

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “A” BENCH

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

**ITA. No: 933 & 1313/AHD/2016
(Assessment Year:1999-2000)**

Ambalal Sarabhai Enterprises Ltd., Wadi Wadi, Baroda-390023	V/S	Dy. Commissioner of Income Tax, Circle-1(1)(1), Vadodara
Dy. Commissioner of Income Tax, Circle-1(1)(1), Vadodara	V/S	Ambalal Sarabhai Enterprises Ltd., Wadi Wadi, Baroda-390023
(Appellant)		(Respondent)

PAN: AABCA6893K

**Appellant by : Shri Bandish Soparkar, A.R.
Respondent by : Shri S.K. Dev, Sr. DR**

(आदेश)/ORDER

Date of hearing : 05 -12-2018
Date of Pronouncement : 17 -01-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. These two appeals have been filed by the assessee and revenue against each other. For the sake of convenience, we would like to dispose of by way of common order.
2. ITA No. 933/Ahd/2016 Assessee's appeal for A.Y. 1999-2000. The has taken following grounds of appeal:
 1. *CIT(A) has grievously erred in fact and in law in confirming disallowance of interest on Bonds issued to the shareholders of erstwhile Standard Pharmaceuticals Ltd. (SPL) amalgamated with appellant company as per the scheme of amalgamation.*
 2. *CIT(A) has grievously erred in fact and in law in upholding disallowance of Rs.2,46,327 being 5% of "other expenses" of Rs.49,26,541.*
 3. *CIT(A) has grievously erred in fact and in law in not adjudicating additional ground raised during the course of proceedings before him praying that employer's contributions to PF etc. paid even after end of previous year but on or before due date of return of income be held as not disallowable u/s.43B of the Act.*
 4. *CIT(A) has grievously erred in fact and in law in not allowing entire amount of claim of PF damages, levied u/s.146 of the P.P. Act, of Rs. 2,26,888/- and, instead, allowing claim of 40% of the damages by holding it as compensatory in nature.*
 5. *CIT(A) has grievously erred in fact and in law in upholding disallowance of salary and wages of employees of appellants' Packart Press Unit.*
 6. *CIT(A) has grievously erred in fact and in law in upholding disallowance u/s.40A(9) in respect of payment to Ambalal Sarabhai Foundation.*
 7. *CIT(A) has grievously erred in fact and in law in upholding disallowance 50% of foreign travel expenses of working directors even though issue is decided in appellants' favour by him in AY 2001-02, 2002-03, 2003-04 and 2009-10 and Department has not challenged the issue further before Hon. ITAT.*
 8. *CIT(A) has grievously erred in fact and in law in rejecting appellants' claim that employees' PF contribution paid within the previous year itself though with a delay could not be taxed u/s. 2(24)(x) r.w.s. 36(1)(VA) of the Act by following decision of Hon Gujarat High Court in case of COMMISSIONER OF INCOME TAX vs. GUJARAT STATE ROAD TRANSPORT CORPORATION reported at (2014) 366 ITR 170.*
3. The brief facts of the case are that the appellant has filed its return of income on 31/12/1999 declaring income from house property at Rs.9,036/-, income

from other sources at Rs.12,35,176/- and business loss of Rs.30,43,96,755/-. In the order passed u/s.143(3), several additions/disallowances were made and the income was assessed at a loss of Rs,27,07,64,210/-.

4. So far first ground is concerned, the appellant has challenged the action of the AO of disallowing interest on Bonds issued at the time of amalgamation of SPL amounting to Rs.1,40,213/-. Identical issue was involved in appellant's own case for earlier assessment years. The CIT(A)-1, Baroda in his order dtd.31/05/2001 in appeal No.CAB-1-67/2001-2002 for AY. 1998-99 has held that such interest is not allowable as it was held to be not for the purpose of business and ld. CIT(A) followed the decision and disallowance was upheld.
5. Before us, ld. A.R. has fairly conceded that this ground is against the assessee. Ground no. 1 is accordingly dismissed.
6. Now we come to ground no. 2 with regard to upholding disallowance of Rs. 2,46,327/- being 5% of other expenses.
7. Ld. A.O has discussed this issue at page no. 10 to 12 on Para No. 9 and ld. CIT(A) has discussed the issues at page no. 3 at para No. 4.4. In support of its contention, assessee cited an order of ITAT in ITA No. 1461/Ahd./2016 wherein it is held:

41. The Revenue's eleventh ground of appeal relates to disallowance effected @ 5% out of the assessee's claim of expenditure on account of tapes and floppies (Rs.1.10 lacs), miscellaneous expenses (Rs.27.45 lacs), telephone expenses (Rs.70.88 lacs) and vehicle expenses (Rs.52.88 lacs), i.e.. at an aggregate of Rs.152.31 lacs. The expenditure stands disallowed on account of its un-verifiably so that a pan thereof is inferred by the A.O as being not laid out for business

purposes, estimating the non-business user at five per cent. In appeal, the same stood allowed by the Ld. CIT(A) on the basis of the assessee having properly substantiated the said expenditure, and following the decision by Tribunal cited before him.

42. We have heard the parties and perused the material on record. The A.O. has we find adopted a global approach in the matter and brought about the instances where the assessee was unable to substantiate its claim of the relevant expenditure being incurred only and exclusively for business purposes. No presumption it is trite, can hold, and it is only on a determination of the discrepancies in the assessee's claim can be proceed to estimate the same by applying a percentage that he considers justified, also delineating the reason for the same, so that the appellate authority would while adjudicating on quantum, i.e., where required to do so, be aware of the same, and consider it on merits. Under the circumstances, we find no infirmity in the order of the Ld. CIT(A), and uphold the same on this ground.

8. We find Co-ordinate Bench decided matter in favour of assessee as noted above. We find that ld. CIT(A) has already granted relief to the assessee in assessment year 1995-96 & 1996-97 in similar facts. So, we allow this ground of appeal.
9. Now we come to confirming disallowance u/s. 43B in respect of employer's contribution to PF before due date of return.
10. The ld. A.O. has discussed issue at page no. 12 & 13 in Para 10 and ld. CIT(A) has discussed this issue at para 4.5 and 4.6 the same is reproduced:

4.5. Vide 6th Ground of appeal, the appellant has challenged the action of the AO of disallowance of Employer's Contribution of PF, FPF etc. of Rs.15,19,481/- u/s.43B(b) by reckoning that the due date for the payment of contribution is to be computed from 20th day from the close of the month irrespective of whether salaries/wages of particular month paid or not. The appellant's contention is that the due date is to be computed from the date of actual payment of

salaries/wages after considering the payment of contribution within the year, though with a delay. During the course of the appellate proceedings, the appellant has relied upon the decision of Hon'ble Supreme Court of India in the case of Alom Extrusion Ltd 319 ITR 306 [SC] and stated that Employer's contribution of PF etc. paid within the year, though with a delay as claimed in the return of income and contributions paid even after the end of previous year but before the due date of return of income cannot be held as disallowable u/s.43B of the Act.

4.6. I have considered the appellant's submission and AO's observations. Identical issues were involved in appellant's own case for AY. 1998-99 and the disallowance made by the AO on the same basis has been directed to be deleted in the appellate order of that assessment year. Following the same, the disallowance made in the current year is also directed to be deleted.

11. Since ld. CIT(A) has followed earlier year in assessee's own case, thus, we allow this ground of appeal.

12. Now we come to confirming disallowance of Rs. 226888/- being claim of damages levied u/s. 14B. The other grievance of the assessee is confirmation of disallowance of Rs. 3,78,148/- being claimed of damages. When the matter was called for hearing, the ld. A.R. submitted that 40% of the damages were treated compensating in nature and accordingly allowed business expenditure which works out to Rs. 1,51,259/- . We find merit in the plea of the assessee accordingly Rs. 2,26,888/- is confirmed.

13. The ld. A.O. has discussed at page no. 14 & 15 at Para no. 11 and ld. CIT(A) has discussed at page 4 & 5 in Para 4.7 and same is reproduced:

4.7. Vide 7th Ground of appeal, the appellant has challenged the action of the AO of disallowing of PF damages U/S.14B of the PF Act amounting to Rs.3,78,148/-. In the appellate order for AY.1998-99, identical issues were involved and in the appellate order, 40% of the disallowance has been considered

as compensatory in nature and has been allowed by way of deduction in computation of total income. Following the same, 40% of Rs.3,78,148/- i.e. Rs.1,51,259/- is directed to be allowed as a deduction in computation of income and disallowance of the balance amount is upheld.

14.Ld. A.R. has cited an order of ITAT in which ITAT had decided the issue against the assessee. Therefore, respectfully following the same, we confirm the disallowance of Rs. 2,26,888/- being claim of damages levied u/s. 14B.

15. Now we come to ground relating to upholding disallowance of Rs. 45,85,598/- being salary and wages of employees of Packart Press Unit.

16. The ld. A.O. has discussed this issue at page no. 16 to 19 in Para 13 and ld. CIT(A) has discussed the issue at page no. 8 & 9 in Para 4.9. Ld. A.R. cited an order of ITAT.. This issue we set aside to the file of the A.O. to decide the matter. The relevant portion of the ITAT is reproduced:

49.4 In view of the foregoing, we are of the clear opinion that only the expenses as stated incurred or in relation to which the liability has, in terms of underlying contract, stands accrued , shall be allowed as an expenditure in the assessment for the current year, and set aside the matter back to the file of the A.O. to decide the same after proper examination of the relevant facts, giving reasonable opportunity to the assessee to present its case before him, and decide as per law.

17. Respectfully following the ITAT order, we also set aside this issue to the file of the A.O. to decide as per the directions were given in aforesaid case.

18. Now we come to confirming disallowance made u/s. 40A(9) in respect of payment to Ambalal Sarabhai Foundation.

19. The ld. A.O. has discussed the issue at page no. 19 in Para 14 and ld. CIT(A) has discussed at page no. 9 & 10 in Para 4.10. And ld. A.R. cited an order of ITAT wherein it has been held:

28. Ground No.1.9 of Revenue's appeal:- The issue involved in this ground has been decided by the CIT(Appeals) as per his findings contained in paragraph No. 18. 4 of the appellate order, which read as under:-

"18.4. I have heard the appellant's counsel and I find considerable force in his contentions and I hold that the payments of Rs.3,32,065/- is outside, the purview of Sec.40A(9). Therefore, I accept appellant's claim and the assessing officer is directed to grant deduction of Rs.3,32,065/- from its total income and appellant gets relief to that extent. "

29.The Ld.DR has supported the order of the Assessing Officer, whereas, the ld.counsel for the assessee has supported the order of the CIT(Appeals) by submitting that the ground that the payment in question were outside the scope of provisions of Section 40A(9) of the Act.

30. After having considered the rival submissions, facts and circumstances of the case as well as the provisions of Section 40A(9) of the Act, we do not find any infirmity in the order of the CIT(Appeals), which is confirmed. Revenue's this ground is rejected.

20. Respectfully following the above said order, we hold that payment made to Ambalal Sarabhai Foundation is outside the scope of provision of Section 40A(9) of Income Tax Act. Therefore, we decide this ground in favour of the assessee.

21. Now we come to ground relating to confirming disallowance of 50% of Foreign travel expenses.

22. The ld. A.O.; has discussed this issue at page no. 25 in Para 22 and ld. CIT(A) has discussed at page no. 15 to 18 in Para 4.17. As we can see, one of the Director Dr. Anand Sarabhai visited USA for company related discussion with various customers to whom company is exporting its product vis Amphoteicin-B and met various other parties for export and has submitted foreign tour details to the lower authorities. Therefore, we allow this ground of appeal.

23. Now we come to ground relating to confirming disallowance made for employees contribution.

24. Ld. CIT(A) has discussed this issue at page no. 19 Para 4.19. This issue is covered against the assessee by the judgment of Hon'ble Gujarat High Court in the matter of GSRTC 91 taxmann.com 100 (Guj.) Therefore, respectfully following the Jurisdictional High Court, we dismiss this ground of appeal.

25. In the result, appeal filed by the Assessee is partly allowed.

26. ITA No. 1313/Ahd/2016 Revenue's appeal for A.Y. 1999-2000. The revenue has taken following grounds:

1. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition/disallowance made by the AO on account of Buying commission to Teknoserv (Jersey) Ltd without appreciating the findings of the AO in assessment order and also the fact that the buying commission payable abroad is merely a provision and has not been remitted to Teknoserv' (Jersey) Ltd.*
2. *On the facts and circumstances of the case and in law, the Ld, CIT(A) has erred in allowing expenses of Rs.204300/- without appreciating the findings brought by the AO in the assessment order and also ignoring the fact that the*

assessee failed to make payments within the stipulated time as in-section 43B of the Act."

- 3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing various expenses aggregating to Rs.256165/- without appreciating the findings brought by the AO in the assessment order and also ignoring the fact that the assessee failed to corroborate the claims with supporting evidences.*
- 4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing expenses of Rs.378148/- without appreciating the fact that the said expenses represents penalty damages for infringing the provisions of PF Act which is not in the nature of compensation and are not allowable business expenses with the business conducted during the year.*
- 5. On the facts and circumstances of case and in law, the Ld, CIT(A) erred in allowing expenses of Rs.670778/- without appreciating the finding brought by the AO in the assessment order and also ignoring the fact that the assessee failed to give broad bifurcation of selling expenses and relations of such expenses with the business conducted during the year.*
- 6. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing expenses of Rs,746027/- without appreciating the fact that the company is following mercantile system of accounting in which the expenses related to prior period are not allowable expense. Reference is drawn from the decision of the Hon'ble High Court of Kerala in the case of Shree Bhagawathy Textiles Ltd, vs.Commissioner of Income-tax (2011) 199 Taxman. 14(Ker.) wherein it is held that prior period expense is not to be deducted from profit.*
- 7. The Ld. CIT(A) erred in allowing expenses of Rs,79478/- as debit balance written off without appreciating the fact that the debit balances are allowed to be written off in books if they are covered u/s. 36(2)(i) of the Income tax Act, 1961.*
- 8. The Ld. CIT (A) erred in allowing expenses of Rs.448924/- claimed as foreign exchange difference without appreciating the fact that such liabilities would become ascertained liability on the date of actual payment and it would be allowed in the year of payment.*
- 9. Ld. CIT(A) erred in allowing payment of Rs. 12551189/- made to ONGC without appreciating the fact that the assessee is following the mercantile system of accounting in which the expenses related to prior period are not allowable expenses.*

27. So far the issue deleting addition of buying commission to Teknoserv(Jersey) Ltd.
28. Ld. A.O. has discussed the same at page nos. 5 & 6 in para 5 and ld. CIT(A) has discussed this issue at page nos. 2 & 3 in Para 4.1. The ld. A.O. disallowed the payment of Rs. 3086065/-. An identical issue were involved in appellant's own case for earlier year in CIT order for assessment year 1998-99 it has been mentioned that the issue decided in favour of the assessee in earlier year and accordingly commission payment of Rs. 3086065/- was allowed by the ld. CIT(A). Ld. A.R. cited an order of Co-ordinate Bench in ITA No. 1956/Ahd/2001 by commission paid to Teknoserv (Jersey) was allowed by the ITAT.
29. Now we come to the ground allowing of Festival allowance of Rs. 2,04,300/-. The ld. A.O. has discussed this issue at page no. 7 to 9 in Para 7 and ld. CIT(A) has discussed the issue at page no. 3 in Para 4.9. The ld. A.R. cited an ITAT order in ITA No. 1956/Ahd/2001 wherein this allowance was allowed by the ITAT. Therefore, following the decision of Co-ordinate Bench, we dismiss this ground of appeal of the revenue.
30. Now we come Misc. expenses, Telephone expenses, Vehicle expenses etc. to the tune of Rs. 2,56,165/-. The ld. A.O. has discussed this issue at page no. 10 to 12 in Para 9 and ld. CIT(A) has discussed this issue at page no. 3 in Para 4.4 and in support of its contention, ld. A.R. cited an order of Co-ordinate Bench in ITA No. 1956/Ahd/2001 wherein similar expenses were allowed by the ITAT. Thus, respectfully following the decision of Co-ordinate Bench, we dismiss this ground of appeal of the revenue.

31. Now we come to ground related to 40% of Provident Fund damages of Rs. 3,78,148/-. The ld. A.O. has discussed this issue at page no. 14 to 15 in Para 11 and ld. CIT(A) has discussed this issue at page no. 4 & 5 in Para 4.7 and in support of its contention, ld. A.R. cited an order of Co-ordinate Bench in ITA No. 1956/Ahd/2001 wherein ld. CIT(A) granted similar relief to the assessee. And Thereafter in revenue's appeal, similar ground though amount was different. ITAT dismissed the ground of the revenue. Respectfully following the ITAT order, we dismiss this ground of appeal of the revenue.
32. Now we come to ground related to selling expenses of Rs. 6,70,778/-. The ld. A.O. has discussed this issue at page no. 15 & 16 in Para 12 and ld. CIT(A) has discussed this issue at page no. 5 to 8 in Para 4.8 and in support of its contention, ld. A.R. cited an order of Co-ordinate Bench in ITA No. 1956/Ahd/2001 wherein similar ground was dismissed by the ITAT. Therefore, respectfully following the order of the Co-ordinate Bench, we dismiss this ground of appeal of the revenue.
33. Now we come to ground related to prior period expenses of Rs. 7,46,029/-. The ld. A.O. has discussed this issue at page no. 22 in Para 17 and ld. CIT(A) has discussed this issue at page no. 11 & 12 in Para 4.1.2.1. In this case, assessee filed complete details before the ld. A.O. but A.O. was of the opinion that expenses pertained to earlier year and same cannot be allowed in the year in which it has been disallowed.
34. In support of its contention, assessee cited a judgment of Hon'ble Supreme Court in the matter of Saurashtra Cement & Chemicals Industries vs. CIT 213 ITR 532 wherein it has been held that in such circumstances claim of the

assessee to be allowed. Therefore, we dismiss this ground of appeal of the revenue.

35. Now we come to ground related to balance written off of Rs. 79,478/-. The ld. A.O. has discussed this issue at page no. 22 in Para 18 and ld. CIT(A) has discussed this issue at page no. 12 in Para 4.13 and in support of its contention, ld. A.R. cited an order of Co-ordinate Bench in ITA No. 1956/Ahd/2001 wherein this issue was decided in favour of the assessee with following observations:

"26. The last and eleventh ground of the Revenue's appeal relates to the disallowance in respect of sundry debit balances written off at Rs.38,008/-. The assessee has claimed the same to be only in the nature of a business loss, being incurred in the normal course of its business; the said sum representing tender deposit money (Rs. 10,000/-) and petty cash at depot (Rs.28,008/-). In appeal, the assessee explained the said amounts to have been paid to customers in terms of tenders issued by them, so that the write-off of the said amount, on it being found not recoverable, is only a nature of business loss. Similarly, the petty cash amount at depot also represents an allowable business loss."

36. Respectfully following the above said order, we dismiss this ground of appeal.

37. Now we come to payment made to ONGC being claim for difference in price. The ld. A.O. has discussed this issue at page no. 22, 25 in Para 21 and ld. CIT(A) has discussed this issue at page no. 13 , 14 in Para 4.16. Ld. CIT(A) granted relief to the assessee citing a judgment of Gujarat High Court in the matter of Saurashtra Cement & Chemical Industries vs. CIT 213 ITR 532 with regard to allowability of prior period expenses.

38. Now Revenue is before us.

39.Ld. A.R. cited a judgment of Hon'ble Gujarat High Court in the Tax Appeal No. 223 of 2007 wherein in similar circumstances, Hon'ble Gujarat High Court dismiss the appeal of the Revenue with following observation:

9. *Facts of the present case may be seen more closely, as noted, the assessee and other members of the Natural Gas Consumer Association had disputed their liability to pay revised charges for consumption of natural gas quoted by ONGC. Such issue came to be decided by the Supreme Court against the assessee and other members. The ONGC was allowed to recover the unpaid charges. However, in such judgment there was no clarification regarding interest to be charged on such delayed payment. It was therefore when ONGC again approached the Supreme Court, under judgment dated 26.7.2001 the Supreme Court applied the principles of restitution and permitted the ONGC to recover the dues with interest. Significantly the Supreme Court has used the words "interest as claimed by ONGC". Such claim arose at the rate specified in clause (5) of the agreement between the parties. Thus by virtue of this judgment the liability of the assessee to pay interest got crystallized. Till this judgment was rendered on 26.7.2001, there was neither any statutory liability to pay interest nor HC-NIC Page 7 of 9 Created On Fri Mar 04 01:17:50 IST 2016 O/TAXAP/223/2007 JUDGMENT any direction from the Supreme Court. In fact, in the earlier round of litigation the Supreme Court gave no direction for charging interest on the delayed payments.*

10. *On perusal of the judgment of the Supreme Court dated 26.7.2001, it appears that the interest claim raised by the ONGC in its entirety was accepted by the Supreme Court. Thus, one possible view would be that the entire liability of interest even at compounded rate got crystallized by the judgment of the Supreme Court dated 26.7.2001. What happened thereafter was merely negotiations and representations and*

eventual decision of ONGC to offer soft terms to the assessee and other consumers of the natural gas to pay simple interest on the condition that the entire amount would be paid in one installment within 60 days of acceptance of such offer. We may notice that the Supreme Court by said judgment dated 26.7.2001 while confirming interest liability of the consumers had granted 60 monthly equal installments for payment.

11. Seen from this angle, at any rate the assessee's liability to pay interest computed at simple rate was crystallized on 26.7.2001, and at no later point of time. Merely because the assessee was negotiating with the ONGC alongwith other members of the association HC-NIC Page 8 of 9 Created On Fri Mar 04 01:17:50 IST 2016 O/TAXAP/223/2007 JUDGMENT for softer terms and for charging simple interest instead of compound interest would not mean that this liability was in any manner contingent. The assessee when debited such amount in the profit and loss account towards interest liability, the same was therefore rightly granted by the assessing officer. The Commissioner therefore committed legal error in disturbing such order of assessing officer.

12. In view of such clear facts, we may not make detail reference to the decision of Supreme Court in case of Kedarnath Jute Mfg. Co. Ltd., vs. Commissioner of Income-tax (Central), Calcutta, 82 ITR page-363 of Division Bench of this Court in case of Alembic Chemicals Works Ltd., 266 ITR page-47 and in the case of Commissioner of Income-tax vs. Official Liquidator, Ahmedabad Manufacturing Calico Printing Co. Ltd, 244 ITR 156.

13. The question is answered against the revenue. Tax appeal is dismissed.

40. Thus, respectfully following the order of the Jurisdictional High Court, we dismiss this appeal of the Revenue.

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

Order pronounced in Open Court on	17- 01- 2019
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Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 17/01/2019

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