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

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER&
Ms. MADHUMITA ROY, JUDICIAL MEMBER

I.T.A. No.2690/Ahd/2017
(Assessment Year :2013-14)

The Assistants Commissioner of Income Tax, Circle – 2(1)(1), Ahmedabad.	Vs.	Gujarat State Road Transport Corporation, 1st Floor, Central Office, Vahan Vyavahar Bhavan, Astodia, Ahmedabad.

[PAN No.AAACG 5587 H]

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

Appellant by : Shri Sulabh Padshah, A.R.
Respondentby: Shri Surendra Kumar, CIT-D.R.

Date of Hearing 11.07.2019
Date of Pronouncement 25.07.2019

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the Revenue is directed against theorder dated 15.09.2017 passed by the Commissioner of Income Tax (Appeals) – 10, Ahmedabad arising out of the order dated 23.02.2016 passed by the Dy. Commissioner of Income Tax, Circle-2(2)(1), Ahmedabad under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act')for Assessment Year 2013-14 with the following grounds:

1. *"The Ld. CIT(A) has erred in law on facts in deleting the addition of Rs.58,40,04,189/-made on account of motor accident claimsofearlier years, without properly appreciating the facts of the case and the material brought on record.*
2. *The Ld. CIT(A) has erred in law on facts in deleting the addition of Rs.6,55,49,995/-made on account of capitalization of reconditioning of Buses & assemblies etc.*

3. *The Ld. CIT(A) has erred in law on facts in treating the income from license fees of canteen amounting to Rs. 4,97,20,806/- as business income, without properly appreciating the facts of the case and the material brought on record.*
4. *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary."*

2. **Ground No.1**In this ground Revenue has challenged the deletion of addition of Rs.58,40,04,189/- made on account of motor accident claims of earlier years, without properly appreciating the facts of the case and the material on record as alleged.

3. The Learned Representative of the respective parties at the outset of the proceeding have agreed that the issue is squarely covered in favour of the assessee by and under a judgment dated 29.01.2018 passed in ITA No.507/Ahd/2016 in assessee's own case for A.Y. 2012-13. A copy of the said order has also been handed over to us. We have carefully considered the order passed by the Hon'ble Tribunal as mentioned hereinabove the relevant portion whereof is as follows:

> *"3. Learned representatives fairly agree that the aforesaid issue is covered, in favour of the assessee, by the order dated 28.04.2017 passed by the coordinate bench, in assessee's own case for the assessment year 2009-10, wherein the Tribunal has held as under:-*
>
> > *"9. We find that merely because the MACT awards are booked by the assessee at a later point of time than the date of the award cannot be reason enough to decline the claim for deduction in respect of these awards. It is sometimes possible, rather its inherent mechanism of the system as it exists, that sometimes there is considerable delay in communicating the awards granted by MACT. The awards are generally conveyed through the lawyers representing the assessee and it does take time in many cases. It is not the case of the Assessing Officer that the subsequent claims are duplication of claims in respect of the same liability, and the assessee does not stand to gain as a result of this delay in accounting. In any event, the quantification of claims is verified by the statutory auditors as also the CAG audit teams, and the same method of accounted is being followed by the*

assessee for last 50 years. As there is no change in method of accounting, as there is no duplication of claims, and, as assessee does not anyway gain anything from delaying accounting for these claims, we see no reasons to reject the claims merely because these claims are accounting for, in the books of accounts, at a point of time later than awards being granted i.e. when the assessee gets to know about the same. In any event, the CIT(A) has given a categorical direction to the Assessing Officer for verification of claim on account of the liability having been crystallized in the relevant previous year. Grievance of the Assessing Officer, regarding crystallization of liability, does not, therefore, survive any longer. In view of these discussions, as also bearing in mind entirety of the case, we approve the conclusions arrived at by the CIT(A) and decline to interfere in the matter."

4. We see no reasons to take any other view of the matter than the view so taken by the co-ordinate bench. Respectfully following the views so taken by the co-ordinate bench (supra) in assessee's own case for AY 2009-10 in ITA No.1192/Ahd/2014, we reject the grievance of the Assessing Officer."

In the absence of any changed circumstances, we find no reason to take a different view other than what has already been decided by this Tribunal and hence respectfully relying on the same, we reject the ground preferred by the Revenue.

4. **Ground No.2**In this ground revenue has challenged deletion of addition of Rs.6,55,49,995/- made on account of capitalization of reconditioning of buses and assemblies etc.

5. At the time of hearing of the instant appeal, Learned Advocate appearing for the assessee submitted before us that the issue is squarely covered in favour of the assessee by and under an order dated 24.01.2013 passed by the Co-ordinate bench in ITA No.2785/Ahd2009 in assessee's own case for A.Y. 2005-06 in appeal preferred by the Revenue. A copy whereof has also been submitted before us. However, the Learned DR failed to controvert such submissions made by the Learned AR.

6. Heard the respective parties, perused the relevant materials available on record. We have carefully considered the order passed by the Co-ordinate Bench as mentioned hereinabove. We find that identical issue has been decided in favour of the assessee. The relevant portion whereof is as follows:

> *"12. The ground no.2 of the Revenue's appeal reads as under:*
>
> > *"2. The ld.CIT(A) has erred in law and on facts in deleting the disallowance of Rs.9,73,94,965/- made by the AO being the expenses of reconditioning of body and engine expenses."*
>
> *13. The learned DR supported the assessment order whereas it was submitted by the learned counsel of the assessee that this issue is covered in favour of the assessee by the decision of the Tribunal in assessee's own case for A.Y.1995-1996, 1997-1998, 1990-1991 and 1991-1992 in ITA No.22, 1871, 2794 and 3429/Ahd/2002. It was submitted that copy of this decision of the Tribunal is available at page no.31 to 41 of the paper book.*
>
> *14. We have considered rival submission and have perused the material available on record and gone through the orders of the authorities below. The learned DR could not controvert this contention of the learned AR of the assessee that the issue is covered in favour of the assessee by the Tribunal decision in assessee's own case for various earlier assessment years. The copy of the Tribunal decision is available in the paper book, and we also find that as per para-11 of the Tribunal decision, this issue was decided by the Tribunal in favour of the assessee, and for the sake of ready reference, this para-11 from the order of the Tribunal is reproduced below:*
>
> > *"11. As is evident from the fact of the case in hand, expenditure had been incurred to "preserve and maintain" an already exiting asset, and the object of the expenditure was not to bring a new asset into existence or to obtain a new advantage. The object behind section 31(i) is to preserve and maintain the asset and not to bring in a new asset. In the light of aforesaid decisions of the Hon'ble Supreme Court in Sarvana Spinning Mills P Ltd. (supra) and of Hon'ble Gujarat High Court in Mihir Textiles (supra) as also the facts and circumstances of the case, we do not find any infirmity in the findings of ld.CIT(A) holding that the expenses are basically on repairs as these expenses do not bring in to existence any new asset or advantage. Thus, ground no.1 raised by the Revenue in all the four appeal is dismissed."*

Since the learned DR could not point out any difference in the facts in the present year, we do not find any reason to take a contrary view in the present year, and hence, we decline to interfere with order of the CIT(A) on this issue and the ground of the appeal of the Revenue is rejected and the appeal of the Revenue is dismissed."

In the absence of any changed circumstances, we find no reason to take view other than that already been decided by this Tribunal and hence respectfully relying on the same, we reject the ground preferred by the Revenue.

7. **Ground No.3** The revenue has challenged the order passed by the Learned CIT(A) in treating the income from licence fees of canteen amounting to Rs.4,97,20,806/- as business income, without properly appreciating the facts of the case and materials brought on record as alleged.

8. At the very outset of hearing of the instant appeal, the Learned AR fairly submitted that this issue is covered against the assessee by and under the judgment passed by the Co-ordinate Bench in ITA No.507/Ahd/2016 for A.Y. 2012-13 in assessee's own case copy whereof has also been submitted before us. We have perused the same and we find the following was the observation of the Learned Tribunal while dismissing the appeal preferred by the Revenue :

"7. With regard to the aforesaid issue, the learned representatives fairly agree that the same is covered, in favour of the Revenue, by another order of the coordinate bench of this Tribunal dated 24.01.2013, passed in assessee's own case for the assessment year 2005-06, wherein the Tribunal has held as under:-

"8. We have considered rival submission and have perused the orders of the authorities below and the judgment cited by the learned counsel of the assessee. First, we discuss regarding the applicability of judgment of Hon'ble Punjab and Haryanna High Court) relied on by the learned counsel of the assessee. In that case, a finding is given that the rental of the premises was fixed and it did not change with the change of occupants and it was deducted from the wages of the

employee or employees occupying the premises. It cannot be shown by the learned counsel of the assessee in the present case that these facts are identical in the present case also, even in the respect of income from rent towards staff quarter. Admittedly, the major part of the income for the licence fee of canteen is ITA No. 507/Ahd/2016 DCIT Vs. Gujarat State Road Transport Corpn A.Y. 2012-13 Page 3 of 3 not from staff, but from outsiders and hence this judgment is not applicable to this receipt at all, and even for the receipt of rent on account of staff quarter, the judgment is not applicable because it could not be shown by the learned AR of the assessee that the facts are identical. Regarding the argument that this income was taxed under the head income from business in earlier years, we find that on the plea of consistency, it cannot be held that if a mistake is committed by the AO in earlier years, the same should be perpetuated. This is not case of the assessee that the rental income is not in respect of house property owned by the assessee, and hence in our considered opinion, this rental income is taxable under the head income from house property, as has been held by the authorities below, and hence, we do not find any reason to interfere with order of the learned CIT(A) on this issue, and this ground of the appeal of the assessee is dismissed."

8. We see no reasons to take any other view of the matter than the view so taken by the co-ordinate bench. Respectfully following the views so taken by the co-ordinate bench (supra) in assessee's own case for AY 2005-06 in ITA No.2598/Ahd/2009, we uphold the grievance of the Assessing Officer."

Taking into consideration the entire aspect of the matter and the view taken by the Hon'ble Co-ordinate Bench in the absence of any changed circumstances, we find no alternative but to decline to entertain the claim of assessee. Hence, revenue's ground of appeal is allowed.

9. In the result, Revenue's appeal is partly allowed.

This Order pronounced in Open Court on	**25/07/2019**

Sd/-	Sd/-
(WASEEM AHMED)	(Ms. MADHUMITA ROY)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 25/07/2019

PritiYadav, 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)-10, 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