

आयकर अपीलीय अधिकरण,सुरत न्यायपीठ, सुरत
**IN THE INCOME TAX APPELLATE TRIBUNAL
 SURAT BENCH, SURAT**

श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER
 AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.2175/Ahd/2014/SRT & 1576/Ahd/2015/SRT
निर्धारण वर्ष/Assessment Years: 2009-10 & 2010-11

Sahajanand Medical Technologies Pvt. Ltd. Sahajanand Estate, Wakharia Wadi, Near Dabholi Char Rasta, Ved Road, Surat-395004. [PAN AAFCS 7694 L]	Vs.	Asstt. Commissioner of Income-tax, Circle-4, Aayakar Bhavan, Majuragate, Surat.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by	Shri Rajesh Shah, C.A.
राजस्व की ओर से /Revenue by	Shri Srinivas T. Bidari, CIT-DR

सुनवाई की तारीख/ Date of hearing:	19.06.2018
उद्घोषणा की तारीख/Pronouncement on	12.07.2018

आदेश /O R D E R

PER O. P. MEENA, ACCOUTANT MEMBER:

1. These two separate appeals by the Assessee are directed against the separate order of learned Commissioner of Income tax (Appeal)-II, Surat (in short “the CIT(A)”) dated 05.05.2014 &

05.03.2015 pertaining to assessment made u/s. 143(3) of the Act, 1961.

ITA No.2175/Ahd/2014/A.Y.2009-10.

2. Grounds of appeal are as under:

- 1) The Hon'ble CIT (Appeal)-II, Surat has erred in confirming the addition of Rs.10,54,100/- on account of write off loans and advance made by the Additional Commissioner of Income-tax.
- 2) The Hon'ble CIT (Appeal)-II, has erred in enhancing the assessment by Rs.1,27,290/- on account of write off loans and advances.

3. Brief facts are that the assessee has written off Rs.11,81,390/- under the head loans and advances. The assessee was asked to explain bad debts on account of loans and advances as to why same should not be disallowed as the same does not satisfy the condition u/s. 36(2)(i) . The assessee vide letter dtd. 15.07.2011 submitted as under :

*“The assessee has submitted a detailed reply vide letter dated 15.07.2011 . The assessee has submitted as under :
“The assessee has written of the debts of subsidiary company Sahajanand Medical Technologies Inc. based in USA. The assessee is engaged in manufacturing of medical device and such device is used in every part of the word.*

There is certain law of land and the assessee company has to take necessary approval and also awareness of the product in general public. Therefore, the assessee company has made 100% subsidiary in USA for business in American continent . The subsidiary company of Assessee Company and activity of subsidiary company will directly benefit to the parent assessee company. There were no funds available with subsidiary company hence the assessee company has to look after the needs of its subsidiary company. The assessee company has sent the required money as loan to subsidiary in F.Y.2006-07 and 2007-08. The subsidiary company has provided much needed support to the parent company. The assessee company has got huge business from Latin America by the efforts of the subsidiary company. The assessee company has exported goods worth of Rs.1414.50 lacs in F.Y. 2006-07. The subsidiary company has not started the direct business but support in expanding business of parent company and also provided support in form of latest development, hence, there was no revenue for subsidiary company. The assessee company has done business from Latin America directly and felt no need for subsidiary company. There was no revenue in the hand of subsidiary company and it was unable to pay the loan given by the assessee company. The parent assessee company, after passing board resolution has written off the debts of subsidiary company in its books of accounts. Out of total Rs.11,81,390/- Rs.1,27,290/- is related to the current year and the same is allowable out of current year's income as trading loss. The assessee company has fulfilled all the required conditions stipulated in section 36(1)(vii) r.w.s. 36(2) of the Act by writing off the debts in the books of accounts. Since, the assessee has fulfilled all the condition of section 36, the debt written should be allowed as to written off".

- 3.2 However, the A.O. has given his findings on and it is seen after examination of the reply that the assessee's reply

is not acceptable. The money has been advanced to M/s. Sahajanand Medical Technologies Inc. USA, a sister concern of the assessee. The same is in the nature of loan as is clear from the ledger account itself. Write off of loans and advances is allowable as a deduction only in the case of money lent in the ordinary course of business of banking or money lending which is carried on by the assessee. The assessee is not carrying on such business. Hence, write off of loans and advance is not permissible in the case of the assessee. The assessee has alternately contended that the same should be allowed as a trading loss as the money has been given for the business purpose of the assessee. The alternative contention of the assessee is acceptable in respect of money of Rs.1,27,290/- given to M/s. Sahajand Medical Technologies Inc. USA during the year. However, the same is not acceptable in respect of earlier years as if it all they will constitute prior period expenses and will not be allowable in the current year as trading loss. Hence, an amount of Rs.10,54,100/- (Rs.11,81,390/- minus Rs.1,27,290/-) is liable to be added as the claim of the assessee is not allowable u/s. 36(1)(vii) as it does not satisfy condition laid down in section 36(2)(i). The same is added to the income of the assessee.

4. Being aggrieved, the assessee has filed an appeal before CIT (A), wherein it was submitted that an amount of Rs.11,81,390/- was given as loan to subsidiary company of the appellant out side India. The appellant claimed that the subsidiary company did support its business and in exchange of support, the loans were advanced to subsidiary company. The appellant further claimed

that loans were advanced to spread business to America. It was further argued that the main company was unable to pay the loan amount, therefore, it was written off and claimed u/s. 36(1) r.w.s. 36(2) of the Act. The CIT (A) observed that the A.O. disallowed the claim on the ground that appellant was not doing any money lending business and therefore, the claim made u/s. 36(1)(vii) r.w.s.36(2) was not allowable. Further, the alternative plea of the assessee that amount of Rs.1,27,290/- given in A.Y. 2009-10 was allowable deduction u/s. 37(1) was accepted by treating the same as Revenue Expenditure / trading loss. While the amount given in earlier years was not allowed for treating it as 'prior period expenses'. This treatment given by the A.O. is not correct as the loan given to subsidiary company cannot be treated as 'Revenue Expenditure' of the appellant. Therefore, the appellant was asked to show cause as to why assessment should not be enhanced by Rs.1,27,290/- . The appellant sticks to its submission that 20% amortization and full loan waiver should be

allowed. However, this contention of assessee was not found in accordance with law and as the loan waiver was on account of capital loss . In several case laws, the loan waiver in the hands of the recipient has been treated as capital receipt. By the same logic, the corresponding expenditure will be of 'Capital Expenditure'. The CIT (A) has placed reliance in the case of Luxor Writing Instruments (P Ltd. (2013) 31, taxmann.com.408 [Delhi] and IFB Securities Ltd. 14 SOT 8 (Kolkatta). Accordingly, the addition of Rs.4,10,54,160/- was confirmed with enhancement income by Rs.12,72,900/-.

5. Being aggrieved, the assessee filed this appeal before Tribunal. The learned counsel for the assessee submitted that the assessee is engaged in the manufacturing and trading of bare mounted and drug eluting stents used in Medical Science (Heart) etc. It was submitted that the assessee company has two subsidiary companies one in USA (M/s. Sahajanand Medical Technologies Inc.) and another in Canada (Sahjanand Medical Technologies Pvt. Ltd.)

of only project. The subsidiary company was not having any revenue income to meet its administrative expenses because all business convinced is transfer to parent a company. The assessee company has sent money in form of unsecured loan to meet its administrative expense. The assessee company has got huge business from Latin America. This was also brought to the notice of the assessee. Appellant has got huge business of Rs.94,87 lakhs in 2007-08 Rs.77.72 lakhs in A.Y. 2008-09 . Apart from the business, the appellant has got 1.00 Million of USA company , a big company for RND activities. Huge profit company. Therefore, the A.O. and CIT (A) held that the said company was to only promote the business of the assessee but expenses transferred by assessee company are of capital in nature. It was further submitted that Mr. Ammad, Director of subsidiary company to the appellant company on discontinue of as pointed out Mr. Ammad, and most of the money was used for payment of service rendered by said Ammad to subsidiary company and got business to the appellant

company. The appellant company on discontinuance of subsidiary companies has appointed Mr. Ammad and paid remuneration for his service, which is allowed as business expenditure. The learned counsel placed reliance in the case of Punjab National Vs. ACIT No. 747/Ahd/2009 ITAT Delhi dtd. 26.4.2011.

6. We have heard the parties, considered the fact and perused material on record. It is seen that the assessee company has written off loans and advances given to its two subsidiary companies situated in USA and Canada. However, it appears that the assessee company has not received any interest income from such loans and advances. Therefore, for no income was generated from such loan. Therefore, the claim trading liability in the books of assessee company is nota in accordance with law. Further, write off of such loans and advances is not revenue expenditure as same related to company promoting the subsidiary companies. Therefore, we did not find any infirmity in the order of CIT(A),

accordingly findings recorded by the A.O. and CIT (A) upheld. This ground of appeal is, therefore, dismissed.

7. Ground No.2 relates enhancing the assessment by Rs.1,29,670/- on account of loans and advances in investment of 100% subsidiary company. Brief facts of these grounds are that the A.O. found that the assessee has claimed loss of investment of 100% subsidiary company for Rs.1,27,670/- . The A.O. further noted that this amount is claimed as bad debt written off, but submission made during the course of assessment proceedings it was claimed as business loss. The A.O. observed that the assessee company and subsidiary company are two different entity and they are taxed separately in the respective country, therefore, the A.O. disallowed Rs.1,29,670/- as business loss holding to be loss of capital.

8. Being aggrieved, the assessee has filed appeal before the CIT(A), wherein it was claimed that claiming loss of investment of Rs.1,29,670/- under the head bad debt was a mistake but has

claimed to be the business expenditure. The appellant has shown in Schedule 6 of investment of its audit report made the provision for diminution in value of investment in last year which has been pointed out by the A.O. also. Therefore, the facts on record shows that it the mere loss of capital and not a business loss. Therefore, the addition made by the A.O. was upheld.

9. Being aggrieved, the assessee has filed this appeal. The learned counsel for the assessee repeated the same submission as made before the A.O. and CIT(A). Per contra, the learned CIT, DR relied on the order of the CIT(A). We have considered the facts and find that the amount of Rs.1,27,670/- was on account of investment loss in 100% subsidiary company, therefore, the said loss is on account of capital. Therefore, we are of the considered opinion that the loss claimed on account of capital loss and not a business loss. Therefore, the lower authority was justified in disallowing the same. In view of this matter, we do not find any

infirmity. Therefore, the order of the lower authorities are upheld.

This ground of appeal is, therefore, dismissed.

10. Ground No.3 relates confirming addition of Rs.8,56,156/- on account of expenses incurred Infinnium Core Trial in core trial prior period expenses. The A.O. found that the assessee has claimed expenses of Rs.8,56,156/- on account of clinical trial expenses, but these expenses pertain to F.Y.2008-09 and not to the relevant assessment year. Therefore, the A.O. disallowed these expenses.

11. Being aggrieved, the assessee filed the appeal before the CIT(A). The CIT(A) noted that the appellant had submitted that the patients were registered for trial in the F.Y.2008-09 but the trial particular in medical field is never complete in one day. However, on perusal of the details, the CIT(A) found that the A.O. has the copies of email communication between the appellant and the various hospitals, communication made to the New India Assurance Company Ltd. for enrolment of patients but these details for

relevant F.Y.2008-09 and not relevant to assessment year.

Therefore, the appellant has admitted this fact had been claimed that the trial continue in the subsequent year but no proof was provided during the assessment proceedings. In view of the above facts, the addition made by the A.O. is upheld.

12. Being aggrieved, the assessee has filed this appeal before the Tribunal. The learned counsel for the assessee argued that the trial particular in medical field is never completed in one day and it took longer time, therefore, the assessee company has incurred the expenses in subsequent year i.e. 2009-10, hence accounted in the correct allowable expenses.

13. Per contra, the learned CIT DR submitted the order of the CIT(A). We have considered the facts and heard rival submissions. It is seen that the A.O. has examined the details of such as name of patient, insurance policy, name of hospital etc. during the course of assessment proceedings and found that payment pertain to last year. Further, the CIT(A) has also observed that the

assessee company has not furnished any evidence to so that the expenses were incurred during the year under consideration.

Therefore, we do not find any fault of learned CIT(A), accordingly, same is upheld. This ground of appeal, is, therefore, dismissed.

14. Ground No.4. Brief facts of these grounds are that at the time of filing the return of income, necessary permission to claim weighted deduction u/s. 35(2AB) in the computation of total income was not received by the appellant company , hence, deductions were claimed u/s. 35(1) for revenue expenditure and u/s. 35(2)(ia) for capital expenditure. But not claimed weighted deduction u/s.35(2AB) of the Act. The reason for not claiming in the return of income was as permission required u/s. 35(2AB) was received vide letter dtd.10.10.2011.

15. Being aggrieved the assessee filed appeal before the CIT(A). However, the CIT(A) was of the view that whether the assessee's claim any deduction filed before the A.O. or the appellate proceedings and claimed revised by way of filing computation ,

revised statement of income after filing the original return other than by way of filing revised return of income as contemplated under section 139(5) of the Act. The CIT(A), therefore we are of the view that claim can be made by the assessee after filing of the original return other than by filing revised return. Since, the appellant never claimed the deduction in the return of income nor filed any revised return of income. Hence, this ground of the assessee was dismissed.

16. Being aggrieved, the assessee has filed this appeal before this tribunal. The learned counsel for the assessee submitted that the appellant company is recognized by Government of India, the expenses incurred by the appellant are eligible u/s.35(2AB) of the Act for which the appellant company has to submit its data, Ministry of Science and Technology, Govt. of India and after preparing provided issue certificate form 3CM, in which certified for claim weighted deduction. These details were submitted before the A.O. as appearing paper book 129 and 130. Therefore,

the learned counsel contended that it is a duty of learned A.O. to give legitimate deduction for bonafide reasons. We have considered the facts and material on record. We have also heard and rival submissions. We find that the assessee has obtained approval of Ministry of Science and Technology and facility u/s.35(2AB) of the Act from Ministry of Science and Technology vide letter dtd.11.10.2011. The said letter was submitted before the A.O. However, the A.O. and CIT(A) did not entertained the same on the ground that the such claim filed revised return. We find that the assessee has bonafide claim and due to late receipt u/s. 35(2AB), the assessee cannot deny bonafied legitimate deduction as provided in this assessment. Therefore, we direct to allow weighted deduction u/s. 35(2AB) of the Act in accordance with law. This ground of appeal is, therefore, treated as allowed.

17. In view of above, the appeal for A.Y. 2010-11 in ITA No.1576/Ahd/2015 is partly allowed.

18. In the result, appeal for A.Y. 2009-10 in ITA No.2175/Ahd/2014 is dismissed and appeal for A.Y. 2010-11 in ITA No.1576/Ahd/2015 is partly allowed.

19. Order pronounced in open court on 12-07-2018.

Sd/-

(सी.एम.गर्ग /C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

सुरत/ Surat, दिनांक Dated: 12th July, 2018

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Surat