

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 2032/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 1984-85)

The Asst. CIT Circle – 1(1)(1), 1 st Floor, Aaykar Bhavan, Race Course Circle, Vadodara - 390007	बनाम/ Vs.	M/s. Ambalal Sarabhai enterprises Ltd. Dr. Vikram Sarabhai Marg, Wadi Wadi, Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCA6893K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Smiti Samant, Sr.D.R.
प्रत्यर्थी की ओर से / Respondent by :	None

सुनवाई की तारीख / Date of Hearing	08/07/2019
घोषणा की तारीख /Date of Pronouncement	09/07/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-1, Vadodara ('CIT(A)' in short), dated 30.06.2017 arising in the assessment order dated 30.11.1988 passed by the

Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 1984-85.

2. The grounds of appeal raised by the Revenue read as under:-

“1. On the facts and circumstances of the case and in law,- the Ld. CIT(A) erred in deleting the disallowance of notional interest aggregating to Rs. 43,20,661 /-without appreciating the findings that Rs. 2,09,76,370 advanced by Assessee to wadi Financiers and Investment Pvt Ltd., that company in turn had advanced Rs. 98.58 lakhs to SHIP Ltd., ignoring the fact that Wadi Financiers has not amalgamated with ASE and hence, advance of Rs. 98.58 lakhs on 24.2.82 by Wadi Financiers to SHIP without interest does not create the necessary fiction of giving of amount to self and hence it must be held disallowance of interest.”

3. None appeared on behalf of the assessee. Accordingly, the matter was proceeded *ex parte*.

4. The CIT(A) has dealt with the issue raised on behalf of Revenue as under:

“3. The first issue set aside by the ITAT is regarding disallowance of interest expenditure amounting to Rs. 43,20,661/-attributable to interest free advance to sister concerns. The ITAT's observations are as follows:

"13. The ground No. 9 of the assessee's appeal is regarding disallowance of interest expenditure amounting to Rs,43,20,661/-attributable to interest free advances to sister concerns. The AO has dealt with this issue in para 17 of his order. The AO disallowed this amount on the ground that the assessee has not been able to explain commercial expediency of such advances or to prove the borrowings to the extent of these advances as for the purpose of assessee's business. He has also disallowed since similar amounts have been disallowed in the past. The matter was carried in appeal before the first appellate authority wherein the Id. counsel for the assessee raised various contentions and has given the details as under:

		Advances made to	Outstanding balance
Swastik Household & Industries Products	1.	Shahibag Entrepreneurs (P) Ltd.	3,00,000

	2.	<i>Sarabhai Management Corp.(P) Ltd.</i>	4,65,508
<i>Ssrabhai Chemicals</i>		<i>Sarabhai Management Corp.(P) Ltd.</i>	4,15,358
<i>Head Office</i>		<i>Wadi Financiers & Invest. (P) Ltd.</i>	2,09,76,370

The other submissions of the assessee have been discussed in detail by the CIT(A) vide para 12 of his order. He has observed that since the facts continue to be identical and there being no change in the circumstances, no additional and new arguments and/or evidence being furnished, there is no justification in interfering with the decision of the AO as regards Rs.110-19 lakhs amounts are concerned. However, as regards the issue in connection with the Wadi Financiers & Investment (P) Ltd. is concerned, the AO has clearly stated that WFI is not amalgamated with Ambalal Sarabhai Enterprises and hence, advances by WFI to SHIP (P) Ltd. without interest does not create the necessary fiction of giving amount to self. In view of the clear findings as above, and in absence of any specific justification for its allowance, So he upheld the same.

13.1 Before us the Id. DR supported the orders of the authorities below while the Id. counsel for the assesses opposed the same arid contended that the issue is covered in favour of assesses by the decision of the Tribunal in assessee's own case for AY 1979-80. For AY 1980-81 a similar issue has been restored back to the file of CIT(A) and the case is still pending before the CIT(A). For AYs, 1981-82 and 1982-83 a similar issue has been decided in favour of the assesses by the Tribunal vide its orders.

13.2. After considering the rival submissions and going through the material on record, we find that a similar issue has been decided in favour of assessee by the Tribunal vide its orders for AYs 1979-80, 81-82 and 1982-83 while for AY 1980-81 the issue has been restored back to the file of CIT(A) and the same is pending there. Therefore, in the interest of justice, we restore this issue to the file of CIT(A) for deciding the same in light of final outcome of AY 1979-80, 81-82, 82-83 and in accordance with law after providing reasonable opportunity of hearing to both the parties. This issue is disposed of accordingly."

3.1. It may be mentioned here that the AO had been requested vide letter dated 10.08.2015 to furnish the orders of CIT(A)'s for AYs. 1979-80 and 1980-81. The same has not been received. The AO has stated vide letter dated 28.06.2017 that records for these years are not traceable. The CIT(A)'s order for these years are also not available in this office. But, a perusal of the above observations of the ITAT shows that the Bench has clearly directed to decide the issue in light of final outcome of the AYs 1980-81, 1981-82 and 1982-83. Thus, in the final direction, the Tribunal has not directed to consider the outcome of set aside appellate order for the AY 1980-81. The order passed by the ITAT 'C' Bench in appellant's own case for AY 1982-83 in ITA No. 3240/Ahd/1994 and ITA No.

3130/Ahd/1994 dated 29.10.2001 could be traced by this office from the appellate folder for the AY 1982-83 in Appeal No. CAB-I/242/06-07. In this order, the Bench has discussed the issue relating to disallowance of interest attributable to the advance given to the group concerns as discussed in Para 10.3 as follows:

"10. Ground No. 9 is against sustaining the disallowance of Rs, 15,32,294/- on account of notional interest attributable to interest given to the group concerns.

10.1. The counsel of the assessee submitted that issue involved in this ground of appeal is covered in favour of the assessee by decision of this Tribunal in assessee's own case for the AY 1979-80. In the AY 1980-81, similar disallowance was also made and Tribunal set-aside the same back to the CIT(A) for adjudicating the same afresh since assessing officer had himself failed to adjudicate the issue on remand by the CIT(A). The counsel of the assessee further admitted that this issue is decided in favour of the assessee by this Tribunal in the AY 1981-82. The relevant discussion is narrated in page 27 of the Tribunal Order for the AY 1981-82.

10.2. On the other hand, the learned D.R. supported the order of the CIT(A). The learned D.R. has also submitted that this issue has been set aside by learned CIT(A) to Assessing Officer for deciding the same afresh. Therefore, order of CIT(A) be upheld.

10.3. Having heard both the sides, we have carefully gone through the order of authorities below. Rival submissions were also considered. The impugned disallowance has been made on facts identical to the AY 1981-82. In the AY 1981-82 this tribunal has decided the similar disallowance. We, therefore, respectfully following the order of the Tribunal in assessee's own case for the AY 1981-82 delete the addition of Rs. 15,32,294/-. This ground of appeal is accordingly allowed."

3.1.1. A perusal of the above order of the ITAT for AY 1982-83 shows that the fact that Tribunal has set aside the similar issue for AY 1980-81 to the file of the CIT(A) was known to them, Still by following their own order for the AY 1981-82 in the appellant's own case, the bench has directed the disallowance to be deleted. Hence, the decision made in the order of the ITAT for the AY 1982-83 is required to be followed in the current year's proceedings also. Accordingly, following the decision of the in appellant's own case for the AY 1982-83, the disallowance of notional interest made in the current year is also directed to be deleted. As a result, this ground is allowed."

5. We notice that the CIT(A) has adjudicated the issue in favour of the assessee having regard to the decision of the coordinate bench of Tribunal for the earlier assessment years. The CIT(A) *inter alia* has observed that the case records are not traceable at the end of the AO. In the similarly placed facts, the

CIT(A) has rightly decided the issue in favour of the assessee. The Revenue could not bring anything on record to point out any flaw in the reasonings adopted by the CIT(A). Thus, we see no reason to impugn the order of the CIT(A). We thus decline to interfere.

6. In the result, the appeal of the Revenue is dismissed.

This Order pronounced in Open Court on 09/07/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad: Dated 09/07/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।