

आयकर अपील अाधिकरण, अहमदाबाद ढायपीठ  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
" A " BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
And  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 991/AHD/2018

अाधरण वष/Asstt. Year: 2009-2010

Amol Dicalite Limited, 301, Akshay, 53, Shrimali Society, Navrangpura, Ahmedabad-380009.  <b>PAN: AABCA2807K</b>	Vs.	D.C.I.T, Cirle-1(1)(1) Ahmedabad.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri S.N. Soparkar, A.R
Revenue by :	Shri Deelip Kumar, Sr.D.R

सुनवाई का ताराख/Date of Hearing : 12/12/2019

घोषणा का ताराख /Date of Pronouncement: 03/03/2020

**आदेश / O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-1, Ahmedabad, dated 27/02/2018 (in short "Ld. CIT(A)") arising in the matter of assessment order passed under s.143(3) r.w.s. 254 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt.28/03/2016 relevant to the Assessment Year 2009-2010.

The assessee has raised the following grounds of appeal.

1) *The Id. CIT(A) has materially erred on facts and in law in confirming the impugned addition made by the A.O. for the alleged addition on account of Transfer Pricing adjustment of Rs. 12,07,517/-*

1.1) *The Id. CIT(A) was equally in error on facts and in law in not appreciating the fact that the Hon. ITAT in its set-aside order did not dismiss the appeal of the Appellant on this issue and in the original order, the addition was not made on account of Transfer Pricing adjustment but it was disallowance made u/s 36(1)(iii) and as such in the fresh set-aside assessment, the A.O. ought to have rendered the findings in view of the explanation and submission made before him.*

1.2) *The Id. CIT(A) ought to have appreciated the submission made before him and as such ought not to have confirmed the addition but ought to have deleted the same.*

2) *The Id. CIT(A) has materially erred on facts and in law in confirming 1) the disallowance out of claim of Bad debts amounting to Rs.1,00,000/- and 2) the disallowance of advance written off amounting to Rs.1,20,000/-*

2.1) *The Ld.CIT(A) ought to have appreciated the submission made before him and as such ought not to have confirmed both the disallowance but ought to have deleted the same.*

*Under the facts and circumstances of the case, the order of the CIT(A) on these issues need to be set-aside and the appeal of the Appellant is requested to be allowed.*

*Your Appellant craves for leave to add/alter/amend/withdraw/modify any of the above grounds before hearing.*

2. The 1<sup>st</sup> issue raised by the assessee is that the learned CIT (A) erred in confirming the addition made by the AO for Rs. 12,07,517/- on account of interest free advances made to the associated enterprises under the transfer pricing provision.

3. The facts in brief are that the assessee in the present case is a limited company and engaged in the business of manufacturing of Filteraid & Perlite

Products & Activities and Manufacturing of Cotton Synthetics Cloths. The assessee in the year under consideration has advanced interest-free loan amounting to Rs. 2,02,19,750/- to the associated concern based in foreign countries. As per the AO the transaction for advancing the interest-free loan to the associated enterprises was the international transactions which was covered under section 92 of the Act. Accordingly the AO determined the arm length price of such transaction at the rate of 7.60% i.e. LIBOR +3% whereas the assessee claimed to determine the same at 5.09% i.e. LIBOR + 2%. However, the AO determined the arm length price at Rs. 12,07,517/- being 7.6% of interest free loan provided to the associated enterprises and added to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the learned CIT (A) who also confirmed the order of the AO.

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

5. The learned AR before us submitted that only applicable LIBOR rate should be applied on the amount of loan advanced to the associated enterprises for determining the arm length price under the transfer pricing provisions. The learned AR in support of his contention placed his reliance on the judgment of Hon'ble Rajasthan High Court in the case of CIT vs Vaibhav Gems Ltd. reported in 88 Taxmann.com 12 which was subsequently confirmed by the Hon'ble Supreme Court reported in 99 taxmann.com 2.

6. On the other and the learned DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. The issue before us arises what should be the rate of interest for determining the arm length price with respect to the interest-free loans

provided by the assessee to the associated enterprises. In this regard we note that the Hon'ble Rajasthan High Court in the case of Vaibhav Gems Limitd (supra) after having reference to the judgment of Hon'ble Delhi High Court in the case of CIT versus Cotton Naturals (I) Private Ltd reported in 55 taxmann.com 523 has decided the issue in favour of the assessee. The relevant extract of the judgment of Hon'ble Delhi High Court reads as under:

*"14. We note that CUP method is the most appropriate method in order to ascertain arms length price of the international transaction as that of the assessee. We agree with the assessee's contention that where the transaction was of lending money in foreign currency to its foreign subsidiaries the comparable transactions, therefore, was of foreign currency Tended by unrelated parties. The financial position and credit rating of the subsidiaries will be broadly the same as the holding company. In such a situation, -domestic prime lending rate would have no applicability and the international Rate Mixed being LIBOR should be taken as the benchmark rate for international transactions."*

8. At the time of hearing, the learned DR did not controvert the arguments advanced by the learned AR for the assessee. In view of the above we direct the AO to determine the arm length price with respect to the interest free loan provided by the assessee at the applicable LIBOR rate. Hence the ground of appeal of the assessee is partly allowed.

9. The 2<sup>nd</sup> issue raised by the assessee is that the learned CIT (A) erred in confirming the order of the AO by sustaining the disallowance of Rs. 1 lakh and Rs.1.20 lakhs on account of bad debts and advances written off.

10. The assessee during the year has written off the amounts of Rs. 1,20,000/- and claimed the deduction for the same under section 28 read with section 37(1) of the Act. The details of the amount written of stand as under:

- i. The principal amount of loan for Rs. 1 lakh advanced to M/s Gujarat Stone Pvt. Ltd..

- ii. The advance amount of Rs. 1.20 lakhs given to the consultant namely Luiz Spelzini for the services.

10.1 However, the AO disregarded the contention of the assessee by observing that the amount of loan given to M/s Gujarat Stone Private Ltd was not part of any business activities and the same was not offered to tax in the earlier years. Therefore the same cannot be allowed as deduction either under section 36 or 37 of the Act.

10.2 Similarly, the AO further held that the advance given to Luiz Spelzini is neither debt nor business loss. Therefore the same cannot be allowed as deduction. Accordingly, the AO disallowed the claim of the assessee for Rs. 2.20 Lakhs and added to the total income of the assessee.

11. Aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the order of the AO.

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

12. The learned AR before us submitted that aforesaid amounts were written off in the course of the business activities and therefore the same are eligible for deduction.

On the other and the learned DR vehemently supported the order of the authorities below.

13. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case is whether the assessee has written off the amounts as discussed above in the course of the business activities and therefore these are eligible for deduction. The onus lies on the

assessee to justify based on the documentary evidence that the impugned amount were written off in the course of the business activities. But the learned AR before us has failed to justify the same. Thus in the absence of sufficient documentary evidence, we are not convinced with the arguments of the learned AR for the assessee. Accordingly we do not find any infirmity in the order of the authorities below. Hence the ground of appeal of the assessee is dismissed.

14. In the result the appeal of the assessee is **partly allowed**.

**Order pronounced in the Court on 03/03/2020 at Ahmedabad.**

**-Sd-  
(RAJPAL YADAV)  
VICE PRESIDENT**

**-Sd-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated  
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(True Copy)  
03/03/2020