

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “B” BENCH**

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT  
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. Nos: 1817 & 1896/AHD/2014  
(Assessment Year: 2009-10)**

<b>Dy. Commissioner of Income-tax, Range-8, Ahmedabad</b>	<b>V/S</b>	<b>Symphony Comfort Systems Ltd. 1<sup>st</sup> Floor, Sanskrut, Near Gujarat High Court, Navrangpura, Ahmedabad-380009</b>
<b>Symphony Comfort Systems Ltd. 1<sup>st</sup> Floor, Sanskrut, Near Gujarat High Court, Navrangpura, Ahmedabad-380009</b>	<b>V/S</b>	<b>Jy. Commissioner of Income-tax, Range-8, Ahmedabad</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA. No: 2280/AHD/2016  
(Assessment Year: 2011-12)**

<b>Symphony Comfort Systems Ltd. 1<sup>st</sup> Floor, Sanskrut, Near Gujarat High Court, Navrangpura, Ahmedabad-380009</b>	<b>V/S</b>	<b>Dy. Commissioner of Income-tax, Range-8, Ahmedabad</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN: AACCS6739B**

<b>Appellant by</b>	<b>: Shri Mudit Nagpal, Sr.D.R.</b>
<b>Respondent by</b>	<b>: Shri Bharat S. Shah, A.R.</b>

**(आदेश)/ORDER**

Date of hearing : 06 -06-2018  
Date of Pronouncement : 31-08-2018

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. These three appeals have been filed by the Assessee and the Revenue against each other for the sake of convenience, we would like to dispose of all these appeals together.

2. In ITA No. 1817/Ahd/2014, Assessee has taken following grounds:-

1. *The part of impugned order is contrary to the evidence and material on record, contrary to the principles of law and binding judgments of the Court, contrary to the relevant provisions of the Act and deserves to be quashed and set aside.*
2. *The Learned CIT (A) ought to have consider the appellant's claim of no disallowance u/s 14A of the Act. Such Addition of Rs./6,22,753/- confirmed by learned CIT (A) being contrary to the facts and relevant provisions of the Act deserves to be quashed and set aside. It may be so held now.*
3. *That the learned CIT (A) ought to have consider the right of Appellant to carry forward and set off depreciation loss of Rs. 66,30,969/- for Ay 1998-99 as per Hon'ble BIFR order dated 13.01.2009 (Case No 338/2002), which has specifically directed the income tax department as under:-*
  1. *To allow set of losses beyond eight years period till the networth of the company becomes positive by relaxing the provisions of the section 72 of the Income Tax Act.*
  2. *To allow the adjustment of unabsorbed depreciation from AY 1997-98 to 2001-02 to the year when the net worth of the company becomes positive under section 32 of the Income Tax Act 1961."*

3. At the outset, ld. A.R. has withdrawn ground no. 3 with regard to depreciation loss. Now only ground remains with us u/s. 14A.
  
4. Briefly stated the facts of the case are that the The appellant is Limited Company, engaged in the business of manufacturing & trading of Air Cooler and other consumer durables. The company filed its return of income on 29.09.2009. The details called for by the learned Assessing officer during the proceedings u/s 143 (3) and the learned A.O. determined total income of the appellant at Rs.14, 44,69,112/- after making certain addition and thereafter in appeal, ld. CIT(A) confirmed certain addition. Ld. CIT(A) confirmed the disallowance of Rs. 6,22,753/- u/s. 14A read with Rule 8D of Income Tax Act on the basis that the appellant failed to prove and not giving the correct claim of expenditure. Whereas appellant stated that no bearing fund had been used in making investments on which the income is exempt. Appellant stated that the manufacturing company and investing or parking surplus money on a regular basis in mutual funds (dividend plan) and gets dividend income credited to its bank account. Such dividend income does not form part of total income under section 10 (34). Since there was no specific loan used for investment, except the cash flows generated from operations by way of profits, no identifiable cost could be attributed for the investment.
  
5. We have gone through the relevant record and in the impugned order. Ld. A.R. filed voluminous paper book in support of its contention and stated that his reserve and surplus are of Rs. 156067282/- and his investment of Rs. 125383779/- and same is evident from the paper book at page no. 5. Therefore, Section 14A read with Rule 8D is not applicable to him read with Rule 8D is not permissible. In the case of Pr. Commissioner Of Income

Tax vs. Sintex Industries Ltd. 2018) 93 Taxmann.com 24 (SC) has held in favour of assessee holding that where assessee had surplus fund against which minor investment was made, no question of making any disallowance of expenditure u/s. 14A of the Act arose and therefore, there was no question of any estimation of expenditure under Rule 8D of the Income Tax Act. Thus, respectfully following the aforesaid Apex Court judgment, we delete the addition made by the lower authorities.

6. Now we come to ITA No. 1896/Ahd/2014. In this case, department has taken following grounds:

- 1. The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the addition of Rs.5,36,005/- made on account of commission expenses for which Assessee failed to prove that services had been received wholly and exclusively for Assessee's business.*
- 2.The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the addition of Rs.1,56,000/- made u/s.68 of the Act for which Assessee failed to discharge its onus of proving genuineness and credit worthiness of depositor.*
- 3.The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the disallowance of Rs.14,55,828/- made on account of market research expenses by treating them as capital expenses , since, the benefit for the same wasn't restricted to the year under consideration only.*
- 4.The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the addition of Rs.25,23,558/- made U/S.145A of the Act.*
- 5.The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the addition of Rs.10,93,488/- made on account of disallowance of bad debts without Assessee complying with the requirement laid down u/s.36(2)(i) of the Act.*
- 6.On the facts and in the circumstances of the case, the Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad ought to have upheld the order of the Assessing Officer.*
- 7.It is therefore, prayed that the order of the Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad may be set-a-side and that of the order of the Assessing Officer be restored.*

7. During the year, the assessee claimed expenses on account of "Commission" at Rs. 52,58,367/- and during the assessment proceedings, assessee submitted the necessary details and copies of agreements with such person in support of its claim to whom commission was paid. However, in respect of claim of miscellaneous sale commission of RS. 5,36,006/-, the assessee could not file supportive details before the lower authorities.
8. Even before the Id. CIT(A) in appeal, no additional evidences have been submitted by the assessee and it was contended by the assessee that details of some recipient of commission details could not be submitted because of small amount being non practical or feasible because most of the businessmen are small which are spread out in the other states and total amount involved for such parties, is hardly less than Rs. 50,000/- approximate. In our considered opinion, assessee has given plausible explanation. Hence, we dismiss this ground of appeal of the department.
9. So far deleting the addition of Rs. 1,56,000/- made u/s. 68 of the Act is concerned. During the course of assessment proceedings, assessee submitted the details of persons from whom deposits have been received during the year. The assessee had also submitted confirmation from some of such persons. And he submitted pertains to M/s. Saiyam Electricals, M/s. A.C. Clinic, M/s. Atlantic Air Conditioning, M/s. Ayushi Services, M/s. T.P. Agency, and M/s. Gayatri Refrigeration & Electronics. Ld. A. R. asked assessee to submit the confirmation from the remaining 21 persons from whom small deposits were received to the tune of Rs. 2000 to 25,000/- and all transactions were made through banking channel. And in support of its contention, assessee cited a judgment of Calcutta High Court in the case of CIT vs. United Comm. and

Industrial Co. Pvt. Ltd. reported in 187 ITR 596 (Cal.) whereby the Hon'ble Calcutta High Court held that the primary onus lies on the assessee to prove the nature and source of credits in its account. It is necessary for the assessee to prove prima facie the identity of his creditors, the capacity of such creditors to advance the money and lastly the genuineness of the transactions. Only when these things are proved by the assessee prima facie and only after the assessee has adduced evidence to establish the aforesaid facts does the onus shift on to the Department.

10. In appeal, ld. CIT(A) deleted the addition of Rs. 1,56,000/- made u/s. 68 holding that he is of the view that considering the total volume of appellant's business and nature of appellant's business, such trade deposits as security from small dealers should not be held non-genuine because appellant failed to submit confirmation from these dealers in all the cases. In most of the cases addresses with PAN are available. Hon'ble Gujarat High Court has held in the matter of CIT vs. Ranchod Jivabhai Nakhawa (Tax Appeal No. 50 of 2011) the appellant stands discharged from burden casted u/s. 68 of the Act since name, addresses, PAN available and transactions are through account payee cheques have been submitted. In such case, assessee should not be doubted. Therefore, we dismiss this ground of appeal.

11. So far deleting the disallowance of Rs. 14,55,828/- made on account of market research expenses is concerned, appellant had entered into agreement with one M/s. direct technology solutions Ltd., USA for understanding the potentiality of foreign market by making research on market development. And it has been held in numerous judgment that research expenses can be construed as business expenses u/s 37(1) of the Act with its nature of expenses and its

expediency and facts of the case that assessee has made expenses is incurred exclusively for the purpose of augmenting the business similarly akin to advertisement expenses then the nature is of that revenue and in our considered opinion, same are fully allowable u/s. 37. Therefore, we dismiss this ground of appeal.

12. So far ground relating to deleting the addition of Rs. 25,23,558/- made u/s. 145A of the Act is concerned, an amount of Rs. 25,23,578/- was on account of unutilized/closing balance on account of MODVAT/CENVAT Credit under "Loans and Advances" and the same was not included in the value of closing stock. In this case, assessee has followed the constant accounting system and treatment by following exclusively method of accounting VAT and excise/service tax where by the total purchases at the net value of the above expenses and the closing stock consequently valued excluding the CENVAT/VAT receivable. This system is consistently adopted by the appellant on the basis of recognition of such treatment by the ICAI.
13. Hon'ble Supreme Court has held in the case of Indo Nippon Chemicals Ltd. 261 ITR 275 that MODVAT credit was an irreversible credit available to manufacturers and would not amount to income which was liable to be taxed under the Act. Therefore, the MODVAT / CENVAT credit balance available with the assessee is neither income nor any incentive or subsidy which can be considered as income of the appellant. Therefore, we dismiss this ground of appeal.
14. Now we come to the ground concerning the addition of Rs. 10,93,488/- made on account of disallowance of bad debts.

15. The detailed ledger account reflect that Rs. 10,93,488/- debited as amount written off in the name of M/s. LEEL. The appellant contended that it has not claimed the same as bad debt written off but the same is claimed as loss incurred and directly emanating from business of appellant. This loss is on account of advance given by M/s. LEEL for supply of raw material in view of an agreement for manufacturing & supply of A.C. and spare parts of A.C. But M/s. LEEL neither supplied the material nor responded the legal notices and as evident from the account of M/s. LEEL for 01.04.07 to 31.03.09, the remaining balance of the account were written off.

16. The Hon'ble Gujarat High Court in the case of CIT Vs. Abdul Rajak & Co. (1982) 136 ITR 825 has held that the debt which spring directly from the business of the assessee was allowable as a bad debt and consequently therefore, a trading loss u/s 28(1) of the Act which spring up directly from the business of the assessee even if not allowable u/s. 36(1)(vii) in view of provision of section 36(2) can still be held as allowable as a trading loss u/s 28(1) of the Act. In our considered opinion, the ld CIT(A) has rightly deleted the addition of Rs. 10,93,488/-. Therefore, this ground of appeal is dismissed.

17. In view of the preceding paras, this appeal is partly allowed.

Now ITA No. 2280/Ahd/2016 Assessee's appeal for A.Y. 2011-12

18. In this case, appellant has taken solely ground that ld. CIT(A) has disallowed part amount of Rs.2,30,000/- out of total amount of Rs.6,30,000/- of small security deposits received during the year. The learned CIT(A) has disallowed the said amount without going into the merits of the case therefore such

addition being contrary to the facts and relevant provisions of the Act deserves to be quashed and set aside.

19. In this case, out of Rs. 6,30,000/- of small security deposits, assessee could submit details of Rs. 4,00,000/- with addresses and PAN number of the depositors but for remaining an amount of Rs. 2,30,000/-, assessee could not provide any related and supportive documents. Therefore, in our considered opinion, ld. CIT(A) has rightly disallowed a part amount of Rs. 2,30,000/-. Thus, we dismiss the appeal of the assessee.

20. In the result, ITA No. 1817/Ahd/2014 is allowed and ITA No. 1896/Ahd/2014 of the Department is partly allowed and in ITA No. 2280/Ahd/2016 is dismissed.

Order pronounced in Open Court on 31 - 08- 2018

Sd/-

**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER** True Copy  
Ahmedabad: Dated 31/08/2018

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad