आयकर अपील य अ धकरण, अहमदाबाद यायपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL,
''C'' BENCH, AHMEDABAD

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.1494/AHD/2016**

नधारण वष/Asstt. Year: 2012-2013

D.C.I.T, Circle-2(1)(1), Ahmedabad.	Vs.	M/s.Gujarat State Financial Corporation, 1st Floor, Block NO.10 Udhyog Bhavan, Gandhinagar. PAN: AABCG2924M

(Applicant)		**(Respondent)**

Revenue by	:	Shri O.P. Sharma, CIT,D.R
Assessee by	:	Shri P.F Jain, A.R

सुनवाई क तारख/**Date of Hearing : 12/03/2019**
घोषणा क तारख /**Date of Pronouncement: 27/05/2019**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax,(Appeals)-2, Ahmedabad [Ld.CIT(A) in short], dated 30/03/2016 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 28/11/2014 relevant to Assessment Year (AY) 2012-13.

The Revenue has raised the following grounds of appeal:

1. *The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.4,45,14,154/- on account of disallowance of provision of bad debt or bad and doubtful debt.*

2. *The Ld.CIT(A) has erred in law and on facts in deleting the disallowance of Rs.36,08,45,107/- u/s14A of the Act.*

3. *On the facts and in the circumstances of the case, the "Ld.CIT(A) ought to have upheld the order of the Assessing Officer.*

4. *It is, therefore, prayed that the order of the "Ld.CIT(A) may be set aside and that of the Assessing Officer may be restored to the above extent.*

5. *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.*

The 1st issue raised by the Revenue in ground No. 1 is that the learned CIT (A) erred in deleting the addition made by the AO for the provision of bad debts amounting to ₹4,45,14,154.00 only.

2. The assessee has claimed provision for the bad debts amounting to ₹ 4,45,14,154.00 in the year under consideration. However, The AO during the assessment proceedings found that the similar claim of the assessee was disallowed in the preceding assessment year. Accordingly, the AO disallowed the same and added to the total income of the assessee.

3. The aggrieved assessee preferred an appeal to the learned CIT (A) who deleted the addition made by the AO.

4. Being aggrieved by the order of the learned CIT (A), the Revenue is in appeal before us.

5. Both the learned DR and the AR before us relied on the order of the authorities below as favorable to them.

6. We have heard the rival contentions and perused the materials available on record. At the outset, we note that this tribunal in the own case of the assessee involving identical issue has confirmed the order of the learned CIT (A) for the assessment year 2011-12 in ITA No. 994/AHD/2015 vide order dated 16-07-2018. The relevant extract of the order is reproduced as under:

> *1. By way of this appeal, the Assessing Officer has challenged correctness of the order dated 30.01.2015, passed by the learned CIT(A)-2, Ahmedabad for the assessment year 2011 -12, on the following ground:*
>
> > *"The Ld. CIT(A) has erred in law and on facts in deleting the disallowance amounting to Rs.3,89,90,537/- made by AO on account of provision for bad and doubtful debts made by assessee."*
>
> *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:-*
>
> > *"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 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.*
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> *5. In the result, the appeal of the Revenue is dismissed.*

7. The learned DR at the time of the hearing has not pointed out any material fact suggesting that there is a change in the facts and circumstances for the year under consideration viz a viz the immediate preceding assessment year. Therefore, respectfully following the order above of this tribunal, we find no reason to interfere in the order of the learned CIT-A. Hence the ground of appeal of the Revenue is dismissed.

The 2nd issue raised by the Revenue is that learned CIT (A) erred in deleting the addition made by the AO for Rs. 36,08,45,107.00 under section 14A of the Act.

8. The assessee in the year under consideration has shown dividend income of شخ19,08,444.00 only which was claimed as exempt income under section 10(34) of the Act. The assessee against such exempted income has made the disallowance of شخ3,67,12,065.00 only. However, the AO was not satisfied with the disallowance made by the assessee as the same was not as per the provisions of rule 8D of Income Tax Rules. Therefore the AO worked out the disallowance under section 14A read with rule 8D for شخ 39,75,57,172.00 and made the disallowance of the remaining amount for شخ 36,08,45,107.00(39,75,57,172.00-3,67,12,065.00) and added to the total income of the assessee.

9. The aggrieved assessee preferred an appeal to the learned CIT (A) who deleted the addition made by the AO.

Being aggrieved by the order of the learned CIT (A), the Revenue is in appeal before us.

10. Both the learned DR and the AR before us relied on the order of the authorities below as favorable to them.

11. We have heard the rival contentions and perused the materials available on record. The limited issue in the instant case arises for our consideration whether the disallowance under section 14A read with rule 8D can exceed the amount of dividend income. Regarding this, we note that this tribunal in the

case of Sagar Yeswantrai Mehta Vs. ACIT in ITA No. 1684/AHD/2018 for the assessment year 2015-16 vide order dated 19th February 2019 has held as under:

> *4. In ground No.2, the assessee has pleaded that Ld.CIT(A) has erred in confirming the addition of Rs.8,05,.8567- which was added by the Assessing Officer with the help of Section 14A r.w.r.SD of the Income Tax Rules, 1962.*
>
> *5. With the assistance of Ld.Representative, we have gone through the record carefully. It emerges out from the record that assessee has filed his return of income on 30/10/2015 declaring total income of Rs. 1,57,94,5307-.- The case was selected for scrutiny assessment and notice-u/s. 143(2) of the Act was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the Assessing Officer that assessee has declared dividend income of Rs.22,697/- which was claimed as exempt from taxes u/s. 10(35) of the Act. The Ld.AO made an analysis of the expenditure required to be disallowed for earning this tax free income. He worked out the disallowance with the help of Rule 8D of the Income Tax Rules, 1962. Such disallowance has been worked out at Rs.8,05,856/-. It is pertinent to observe that the Hon'ble Gujarat High Court on the issue in the case of CIT vs. Corrtech Energy Pvt.Ltd. reported in (2014) 223 Taxman 0130 and Hon'ble Delhi High Court in the case Cheminvest Ltd. vs. CIT reported in 378 ITR 033 have concurred with each other that if there is no dividend income or tax free income in a year, then no disallowance U/S.14A can be made. This explication was amplified and employed subsequently by the ITAT to construe that working of expenditure for disallowance u/s.HA of the Act should not exceed more than dividend income itself. In the case of Joint Investments Pvt.Ltd. vs. CIT (ITA No.ll7/Ahd/2015 decided on 25/02/2015), the Hon'ble Delhi High Court has observed that by no stretch of imagination section 14A or Rule 8D could be interpreted so as to mean -that entire tax-free income is to be disallowed. The ITAT Ahmedabad has restricted the disallowance equivalent to exempt income (a reference could be made to ITA No,3266/Ahd/2015 decided on 7/12/2016 and ITA No.750/Ahd/2016 in the case of CIT vs. Nirma Chemical Works Pvt.Ltd. decided on 03/12/2018).*
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> *6. Following the above, we are of the view that ends of justice would meet if we restrict the disallowance equivalent to the tax-free income shown by the assessee i.e. Rs.22,697/-. This ground is accordingly partly allowed. The Ld.AO consider the disallowance at Rs.22,697/- instead of Rs.8,05,856/-.*

12. In view of the above, we do not find any infirmity in the order of the learned CIT (A). Hence respectfully following the order of this tribunal as

discussed above we uphold the order of the learned CITA. Thus the ground of appeal of the Revenue is dismissed.

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

Order pronounced in the Court on 27/05/2019 at Ahmedabad.

-Sd-	**-Sd-**
(MAHAVIR PRASAD)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 27/05/2019

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