आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCHE, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.50/Ind/2017
Assessment Year: 2004-05

DCIT-3(1) Indore	**बनाम**/ Vs.	M/s. Madhya Pradesh Financial Corporation, Finance House, Bombay Agra Road, Indore
(Revenue)		(Respondent)
		P.A. No.AADCM6480C

ITA No.144/Ind/2017
Assessment Year: 2013-14

DCIT-3(1) Indore	**बनाम**/ Vs.	M/s. Madhya Pradesh Financial Corporation, Finance House, Bombay Agra Road, Indore
(Revenue)		(Respondent)
		P.A. No.AADCM6480C

Appellant by	Smt. Ashima Gupta, CIT-DR
Respondent by	Shri Ashish Goyal & N.G. Patwa. Advs.
Date of Hearing:	**18.07.2018**
Date of Pronouncement:	**26 .07.2018**

आदेश / O R D E R

PER KUL BHARAT, J.M:

These two appeals filed by the Revenue against two different orders of CIT(A)-I, Indore dated 21/10/2016 & 24.11.2016 pertaining to assessment years 2003-04 & 2013-14. Both the

appeals were taken up together for the sake of convenience and being disposed byway of this consolidated order.

First, we take up Revenue's appeal in ITA No.50/Ind/2017 for A.Y. 2004-05

The revenue has raised following grounds of appeal:

> "i. *Whether on the facts and in the circumstances of the case Ld. CIT(A} has erred in deleting the addition of Rs. 3,02,93,587/- under u/s. 115JB (MAT provisions) of the I.T. Act and addition of Rs. 12,81,214/- both under normal provisions and MAT provisions of the I.T. Act.*
> *(ii) Whether on the facts and in the circumstances of the case Ld. CIT(A} was erred in holding that the MAT provision is applicable in the assessee's case only w.e.f. Assessment Year 2013-14. While the MAT is applicable for the A.Y. 2012-13 and earlier year by the amendment in section through Finance Act, 2012 as per explanation 3 to the section 115JB(2} of the Act and only an option is given to prepare its profit and loss account for the relevant previous year either in accordance with the provision of Part II and Part III of Schedule VI to the Companies Act, 1956 or in accordance with the provisions of the Act governing such company.*
> *(iii) Whether on the facts and in the circumstances of the case Ld. C1T(A} was erred in relying upon the decision of Hon'ble ITAT where Hon'ble ITAT relied upon the decision of Kerala High Court wherein it is held that MAT is not applicable in the appellant case M/s. Kerala Electricity Board for the A.Y. 2002-03 to 2005-06. However, the judgment of Kerala High Court in the case of M/s. Kerala State Electricity Board is distinguishable on the facts of the assessee instant case. M/s. Kerala State Electricity Board engaged in the business of generation and distribution of electricity which is exempt from MAT under the provision of section 115JB vide CBDT Circular No. 13/2001 dated 09/11/2001.*
> *(iv) Whether on the facts and in the circumstances of the*

case Ld. CIT(A} was erred in deleting the addition of Rs. 12,81,214/- made on account of disallowance of claim of deduction of interest income for the period prior to 31/03/1990 while the assessee follows cash system of accounting rather than the mercantile system of accounting and interest income received during the year is to be taxed for the year."

2. Briefly stated facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act 1961(hereinafter called as 'the Act') was framed vide order dated 27.11.2006. During the course of assessment observed that the assessee company had returned loss both under normal provisions and under MAT. The Assessing Officer (AO) has observed in his order as under:

"Thus, in my considered opinion, the submissions of the assessee on these issues are not correct and, therefore, are liable to be rejected. Since these items are not an allowable expenditure in view of the detailed submissions made above, the same cannot be allowed in the computation of normal income.

As far as the computation of book profits are concerned for the purpose of MAT, it is observed that the assessee has not debited either the rebate, decompounding etc. or the interest income pertaining upto 31.03.1990 in the P& L a/c as per the accounts prepared by it. So, they cannot be treated as allowed for the purpose of MAT also. As mentioned above, they are being added under normal computation, being not allowable in view of the cash system of accounting followed by the assessee as well as on the basis of discussion made above and the case laws cited therein.

This is being further mentioned here that as far as the issue of rebated decompounding etc. are concerned the assessee has also taken plea that Hon'ble I.T.A.T., Indore Bench, Indore have for the A.Y. 92-93 & A.Y. 95-96 vide orders ITANo.25/Ind/97 A.Y. 92-93 dated 30.04.1998 and ITANo.266/Ind/2000 A.Y.95-

96 dated 19.09.2002 respectively quashed the CIT's order u/s 263 on the point of deduction claimed on account of rebate, decompounding etc. being not allowable and has decided the issue in favour of the assessee. However, this is mentioned here that the department has not accepted the order of the Tribunal and the appeal has been filed before the Hon'ble MP High Court which is still pending for disposal.

The assessee has further submitted that the Hon'ble I.T.A.T., Indore has recently dismissed the departmental appeals for the additions of the said two types under the Normal Provisions for the A.Ys. 1997-98 to 2001-02 vide orders ITANos.739, 741, 742, 743/Ind/05 respectively. It has also submitted that Hon'ble I.T.A.T., Indore has under the MAT provisions allowed its appeals on the matter of deduction of interest income for the A.Ys. 1997-98 to 2001-02 vide orders ITANos.670, 671,672,673 & 675/Ind/05 respectively and set aside the matter of rebate, decompounding, waiver of interest etc. to be considered on the basis of the P & L A/c prepared as per the Schedule VI by resorting to the file of AO for the A.Ys. 2000-01 & 2001-02 vide orders ITANos.673/05 & 675/05 respectively. However, this is mentioned here that the department is not going to accept the order of the Tribunal and suitable appeals are being made before the Hon'ble MP High Court.

In view of the same, the addition on account of interest income pertaining to A.Y. 1990-91 and earlier and rebate, decompounding, waiver of interest etc. being not allowable shall have to be made in the normal computation of income and MAT, wherever applicable.

And computed the income at loss of Rs.17,65,41,948/- against the returned loss of Rs.20,81,16,749/-. The AO computed the loss under the provisions of section 115JB at Rs.17,69,46,009/-.

3. Against this the assessee preferred an appeal before the Ld. CIT(A) partly allowed the appeal thereby he deleted the addition made by the AO.

4. At the outset, Ld. Counsel for the assessee submitted that the issues in appeal have already been decided in favour of the assessee by the judgment of the Hon'ble jurisdictional High Court in favour of the assessee. He supported the order of Ld. CIT(A).

5. Per contra, Ld. CIT-DR supported the AO however could not controvert the fact that issues involved in this appeal are decided by the Hon'ble Jurisdictional High Court against the assessee.

6. We have heard the rival contentions and perused material on record. We find that in respect of both the issues the Ld. CIT(A) in para no. 5 to 7 of his order has decided the issues as under:

> *"Ground No.1(i): This ground of the appellant is directed against the disallowance of claim of deduction of interest income of period upto 31.03.1990 of Rs.12,81,214/-. The detailed facts as per the assessment order are reproduced at para No.2 above and the detailed written submission of the appellant are reproduced at para No.3 above.*
>
> *5.1 During the course of appellate proceedings the appellant has pointed out that the issue is covered in favour of the appellant by the orders of ITAT for the A.Y. 1997-98 to 2003-04. This fact has also been noted by the AO in the assessment order but the AO has disallowed the amount observing that the department will prefer appeal against the order of the ITAT. The appellant has pointed out that on the issue no appeal has been filed by the department. As the*

matter has been decided by the ITAT in the appellant's own case and as the facts for the year under consideration are identical the disallowance cannot be upheld in appeal. The ITAT has observed as under:-

({We have heard the contentions of both the parties. These appeals are against the order passed u/ s 143 (3) the IT Act. It is an undisputed fact that the assessee but switched over the system of accounting from' Mercantile system to Cash system w.e.f. AY] 991-92. The change in the system of accounting was duly approved by the IDBI and accepted by the Department. Once the assessee has changed the system of accounting from Mercantile to Cash system, he is required to make certain reverse entries of those amounts, which had been credited on due basis in earlier years, but in fact, have not been received so far. The waiver, decompounding or rebate is a notional payment and has to be, allowed as an expenditure incurred by the assessee. We are in agreement with ld AR that in case, it is not allowed, then the same may be treated as Bad Debt/ Trading Loss to arrive at the correct profit of the assessee. Though the amount is recoverable on the settlement or under an agreement and as such it is allowable in both the circumstances either expenditure or Bad Debts. The Ld CIT (A) has rightly observed that the liability of rebate, decompounding and waiver of interest etc has arisen due to the agreements executed by the assessee with its clients and this is certainly allowable liability as the assessee duly claimed the same and the AO was not justified in justified in the rejecting the claim of the assessee that he is now following cash system of accounting and the rebate on interest etc related to the period when the arises see was following the mercantile system of accounting. We further noted that this issue has already been considered by this Bench' Though, in different context while deciding the appeal against the order passed by the CIT u/ s .263 of the I.T. Act for 1992-93 and 1995-96 in ITA No.28/Ind/97 and 266/ Ind/2000 respectively. In the said order, the issue was decided. in favor Of the assessee after discussing the issue at length

on merits. Further, the assessee is a Govt. Financial Institution, which have a number of customers/ debtors whose accounts cannot be settled In one year if the assessee has to allow certain relief under different schemes launched by the assessee from time to time. In view of the above discussion as well as the fact that this issue has been dealt at length by this bench also while deciding the appeal u/ s 263 of the IT Ace we do not find any reason as to why the claim of the assessee should not be allowed: Hence we do not find any infirmity in the order of Ld. CIT(A) therefore this ground of appeal of revenue is demised.

5.2 *In view of the above the disallowance IS directed to be deleted. This ground of the appellant is therefore allowed.*

Rs.12,81,214/- deleted.

6. Ground No. 1(ii): *This ground of the appellant is directed against the disallowance of claim of deduction of rebate decompounding waiver of interest etc. of Rs.3,02,93,587/ -. The detailed facts as per the assessment order are reproduced at Para No.2 above and the detailed written submissions of the appellant are reproduced at Para NO.3 above.*

6.1 *During the course of appellate proceedings the appellant has pointed out that the issue is covered in favour of the appellant by the orders of !TAT for the A.Y. 1997-98 to 2001-02 which decision has been upheld by the M.P. High Court. As the matter has been decided by the I.T.A.T. and the High Court in the appellant's own case and as the facts for the year under consideration are identical the disallowance cannot be upheld in appeal. The High Court in its order in ITA No148/2007, dated 13.4.2007 has observed as under:*

"We have heard the contentions of both the parties. These appeals are against the order passed under section. 143(3) the IT Act. It is an undisputed fact that the assesses has switched over the system of

accounting from Mercantile system La Cash. system with effect from AY 1991-9.? The change in the system of accounting was duly approved by the IDE 1 and accepted by the Department. Once the assessee has changed the system of accounting from Mercantile to Cash system, he is required to make certain reverse entries of those amounts, which had been credited on due basis in earlier years, but in fact, have not have been received so far. The waiver, decompounding or rebate is a notional payment and has to be allowed as expenditure incurred by the assessee. We are in agreement with, Ld. AR that in case, it is not allowed, then the same may be treated as Bad Debt! Trading Loss to arrive at the correct profit of the assessee. Though the amount is recoverable on the settlement or under an agreement and as such it is allowable in both the circumstances either expenditure or Bad Debts. The Ld. CIT(A) has rightly observed that the liability of rebate, decompounding and waiver of interest etc. has arisen due to the agreements executed by the assessee with its clients and this is certainly allowable liability as the assessee duly claimed the same and the AO was not justified in rejecting the claim of the assessee that he is now following the cash system of accounting and the rebate on interest etc. related to the period when the assessee was following Mercantile system of accounting. "

We have heard the learned Counsel for the Revenue and gone through the record.

We find that there is no provision of law that creates an embargo against credit of the amount to which the assessee entitled after the system of accounting is changed. We are fully in agreement with the Tribunal that the change of the system of accounting does not divest the assessee from receiving the benefits which have already accrued to him in the previous years. In this view of the matter, we do not find any merit in this appeal. The appeal is, summarily, dismissed."

6.2 In view of the above the disallowance IS directed to be deleted. This ground of the appellant is therefore allowed.

Rs.3,02,93,587/_ deleted.

7. Ground Nos. 2(i) & 2(ii): The above grounds of the appellant are directed against the addition of the amount of Rs.12,8l,2l4j- and Rs.3,02,93,587 j -, which were subject matter of appeal in ground nol(i) &l(ii) under normal provisions, while making adjustments under the MAT Provisions. The detailed facts as per the assessment order are reproduced at Para No.2 above and the detailed written submissions of the appellant are reproduced at Para No.3 above.

7.2 During the course of appellate proceedings the appellant has pointed out that the issue is covered in favour of the appellant by the order of ITAT for the A.Y. 2008-09 to 2010-11 in ITA Nos.1l7 to 119jlndj20l6 dated 16.08.2016. As the matter has been decided by the ITAT the appellant's own case and as the facts for the yc ar under consideration are identical the disallowance cannot be upheld in appeal. The High Court has observed as under:

"Similarly, in the instant case, while filing the return. of income, 'the, assessee did not claim that the assessee is a State Financial Corporation and the assessee has filed its return under the impression that MAT provision is applicable and paid the MAT on it after it has. come. to the knowledge of the assessee that in the years under consideration 1.e. assessment years 2008-09 to 2010-11, the assessee is not liable for MAT and the MAT is applicable from the assessment year 2013-14 i.e. under section (2) of section 155JB(l). Therefore, the assessee has moved this application for rectifying the order because the assessee IS not covered under MAT provisions u/ s J55JB. The Assessing Officer did not allow the application and the learned CIT(A) has allowed it. Moreover, there are various decisions including the decision of the Hon'ble Kerala High Court

in 196 Taxman. 1 wherein it is held that MAT is applicable from the assessment year 2013-14. Therefore, the learned CIT(A) is fully justified in allowing the appeals of the assessee. We, therefore, find no merit in these appeals of the revenue and dismissed the same:))

7.3 In view of the above as it has been hold that the MAT provisions are not applicable to the appellant for the year under consideration therefore there is no question of any adjustments under MAT provisions. Both the disallowances therefore cannot be sustained and are directed to be deleted in working of MAT Provisions. These grounds of the appellant are therefore allowed.

7. From the above finding of the Ld. CIT(A) is not controverted by the Revenue by placing any contrary binding precedents. Hence, the grounds raised in this appeal are dismissed. Before parting, we wish to observe that the observation of the AO that department is not going to accept the order of the Tribunal and suitable appeals are being made before the Hon'ble MP High Court is against the judicial discipline. The concerned higher authorities would take note of these observations and issue suitable instructions to the lower authorities for refraining making such kind of observations as above. We are not awarding any cost parties to bear their own cost. The appeal of the Revenue is dismissed.

Now we take Revenue's appeal in ITANo.144/Ind/2017 for A.Y. 2013-14

The revenue has raised following grounds of appeal:

"i. Whether in the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition amounting to Rs.19,49,27,753/- made by the AO on account of disallowance

of proportionate interest free funds transferred to M.P. Power Generating Co. Ltd. Jabalpur, whereas company is paying heavy interest on loans.
ii. Whether in the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition amounting to Rs.19,49,27,753/- made by the AO even when the interest free funds were provided to M.P. Power Generating Co. Ltd. Jabalpur without any business or commercial expediency."

8. The only effective ground in this appeal is against deleting the addition amounting to Rs.19,49,27,753/- made by the AO on account of disallowance of proportionate interest free funds transferred to M.P. Power Generating Co. Ltd.

9. Facts giving rise to the present appeal are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act 1961(hereinafter called as 'the Act') was framed vide order dated 29.02.2016 while framing the assessment the AO made disallowance of interest of Rs. 19,49,27,753/-.

10. Against this the assessee preferred an appeal before the Ld. CIT(A) who after considering the submissions allowed the claim and deleted the addition.

11. At the very outset the ld. counsel for the assessee submitted that this issue is also covered in favour of the assessee. He submitted that in the assessee's own case pertaining to A.Y. 2007-

08 similar addition was deleted. However, Ld. CIR-DR supported the orders of the AO.

12. We have heard the rival contentions and perused material on record. We find that the Ld. CIT(A) has given finding on fact as para 34 to 35 of his order as under:

> *"In view of the above categorical finding of fact recorded by the I.T.A.T. in the year 2007-08 in which year the funds were received and invested that there was a direct nexus between interest free funds and investment of same in MP Power Generating Co. Ltd. hence provisions of section 14A of the Act were not attracted and further finding that the investment was for business operation and commercial expediency the disallowance id devoid of merits. For the year under consideration admittedly no new investment has been made and the funds remained invested from the assessment year 2007-08. For the A.Y. 2012-13 also the same issue was involved and the appeal has been decided by the CIT(A)-1, Indore by order in Appeal NO.-IT-117/2015-16 dated 20.05.2016 wherein the disallowance has not been found to be sustainable in view of the above referred order of I.T.A.T. for the A.Y. 2007-08. The factual matrix for the year under appeal remains identical to that prevailing in the A.Y. 2007-08 and A.Y. 2012-13 and hence the findings of I.T.A.T. reproduced above and that of the CIT(A)-1 Indore are valid for the year under consideration also. There is no nexus between the interest bearing funds and the interest free investment and hence it cannot be held that the interest expenditure related to non business purposes. Considering all the above facts and addition of Rs.194927753/- is directed to be deleted. This ground of the appellant is therefore allowed."*

13. This finding on fact is not controverted by the Revenue while placing any material on record we, therefore, following the decision in the assessment year 2007-08 in assessee's own case direct the AO to delete the addition. We do not see any infirmity in the order of

the Ld. CIT(A), same is hereby confirmed. Ground raised by the Revenue are dismissed

14. In the result, both appeals of the Revenue i.e. ITA No. 50/Ind/2017 & ITA NO.144/Ind/2017 are dismissed.

Order was pronounced in the open court on 26 .07.2018.

Sd/-	Sd/-
(MANISH BORAD)	(KUL BHARAT)
CCOUNTANT MEMBER	JUDICIALMEMBER

Indore; दिनांक Dated : 26/ 07/2018

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Private Secretary/DDO, Indore