

IN THE INCOME-TAX APPELLATE TRIBUNAL “H” BENCH MUMBAI  
BEFORE SHRI PAWAN SINGH JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER  
ITA No. 852/Mum/2019 (Assessment Year 2015-16)

DCIT- 1(1)(2) 579, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	M/s HDFC Sales Pvt. Ltd. 169, Raman House, H.T. Parekh Marg, Backbay Reclamation, Mumbai-400020. <b>PAN: AABCH4278H</b>
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Appellant

Respondent

Revenue by : Shri Nikhil Chaudhary (CIT-DR)  
Assessee by : Shri Niraj Sheth (AR)

Date of Hearing : 17.09.2020

Date of Pronouncement : 18.09.2020

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-2 [ld. CIT(A)], Mumbai dated 18.12.2018 for Assessment Year (AY) 2015-16.
2. Brief facts of the case are that the assessee is a company engaged in the business of marketing and selling of home loans and other financial products, carrying out operations of HDFC Realty Limited, providing Corporate Agency services to HDFC Standard Life Insurance Company Limited. The assessee is part of HDFC group. The assessee while filing its return of income for AY 2015-16 declared loss of Rs. 6.21 crore. The case was selected for scrutiny. The assessing officer during the assessment noted that assessee in the statement of accounts has made a

provisions of Rs. 10.24 crore for under 31 heads of expenses for one month expenses (March 2015). The assessee has made provision in respect of expenditure pertaining to the previous year ending 31 March 2015. The Assessing Officer issued show-cause notice, if any tax was deducted (TDS) on such provisions or such provisions are disallowed for computation of income under the normal provision as well as under the provision of section 115JB (para-4.2 of assessment order).

2. The assessee filed its reply vide reply dated 27.11.2017. In the reply, the assessee submitted that none of the provision made by assessee represents *ad hoc* provision or for any unascertained liability, the provision has been made in respect of expenditure pertaining to previous year ending March 31<sup>st</sup> 2015 and accounted for in accordance with the Accounting Policy consistently followed by the assessee. The assessee also stated that these are ascertained liabilities which are paid at actual rate in subsequent year and are not subject to disallow under section 37 or for the purpose of computing Minimum Alternative Tax (MAT) under section 115JB. The provisions are made in conformity with the Companies Act. The assessee also furnished the quantitative details of the provisions made at the end of year (for the month of March 2015), vide letter dated 14.12.2017.
3. The reply furnished by assessee was not find favour to the Assessing Officer. The Assessing Officer concluded that the provision of Rs. 10.24

Crore represent pure *ad hoc* provision made at the end of year. And that this fact is admitted by the assessee that provisions are reversed at the beginning of the year. The tax auditor has confirmed this fact in Form 3CD. The Assessing Officer concluded that the provisions are contingent in nature and therefore, disallowed the entire provisions of expenses in the assessment order passed under section 143(3) on 27.12.2017.

3. On appeal before the Id. CIT(A), the assessee filed detailed written submission which has been recorded by Id. CIT(A) in para-5.2 of his order. In written submission, the assessee specifically contended that the provisions made by assessee do not represent an *ad hoc* provision. The heads of expenses for which provisions were made are actual expenses incurred by assessee during the year and provisions were made for the expenses incurred for which full details were received and are available on record. The financial statement of assessee was finalized on 27.04.2015 just 27 days after the close of Financial Year. Keeping in view the nature of business and volume of transaction of the assessee, it is not practically possible to get all information relating to quantum of expenses incurred in the month of March in such a short span of time. The assessee also relied on various decisions of Tribunal and other Superior Courts in its written submissions. The Id CIT(A) after considering the submissions of the assessee granted relief to the assessee by taking view that the provisions made by the assessee cannot be held

to be contingent expenditure as the expenditure have been made on a certain basis for each head of expenses so the accounts adopted by the assessee represent the true and fair view of assessee's business, which is consistent with accounting standards. The assessee made provisions of Rs. 10.24 Crore and incurred actual expenses of Rs. 10.46 Crore. It was also held that no disallowances can be made under section 40(a)(ia) of the Act since the scheme of TDS proceeds on the assumption that the person whose liability is to pay an income knows the identity of the beneficiary or the recipient of the income. Further, the amount of payment should also be exactly quantified. Aggrieved by the order of Id. CIT(A), the revenue has filed the present appeal before this Tribunal.

The revenue has raised the following grounds of appeal:

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by AO of Rs. 10.24 crore being a provision of average of one month expense of total expenses covered under thirty one heads as on 31.03.2015, by holding that it is an accrued liability, without appreciating the fact that no evidence was furnished by the assessee before the AO to substantiate that the same is an ascertained liability as such allowable u/s 37(1) of the Act."
2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO of Rs. 10.24 crore to the book profit by holding that the provision made by assessee is ascertained liability covered by Explanation 1 to sec. 115JB of the Act."
4. We have heard the submission of Id. Departmental Representative (DR) for the revenue and Id. Authorised Representative (AR) of the assessee and perused the material available on record. Ground No.1 relates to deleting the addition of Rs. 10.24 crore being a provision of average one

month expenses. The ld. DR for the revenue submits that the assessee made a provision of expenses at the end of year for unascertained liabilities. The provisions of 31 items of expenses were made fully on estimation basis. There was no justification for making such estimate provision on *ad hoc* basis. The Assessing Officer while passing the assessment order has clearly held that the provisions of expenses were purely on *ad hoc* basis and this fact was admitted by assessee. The Tax Auditor has also confirmed this fact in the Tax Audit Report. The provisions are contingent in nature and liable to be disallowed. The ld. DR further submits that the item wise details of expenses for which the assessee made provision is recorded by ld. CIT(A) on page 8,9 & 10 of the impugned order. The ld. DR invited our attention on item no.1 wherein the assessee made provision for motor car expenses and reimbursement of fuel expenses of Rs. 7.84 lakhs each, however, actual expenses were only Rs. 1.64 lakhs. Similarly, the provision for brokerage and consultancy fees –HSPL /HRL was shown at Rs. 1.12 lakhs and Rs. 14.10 lakhs, however, no actual expenses were incurred. The ld. DR also made similar submission with regard to item no.18, 20 & 21 wherein provisions were made for Rs. 55 lakhs on account of entertainment expenses and incurred only Rs. 58,000/-, on repair and maintenance provision was made for Rs. 10.18 lakhs and actual expenses were incurred Rs. 3.89 lakhs and for repair and maintenance of building

provisions of Rs. 7,000/- was made and nothing was incurred. On the basis of aforesaid figures, the ld. DR submits that there was no scientific basis for making provision of the expenses, the estimation projected is misleading. The provisions of expenses are without any substantiation, purely *ad hoc* and are liable to be disallowed.

5. To buttress his submission, the ld. DR for the revenue relied upon the decision of Ahmadabad Tribunal in Hardik Jigishbhai Desai Vs. DCIT in ITA No. 1084/Ahd/2013 reported vide [2016] (11) TMI 668- ITAT Ahmadabad. The ld. DR further submits that if there was certain liability, the assessee should have made TDS. No TDS was made, therefore, the expenses is not allowable. And relied upon the decision of Cochin Tribunal in Abad Builders (P.) Ltd. vs ACIT reported in [2014] 43 taxmann.com 128 (Cochin Trib.). The ld. DR finally submits that the assessee was following the same practice from last various years. This was a wrong practice adopted by assessee which is not permissible under the law. The policy and practice which is adopted by assessee, if not permissible by law; the assessee cannot take the plea that such practice was never questioned by the revenue. The case of assessee was selected for scrutiny for the first time in the year under consideration. The ld. DR prayed for reversing the decision of ld. CIT(A) and to restore the order passed by Assessing Officer.

6. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that the assessee is engaged in the business of marketing and selling of home loans, Life Insurance product, Corporate Agency Services and promoting and marketing of general insurance, mutual funds and financial products and carrying out operation of HDFC Group. The Id. AR of the assessee further submits that the amount of provision does not represent adhoc provision. The head of expenses for which provisions were made are actual expenses incurred by the assessee during the year and the provisions were made for expenses incurred for which full details were received. The Audit of financial statements of assessee was finalized on 27.07.2015, just 27 days after the close of Financial Year. It may be appreciated that keeping in view the nature and business activities and volume of frequency of different type of transaction, it is not practically possible to get all the information relating to the quantum of expenses incurred for the month of March in a short period of time. The assessee furnished complete details to the Assessing Officer. The assessee made provision for Rs. 10.26 crore, however, actual expenses of Rs. 10.46 crore was incurred, which confirmed the fact that the provisions were made with due diligence and cannot be considered as *adhoc*. Though the provisions were made on estimation, which were based on consistency over the years keeping in view the expenses incurred on certain basis for each

head of expenses. The Id. AR further explained that reversal of provision and is merely for administrative convenience and for insuring correct accounting as per Companies Act and in accordance with section 145 of the Act. The observation of Auditor in the Tax Audit Report is merely a disclosure in the said report which cannot be considered as “qualification”. The Auditor has not confirmed anything to give an impression that provision must be disallowed for computing the income under the Act. The Assessing Officer while issuing show-cause notice has not raised the issue that no TDS was made on the provision of expenses. The Id. AR for the assessee finally submits that when the assessee was regularly following the practice of making provision on account of various expenses in the month of March, which is reversed on 1<sup>st</sup> April in the next year and expenses are considered on the basis of actual payment in the subsequent year and the same has been taxed in the next year, the same cannot be held to be contingent expenses. The assessee has adopted true and fair estimation for the month of March, which is in accordance with the Accounting Standard. The Id. AR further reiterate that no disallowance can be made in the context of section 40(a)(ia) as no payment was exactly identified or quantified. In support of his submission, the Id. AR of the assessee relied on the following decisions:

- Aditya Birla Nuvo Vs DCIT (ITA No. 8427/Mum/2010 dated 17.09.2014),
- Pfizer Ltd. Vs ITO in ITA No. 1667/Mum/2010,
- CIT Vs Triveni Engineering and Industries Ltd. [2011] Taxman 94 (Delhi HC),
- Bharat Earth Movers Ltd. Vs CIT 245 ITR 428 (SC),
- Rotrock Controls India (P.) Ltd. Vs. CIT (314 ITR 62 (SC),
- CIT Vs Hindtron Services Ltd. (328 ITR 263 (SC) and
- CIT Vs Excel Industries Ltd. (358 ITR 295 (SC).

7. We have considered the rival submission of both the parties and carefully gone through the orders of lower authorities. We have also deliberated on various case laws cited by ld. Representative of the parties. The AO disallowed the provision of expenses by taking view that the provisions made by assessee are *ad hoc* provisions made at the end of the year. These provisions are contingent in nature and have to be disallowed in computing the income. The ld. CIT(A) granted relief to the assessee by taking view that the assessee is regularly following the practice of making provision for various expenses for the month of March, which is reversed on 1<sup>st</sup> April of next year and that expenses are considered on the basis of actual payment in the subsequent year. The ld. CIT(A) also concluded that these provision cannot be held to be contingent expenditure as the expenditure have already been incurred and the provision has been made on certain basis for each head of expenses so that the accounts adopted by assessee represent a true and fair affairs of business and is with consistent of accounting standard. The

ld. CIT(A) also held that the assessee incurred actual expenses of Rs. 10.46 crore against the provision of Rs. 10.24 crore. The ld. CIT(A) also relied upon the decision of Delhi High Court in Triveni Engineering & Industries Ltd. (supra). On the issue of non-deduction of TDS, the ld. CIT(A) agreed with the submission of assessee that no disallowance can be made under section 40(a)(ia) as the scheme of TDS proceed on the assumption that the person whose liability is to pay income knows the identity of beneficiary or recipient of the income and that amount of payment should be exactly quantified. The operative part of the order of ld CIT(A) is extracted below;

“6. Decision: I have considered the AO's order, the submissions of the appellant and the details filed. I find that the appellant is regularly following this practice of making provisions for various expenses for the month of March, which is then reversed on the 18t of April, next year and the expenses are considered on the basis of actual payment in the subsequent year. The provision has been made, for the expenses incurred for which invoices/full details were not received till the end of the month i.e. 31st of March, by considering the average one month expense. I am inclined to agree with the appellant's submission that these provisions cannot be held to be contingent expenditure since the expenditure have already been incurred and the provision has been made on a certain basis for each head of expense so that the account~ adopted by the appellant represent a true and, fair view of the state of affairs of the business, consistent with the accounting standards. In this regard, it is noted that the actual expenses incurred was Rs.10,46,13,017/ - as against the provision of Rs.10,24,36,819/ -, Further, it is not a case where the expenditure would accrue on the happening of some subsequent event. In this regard, reliance

is placed on the decision in the CIT Vs. Triveni Engineering and Industries Ltd. (2011) 196 Taxman 94 Delhi High Court.

6.1 I find that the AO has also required the appellant to explain whether TDS was deducted on such provisions and if not, whether such provisions have been disallowed in the computation of income. In this regard, the appellant has submitted that no disallowances can be made in the context of Sec. 40(a)(ia) of the Act since the scheme of TDS proceeds on the assumption that the person whose liability is to pay an income knows the identity of the beneficiary or the recipient of the income. Further, the amount of payment should also be exactly quantified. I am inclined to agree with the above submission of the appellant in the light of the decision of Mumbai ITAT in the case of Aditya Birla Nuvo Vs. DCIT (ITA No.8427/Mum/2010) dated 17.09.2014.

6.2 In view of above discussion, I find that the addition made by the AO, by treating the provisions of Rs. 10,24,36,819/-, as contingent in nature is not justified and the same is hereby deleted.

8. Before us the ld. DR for the revenue in his submissions vehemently submitted that the projected estimation of the provisions of expenses is projected purely on estimation and that there is mismatch of projected figures of expenses and the actual expenses incurred on various counts, which we have recorded above. Second contention of the ld. DR for the revenue is that no TDS was made on such provisions. The ld. DR for the revenue also relied on the decisions of Ahmedabad Tribunal in Hardik Jigishbhai Desai (supra) and the decision of Cochin Tribunal in Abad Builders (P.) Ltd. (supra). In Hardik Jigishbhai Desai (supra), the assessee debited the provision of commission expenses to the Profit & Loss Account without making TDS. The Assessing Officer disallowed

the expenses by taking view that debiting the commission expenses resulted in deduction of profit and TDS should have been made on such expenses. The Id. CIT(A) confirmed the disallowance made by Assessing Officer. On appeal before the Tribunal, the disallowance was maintained. In the said case, the recipient of commission was identifiable. However, fact of the present case is quite different. The assessee made provision with regard to 31 different items. The Assessing Officer has not brought any fact on record that recipient were certain or identifiable. The assessee has made provision in the last month the Financial Year only on the basis of estimation of earlier month of the Financial Year. The Assessing Officer has not examined whether the provision made for the month of March 2015 was not a reliable estimate on account of past obligations. Similarly, in case of Abad Builders (P.) Ltd. (supra), the Assessing Officer made disallowance under section 40(a)(ia) as the assessee has not made TDS on provision of sundry creditor. The assessee claimed deduction of the same amount in subsequent AY. The Id. CIT(A) confirmed the disallowance by taking view that the assessee cannot claim double deduction of a very same amount on which assessee deducted and paid TDS. In the said case, the recipient was identifiable and the assessee has not pleaded that such obligation was a result of past events. We may further reiterate that in both the case law relied by Id. DR for the revenue a recipient was

identifiable, however, in the case in hand, no such recipient were identifiable, moreover, the provisions were made for multiple purposes. The assessee made provision of Rs. 10.24 crore and ultimately made expenses of Rs. 10.46 crore, which clearly demonstrate that assessee made the provision after due diligence which cannot be said to be an *ad hoc* provision.

9. In view of the aforesaid discussions, we do not find any merit in the grounds of appeal raised by revenue; hence we affirm the order passed by Id CIT(A). In the result Ground No.1 of appeal is dismissed.

10. Ground No.2 relates to deleting the addition/ disallowance of Rs. 10.24 Crore from book profit under section 115JB. Considering the facts that we have affirmed the order of Id CIT(A) on ground No. 1 of the appeal, therefore adjudication of Ground No.2, have become academic.

11. In the result, appeal of the revenue is dismissed.

Order pronounced in open court on 18/09/2020.

**Sd/-**  
**RAJESH KUMAR**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 18.09.2020

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**Copy of the Order forwarded to :**

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|-------------------------------|----------------------|
| 1. Assessee                   | 2. Respondent        |
| 3. The concerned CIT(A)       | 4. The concerned CIT |
| 5. DR "H" Bench, ITAT, Mumbai |                      |
| 6. Guard File                 |                      |

**BY ORDER,**

**Dy./Asst. Registrar**  
**ITAT, Mumbai**