year, the same salary was allowed while framing assessment under [section 143\(3\)](#) and no such disallowance was made. It was the contention of the learned Counsel before us, that the salary paid was in order to contract and retain talented employees and it was commensurate with the duties and profile of employees. The learned Counsel for the assessee relied on the decision of [JK Woollen Manufacturers vs. CIT](#) (1972) 72 ITR 612 (SC), wherein it is held as under: -

"Commercial expediency for determining whether an expenditure was wholly and exclusively laid out for the purpose of the business, reasonableness of the expenditure has to be adjudged from the point of view of the businessman and not of the income-tax department. An employer in fixing the remuneration of his employees is entitled to consider the extent of his business, the nature of the duties to be performed and the special aptitude of the employee, future prospects of extension by the business and a host of other related circumstances. It is not the function of the Tribunal to determine the remuneration which in their view should be paid to an employee of the assessee."

6. It is clear from the above that the co-ordinate bench of the Tribunal has decided the issue in favour of the assessee holding that the AO cannot step into the shoes of businessman for deciding the reasonableness and thus allowed the appeal of the assessee. Maintaining the consistency with the earlier year decision , we allow the appeal of the assessee by setting aside the order of the Ld. CIT(A) on this issue and direct the AO accordingly.

7. In the result, appeal of the assessee is allowed.

**Order pronounced in the open court on 28.03.2018.**

**Sd/-  
(Saktijit Dey)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 28.03.2018.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.