

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

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1285/Hyd/2015
Assessment Year: 2011-12**

DCIT Circle – 3(1) Hyderabad. (Applicant)	vs.	Share Microfin Ltd., Hyderabad. PAN – AA ECS9243C (Respondent)
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Revenue by :	Shri P.V Subbaraju
Assessee by :	Shri A.G. Sitaraman

Date of hearing	:	18-07-2018
Date of pronouncement	:	27-07-2018

ORDER

PER P. MADHAVI DEVI, J.M.:

This is Revenue's appeal for the A.Y 2011-12 against the order of the CIT(A)-3, Hyderabad dated 05.08.2015. The Revenue has raised the following grounds of appeal.

- “1. The Ld. CIT(A) erred in both in law and on facts of the case.*
- 2. The Ld. CIT(A) erred in deleting the disallowance of rating fee expenditure Rs. 16,60,414/-.*
- 3. The Ld. CIT(A) ought to have upheld the order of the A.O that the rating fee paid to CRISIL and ICRA is capital expenditure in nature since even if the purpose is for availing loan from banks, it is of enduring nature.*
- 4. The Ld. CIT(A) erred in deleting the disallowance of Audit programme expenditure of Rs. 12,84,242/-.*
- 5. The Ld. CIT(A) ought to have appreciated that fact that the assessee had failed to substantiate its claim of audit programme expenses through any supporting evidence and that*

similar claim in similar circumstances was not allowed by CIT(A) for the A.Y 2008-09 and the assessee did not contest this further.

6. The Ld. CIT(A) erred in deleting the addition of Rs. 69,41,861/- made on account of interest accrued on Non Performing Assets, without considering the fact that the assessee company does not fall under the category of State Financial Corporation as envisaged in CBDT circular No. 491 dated 30.06.1987.

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

2. The brief facts of the case are that the assessee company, engaged in the business of providing financial assistance and service to the rural poor, registered with the Reserve Bank of India as a non-banking finance company, provides collateral free loans to various social groups comprising of poor women in the rural areas. It has also provides individual loans as micro enterprises loans and personal loans and follows mercantile method of accounting to report its income. It filed its return of income under the normal provisions and also under the MAT provisions on 28.09.2011.

2.1 During the assessment provisions u/s 143(3) of the IT Act, the A.O observed that the assessee has mentioned an amount of Rs. 59.24 crores as interest accrued. When the A.O enquired as to whether the entire interest on the loans advanced was considered as income of the year, assessee stated that an amount of Rs. 69,41,861/- is not recognized as income because it is attributable to the Non Performing Assets. The A.O, however, was of the opinion that the entire interest has accrued to the assessee and therefore is taxable he accordingly brought it to tax.

2.2 Thereafter the A.O also observed that the assessee has paid certain amount to credit rating agencies such as CRISIL and ICRA and claimed the same as revenue expenditure. The A.O was of the opinion that it is capital in nature and therefore was not allowable. He accordingly made the addition.

2.3 The A.O also observed that the assessee has claimed sum of Rs. 12,84,242/- as incurred towards audit programme, but from the summary of details, the A.O found that the expenditure comprised of food expenses, hall rent, repairs and maintenance, transport charges etc. Observing that the assessee has separately claimed expenditure for audit fees, certification fees etc, he disallowed the sum of Rs. 12,84,242 and brought it to tax. The A.O also made certain other disallowances and consequent additions, against which the assessee preferred an appeal before the CIT(A), who partly allowed the same. Against the relief granted by the CIT(A), the Revenue is in appeal before us.

3. The Ld. DR supported the orders of the A.O while the Ld. Counsel for the assessee supported the orders of the CIT(A) and also submitted that all the issues raised in this appeal are covered in favour of the assessee by the decision of the ITAT in the assessee's own case and also in the case of M/s SKS Micro Finance Ltd Vs. DCIT in ITA Nos. 435/Hyd/2010, 1222/Hyd/2011 and 1789/Hyd/2011 dated 21.06.2013. He also filed a copy of the said orders before us.

4. Having regard to the rival contentions and the material on record, we find that the CIT(A) has allowed the audit programme expenditure by accepting the assessee's contentions that it had 1,076 branches located all over the country and that the branch head and accountant visited the head office / zonal office for verification and consolidation of books of account and that the expenses were incurred on rent for premises hired for conducting this exercise, food expenses, printing and stationary, electrical expenses hiring of generator etc., which were necessary for one time annual exercise of audit and for establishing the integrity and reliability of the books. Since, the Revenue has not been able to rebut this finding of the CIT(A) and the ITAT in the assessee's own case for the A.Y 2010-11 in ITA No. 1681/Hyd/2014, in para 4 of this order has upheld similar deletion, we are inclined to accept this contention of the assessee and do not find any reason to interfere with the order of the CIT(A) in this issue. For the sake of ready reference para 4 is reproduced hereunder:

"4. Coming to the issue that claim was not substantiated it was substantiated stating that assessee had 1007 branches located all over the country and that the Branch Head and Accountant visits the Head Office/Zonal Office for verification and consolidation of the Books of Account and that expenditure was incurred on rent for the premises hired for conducting this exercise, field expenses, printing and stationery, electrical expenses and hiring of generator etc. It was further submitted that this was a onetime annual expenditure which was necessary for establishing the integrity and reliability of the Books. Considering the explanation, Ld. CIT(A) found that explanation of assessee is logical and reasonable and allowed the expenditure. We do not see any reason to interfere with the order of the Ld. CIT(A) as assessee has justified the claim and

as seen from the nature of expenditure, assessee has more than 1007 branches and average expenditure per branch is about Rs. 3,300/- which cannot be considered excessive also. In view of this, we approve the order of the CIT(A) and reject the ground raised by the Revenue”.

4.1 As far as rating fees is concerned, the A.O has treated it as capital in nature, but the CIT(A) has followed the order of his predecessor in the assessee’s own case for the A.Y 2010-11 to hold it in favour of the assessee. We find that this issue has already been considered by the Coordinate Bench of this Tribunal in the assessee’s own case in ITA 1681/Hyd/2014 for the A.Y 2010-11 and the Tribunal has held as under:

5. Ground No. 3 raised by Revenue is as under:

“3. The learned CIT(A) ought to have upheld the order of the AO that the rating fee paid to CRISIL is capital expenditure since even if the purpose is for availing loan from banks, it is of enduring nature”.

5.1. Herein also AO disallowed rating fee of Rs. 28,83,766/- paid to CRISIL and to ICRA for obtaining credit rating for obtaining loans whereas, the AO has stated that similar expenditure was disallowed in earlier year and therefore, rating fee was to be disallowed in this year also. It was submitted before the CIT(A) that in AY. 2008-09, AO has disallowed the sum of Rs. 22,47,200/- paid towards Governance and Value Creation (GVC) rating fee out of the total rating fee expenses of Rs. 29,76,229/-. It was submitted that the GVC rating fee was for certifying corporate governance standard and was not related to grading of assessee’s creditworthiness. It is also submitted that similar rating fee paid in 2008-09 was allowed by the AO himself. Considering the explanation of assessee, Ld. CIT(A) allowed the claim by stating as under:

“8.3 It is clear from the details of rating fees paid during AY. 2008-09, that a sum of Rs. 7,29,029/- had been paid to agencies other than GVC which had been allowed by the Assessing Officer himself in the preceding year. It is also clear from the order of the CIT(A) cited above that his observations had been made in the context of GVC rating fees for rating the corporate governance standards. The

payment by the appellant during the year to CRISIL and to ICRA was not for corporate governance standards rating and was of the same nature as the expenses of Rs. 7,29,029/- incurred during AY. 2008-09. The incurring of the rating expenses was for the purpose of enabling the appellant to avail of loans from banks and financial institutions. These loans were required by the appellant for the micro finance lending in the course of its business. It can, therefore, be held that the expenses were incurred for the purposes of the appellant's business. The disallowance is, therefore, directed to be deleted".

5.1.i. We do not find any reason to disturb the findings of the Ld. CIT(A), as nothing was brought on record to counter the above finding. When AO has allowed similar rating fee in AY. 2008-09 to an extent of Rs. 7,29,029/-, without examining the nature of expenditure AO disallowed the entire amount of similar nature in this year. Considering the details placed on record and order of the CIT(A), we approve the same and reject the Revenue's contentions. Hence, this ground is also rejected".

4.2 Respectfully following the decision of the Coordinate Bench in the assessee's own case on the same issue, we reject the Revenue grounds of appeal No. 2, 3, 4 and 5.

4.3 As regards ground No. 6, it is on the issue of interest accrued on NPS. We find that this issue also is covered in favour of the assessee by various decisions of ITAT particularly in the case of M/s SKS Micro Finance Ltd Vs. DCIT (supra), and the relevant paragraph is reproduced hereunder for the sake of ready reference:

"31. We have heard rival submissions of the parties and perused the material on record. It is not disputed that the interest amount of 9,63,944/- relate to interest on NPAs and has been taken on accrual basis. It is nobody's case that the assessee has actually received the interest income. The prudential norms of RBI or NBFCs have laid down that income from NPAs may not be recognised on accrual basis. The Hon'ble Supreme Court in case of Southern Technologies Ltd. Vs. JCIT (320 ITR 577) held that income recognition with regard to NPAs should be as per section 45Q of the RBI Act. Following the

aforesaid decision of Hon'ble Supreme Court, the Hon'ble Delhi High Court in case of CIT vs. Vasisth Chay Vyapar Ltd., and another (330 ITR 440) held that where even the principal amount itself had become doubtful of recovery it cannot be said that interest thereupon had accrued. The Hon'ble Delhi High Court further held that having regard to the provisions of section 45Q of the RBI and prudential norms issued by the RBI in exercise of its statutory powers where interest was not received on non performing asset and the possibility of recovery was almost nil it could not be treated to have been accrued in favour of the assessee. Therefore, considered in the light of the ratio laid down as above it cannot be said that interest of an amount of Rs.9,63,944/- has accrued to the assessee. In aforesaid view of the matter, we direct the Assessing Officer to delete the amount of Rs.9,63,944. Hence, this ground of the assessee is therefore allowed”

4.4 Respectfully following the said decision, we do not see any reason to interfere with the order of the CIT(A) on this issue as well. Accordingly ground No. 6 is rejected.

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

Pronounced in the open court on 27th July, 2018.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 27th July, 2018

KRK

- 1) M/s Share Microfin Ltd., 1-224/58, Rajeev Nagar, Nacharam, Hyderabad.
- 2) The DCIT, Circle - 3(1) Hyderabad.
- 3) CIT(A)-3, Hyderabad
- 4) Addl.CIT, Range-3, Hyderabad.
- 4) The Departmental Representative, I.T.A.T., Hyderabad.
- 5) Guard File.