

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
& MS. MUDHIMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos. 1244 & 1718/Ahd/2015

(निर्धारण वर्ष / Assessment Year: 2010-11)

Asian Granito India Ltd. 202, Dev Arc, Opp. Iskon Temple, S.G. Highway, Ahmedabad-380015	बनाम/ Vs.	DCIT Cricle-1, Ahmedabad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAF CA2 340 H		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

DCIT Cricle-1(1)(1), Ahmedabad	बनाम/ Vs.	Asian Granito India Ltd. 202, Dev Arc, Opp. Iskon Temple, S.G. Highway, Ahmedabad-380015
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAF CA2 340 H		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri A. L. Thakkar, AR
प्रत्यर्थीकीओरसे / Respondent by:	Shri L. P. Jain, Sr. DR

सुनवाईकीतारीख/Date of Hearing	03/09/2019
घोषणाकीतारीख /Date of Pronouncement	16/09/2019

आदेश/O R D E R

PER AMARJIT SINGH - AM:

These two appeals one appeal filed by the assessee and the other appeal filed by the Revenue for A.Y. 2010-11, arise from order of the CIT(A)-1, Ahmedabad

dated 26.02.2015, in proceedings under section 143(3) of the Income Tax Act, 1961; in short “the Act”.

ITA No. 1718/Ahd/2015(Revenue’s Appeal):-

2. The fact in brief is that return of income declaring total income of Rs. 12,55,06,230/- was filed on 30.09.2010. The case was subject to scrutiny and notice u/s. 143(2) of the Act was issued on 30.08.2011. The assessment u/s. 143(3) of the Act was completed on 18.03.2013. Further facts of the case pertaining to the grounds of appeal filed by the Revenue are discussed while adjudicating these grounds of appeal as under.

First Ground of Appeal:-

Disallowance u/s. 35D:-

3. The assessee has claimed expenses of Rs. 65,57,172/- on account of public issue expenses u/s. 35D of the Act. The AO has disallowed the claim of expenses stating that the assessee has incurred the expenses for increase in the authorised capital of the company and the same is not allowable under sub-section 2 of Sec. 35D of the Act.

4. Aggrieved assessee has filed appeal before the Ld. CIT(A). The Ld. CIT(A) has allowed the claim of the assessee.

Second Ground of Appeal:-

Pertaining to deleting the disallowance of Rs. 9,630/- made u/s. 14A r.w. Rule 8D(2)(ii) of the I. T. Rule:-

5. The assessee has claimed dividend income to the amount of Rs. 76,108/- as exempt from tax. The assessee explained that it has not incurred any expenses relating to earning exempt income and stated that the exempt dividend was earned on the investment which was made in the earlier years. The AO has not agreed

with the explanation of the assessee and computed the disallowance u/s. 14A as prescribed under Rule 8D of the I. T. Rule to the amount of Rs. 12,130/-.

6. Aggrieved assessee has filed appeal before the CIT(A). The Ld. CIT(A) has deleted the addition of Rs. 9,630/- after referring the decision of his predecessor that assessee has not incurred any expenses relating to interest expenditure pertaining to invest made on which it had earned exempt income. The CIT(A) has restricted the disallowance to the extent of Rs. 2,500/- for administrative expenses incurred on earning exempt income.

Third Ground of Appeal:-

Deleting the addition of Rs. 90,72,239/- on account of disallowance of unutilised CENVAT credit:-

7. The AO noticed that there was unutilised CENVAT credit shown by the assessee in Column No. 22(a) of 3CD Report and further noticed that assessee has followed exclusive method for accounting CENVAT as against inclusive method mandated u/s. 145A of the Act. The AO has observed that as per the provision of Sec. 145A of the Act the unutilised CENVAT credit had to be included in the closing stock of raw material as work-in-progress and the excise duty paid on unsold finished goods to be included in the inventory of the finished goods. Therefore, he was of the view that unutilised CENVAT credit had to be included in the closing stock of raw material for reducing the cost of consumption of goods charged to the profit and loss account. Therefore, the AO has added unutilised CENVAT credit of Rs. 90,72,239/- to the total income of the assessee.

8. Aggrieved assessee has filed before the CIT(A). The Ld. CIT(A) has deleted the addition after following the various decision of the ITAT Ahmedabad on the issue.

9. During the course of appellate proceeding before us the Ld. Counsel has contended that identical issue on similar fact in the case of the assessee itself has

been decided by the ITAT Ahmedabad vide ITA No. 1147/Ahd/2013 in favour of the assessee itself.

10. The Ld. DR could not controvert the aforesaid material fact stated by the Ld. Counsel.

11. With the assistance of the Ld. Representatives we have gone through the above cited order of the ITAT Ahmedabad and notice that vide Para 3 of the above cited order the issue of deduction of amortisation of preliminary expenses u/s. 35D has been decided in favour of the assessee. Relevant part of the decision of the ITAT is reproduced as under:-

“3. Learned Departmental Representative seeks to read Section 35D(2)(c)(iv) of the Act to plead that the CIT(A) has erred in law as well as on facts in allowing the impugned amortization on preliminary expenses to the assessee. He however fails to dispute the crucial fact that the impugned assessment year is not the first year of the assessee raising the instant amortization claim. It has come on record that the Assessing Officer had himself allowed the very relief of 20% in preceding assessment year whilst framing a regular assessment. The instant issue before us is therefore merely a consequential one since the earlier relief granted to the assessee hereinabove has attained finality. We therefore see no reason to interfere the CIT(A)'s above extracted conclusion deleting the impugned disallowance of amortization of preliminary expenses as per the referred case law. This first substantive ground fails accordingly.”

After considering the decision of the Co-ordinate Bench ITAT Ahmedabad in the case of the assessee on the identical issue based on similar fact we do not find any merit on this ground of appeal of the Revenue. Therefore, this ground of appeal is rejected.

12. Regarding disallowance u/s. 14A of the Act the ITAT has also adjudicated vide Para 4 of the order that the assessee was having interest free fund to the tune of Rs. 201 crores as against its investment made in Mutual Fund amounting to Rs. 5 lacs only. Therefore, the appeal of the Revenue was dismissed. Considering the aforesaid facts on similar issue we do not find any merit in the ground of appeal of the Revenue, therefore, the same stand dismissed.

13. Regarding third issue of addition of unutilised CENVAT credit u/s. 145A of the Act we have noticed that the Co-ordinate Bench of the ITAT vide aforesaid order has adjudicated the similar issue on identical facts in the case of the assessee itself in the favour of the assessee. The relevant part of the decision of the Co-ordinate Bench is reproduced as under:-

“6. Heard both the parties reiterating their respective stands their respective stands in support of and against the impugned closing stock addition made in the course of assessment and deleted during lower appellate proceedings. There can hardly be any dispute in view of catena of above referred case law that the impugned addition is a revenue neutral case since any adjustment made in closing stock follows a consequential increase in opening stock of the succeeding assessment year as well. The assessee has already demonstrated during the course of lower appellate proceedings that there is no revenue effect either way if it follows inclusive or exclusive method qua the CENVAT credit. Learned Departmental Representative fails to rebut this clinching factual position. We therefore affirm the CIT(A)'s findings under challenge. The Revenue fails in its last substantive ground as well.”

Respectfully following the decision of the Co-ordinate Bench on similar issue and identical fact in the case of the assessee itself as elaborated above we do not find any merit in the appeal of the Revenue. Therefore, appeal of the Revenue is dismissed.

ITA No. 1244/Ahd/2015(Assessee's Appeal):-

14. Ground No. 1 is not pressed. Therefore, this ground of appeal of the assessee is dismissed.

15. Ground No. 2 is regarding disallowance of Rs. 41,38,742/- and Rs. 6,859/- being the amount of Employees' contribution to Provident Fund and ESI u/s. 2,(24)(x) r.w.s. 36(1)(va) of the Act. The aforesaid addition was made as the assessee has deposited the Employees' contribution to Provident Fund as well as ESI after the due date prescribed in the relevant Act. The Ld. CIT(A) has sustained the disallowance.

16. We have heard the rival contention on this issue. After following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Road

Transport Corporation in Tax Appeal No. 637 of 2013 we do not find any merit in the appeal of the assessee as the assessee shall not be entitled to deduction of such sum in computing the income until such sum is credited by the assessee to the employees account in the relevant fund or funds on or before the due date prescribed in the relevant Act. Therefore, this ground of appeal of the assessee is dismissed.

17. In the result, both the appeal of the Revenue and appeal of the assessee are dismissed.

This Order pronounced in Open Court on 16/09/2019

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad: Dated 16/09/2019

TANMAY

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आदेश की प्रतिलिपि अग्रहित / 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.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।