IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
Ms. MADHUMITA ROY, JUDICIAL MEMBER

I.T.A. No. 1547/Ahd/2014
(Assessment Year : 2009-10)

Gujarat State Financial Corporation, Block No.10, Sector-11, Udhoyog Bhavan, Gandhinagar – 382017.	Vs.	ACIT, Circle – 4, Ahmedabad

I.T.A. No. 1903/Ahd/2014
(Assessment Year : 2009-10)

DCIT, Circle – 4, Ahmedabad	Vs.	Gujarat State Financial Corporation, Block No.10, Sector-11, Udhoyog Bhavan, Gandhinagar – 382017.

[PAN No. AABCG 2924 M]

(**Appellant**) .. (**Respondent**)

Assessee by :	Shri P. F. Jain, A.R.
Revenue by :	Shri Anshu Prakash, CIT-D.R.
Date of Hearing	17.01.2019
Date of Pronouncement	04.04.2019

O R D E R

PER Ms. MADHUMITA ROY - JM:

These two cross appeals filed by the assessee and revenue are against the same order dated 10.03.2014 passed by the Commissioner of Income Tax (Appeals)-VIII, Ahmedabad under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to "The Act") arising out of the order dated 16.11.2011 passed by the ACIT, Circle-4, Ahmedabad for the Assessment Year 2009-10.

2. The assessee filed its return of income on 28.09.2009 claiming loss of Rs.152,85,63,518/- which was proposed u/s 143(1) of the Act, 1961. Upon scrutiny, a notice u/s 143(2) of the Act dated 27.08.2010 followed by a further notice dated 06.07.2011 u/s 143(2) of the Act due to change of incumbent were served upon the assessee. During the course of assessment proceeding, upon verification of the 3CD report, it was found that the assessee has written off an amount of Rs.182,87,27,185/- on account of settlement with IDBI Ltd. Upon verification of the details so furnished by the assessee, it was further found that the amount pertains to the year under consideration of Rs.8,07,35,116/- to PSB account of India Overseas Bank. The said amount was not offered for taxation and credited to the capital reserve of the company. The assessee was issued a show-cause dated 09.11.2011 directing him to explain as to why said amount should not be added to the income of the assessee. Pursuant to the said show-cause, the assessee submitted before the Learned Assessing Officer that it has restructured its high interest bearing unguaranteed lenders. The corporation, therefore got waiver of principal loan outstanding of 182.87 crores of principal outstanding of which Rs.8.07 crores has been accounted to the credit of capital reserve in the A.Y. 2009-10. Since waiver of outstanding principal loan amount is a capital receipt, the same was not offered to tax. It was further contended by the assessee that whether any particular receipt is income or not would depend upon the nature of receipt and the true scope and effect of the relevant Taxing provision. It has also relied upon the judgment passed by the Hon'ble Delhi High Court in the matter of ACIT-vs-Handicraft & Handloom Export Corporation reported in 133 ITR 590 holding that voluntary payments can be regarded as Trading receipts in the hand of the recipients and therefore, not in the nature of income. The judgment passed by the Hon'ble Supreme Court in the matter of Padmaraja R. Kadmabendre-vs-CIT reported in 195 ITR 877 was also relied upon wherein factually in an identical case the amount received by appellant therein during the financial year in question was a capital receipt and therefore was not income within the meaning of Section 2(24) of the Act. It was further pointed out by the assessee that the transaction between the assessee and the bank

are mostly in the nature of loan transaction; these are therefore on capital account. The waiver of remission of the liability towards loan incurred by the assessee cannot, therefore, be construed as revenue income in the hands of the assessee. It was further submitted that the waiver portion relatable to the interest income shall be deemed to the income of the Corporation because of the fact that this particular interest amount was claimed as deduction in the statement of total income of earlier year and the same would be offered for taxation in the year in which the liabilities is waived. But in case of remission of principal amount, the same cannot be deemed as income. The waiver of principal loans amount credited in the Capital Reserve Account of Rs. 159.46 crores in F.Y. 2006-07 was also, therefore, not considered as income which again for the part of waiver income of Rs.8.07 crores. Such cannot be considered as income. However, the contentions made by the assessee was not found acceptable by the Learned AR while adding the said amount of Rs.8,07,35,116/-. The Learned AO observed as follows:

> *"4.1. The submission of the assessee is considered carefully and found not acceptable. The assessee is doing the business of finance. When it had received any amount from banks or other Financial Institution it is a trading liability of the assessee on which the assessee is paying interest. The assessee has created this amount as trading liability. The assessee has entered in settlement with various banks/Financial Institutions in which it was decided not to pay certain amount to them from the outstanding on their name. Therefore, as per provision of Section 41(1), non-payment of same is the cessation of liability. The amount written off during the year or which is not payable is to be offered for taxation. The person who had given the amount to the assessee had written off the amount in their books of accounts as bad debts. Therefore, the amount is ceased to be payable to them. When a person enters in transaction with other person, the expenditure of other person becomes income of the other person, In the instant case the banks and Financial Institution who had granted loans to the assessee had written off the amount in their books of accounts and claimed it as bad debts in their final accounts. The reliance is placed on the decision of CIT vs T.V. Sundaiam lyenger Sons Ltd. 136 ITR 444 in which Hon. Apex Court had held that when the amount of deposit becomes assessee's own money because of limitation or by any other statutory or contractual right, such amount should be treated as income of assessee. In the instant case the amount received as trading liability to the assessee from banks or other non-banking financial institution are ceases to be payable as per contract between assessee company and the other banks or non-banking finance company. Therefore, the same is to be treated as income of the*

assessee company. Accordingly, the amount of Rs. 8,07,35,116/- which is not payable is falling under cessation of liability and provision of Section 41(1) is applicable in this case. On receipt of details of written off amount, letters were issued to various banks/financial institutions. These banks/financial institutions has informed that they had written off the amount in their books of accounts and claimed as bad debts in their final accounts. When any amount which is written off by the parties who had advanced to the assessee, the amount ceases to be paid and become income of the person who had not to pay the amount in future. Accordingly, an amount of Rs. 8,07,35,116/- is added to the income of the assessee company. Penalty proceedings u/s.271(1)(c) of the I.T. Act is initiated separately."

2.1 In appeal, the same was upheld by the Learned CIT(A) relying upon the judgment passed by the Hon'ble Supreme Court in the case of T. V. Sundaiam Iynder & Sons Ltd. reported in 136 ITR 444 with the following observation :

"It is therefore, clear from the above observations and findings given by the honourable Supreme Court that the purpose for which the loan has been taken would be a determinative factor in deciding whether it would be a capital receipt or business receipt. If the loan was taken for acquiring the capital asset, waiver thereof would not amount to any income exigible to tax. On the other hand, if this loan was for trading purpose and was treated as such from the very beginning in the books of account the waiver thereof may result in the income. Accordingly applying these principle on the facts of the present case which show that the appellant has borrowed money from the financial institutions for giving the same on interest to others during the course of its business, the benefit obtained by the appellant by way of waiver of loan should be taxable in the hands of the appellant under the provisions of section 2(24) (vd) read with section 28(iv) of the Act. It is held accordingly. Reliance is also placed on the judgement of honburable High Court of Delhi in the case of Logitronics Private Limited 197 taxman 394 and Bombay High Court's decision in the case of Solid Containers Limited 308 ITR 417.

The appellant has also placed reliance on certain judgements which are mentioned in the written submission reproduced above. I have carefully perused the judgement mentioned. It is noted that none of the judgement is applicable in the case as the judgement of the honourable Supreme Court of India in the case of T.V. Sundaram lyengar and Sons Ltd 222 ITR 344 is directly on the issue. In the cases that have been relied by the appellant the facts were different and the waiver of the loan was related to capital asset which is clearly borne out by the reading

of those judgements. The judgements relied by the appellant are therefore, respectfully distinguished.

The ground of appeal is accordingly, ***dismissed."***

2.3 At the time of hearing of the instant appeal, the Learned Advocate appearing for the assessee submitted before us that waiver of outstanding principal loan amount is a capital receipt, the same is not, therefore, taxable.

2.4 He also relied upon the judgment passed by the Hon'ble Madras High Court in the case of the Iskraemeco Regent Ltd.-vs- CIT reported in [2011] 331 ITR 0317 in support of his contention. On the other hand, the Learned Representative appearing for the revenue relied upon the order passed by the authorities below.

2.5 Heard the respective parties, perused the relevant materials available on record. We have also considered the judgment passed by the Hon'ble Madras High Court in the matter of Iskraemeco Regent Ltd. (supra) wherein it was held by the Hon'ble Court that Waiver of loan even though a receipt may be in connection with the business, every such receipt is not a trading receipt. Amount referable to the loan obtained by the assessee towards the purchase of capital asset did not constitute a trading receipt. Further, Section 28(iv) speaks of benefit or perquisite received in kind. The same has no application to any transaction which involves money. It was further observed that loan received for the purpose of acquiring capital assets did not constitute a trading liability and hence, Section 41(1) also has no application.

2.6 We have also considered the judgment passed in the matter of Mahindra and Mahindra Ltd.-vs-CIT reported in [2003] 182 CTR Bom 34.

2.7 If the ratio of the judgment is applied to the instant case then we can safely conclude that the waiver of principal amount of loan by IDBI to the tune of Rs.8,07,35,116/- under one time settlement scheme though written off by the concerned bank does not constitute trading receipt, which was never claimed by the assessee as deduction does not give rise to profits chargeable to tax u/s 41(1) of the Act and thus cannot be added at all to the income of the assessee. Addition of Rs.8,07,35,116/- is thus hereby deleted. Thus, this ground of appeal is allowed.

ITA No.1903/Ahd/2014 for A.Y. 2009-10:

3. The revenue has challenged the order impugned before us in deleting the addition of Rs.7,34,83,295/- made on account of disallowance of penal interest paid to Government of Gujarat.

3.1 During the course of assessment proceeding upon verification of the 3CD report it was found that the assessee has paid penal interest of Rs.7,34,83,295/- to the Government of Gujarat. According to the Learned AO, the nature of expenditure since is of penalty, not allowable as per the provision of Income Tax act a show cause notice, therefore, was issued on 09.11.2011 as to why such payment of penal interest to the Government of Gujarat should not be disallowed and added to the income of the assessee. In reply thereof, the assessee contended that the penal interest paid of Govt. loans is not the amount of penalty paid to the Government for any breach of law. But it is an amount of additional interest paid to the Govt. on its loans outstanding only in the case of late payment of interest or late payment of installment of loan. In this particular case, the penal interest has been calculated at 2% on the amount of interest and on the amount of installment of loan which was paid late and the same was only calculated for the period of delay in making such payment. The assessee further submitted that it had paid interest of Rs.118.96 crores on Govt. loan and penal interest of Rs.7.35 crores for late payment

and interest on principal amount on due dates. It was the contention of the assessee that the penal interest is not the penalty but part of regular interest and hence it is rightly debited to the profit and loss account and claimed as allowable deduction. However, the submission rendered by the assessee was not found acceptable by the Learned AO. He, thus disallowed the same and added to the total income of the assessee. In appeal, the same was deleted by the Learned CIT(A). Hence, the instant appeal filed by the revenue before us.

3.2 At the time of hearing of the instant appeal, the Learned Counsel appearing for the assessee submitted before us that the issue is squarely covered by the order passed by the Co-ordinate Bench in ITA No.3008/Ahd/2014 for A.Y. 2010-11; copy whereof was also handed over to us.

3.3 We have heard the respective parties, perused the relevant materials available on record. We have also carefully considered the order passed by the Co-ordinate Bench in favour of the assessee by deleting such addition on 23.02.2018 while dealing with identical issue in ITA NO. 3008/Ahd/2014 relevant portion whereof is as follows:

> *"5. We find that an identical issue arose before the Tribunal in assessee's own case in Assessment Year 2006-07 in ITA No.483/Ahd/2011. The Tribunal, after considering the impugned issue, held as under:-*
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> > *"16. We have considered rival submissions. We find that a perusal of the Resolution no.JNV-1099-2023-A of the Govt. of Gujarat (supra) makes it clear that the Govt. of Gujarat has prescribed rates of interest on loans for the public sector undertakings, which is clearly in the nature of "penal interest" and not in the nature of penalty. The assessee is in the business of finance and interest was paid by the assessee-company on account of late payment of amount payable to the State Government. There is no infringement of law and there is no act on the part of the assessee which can be said to be against the public policy. The assessee has advanced finance by way of term loans, lease finance etc. for the industrial units in the State of Gujarat during the relevant period and has earned interest thereon. The penal interest in the nature of finance charges for late payment of installment/amount could not be equated with penalty imposable due to some infringement of law. The use of the word "penal*

interest" as a nomenclature does not mean any penalty for infringement of law. We find that the observations of the CIT(A) that such late payment is against the public policy and amount paid by the same could not be allowed as deductible expenses u/s.37(1A) in view of the explanation to section 37(1), is not sustainable in /aw. The interest charged at the rate of 2% per month for delayed payment of installment by the assessee-company could not be equated with payment made against the public policy or payment made in contravention of law. We are of the considered view that the interest paid by the assessee on delayed payment of installment to the State of Gujarat is in the nature of financial charges for late payment of installment. In this view of the matter, we hold that no case of disallowance by holding the payment of penal interest as against the public policy could be made out by the department, and accordingly, the issue is decided in favour of the assessee and the grounds of the appeal of the assessee are allowed."

Respectfully following the findings of the co-ordinate bench, we decline to interfere in the matter."

3.4 We find that the Learned CIT(A) relying upon the order passed by the Co-ordinate Bench in assessee's own case for A.Y. 2006-07 in ITA No.438/Ahd/2011 on the same ratio deleted the addition made by the Learned AO.

3.5 Respectfully relying upon the judgment passed by the Co-ordinate Bench, we find no infirmity in the order impugned and hence confirm the same. In the result, Revenue's ground of appeal is dismissed.

4. Ground No.2 relates to the order passed by the Learned CIT(A) in deleting the addition of Rs.31,99,26,645/- made on account of disallowance of bad debts written off.

4.1 During the assessment proceeding it was found that the assessee has claimed bad debts written off to the tune of Rs.31,99,26,645/-. The assessee was issued a show-cause dated 09.11.2011 as to why said amount should not be added to the income of the assessee. In response thereof, the assessee submitted before the Learned AO that he was

having around 10,000/- borrowers. Due to passage of time, many of them become non-operative. As a policy matter, after taking all efforts for recovery, the assets mortgaged to the corporation was sold, the realization whereof use to be credited to borrowers accounts and the unpaid balance remaining in the borrowers accounts ultimately written off, to the profit and loss account, by giving credit to the loanees account. In this manner Rs.31.99 crores were written off as bad debts by giving credit to individuals loanees by passing journal entries of written off amount.

4.2 However, the explanation provided by the assessee was not accepted by the Learned AO and such amount of Rs.31,99,26,645/- was disallowed and added to the total income of the assessee. In appeal, the same was deleted by the first appellate authority hence the instant appeal.

4.3 At the time of hearing of the instant appeal, Learned Counsel appearing for the assessee submitted before us that in terms of Section 36(2) debts should have been booked on account of money lends in the business of money lending and same should be written off as bad debts. It is the prime consideration that the bad debts advanced by the assessee had in fact became not recoverable or whether writing all the bad debts as irrecoverable as the account was sufficient. When a bad debts occurs such bad debts account is debited and the customer account is credited; thus closing the account of the customer. He also relied upon the judgment passed by the Hon'ble Apex Court in the case of TRF Limited-vs-CIT reported in 323 ITR 397 wherein it was held that only requirement was that the bad debts was written off as irrecoverable in the account of the assessee. He, therefore, relied upon the order passed by the Learned CIT(A). It was the finding of the Learned CIT(A) that the assessee duly passed the entries in the bad debts account and settled the debts by way of debit to the bad debts accounts. On the contrary, the Learned DR relied upon the order passed by the Learned AO.

4.4 We have heard the respective parties and perused the materials available on records. We have carefully considered the order passed by the Learned CIT(A). We find that taking into consideration the judgment passed by the Hon'ble Supreme court in the case of TRF Ltd. It was further pointed out that in terms of Section 36(2)(i), the deduction on account of bad debts which have become bad and been written off is allowable in case the debts represents money lent in original course of business of banking or money lending which in this particular case is carried out by the assessee. The ratio of the judgment passed by the Hon'ble Apex Court in the matter of TRF Limited-vs-CIT has also been followed by the Learned CIT(A) holding that the requirement of conditions with the bad debts written off as irrecoverable in the accounts of assessee has been, since, fulfilled by the assessee disallowance made by the Learned AO is not sustainable in the eye of law. Hence, deleted.

4.5 We find no infirmity in the order passed by the Learned CIT(A), taking into consideration the ratio laid down by the Hon'ble Supreme Court passed in the matter of TRF Ltd. (supra). Hence, deletion is sustainable. In that view of the matter, revenue's ground of appeal is dismissed.

5. This ground of appeal relates to deletion of addition of Rs.14,30,48,427/- made on account of provision for certain bad debts.

5.1 The assessee claimed provision for bad and doubtful debts amounting to Rs. 14,30,48,827/-. By and under a show-cause notice dated 09.11.2011, the assessee was asked to show-cause as to why said amount should not be added in the income of the assessee whereupon the assessee submitted that the provision for ascertain bad debts is made in the Profit and Loss account of the Corporation on the basis of consolidated statement prepared since the introduction of NPA norms. The consolidated statement for the year 2008-09 and the working of the bad debts has already been submitted earlier.

Relying upon the judgment passed by the Gujarat High Court in the case of Dhal Enterprise, it was further argued that when the provision for bad debts is made the ascertained and identified loanees accounts, a deduction for ascertained bad debts account be allowed. However, the same was disallowed by the Learned AO since it was only provision deduction is not permissible which was in turn allowed by the first appellate authority. Hence, the instant appeal.

5.2 At the time hearing of the case Learned Counsel appearing for the assessee submitted before us that the issue is squarely covered by the judgment passed by the Co-ordinate Bench in ITA No.994/Ahd/2015 for A.Y. 2011-12 in favour of the assessee copy whereof has also been provided to us. On the contrary, the Learned DR relied upon the order passed by the Learned AO.

5.3 Heard the respective parties, perused the relevant materials available on record. We have also carefully considered the order passed by the Co-ordinate Bench dealing with the identical issue in ITA No.994/Ahd/2015 in the appeal, preferred by the revenue. The Hon'ble Co-ordinate Bench observed as follows:

> *"2. At the time of hearing before us, learned representatives fairly agree that the grievance raised by the Assessing Officer in the appeal is covered, in favour of the assessee, by a decision of the co-ordinate bench in assessee's own case for assessment year 2006-07 (ITA No. 335/Ahd/2011; order dated 27.10.2016) wherein the co-ordinate bench has observed as follows:-*
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> > *"6. We find that so far deduction of actual bad debts written off, of Rs.36,11,57,536/-, are concerned, it is not in dispute that amounts have actually been written off in the books of account of the assessee. The assessee has squared up the individual accounts to the debit of bad debts. In this view of the matter, and in the light of Hon'ble Supreme Court in the case of TRF Limited vs. CIT (323 ITR 397) which holds that a mere write off of the bad debts in the books of account, as irrecoverable, is sufficient to claim deductions as bad debts. Learned CIT(A) was, therefore, quite justified in granting relief to the assessee on this issue. As far provision of Rs.88,38,79,657/- is concerned, undoubtedly there is nothing on record to*

show, or even indicate, that these amounts have actually been written off by squaring up individual accounts of the debtors, but what is not in dispute that the provision in question has been debited to the profit and loss account, and the amount of provision is reduced from the loans and advances appearing in the balance sheet. With these facts having been verified by us with respect to material on record, we find that the issue is squarely covered in favour of the assessee by Hon'ble jurisdictional High Court's judgement in the case of CIT vs. Nawanagar Co-operative Bank Limited (Tax Appeal No.549 of 2014; judgement dated 30.06.2014), which has observed as follows :-

> *"5. We have heard Mr. Pranav G. Desai learned advocate appearing on behalf of the appellant-revenue. We have also perused the impugned judgment and order passed by the learned Tribunal. The learned Tribunal, while allowing the claim of the assessee of deduction of Rs.2,18,05,3927- u/s. 36(1)(vii) of the Act, as bad debts, the learned Tribunal has heavily relied on the decision of the Hon'ble Supreme Court in the case of Vijaya Bank v. CIT, reported in (2010) 323 ITR 166. We have also considered the decision of Hon'ble Supreme Court in the case of Vijaya Bank vs. CIT (supra). The question which is proposed in the present appeal is squarely covered by the decision of the Hon'ble Supreme Court in the case of Vijaya Bank v. CIT(supra). In the case of Vijaya Bank v. CIT (supra), the Hon'ble Supreme Court has observed and held that where assessee bank had written off impugned bad debt in its books by way of a debit to profit and loss account, simultaneously reducing corresponding amount from loans and advances to debtors depicted on assets side in balance sheet at close of year, the assessee - bank was entitled to deduction under section 36(1)(vii) and for that purpose, it was not necessary for it to close individual account of each of its debtors in its books. We are in complete agreement with the view taken by the learned Tribunal. We see no reason to interfere with the impugned judgment and order passed by the learned Tribunal."*
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> *7. In view of the above discussions, as also bearing in mind entirety of the case, we approve the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter."*

3. We see no reasons to take any other view of the matter than the view so taken by the co-ordinate bench.

4. Respectfully following the decision of co-ordinate bench decision dated 27.10.2016 (supra), in assessee's own case for assessment year 2006-07, we decline to uphold the plea of the Assessing Officer. Accordingly, relief granted by the CIT(A) stands confirmed and approved."

5.4 Respectfully, following the judgment passed by the Hon'ble Co-ordinate Bench dated 16.07.2018 for A.Y. 2011-12 we confirm the finding and conclusion made by the Learned CIT(A). Hence, revenue's appeal is dismissed.

5. In the result, assessee's appeal is allowed and revenue's appeal is dismissed.

This Order pronounced in Open Court on 04/04/2019

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 04/04/2019
Priti Yadav, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-VIII, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad