

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

**BEFORE HON'BLE SHRI SHAMIM YAHYA, AM
&
HON'BLE SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 7024/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s. Grameen Capital India Ltd., 402, 5th Floor, 36 Turner Road, Opp. Tawa Hotel, Bandra (W), Mumbai – 400 051 PAN:	बनाम/ Vs.	Asst. Commissioner of Income Tax 12(2)(2), Mumbai
स्थायीलेखासं ./जीआइआरसं ./PAN No. AACCG9490K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Sashank Dundu, AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri V. Vidhyadhar, DR

सुनवाईकीतारीख/ Date of Hearing	:	04/06/2018
घोषणाकीतारीख / Date of Pronouncement	:	21/08/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the assessee is against the order of Ld. CIT (Appeal) – 20, Mumbai dated 19.07.16 for AY 2013-14.

3. 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.1,09,89,815/- 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. 1,09,89,815/-.

4. Ld. AR appearing on behalf of the assessee submitted before us that the present case is fully covered by the order of Hon'ble ITAT in ITA No. 783/Mum/16 for AY 2011-12 and ITA No. 5231/Mum/16 for AY 2012-13 in assessee's own case wherein the identical grounds raised in the present appeal have already been decided on merits.

5. On the other hand, Ld. DR fairly agreed to the contention of Ld. AR that the issue is covered in favour of assessee.

6. We have heard both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground has already been decided by the Coordinate Bench of Hon'ble ITAT

in ITA No. 783/Mum/16 for AY 2011-12 and ITA No. 5231/Mum/16 for AY 2012-13 in assessee's own case. The operative portion of the order of Hon'ble ITAT passed in ITA No. contained in para no. 3 to 6, which is reproduced below:-

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.

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and Hon'ble ITAT as mentioned above in assessee's own case, we find that the identical issues have already been decided by the Hon'ble ITAT in assessee's own case for AY 2011-12 & 2012-13 in ITA Nos. 783/Mum/16 and ITA No. 5231/Mum/16. Therefore, respectfully following the decision of the Coordinate Bench of Hon'ble ITAT and in order to maintain judicial consistency, we apply the same findings in the present case which are applicable *mutatis mutandis* in the present case. Therefore, we order accordingly.

7. In the net result, the appeal filed by the assessee stands **allowed** with no order as to cost.

Order pronounced in the open court on 21st August. 2018

<i>Sd/-</i> (Shamim Yahya) लेखासदस्य / Accountant Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (Sandeep Gosain) न्यायिकसदस्य / Judicial Member 21.08.2018
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार
(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai