

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

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA Nos. 1992 & 1993/Hyd/2017
Assessment Years: 2013-14 & 2014-15

Shriram Chits (P) Ltd., vs. Dy. Commissioner of
Hyderabad. Income-tax, Circle – 3(1),
Hyderabad.

PAN – AAFCS 49160

Appellant

Respondent

ITA Nos. 1947 & 1948/Hyd/2017
Assessment Years: 2013-14 & 2014-15

Dy. Commissioner of vs. Shriram Chits (P) Ltd.,
Income-tax, Circle – 3(1), Hyderabad.
Hyderabad.

PAN – AAFCS 49160

Appellant

Respondent

Assessee by: Shri K.C. Devdas
Revenue by: Shri C. Srinivas Reddy

Date of hearing: 23/05/2018
Date of pronouncement: 08/06/2018

ORDER

PER S. RIFAUR RAHMAN, AM:

These are cross appeals by the assessee as well as revenue directed against the orders of CIT(A) 3-, Hyderabad, all dated 11/09/2017 for the AYs. 2013-14 and 2014-15. As identical issues are involved in these appeals, they were clubbed and heard together and therefore a common order is passed for the sake of convenience.

2. First we will take up the appeals of the assessee, in which, the assessee has raised a common ground regarding

upholding the taxability of foreman dividend at Rs. 16,78,75,363/- for AY 2013-14 and Rs. 18,60,80,501/- in AY 2014-15.

3. The facts relating to raise this ground as taken from AY 2013-14 are, the AO observed that in the computation of total income, assessee company had claimed dividend income on Company's chit of Rs. 16,78,75,363/- as not taxable since it was derived from the mutual association based on the decision of Punjab & Haryana High Court in the case of Soda Silicate & Chemical Works, 179 ITR 588. The assessee contends that principle of mutuality is applicable in its case and its dividend income is not taxable as it is not an income chargeable to tax, as there is complete identity between the contributors and the receivers in the chit. On this account, the assessee claims deduction of foreman dividend received by it in respect of the compulsory chit.

3.1 The AO rejected the submissions of the assessee by referring to the section 21 of the Chit Funds Act, 1982 and relying on few case law and claim of foreman dividend was brought to tax.

4. Aggrieved, the assessee preferred an appeal before the CIT(A), who had upheld the action of the AO by relying on the decision of the ITAT in assessee's own case for earlier years.

5. Aggrieved by the order of CIT(A), the assessee is in appeal before us.

6. Before us, the Id. AR of the assessee fairly admitted that this issue is covered against the assessee by the decision of the ITAT in earlier AYs from 1995-06 to 2012-13. In AY 2012-

13 in ITA No. 1187/Hyd/2015 vide order dated 29/04/2016, the coordinate bench has held as under:

"6. As regards grounds 4 & 5 against the order of the CIT (A) upholding the taxability of foreman dividend at Rs.15,67,25,358, the learned Counsel for the assessee fairly admitted that this issue also is covered against the assessee by the above decision for the A.Y 2007-08. The relevant portion of the order is reproduced hereunder:

"9. The next two ground Nos. 4 & 5 in the assessee's appeal in ITA No.470/HI2010 is as follows: 4. The CIT(A) Hyderabad erred in upholding the taxability of foreman dividend at Rs.10,59,45,915/- 5. The CIT(A) ought to have clearly held that the foreman dividend was not taxable on the principles of mutuality.

10. Similar issues came up for considered before this Tribunal and the Tribunal has decided these issues in assessee's own case reported in 83 ITD 792. Respectfully following the same ratio laid down by the Tribunal in assessee's own case, we dismiss the two grounds taken by the assessee "

7 . Respectfully following the same, we dismiss these two grounds of appeal."

6.1 In the above decision, the bench has relied on the decision of assessee's own case which was reported in 83 ITD 792, for the sake of clarity, we reproduce the same:

"Admittedly, the assessee is a commercial entity formed to derive profits and gains from the business of chits. It is a settled proposition of law that the principles of mutuality is not applicable to commercial organisations formed with an object of earning profit of a commercial nature. It is pertinent to note that this is a case of a company, which carries on the business of chit funds and not that of an assessee who joins as a subscriber to chits for personal savings or otherwise. Assessee-company joined the chit groups promoted by it either as a foreman in fulfilment of the requirement of law i.e., Chit Funds Act, 1982 or it entered into the shoes of defaulting subscribers or in some cases to fill up vacant chits as a matter of necessity or expediency of its business and not by choice. It is not the case of the assessee-company that it participates in chits promoted

by other companies or entities. The basic principle of mutuality cannot be applied to income from commercial pursuits. Profit earning is the motto of the assessee-company. The profits in question arise and accrue from the trade or vocation which it carried on. The bye-laws of the company do not demonstrate that it is a mutual association. The principles of mutuality are based on the concept that no one can make profits out of himself. The essence of mutuality is of complete identity between the contributor and the participator. Sec. 21 of the Chit Funds Act, 1982, demonstrates that the foreman's role and rights are at variance with the other participators and contributors. The foreman need not forego discount or loss and can take the first instalment. Thus, it cannot be said that there is complete identity between the foreman and other participators in the chit. It cannot also be said that the profit is made out of itself. Thus, the principles of mutuality cannot on this count also be applied to chit fund companies."

7. As the facts and ground raised in AYs 2013-14 and 2014-15 are materially identical to that of earlier years, following the decision therein, we uphold the order of CIT(A) in both the years under consideration and dismiss the ground raised by the assessee in the AYs under consideration.

8. In the result, both the appeals of the assessee are dismissed.

Revenue appeals

9. In ITA No. 1947/Hyd/2017 for AY 2013-14, the revenue has raised the following grounds of appeal:

"1. Ld. CIT (A) erred on both law and facts of the case.

2. The Ld. CIT(A) erred in allowing the claim of assessee for deduction on account of bad-debts relating to running and terminated chits, when the assessee failed to satisfy the conditions laid down u/s 36(2) of the IT Act amounting to Rs. 45,30,11,346/-

3. The Ld. CIT(A) erred in upholding the claim of assessee with regard to the commission on cancelled chits amounting to Rs.1,16,13,700/- .

4. The Ld. CIT (A) erred in allowing the claim of assessee on royalty payment ignoring the fact that the parent company is not rendering any services to assessee-company.

5. Any other ground(s) that may be urged at the time of hearing.”

10. Ground Nos. 1 & 5 are general in nature, hence, need no adjudication.

11. As regards ground No. 2 in AY 2013-14, the brief facts relating to claim of bad debts are, the assessee had debited an amount of Rs. 47,68,54,048.44 on account of bad debts written off during the previous year relevant for the AY 2013-14. Out of this, bad debts amounting to Rs. 28,92,09,685.57 pertain to the running chits and balance bad debts of Rs. 18,76,44,362.87 pertain to the terminated chits. The assessee's submissions were extracted by the AO in his order at pages 2 to 6. After considering the submissions of the assessee, the AO exhaustively discussed the issue at length by referring to the provisions of section 36(1)(vii), section 22 of the Chit Funds Act, 1982, referring to case law and restricted the bad debts claim of Rs. 47,68,54,048.44 to Rs. 2,38,42,702.42 and the balance amount of Rs. 45,30,11,346.02 was disallowed by holding that it is not an allowable expenditure either as bad debt u/s 36(1)(vii), or residuary deduction u/s 37(1) or business loss u/s 28(1).

12. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and the CIT(A) allowed the assessee's claim of bad debts following the decision of the ITAT in assessee's own case for earlier AYs.

13. Aggrieved by the order of CIT(A), the revenue is in appeal before us.

14. Considered the rival submissions and perused the material on record. On perusal of earlier year orders of ITAT in assessee's own case, we find that the ITAT has allowed the assessee's claim of bad debts in AY 2011-12 in ITA no. 809/Hyd/2014 and 1210/Hyd/2014 vide order dated 29/10/2014, wherein, the coordinate bench has held as under:

"7. We have heard the arguments of both the sides and also perused the relevant material on records. It is observed that a similar issue involving identical facts and circumstances has already been decided by the Tribunal consistently in favour of the assessee in the earlier years, and in one such decisions rendered for assessment year 2009-10 vide order dated 5.4.2013 passed in ITA No.651/Hyd/2012, a similar claim of the assessee for deduction on account of claim of bad debts in respect of running and terminated groups has been allowed by the Tribunal for the following reasons given in paragraph 10:

"10. We have heard both the parties and perused the material on record. The crux of argument of the assessee's counsel is that in earlier years similar claim of the assessee has been allowed by the Tribunal and on that basis the present claim is to be allowed. He relied on the order of the Tribunal dated 12.10.2012 in M/s Sri Ram Chits Pvt. Ltd. ITA No. 975/12 for A.Y. 2009-10. While disposing the appeal for A.Y. 2009-10, the Tribunal relied on the earlier order of the Tribunal for A.Ys. 1995-96 to 1999- 2000, 2002-03 to 2006-07 and 2008-09. In earlier year, the Tribunal remitted the issue for computing the bad debts relatable to running chits. We have no dispute with regard to the findings of the Tribunal on earlier occasion. The amount of loss incurred by the assessee has to be allowed on both running and terminated chits if irrecoverable if the prized chit amount has gone out of the hands of the assessee. In other words, bad debts can be allowed to the extent of instalments defaulted by the prized subscribers and written off as bad debt in the books of the assessee. Accordingly, we

direct the Assessing Officer to decide the issue in the light of the order of the Tribunal for A.Ys. 1995-96, 1997-98, 1998- 99 and 1999-2000 in ITA No.500/Hyd/1999 and 506/Hyd/1999 (1995-96), 294/Hyd/2010 and 327/Hyd/ 2001 (1997-98), 471/Hyd/2002{1998-99), 1049/Hyd/2002 (1999-2000) in assessee's own case dated 26.7.2004 wherein the Tribunal remitted the issue back to the file of the Assessing Officer to see whether the assessee made a claim of bad debt and written off in the books of account. Thus on similar direction we remit the issue back to the file of the Assessing Officer to re-examine the issue in the light of the order of earlier years i.e., 1995-96, 1997-98, 1998-99 and 1999-2000 (supra). This ground of the assessee is allowed for statistical purposes."

8. The above decision rendered for assessment year 200910 has been subsequently followed by the Tribunal to decide similar issue in assessment year 2010-11, vide consolidated order dated 6.12.29013 passed in ITA No.1142/Hyd/2013 of the Revenue and. ITA NO.1049/Hyd/2013 of the assessee. Respectfully following the orders of the Tribunal for assessment year 2009-10 and 2010-11 in assessee's own case on similar issue, we uphold the impugned order of the learned CIT(A) allowing the claim of the assessee for deduction on account of bad debts relating to running chits and terminated groups. Ground No.2 of the Revenue's appeal is accordingly dismissed.

9. As regards the issue raised in grounds No.2 and 3 of the assessee's appeal relating to its alternative claim for deduction on account of bad debts under 5.28, as business loss, it is observed that the same is also covered in favour of the assessee by the decision of the Madras High Court in the case of CIT V Is. Sri Ram Chits and Investments Limited (83 DTR (Mds) 208), wherein it was held that contribution of the assessee as a foreman in the place of a defaulting subscriber is deductible as bad debt under 5.37(1) or as a business loss under s.28 (i) of the Act. Respectfully following the said decision of the Hon'ble Madras High Court in the case of Sri Ram Chits and Investments Ltd. (supra), we hold that the claim of the assessee for deduction of bad debts written off is also allowable alternatively as business loss under s.28(i). The relevant grounds of the assessee on this issue, being grounds No.2 and 3 in its appeal, are accordingly allowed."

Therefore, we do not find any infirmity in the order of CIT(A) in allowing the assessee's claim of bad debts as his decision is in consonance with the decision of the ITAT and accordingly, we uphold the order of CIT(A) and dismiss the ground raised by the revenue on this issue.

15. As regards the ground Nos. 3 & 4 in AY 2013-14 and 2 & 3 in AY 2014-15,(which are common in both the year), the commission on cancelled chits and royalty payment, we observe that the CIT(A) allowed both the above grounds following the decision of ITAT in earlier AYs. For the sake of clarity, we reproduce the findings of the ITAT in ITA No. 1224/Hyd/2015 (appeal by the revenue) for AY 2012-13, vide order dated 29/04/2016, as under:

"10. Having regard to the rival contentions and the material on record, we find that the order of the CIT (A) is in consonance with the directions of ITAT in the assessee's own case for the earlier A.Ys. The relevant paras are reproduced hereunder for ready reference:

"14. The ground No.2 in Revenue appeal in ITA No.120/H/2010 is as follows:

The CIT(A) ought to have appreciated the action of the Assessing Officer in making addition towards commission on removed chits which is contravention and not properly dealt by the assessee company as per the guidelines of Sec.21(3) of the Andhra Pradesh Chit Fund Act, 1971.

15. Similar issue came up for consideration before this Tribunal in assessee's own case in earlier orders for the assessment years 1998-99, 1999-2000 in ITA Nos.471/H/2002 & 1049/H/2002 respectively wherein the Tribunal held in Para 6.3 as follows:

6.3. Time of recognition of income from commission on cancelled chits.This issue is involved in the assessee's appeals for assessment years 1998-99 and 1999-2000. The dispute is about time of accrual of the income by way of commission in respect of cases where defaulting non prized

subscribers who are removed from the chit and in whose place new subscribers are substituted. On a careful consideration of the issue, we find that from out of the amount that is payable to the defaulting subscriber consequent to his replacement by another person the company is entitled to deduct 5% as commission. This has nothing to do with the regular commission income of the assessee. Thus the stand of the assessee that the commission income accrues when the accounts have been finally settled to the defaulting non subscriber to our mind appears to be the correct position. Otherwise in case of a non prized subscriber the amount of 5% would be deducted from the ITA Nos 1224 and 1187 of 2015 Sriram Chit Funds P Ltd Hyderabad amounts due to him much before the settlement of his account and recognised as income by way of transfer from current liabilities to profit and loss account. Reliance was placed by the Revenue on the Special Bench decision of the Tribunal in the case of Shriram Chits & Investments P Ltd. Chennai Vs. ACIT (263 ITR (AT) 65). This decision is not applicable to the facts of this case. The commission/remuneration to the foreman in that case was sought to be recognised on the completion of chit method and had nothing to do with the type of additional commission receivable in case of substitution of a subscriber as in this case. The natures of income in both these cases are different. The further commission of 5% receivable from a defaulting subscriber consequent to his removal and substitution on a full and final settlement of a defaulting subscriber account is recognised as income on the finalisation of the issues. This is not an unacceptable proposition. We agree with the submissions of the learned counsel for the assessee, which are at para 4.11 of this order. In the result, this ground of appeal of the assessee is allowed.

16. In view of the above order of this Tribunal, we dismiss this ground taken by the Revenue on the same lines.

19. The Ground No.4 in Revenue appeal in ITA No.120/H/2010 is as follows:

The CIT(A) ought to have appreciated the action of the Assessing Officer in adding Royalty payments made by the assessee company which are in contravention under the copy Act and as per [section 37](#) of the IT Act, 1961.

20. Similar issue came up for consideration before this Tribunal for the assessment years 2004-05, 2005-06 and 2006-07. The Tribunal vide its order dated 26.7.2004 in Para 20 held as follows:

"6.7(iv): We are convinced with the arguments of the learned counsel for the assessee. The Bangalore Bench of the Tribunal in ITA No.751, 750, 749 & 748/(Bang.)/1998 in the case of M/s Sriram Chits (Bangalore) Ltd. Vs. DCIT (assistant) Special Range, Bangalore held as follows:

"29. We have carefully gone through the records and consideration the rival contentions. M/s Sriram Chits & Investment (P) Ltd. having registered office at Madras was the absolute owner of the copy right relating to existing artistic work "Sriram Chits" logo registered as such under the provisions of the Copy Right Act, 1957 with the Registrar of Copyrights bearing registration No.A/49890/88 dated 7.7.1988. The assessee entered into an agreement with the holding company for exclusive use of the logo of the holding company in the course of soliciting its business amongst potential investors. The conditions of the agreement provided that the assessee shall pay royalty of 0.5% on the annual auction turnover of the assessee determined on the basis of ITA Nos 1224 and 1187 of 2015 Sriram Chit Funds P Ltd Hyderabad value of auctions fixed during the year. In fact, the assessee has used the logo to the best advantage of business. The assessee was to carry on the business of chit fund in the state of Karnatka and the holding company gradually stopped floating new (grounds as it did in 1984) allowing subsidiary company to expand itself. The growth of business of the assessee over the years of the order of the CIT(A) is very much relevant. The relevant portion reads:

- 1. Sriram Chits & Investments (P) Ltd. commenced operations in Karnataka in the year 1984. The business of the company in Karnataka increased over the years upto 1990-91 when the auction turnover touched Rs.80.39 lakhs.*
- 2. Sriram Chits and Investments (P) Ltd. decided to expand its business in Karnataka by forming a subsidiary company Sriram Chits (Bangalore) (P) Ltd.*
- 3. In the year 1990, Sriram Chits (Bangalore) (P) Ltd. was formed and was carrying on the business of Chit Funds in the State of Karnataka and Sriram Chits and Investments (P) Ltd. gradually stopped floating new groups allowing the subsidiary company to expand.*

4. *Sriram Chits (Bangalore) (P) Ltd. since inception continued to book new business by using the logo of its Holding Company.*

5. *The business growth of Sriram Chits (Bangalore) (P) Ltd. over the years can be inferred from the following figures":*

FY	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97
No. of branches	4	6	7	9	11	19	19
Business (in lakhs)	29.49	66.41	105	81.26	184.01	260.05	359.05
Auction turnover	29.49	95.9	181.15	225.69	348.29	542.28	753.23

6. *The right to use the logo from the Holding Company Sriram Chits and Investments (P) Ltd. was formally given to Sriram Chits (Bangalore) (P) Ltd. the subsidiary company in the year 1994 vide an agreement entered into, which provided for the payment of certain % of the Auction turnover as royalty to Sriram Chits and Investments (P) Ltd.*

7. *By the agreement, Sriram Chits and Investments (P) Ltd., has formally committed itself to the growth and development of Sriram Chits (Bangalore) (P) Ltd. for a further period of 7 years.*

8. *The duty of Sriram Chits and Investments (P) Ltd. does not end with merely transferring the right to sue its logo to its subsidiary company. It also assumes the responsibility to ensure that the name which it has built up over the years is maintained by Sriram Chits (Bangalore) (P) Ltd. Towards thi,ITA Nos 1224 and 1187 of 2015 Sriram Chit Funds P Ltd Hyderabad Sriram Chits and Investments (P) Ltd. has provided financial assistance time and again to Sriram Chits (Bangalore) (P) Ltd. to help its working capital requirements.*

9. *When Sriram Chits (Bangalore) (P) Ltd. commenced operations, all its employees were from Sriram Chits & Investments (P) Ltd. who had prior experience in this line. Even now, Sriram Chits (Bangalore) (P) Ltd. looks for managerial support from Sriram Chits and Investments (P) Ltd. which is being provided. In addition to this, the entire software package of Sriram Chits and Investments (P) Ltd. which was being used by it for its operations was transferred to Sriram Chits (Bangalore) (P) Ltd. for carrying out its day to day routines. The Holding company also holds periodical meetings with the executives of the subsidiary Company in order to monitor its activities.*

10. *The reasonability of 0.5% royal. The use of logo is enhancing the growth of Sriram Chits (Bangalore) (P) Ltd. cannot be under estimated."*

30. The record also shows that holding company was providing financial assistance time and again to the assessee to help in its working capital requirements. The record further shows that when the assessee commenced its operation, all its employees were from holding company who had prior experience in this line. It is claimed that even the assessee looks for managerial support, from its holding company which is again provided. The holding company is also stated to have conducted periodical meetings with the executives of the assessee in order to monitor its meetings. All these and the table extracted above shows that there has been a substantial increase in the new business as also auction turnover from what was only 29.49 lakhs in assessment 1990-91 to Rs.225.69 lakhs in the assessment year 1994-95 and Rs.348.29 lakhs in the assessment year 1995-96 and the business has been substantially growing from year to year. The financing business and conducting of the chit business is not that easy unless it is backed by the promoters who have highest integrity and trustworthiness. M/s Sriram Chits and Investments (P) Ltd. Madras (holding company has been in the names for itself with the investors in the south. We are, therefore, of the considered opinion that the payment of royalty at 0.5% of having regard to the business requirements of the assessee. In our view, the payment is for legitimate benefit taken in the course of business and from any standard, it cannot be said that payment of Rs.1 lakh as royalty is sufficient to produce the business of the magnitude procured by the assessee over the years. The holding company has entered into similar agreements with other subsidiary companies and the CIT(A) has considered the same to be reasonable business outflow property under a specific agreement executed by the parties is very much reasonable ITA Nos 1224 and 1187 of 2015 Sriram Chit Funds P Ltd Hyderabad and should have been accepted as a business expenditure allowable as deduction. We, therefore, delete the disallowance for these two years. The disallowance has been primarily based on a suspicion and incorrect appreciation of hard realities of the business by the revenue authorities. The disallowance is accordingly deleted. 21. Respectfully following the same and for the reasons given above by us we allow this ground of the assessee and delete the disallowance made on this account by the assessing officer. We direct the assessing officer to allow the claim of the assessee".

11. Respectfully following the same, we reject the Revenue's grounds of appeal."

As the order of the CIT(A) is in consonance with the directions of ITAT in assessee's own case as above, we uphold the order of the CIT(A) in allowing the claim of assessee with regard to commission on cancelled chits and claim on royalty payment

in both the years under consideration and accordingly, dismiss the grounds raised by the revenue on these issues.

16. Ground Nos. 1 & 4 in AY 2014-15 are general in nature, need no adjudication.

17. In the result, both the appeals of revenue are dismissed.

18. To sum up, appeals of the assessee as well as appeals of the revenue are dismissed.

Pronounced in the open court on 8th June, 2018.

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 8th June, 2018

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Copy forwarded to:

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3. CIT(A) -3, Hyderabad
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