

आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफाउर रहमान, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VP AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं./ ITA No. 6425/Mum/2017
(निर्धारण वर्ष / Assessment Year 2011-12)

आयकर अपील सं./ ITA No. 6426/Mum/2017
(निर्धारण वर्ष / Assessment Year 2012-13)

आयकर अपील सं./ ITA No. 1140/Mum/2017
(निर्धारण वर्ष / Assessment Year 2014-15)

The Dy. Commissioner of Income Tax, Circle 1(2)(2), Room No. 535, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	बनाम/ Vs.	M/s Maharashtra Tourism Development Corporation Ltd. C.D.O. Hutments, Opp. LIC Bldg, Mada Cama road, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAACM0712G		

अपीलार्थी की ओर से/ Appellant by	:	Shri Mamta Bansal, CIT DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Anil Sathe, AR

सुनवाई की तारीख / Date of hearing:	27.07.2021
घोषणा की तारीख / Date of pronouncement:	27.07.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

These appeals of the Revenue are arising out of order of the Commissioner of Income Tax (Appeals)]-8, Mumbai [in short CIT(A)],

in Appeal No. CIT(A)-8/IT-365 & 366/15-16, CIT(A)-2/IT/10479/2016-17 vide dated 07.08.2017, 17.12.2018. The Assessments were framed by the Dy. Commissioner of Income Tax, Circle 3(2), Mumbai (in short ITO/ AO) for the A.Ys. 2011-12, 2012-13, 2014-15 vide order dated 01.03.2013, 27.03.2015, 28.12.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

In ITA No. 6426/Mum/2017 for AY 2012-13

2. The first issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of addition made by Assessing Officer in treating the interest credited to the grant in aid as income chargeable to tax under the head income from other sources. For this, Revenue has raised the following ground No. 1:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of additions made by the AO of Rs. 48,30,94,244/- relying on various judicial pronouncement and without appreciating the facts that assessee has not business activity and the income chargeable to tax is under the head of income "Income from other sources."

3. At the outset, the learned Counsel for the assessee took us through Para 5.2 of the CIT(A)'s order wherein it is held that the interest earned on FD made out of unutilised grants cannot be

treated as income and CIT(A) relying on the order of appeal for AY 2007-08 deleted the addition by observing in Para 5.2 as under:-

"5.2.1 These grounds relates to addition of Rs. 48.30 crore being interest earned on FDs made out of unutilised grants. This issue has been decided by me in favour of the appellant in their appeal for AY 2007-08 in Appeal no. CIT(A)-8/IT-361/15-16 dated 7/8/2017.

5.2.2 Since the facts and circumstances relating to this issue remain the same, applying the same reasoning and following my earlier decision, these grounds are allowed."

4. The learned Counsel for the assessee then took us through the Tribunal's order in ITA Nos. 6423-24, 6431 & 6439/Mum/2017 for Assessment Years 2007-08 to 2010-11 respectively order dated 01.06.2021, wherein identical issue was considered and referred to Para 8, which reads as under:-

"8. Per contra, learned Counsel of the assessee stated that learned CIT(A) has taken a correct view of the matter. He has submitted a detailed paper book alongwith following submissions :-

"At the outset, ratio of decision of Hon'ble ITAT in assessee's own case for AY 2006-07 is not applicable to present appeals since in the said year, the limited

question for consideration before Hon'ble ITAT was whether the interest would be taxable under the head 'Business Income' or 'Other Sources'. In AY 2006-07 it was never contested by the assessee that the interest is not taxable. It was only in AY 2007-08 that the stand in regard to taxability of the interest was first time changed by the assessee, in view of the Office Memorandum dated 06/12/2006.

> There are a number of decisions of various appellate authorities, upholding the stand taken by the assessee that interest earned on unutilized grants will be in the nature of grant itself and therefore not chargeable to tax. The said decisions have been included in the legal paperbook handed over during the hearing on 17/06/2019. (Please refer page no. 7 to 72 of the legal paper-book)

> The un-utilized grants are kept by the assessee in form of FDs and in no circumstances are utilized for any purpose other than the one for which the same are granted. A statement of grants received during FY 2006-07 and FDs kept against the same is included in the factual paper-book filed on 04/04/2019. (Please refer page no. 33 to 38 of the factual paper-book.)

> Accounting Standard (AS)-12 which deals with accounting for government grants, does not specify a

particular method to be followed for recognition/accounting of interest accrued on the unutilized grants. However, it is the contention of the assessee that once it is accepted that the interest partakes the same character of the principal grant, the interest should also be recognized in the same manner as the principal grant. A copy of AS - 12 is annexed herewith for reference.

> Similarly, ICDS - VII relating to government grants also does not prescribe any particular method for recognition of interest on unutilized grants. A copy of ICDS VII is already included in the factual paper-book. (Please refer page no. 114 to 116 of the factual paper-book)".

9. *He has further relied upon following case laws :-*

Over-riding title of the Government

- CIT VS Sitaldas Tirathdas (41 ITR 367)*

Interest being characterized in the nature of grant

- CIT vs. SAR Infracon (P) Ltd. (Guj) 42 taxmann.com 405*

- CIT vs. Karnataka State Agricultural Produce Processing & Export Corporation Ltd. (Kar) 57 taxmann.com 349*

- *CIT & Anr. Vs. Karnataka Urban Infrastructure Development & Finance Corporation (Kar) 203 CTR 422*
- *Gujarat Municipal Finance Board vs. Dy. CIT (Guj) 221 ITR 317*
- *ITO v. Harijan Evam Nirbal Varg Avas Nigam Ltd. (Allahabad) 29 TTJ 57*
- *Gujarat Power Corporation Ltd. vs. ITO (Guj) 25 taxmann.com 14*
- *Gujarat Narmada Valley Fertiliser Co. Ltd. vs. ITO (And) 2 ITD51*
- *Gujarat State Police vs. Asst. CIT (Ahd) 40 CCH 523*
- *Tamil Nadu Urban Finance & Infrastructure Development Corporation Ltd vs. Asst. CIT (Chennai) 33 CCH 680*
- *ITO VS Kolkata Metro Rail Corporation Ltd. (175 ITD 347)*
- *Vizhinjam International Seaport ltd. VS Income-tax Officer 76 taxmann.com 380*

In the alternative, and without prejudice to above, Interest to be reduced from the cost of the asset

- *CIT VS Bokaro Steel Ltd. 236 ITR 315*

Principle of Consistency

- *CIT VS Excel Industries Ltd. 358 ITR 295*
- *Radhasoami Satsang vs. CIT (193 ITR 321)*

10. Upon careful consideration, we find that learned CIT(A) has taken a correct view of the matter. The Government directive which has been relied upon by him is duly applicable for the current assessment year. As per the said direction the interest on unutilised grant has to be treated a part of the grant itself. Hence, it cannot be subject to tax by the Revenue. In this view of the matter, there is change in circumstances and the ITAT order relied upon by the Assessing Officer is not at all applicable. As at that time there was no direction for such treatment. Further submission and case laws referred by the learned Counsel of the assessee is duly applicable on the facts and circumstances of the case. Nothing was brought before us referring the cogent finding of learned CIT(A). Hence, we uphold the order of learned CIT(A)."

5. The learned CIT DR could not controvert the above finding of the Tribunal and could not point out any difference in the facts. However, she relied on the assessment order. Hence, we uphold the order of CIT(A) on this issue. This issue of Revenue's appeal is dismissed.

6. The next issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the disallowance of addition of ₹9,02,84,251/- pertaining to the revenue grant received by the assessee company. For this, Revenue has raised the following ground No.2:-

"2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of additions of Rs. 9,02,84,251/- without appreciating the facts that the addition was made based on fresh ground and principles of re judicata do not apply to the income tax proceedings."

7. At the outset, the learned Counsel for the assessee drew our attention to Para 5.3 of the CIT(A)'s order and stated that the addition made by the AO on account of revenue grant for publicity has been decided by the CIT(A) based on appeal of assessee for AY 2007-08. He referred to Para 5.3, which reads as under:-

"5.3.1 These grounds relates to addition of ₹9,02,84,251/- on account of revenue grant for publicity. This issue has been decided by me in favour of the appellant in their appeal for AY 2007-08 in Appeal no. CIT(A)-8/IT-361/15-16 dated 7/8/2017.

5.3.2 Since the facts and circumstances relating to this issue remain the same, applying the same

reasoning and following my earlier decision, these grounds are allowed."

8. The learned Counsel for the assessee further stated that this issue is squarely covered in assessee's own case in ITA Nos. 6423-24, 6431 & 6439/Mum/2017 for Assessment Years 2007-08 to 2010-11 respectively vide order dated 01.06.2021, whereby Tribunal in Para No. 12 to 14 has considered as under:-

"12. The learned CIT(A) deleted the disallowance holding as under :

5.2.2 It is not in dispute that the appellant receives both Capital and Revenue grants from the Government which are to be utilized as per the terms of the grant. As per the accounting policy followed by the appellant company, the Revenue grants are credited to Current Liabilities when received and subsequently, are credited to Profit & Loss account to the extent of corresponding expenditure met out of the said grant. This accounting policy is followed by the appellant company consistently for a number of years and the same has been accepted by the department in the past.

5.2.3 Although principles of res judicata do not apply to Income Tax assessments, it is settled law that to differ from stand taken/accepted in earlier years, the Assessing Officer must have some substantial

material and there should be substantial difference in facts. In the case of Radhasoami Satsang Vs C.I.T, 193 I.T.R; p.321(SC) it was held that in the absence of any material change justifying the Department to take a different view from that taken in earlier proceedings, it is not permissible to take different and contradictory stand in a subsequent year with regard to the exemption earlier granted. In the instant case, there are no differences in facts w.r. to this issue from earlier years.

5.2.4 There is no dispute that the grant is in nature of revenue grant. The appellant has consistently accounted for it on matching concept in accordance with AS 12 and ICDS-VII. Relevant extracts of the same are given under contentions and hence not repeated here. This method has also passed the approval of CAG and accepted by the Department in the past. These revenue grants are in nature of reimbursement for publicity costs for promoting tourism incurred and the unspent amount will have to be incurred on publicity expenses in future in capacity of a Nodal Agency acting on behalf of Government of Maharashtra/Government of India. Therefore, the appellant is not free to retain the amount or spend it for any other purpose than publicity. The unspent amount cannot be considered as income in the hands

of the appellant. Accordingly, this ground of appeal is allowed.

13. Against this order the Revenue is in appeal before us.

14. We have heard both the parties and perused the records. We find that policy of accounting for grant on receipt in current liability has been accepted by the Revenue in the earlier year. The utilisation of the same is duly accounted for. The unutilised grant is accepted in liability. Having accepted the above policy earlier the Assessing Officer is taking a different view in the current year. We agree with learned CIT(A) that on the principle of consistency the Assessing Officer's action is not justified without pointing out why contrary view from earlier year is being taken. Hence, we uphold the order of learned CIT(A)."

9. We noted that this revenue grant in aid is already covered by Tribunal's decision in assessee's own case for earlier assessment years. The facts being similar and Revenue now before us could not point out any different in facts or legal position. Nothing contrary was brought to our notice, we uphold the order of CIT(A). This issue of Revenue's appeal is dismissed.

10. Coming to next issue of Revenue's appeal against the order of CIT(A) deleting the disallowance of bad debts written off. For this reason Revenue has raised the following ground No.3: -

"3. Whether on the facts and in the circumstances of the case and in law, the deletion of Rs. 4,99,08,222/- by the Ld CIT(A) relying on Supreme Court decision in the case of TRF Ltd Vs CIT 323 ITR 397, is misplaced, as the decision relates to the actual bad debts written off, whereas, in the instance case only provision have been made, which are yet to be written off."

11. The brief facts relating to this issue are that the AO on perusal of P & L Account noticed that the assessee has debited an amount of Rs. 4,99,08,222/- as provisions for bad and doubtful debts and further noted that such claim has been added back to the total income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) deleted the disallowance relying on the decision of Hon'ble Supreme Court in the case of TRF Limited vs. CIT 323 ITR 397 (SC) and also circular issued by Central Board of Direct Taxes vide its circular No.30.05.2016 No. 12/16 by holding the same as under:-

"5.4.2 This issue was addressed and put to rest by the Supreme Court (SC) .In the case of TRF Limited vs. CIT 323 ITR 397, wherein it was held that post the amendment, it was not necessary for the taxpayer to establish that the debt had come irrecoverable, and mere write-off of the debt in the books of accounts would suffice for the purpose of claiming deduction of bad debts.

5.4.3 The Central Board of Direct Tax (CBDT) vide its Circular dated 12/2016 dated 30 May 2016 has observed that the legislative intention of the 1. aforesaid amendment to section 36(1)(vii) was to eliminate litigation on the issue of allowability of bad debts by removing the condition of establishing recoverability of the debt by the taxpayer.

5.4.4 Accordingly, respecting the SC decision, it has instructed that claims for any bad debt or part thereof in any previous year shall be admissible under section 36(1)(vii) of the Act if it is written off as irrecoverable in the taxpayer's books of accounts, subject to the other conditions specified under section 36(2) of the Act. The CBDT has also instructed that no further appeals should be filed on the above issue, and any pending appeals before Courts / Income-tax Appellate Tribunals on this issue may be withdrawn / not pressed. Accordingly, this ground of appeal is allowed."

Aggrieved, now Revenue is in appeal before us.

12. The learned CIT DR could not controvert the finding of CIT(A) but argued that the assessee has made mere provision for bad debts which is not deductible and for this, she relied on the assessment order. Before us, the learned Counsel for the assessee stated one fact that the assessee has obliterated the provision that bad debts in the

books of accounts by reducing the same from balance of debtors and had shown the net balance of debtors on the asset side of the balance sheet. He stated that the issue is squarely covered by the decision of Hon'ble Supreme Court in Vijaya Bank Vs. CIT & Anr. 333 ITR 166 (SC) and also Hon'ble Bombay High court in the case of CIT vs. Jain insurance corporation of India 254 ITR 204, wherein it is observed that 'writing off' is a technical term and means raising a debit entry to the P&L Account and the corresponding credit may be given either to debtors or to reserve for bad debts. Further the court has observed that where the assessee has debited P&L account and has credited reserve for bad debts, the same would be sufficient for claiming deduction under section 36(1)(vii) of the Act. In the given facts, the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Vijaya Bank (supra) and also TRF Ltd.(supra). Hence, we find no infirmity in the order of CIT(A) and the same is confirmed. This issue of Revenue's appeal is dismissed.

13. The next issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the disallowance made by Assessing Officer of employees contribution to provident fund beyond due date of respective statute amounting to ₹11,03,233/-. For this, Revenue has raised the following ground No.4: -

"4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of additions made by the Assessing Officer of ₹11,03,233/- without taking into consideration and the fact that in identical

circumstances decided the issue in favour of Revenue."

14. Brief facts are that the Assessing Officer noticed from Annexure iii to 3CD report, being annual statement of accounts of the assessee in regard to the provident fund i.e. employees contribution for Pune Regional office, Nasik Regional Office and Mumbai Headquarter. The assessee either made no payment or there is difference in payment or the payment is made after due date as prescribed under the Provident Fund Act. The Assessing Officer has pointed out the following:-

<i>Disallowance on account of difference</i>	<i>Rs.65,462/-</i>
<i>Disallowance on account of non-payment</i>	<i>1,28,798/-</i>
<i>Disallowance on account of payment after due date</i>	<i>9,08,973/-</i>
<i>Total</i>	<i>11,03,233/-</i>

15. Hence, the Assessing Officer disallowed the claim of assessee of employees contribution to the provident Fund being paid beyond the due date of prescribed Act amounting to ₹ 11,03,233/- and added to the returned income of the assessee. Aggrieved assessee preferred the appeal before CIT(A). The CIT(A) allowed the claim of the assessee by observing in Para 5.6 as under: -

"5.6.1 This ground relates to addition of Rs. 11,03,233/- u/s 36(1)(va) on account of late payment of employees contribution to PF. During the appellate proceeding it has been contended that the same are paid before due date of filing of return. Relying on the case in 53 Taxmann.com 141, CIT vs.

Ghatge Patil Transport (BOM) and other jurisdictional judgements, the assessing officer is directed to verify and allow the same if paid before due date of filing the return of income. This ground is allowed subject to verification."

Aggrieved, now Revenue is in appeal before Tribunal.

16. Before us, the learned CIT DR Ms. Mamta Bansal stated that there is no question of allowance of differential payment of ₹65,462/- which has never been paid by the assessee and the amount which are not paid by the assessee amounting to ₹1,28,798/- being claimed on account of employees contribution of provident fund. The balance amount of ₹9,08,873/- was paid after the due date as prescribed under the provident fund Act. She stated that the Assessing Officer clearly brought out the amount due and amount paid. Now, the learned CIT DR further stated that there is an amendment in the Provisions of Section 36(va), wherein explanation 2 was added by the Finance Act 2021, with effect from 01.04.2021 and the relevant explanation read as under: -

"[Explanation-2- For the removal of doubts, it is hereby clarified that the provisions of section 43B shall not apply and shall be deemed never to have been applied for the purposes of determining the "due date" under this clause;]

17. The learned CIT DR stated that this is only clarificatory explanation and normal presumption is that these provisions have

been in the Act from the very inception, once it is clarificatory for this, she relied on CIT v. Podar Cement (Pvt.) Ltd. [1997] 226 ITR 625 (SC) and CIT vs. Gold Coin Health Food (P.) Ltd [2008] 304 ITR 308 (SC).

18. On the other hand, the learned Counsel for the assessee relied on the decision of Hyderabad Bench of ITAT in the case of Salzgitter Hydraulics (P.) Ltd. Vs. ITO (2021) 128 taxmann.com 192 (Hyderabad – Trib.) dated 15.06.2021, wherein it is held that the provident fund contribution received from employees deposited by assessee before the due date of filing of return under section 139(1) of the Act but after the due date prescribed in the relevant statute of provident Fund Act is to be allowed despite the fact that legislation has not only incorporated necessary amendment in section 36(1)(va) of the Act by inserting explanation 2 as well as explanation 5 to section 43B vide Finance Act, 2021 with effect from 01.04.2021, wherein it is clarified that the provisions of section shall not apply and shall be deemed to have been applied to a sum received by assessee from any of his employees covered by section 2(24)(x) of the Act because this explanations are prospective and not retrospective. The relevant Para 2 of the case reads as under: -

"2. Coming to the sole substantive issue of ESI/PF disallowance of Rs. 1,09,343/- and Rs. 3,52,622/-, the assessee's and revenue's stand is that the same has been paid before the due date of filing sec. 139(1) return and after the due date prescribed in the corresponding statutes; respectively. I notice in

this factual backdrop that the legislature has not only incorporated necessary amendments in Sections 36(va) as well as 43B vide Finance Act, 2021 to this effect but also the CBDT has issued Memorandum of Explanation that the same applies w.e.f. 1-4-2021 only. It is further not an issue that the forergoing legislative amendments have proposed employers contributions; disallowances u/s 43B as against employee u/s 36 (va) of the Act; respectively. However, keeping in mind the fact that the same has been clarified to be applicable only with prospective effect from 1-4-2021, I hold that the impugned disallowance is not sustainable in view of all these latest developments even if the Revenue's case is supported by the following case law."

19. In view of the above, we are of the view that the legislative amendments incorporated in section 36(1)(va) and 43B of the Act by the Finance Act, 2021 by inserting explanation 2 and explanation 5 to the respective provisions, are prospective in application with effect from 01.04.2021. Hence, we find no infirmity in the order of Commissioner of Income Tax (Appeals). Hence, the appeal of the Revenue is dismissed.

ITA No. 6425/Mum/2019 for AY 2011-12

20. The only issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the penalty levied by Assessing Officer under

section 271(1)(c) of the Act in regard to interest credited to the account of the assessee on account of grant in aid, amounting to ₹25,44,62,706/-. For this Revenue has raised the following ground No.1:-

"1. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) was justified in deleting the penalty amounting to ₹8,45,26,150/- imposed under section 271(1)(c)?"

21. At the outset, it is noticed from the Tribunal's order in assessee's own case that the addition of interest on unutilized grant in aid in respect of which penalty has been levied was deleted by CIT(A) and which deleting has been confirmed by Tribunal further. The Tribunal in ITA No. assessee's own case for ITA Nos. 6423-24, 6431 & 6439/Mum/2017 for Assessment Years 2007-08 to 2010-11 respectively vide order dated 01.06.2021, has deleted the quantum addition, hence, the penalty will not survive. Therefore, CIT(A) has rightly deleted the penalty and we confirm the same. The appeal of Revenue is dismissed.

1140/Mum/2017 for Assessment Year 2014-15

22. The only issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the addition made by Assessing Officer on account of interest earning from fixed deposits received from grant in aid. For this, Revenue has raised the following ground No.1:-

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting of ₹55,27,38,082/- on account of interest earning from fixed deposits made form grant in aid by following the decision in appellant's own case for Assessment Year 2007-08 given by CIT(A)-8, Mumbai by holding that the same cannot be held as income."

23. At the outset, it is to be stated that this issue is squarely covered by the Tribunal's decision in assessee's own case in ITA Nos. 6423-24, 6431 & 6439/Mum/2017 for Assessment Years 2007-08 to 2010-11 respectively vide order dated 01.06.2021. We have already taken a view in this order vide Paras 3, 4 & 5. The facts and circumstances are exactly identical in this year also. Hence, taking a consistent view, we dismiss the appeal of Revenue in this year also.

24. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the open court on 27.07.2021.

Sd/-

(एस रिफऔर रहमान/ S. RIFAUR RAHMAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 27.07.2021

सुदीप सरकार ,व .निजी सचिव/ Sudip Sarkar, Sr.PS



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील)/ The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि आयकर ,अपीलीय अधिकरण मुंबई ,/
DR, ITAT, Mumbai
6. गार्ड फाईल /Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True_ व .निजी सचिवyraterceS etavirP .rS /

आयकर अपीलीय अधिकरण ,मुंबई / ITAT, Mumbai