

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

[Through Virtual Court]

**ITA. No: 2400/Ahd/2018
(Assessment Year: 2015-16)**

The Deputy Commissioner of Income Tax, Circle- 2(1)(1), Ahmedabad	V/S	Gujarat State Road Transport Corporation, Central Office, Central Workshop, Naroda Patiya, Ahmedabad-382340
(Appellant)		PAN No. AAACG 5587H (Respondent)

**Appellant by : Shri Aarsi Prasad, CIT/DR
Respondent by : Shri Sunil Talati, A.R.**

(आदेश)/ORDER

Date of hearing : 10-12-2020
Date of Pronouncement : 16 -12-2020

PER MAHAVIR PRASAD, J.M.

1. This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (hereinafter called CIT(A)) order no. CIT(A)-2/10288/AC. Cir.

2(1)(1)//2017-18 order dated 28/09/2018 arising out of assessment order dated 26/12/2017. Revenue has taken following grounds of appeal:

- i. The Ld CIT(A) has erred in law and on facts in deleting the addition of Rs 4,53,46,656 made on account of capitalization of reconditioning of Buses and assemblies etc.*
- ii. The Ld CIT(A) has erred in law and on facts in treating the income from license fees of canteen amounting to Rs 6,27,88,985/- as business income, without properly appreciating the facts of the case and material brought on record.*
- iii. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.*

2. Briefly stating the facts as envisaged from the order of the Ld. CIT(A):

"1. As regards Ground No. 1 regarding payment made towards Motor Accident Claim of Rs. 29,51,21,469/-, it is submitted that the learned Assessing Officer has erred in not appreciating the facts of the case which has direct nexus to the transportation business and liabilities thereon in which the appellant is engaged into. It is to be appreciated that GSRTC is a govt. undertaking mainly concentrating or providing facilities to remote places at most economical fare. Improving and reviving the operational performance of GSRTC is indeed a challenging task. Accidents per bus and break down / km had also risen to unacceptable levels; for which the corporation has undoubtedly the liabilities in relation to claim that may arise in case of Accidents as due to exemption granted by govt. of Gujarat to corporation for insuring buses. For this reason the buses of corporation do not cover any insurance and corporation has to honour the liabilities by way of expenditure towards approximately 2500 to 2700 MACT awards annually and it is to be incurred every year. This is most regular practice since years as regularly accidents take place, claims are made and regularly settled.

Given the above reasons it is to further submit in relation to above ground that Motor Accident Claims Tribunal (MACT) carries out proceedings in relation to cases which are filed against the corporation which are being lodged when accident takes place. The MACT passes the awards after 6-7 years which are received by the corporation after 2-3 months through advocates and accordingly the liabilities are discharged subject to availability of funds with the corporation. From this procedure it can be understood that it is not feasible to derive the liabilities for the provision purpose as in case of damages to buses the recovery of the repairing charges are being done from the party/drivers and adjusted against the expenditure. Thus as the liabilities takes time to get crystallized and all this claims became due only in this assessment year and were honoured, It is to be submitted that provisions cannot be made merely on the basis of claims made by the

parties or suits filed in court by dead or injured parties/relatives due to accidents. Therefore liabilities are crystallized, made known and debited in books only when awards/order of courts are received from advocates. Therefore they are not at all of previous year in nature and has been allowed consistently on the same basis for all those more than 50 years.

Therefore by no stretch of interpretation the payment in nature of compensation be termed as penalty; as there is no breach of any provisions of any law. If the amount of money demanded as compensation is extravagant and has no regard to the extent of damages caused, than it is said to be a penalty. Penalty is punitive in nature and the main intention is to frighten the aggressor to prevent him from committing a breach in future, while compensation means money value awarded to someone in recognition of loss, suffering or injury caused to any party .So it can be concluded that payment of Rs. 29,51,21,469/-, towards Motor Accident Claim incurred by the appellant in the shape and nature of Motor Accident claim are not at all in the nature of penalty and appreciating the above facts of the case it is prayed, that disallowance made of Rs. 29,51,21,469/- which is unjustifiably made be deleted.

Also in earlier years i.e. from A.Y. 2009-10 to A.Y. 2014-15, this issue has already been covered in favour of the appellant by your honour. The copy of the order passed by your honour for A.Y. 2014-15 is enclosed herewith as per Page 1 to 10".

3. Thereafter assessee preferred an appeal before the Id. CIT(A) who allowed the appeal of the assessee on the basis of that similar disallowances were deleted by the Ld. CIT(A) in assessment years 2011-12, 2012-13 & 2013-14 as well as ITAT decided matter in favour of assessee in ITA No. 507/Ahd/2016 order dated 29/01/2018 for Assessment Year 2012-13 wherein deleted the disallowance of Motor Accident Claim compensation.
4. Now Revenue has come before us.
5. We have gone through the relevant record and impugned order. So far ground no. 1 is concerned with regard to deletion the addition of Rs. 4,53,46,656/- made on account of capitalization of reconditioning of Buses and assemblies etc.
6. The Co-ordinate Bench in assessee's own case for Assessment Year 2014-15 has passed in order in favour of assessee's own case with the following observations:

3. The first issue relating to the deletion of addition of Rs. 2,41,97,132/- made on account of expenditure claimed on reconditioning of buses and assemblies etc upon treating the same as capital expenditure is a covered one as submitted by the Ld. Authorized Representative (AR); of the assessee in assessee's own case for A.Y. 2013-12, by and under the order dated 25/07/2019 passed by the Co-ordinate Bench; a copy whereof has also been submitted before us. However, such contention of the Ld. Authorized Representative (AR) has been failed to be controverted by the Ld. Representative of the Revenue.

7. Now we come to ground no. 2 with regard to treating the income from license fees of canteen amounting to Rs. 6,27,88,985/- as business income, without properly appreciating the facts of the case and material brought on record.
8. At the outset, Ld. A.R. submitted the copy of the Co-ordinate Bench wherein relief was not granted to the assessee in earlier assessment year i.e. 2014-15 wherein ITAT dismissed the appeal of the Revenue with following observations:

"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 Haryana 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. Thus in parity with the aforesaid Co-ordinate Bench order in assessee's own case in ITA No. 1493/Ahd/2018 in preceding assessment year, we allow this ground of appeal of the Revenue.

10. In the result, appeal filed by the Revenue is partly allowed.

Order pronounced in Open Court on	16- 12- 2020
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Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER **True Copy**
Ahmedabad: Dated 16 /12/2020

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad