

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.2031/Ahd/2017

निर्धारण वर्ष/Asstt. Year: 2013-14

The DCIT, Cir.1(1)(2) Baroda.	Vs.	M/s.Vadodara Enviro Channel Ltd. 304/1, 317 & 318, Post-Dhanora Dist. Baroda 391 346.
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आयकर अपील सं./ ITA No.2095/Ahd/2017

निर्धारण वर्ष/Asstt. Year: 2013-14

M/s.Vadodara Enviro Channel Ltd. 304/1, 317 & 318, Post-Dhanora Dist. Baroda 391 346.	Vs.	The DCIT, Cir.1(1)(2) Baroda.
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<i>अपीलार्थी</i> (Appellant)		<i>प्रत्यर्थी</i> (Respondent)
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Assessee by :	Shri M.J. Shah, AR
Revenue by :	Shri M.Anand Kumar, Sr.DR.

सुनवाई की तारीख/Date of Hearing : 06/06/2019

घोषणा की तारीख/Date of Pronouncement: 17 /06/2019

आदेश ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

These are cross appeals by the Revenue and the Assessee against order of the Id.CIT(A)-1, Vadodara dated 16.6.2017 passed for the Asstt.Year 2013-14.

2. First we take Revenue's appeal.

3. In this appeal, the grievance of the Revenue is that the Id.CIT(A) has erred in restricting the addition in the current year only to the extent of 1/5th of membership contribution received.

4. Brief facts of the case are that assessee is engaged in the business of treatment of industrial waste-water discharged by the participating member companies and conveyance of industrial effluent & maintenance of channel in the industrial area of Vadodara. It has filed its return of income for the Asstt.Year 2013-14 on 29.9.2013 declaring total income at Rs.3,44,25,430/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. In the assessment proceedings, it was noticed by the AO that the assessee has received capital contribution of Rs.2,52,73,456/- from participating members as contribution towards life time membership for availing of effluent disposal facility offered by the assessee company. Assessee company claimed the same as capital receipts and not revenue receipts. The AO confronted the assessee as to why entire receipt of contribution amount should not be treated as revenue. It was explained by the assessee that the contributions from the members were being utilized on constructing channel and purchasing mechanical equipments, and therefore, this contribution had to be treated as capital receipts, as the benefit of which accrued to the participating members were of enduring nature. Therefore, entire income could not be treated as revenue income. The assessee treated the same as revenue receipt in the first year, but recognized the income to the extent of 1/5th and rest of the amount was to be taxed on deferred basis for next four years. However, the Id.AO did not accept this treatment of

income by the assessee, and he held that entire such receipt from new members was revenue in nature, and according, the AO added the entire amount to the total income of the assessee. Dissatisfied with this action of the AO, the assessee went in appeal before the Id.CIT(A), who after following the decision of ITAT in the assessee's own case for the Asstt.Year 2011-12 in ITA No.1945/Ahd/2011, directed the AO to restrict the addition made in the current year to 1/5th of Rs.2,52,73,456/- i.e.Rs.50,54,691/- , and the balance amount was directed to be taxed in the assessee's hand on deferred basis. Aggrieved with this action of the First Appellate Authority, Revenue is in appeal before us.

5. Before us, the Id.DR supported the order of the AO, while Id.counsel for the assessee relied upon the order of the Id.CIT(A). He further submitted that ITAT in the assessee's case in ITA No.766/Ahd/2016 for the Asstt.Year 2012-13 allowed similar claim, and therefore, facts and circumstances being identical in this year as well except quantum, there is no reason to disallow the claim of the assessee by deviating the view taken by the Tribunal in the earlier years. The Id.counsel for the assessee has placed on record a copy of above order of the ITAT.

6. We have considered rival submissions and gone through the record carefully. We find that similar claim of the assessee was allowed in earlier years i.e. Asstt.Year 2011-12 and 2012-13 by the Id.CIT(A) which was upheld by the Tribunal. We have perused orders of ITAT for both the years. There is no disparity on facts pointed out by the Id.DR. Therefore, applying principle of consistency, we uphold the order of the Id.CIT(A) on this issue and reject the ground of appeal of the Revenue.

7. Now we take assessee's appeal.

8. The grievance of the assessee is that the Revenue authorities have erred in making addition of Rs.12,60,252/- as undisclosed receipts of bank and other interest income.

9. Brief facts of the case are that as per the details submitted by the assessee, the AO noticed that there was difference in the amounts shown as per Form No.26AS and the income shown in the books of accounts. This amount was added as income of the assessee. In appeal before the Id.First Appellate Authority, assessee submitted that on reconciling the books of accounts of the assessee and Form NO.26AS there were instances of differences, which was happened due to late updation. For example, for the asstt.Year 2013-14 (F.Y.2012-13), the details were added/updated in the TDS even after September, 2013 i.e. after filing of the return of income, therefore, it was likely that such income being left out for consideration in that year, however, short interest income was recognized in the succeeding assessment year. It was also submitted that interest income from Bank of Baroda for F.Y.2012-13 was received in F.Y.2013-14, but the same was offered for taxation in the Asstt.Year 2014-15, and therefore, there was no loss to the Revenue. It was also submitted that the interest income from DGVCL was adjusted towards electricity bill raised by the DGVCL, which was properly accounted for. However, the Id.CIT(A) did not accept the submissions of the assessee, because according to the Id.CIT(A), there was no supporting documentary evidences and details. He

further held that any income has to be taxed in correct assessment year on accrual basis. Assessee is now before us.

10. Before us, the Id.counsel for the assessee reiterated submissions made before the Revenue authorities. He further submitted that difference of interest income was due to late reflection of details in TDS certificate, that too after filing of the return. Whatever differential amount was there, has been recognized in the succeeding assessment year i.e. 2014-15 and offered for taxation, therefore, there is no question paying double tax on the income already offered. On the other hand, the Id.DR relied

11. We have considered rival submissions and gone through the record carefully. We find *prima facie* that there is a difference of interest income shown in the Form 26AS and interest reflected in the books of accounts. This is due to late updation of figures in the Form No.26AS. However, the assessee has claimed that the differential amount has been offered to tax in the next assessment year i.e. 2014-15, and therefore there is no question making addition in the assessment year 2013-14. The assessee has filed the details of interest earned during the Asstt.Year 2014-15 and short interest of the Asstt.Year 2013-14, which was recognized in the Asstt.Year 2014-15 and offered for taxation. Since assessee has claimed that it has already offered the differential interest income for taxation in the next assessment year, we are of the view that the AO should verify these details, and find out whether the same was offered for taxation or not. For this purpose, we set aside the issue to the file of the AO for reconsideration on the basis of the details furnished by the assessee, and in case the

assessee has offered the impugned interest income for taxation, then the assessee should be given proper relief, and no addition should be called for. Otherwise, the AO may make addition in accordance with law. Assessee may file all the details to support its claim before the AO.

12. In the result, appeal of the Revenue is dismissed, and that of assessee is allowed for statistical purpose.

Order pronounced in the Court on 17th June, 2019.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 17/06/2019