

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

(Conducted through Virtual Court)

**ITA No.2631/Ahd/2015
Assessment Year: 2009-10**

Gujarat State Land Development Corporation Limited, Balram Bhavan, Sector-10A Gandhinagar – 382 007. [PAN – AACCG 2870 P] (Appellant)	vs.	Dy. Commissioner of Income Tax, Gandhinagar Circle, Gandhinagar, (Respondent)
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Appellant by : Ms. Arti N. Shah, A.R.
Respondent by : Shri Mohd. Usman, CIT D.R.

Date of hearing : 17.03.2022
Date of pronouncement : 30.03.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 30.07.2015 passed by the CIT(A), Gandhinagar, Ahmedabad for the Assessment Year 2009-10.

2. The grounds of appeal raised by the assessee are as under :

- “1. The Learned Commissioner of Income Tax (Appeals), Gandhinagar, Ahmedabad has erred in law and on facts of the case by confirming disallowance of Rs.20,55,16,232/- in respect of farmers’ loan and interest debited to Profit and Loss Account being not realized and considered as bad debt.*
- 2. The Learned Commissioner of Income Tax (Appeals), Gandhinagar, Ahmedabad has erred in law and on facts of the case by disallowing Rs.1,26,00,819/- made by the Assessing Officer being gratuity premium stating that the Appellant has claimed deduction twice.”*

3. The assessee is a wholly owned Government Corporation engaged in the business of development of soil and water conservation activities. Original return was filed on 29.09.2009 declaring total income of Rs.Nil. Assessment was finalised under Section 143(3) of the Income Tax Act, 1961 vide order dated 01.12.2011

determining the total income at Rs.1,31,61,984/-. Thereafter, notice under Section 148 was issued and the assessee vide letter dated 16.04.2014 requested the Assessing Officer to supply copy of the reasons recorded and accordingly the reasons were duly supplied. The Assessing Officer made addition of Rs.20,55,16,233/- in respect of claim of waiver of interest on Farmers' Loan and made addition of Rs.1,26,00,819/- towards Gratuity Premium.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. As regards ground no.1 relating to disallowance of Farmers' Loan and interest debited to Profit & Loss Account being not realised and considered as bad debt, the Ld. A.R. submitted that the said issue is covered in favour of the assessee in its own case for A.Y. 2008-09, 2011-12 & 2012-13.

6. As regards ground no.2 relating to disallowance of Gratuity Premium, the Ld. A.R. submitted that during the assessment year 2009-10, the Auditors had in their Tax Audit Report mentioned the amount of Rs.1,31,00,000/- under item no.17(i) in Form No.3CD as below :-

"The Corporation has set the group gratuity trust, which has taken an insurance policy with Life Insurance Corporation of India covering the corporation liabilities for the payment of gratuity on retirement. The Corporation has paid Rs.1,31,00,000/- during the year under the audit."

7. The Ld. A.R. further submitted that Clause 17 requires Auditor to mention amount debited in Profit and Loss Account being; "(i) provision for payment of gratuity not allowable under section 40A(7);" under the amount of Rs.1,31,00,000/- stated by the Auditors was with respect to amount of gratuity paid and not with respect to provision for payment of gratuity. The Tax Auditor has just mentioned that the Corporation has made payment of gratuity amounting to Rs.1,31,00,000/-. However, the Assessing Officer disallowed the same stating that the amount of Rs.1,26,00,819/- was deducted twice; once in the Profit and Loss Account and again in the computation of income. The Ld. A.R. submitted that the amount actually debited to Profit and Loss Account was Rs.16,45,201/-. The said amount has been calculated by actuarial valuation of assets and the said calculation is mentioned in the Annual Report for F.Y. 2008-09, which is attached herewith at Paper Book II page no.90. Since the amount was debited in Profit and Loss Account, it was added

back in computation of income. Thereafter, the gratuity insurance premium paid of Rs.1,26,00,819/- being Rs.1,31,00,000/- less Rs.1,99,181/- being insurance/service tax expenses was claimed as deduction u/s.36(1)(v)b of the I.T. Act, 1961 in the return of income. Nowhere in the financial accounts, this amount of Rs.1,26,00,819/- has been otherwise claimed as deduction as stated by the Assessing Officer. In view of this, the Ld. A.R. submitted that there is no double deduction claimed by the assessee and, therefore, the addition in respect of the same should be deleted.

8. The Ld. D.R. relied upon the Assessment Order and the order of the CIT(A).

9. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that for the A.Ys. 2008-09, 2011-12 & 2012-13, similar issue related to disallowance of Farmers' loan and interest debited to Profit & Loss Account was allowed in assessee's favour by the Tribunal. The Tribunal held as under :-

29.1. As for the claim of write off of principal amount of loan, the contention of the Ld. Counsel for the assessee before us is that it was a business loss for the assessee since it was in the business of granting loans and the same had become irrecoverable. We find that for adjudicating the issue the facts have not been clearly brought out. The Ld. Counsel for the assessee had stated that the assessee was undertaking activities for farmers. That the said activities were met by funds provided by the government and part of the expense incurred was raised as recoverable from the farmers as loan. What transpires from the above is that loan raised on farmers was a method of recovery of cost of expenditure incurred on activities undertaken for the farmers. The manner of undertaking the transaction is not clear. It is not known as a fact whether the farmers are billed for the activities undertaken. Then treating a part of it as loan would only tantamount to a different method being adopted for recovery of income by the assessee and in that case the assessee cannot be said to be indulging in the activity of granting loan. The treatment of the write-offs of such loans would then have to be viewed probably as bad debts, though this may not be treated as our decision on the issue. What is necessary therefore for adjudicating the issue of eligibility to claim of write off of principal loan amount is the nature of the transaction resulting in the loan being granted to farmers. It is only thereafter it can be decided as to whether the assessee is eligible to claim write off of the same as per law and under which provision. We therefore deem it necessary to restore the issue back to the AO to determine the facts in which the impugned loans have arisen and thereafter adjudicate the issue in accordance with law. Needless to add the assessee be granted due opportunity of hearing in this regard.

10. Thus, from the above observation of the Tribunal the treatment of write-offs of such loans to be viewed as bad debts should be eligible to claim write-off of principal

loan amount. The Ld. A.R. at the time of hearing also relied upon the decision of Hon'ble Apex Court in the case of T.R.F. Limited vs. CIT (2010) 190 Taxmann 391 (SC). Thus, in the present case the treatment of written-off loans needs to be verified in light of the Profit & Loss Account. Therefore, we are remanding back this issue to the file of the Assessing Officer for proper adjudication after considering the observations made in the earlier and subsequent Assessment Years by the Tribunal. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

11. As regards ground no.2 is concerned, from the perusal of the records it can be seen that the Gratuity Premium allowable under Section 40A(7) and section 50 of the Act. From the perusal of the Profit & Loss Account, since the same was debited and, therefore, in the computation of income the same was shown by the assessee. Thus, there is no double deduction claimed by the assessee as per the observations of the Assessing Officer and the observations of the CIT(A). Thus, the Assessing Officer was not right in making this addition. Ground no.2 is thus allowed.

12. In the result, appeal of the assessee is partly allowed for statistical purposes.

Pronounced in the court on the 30th March, 2022.

Sd/-
(BHAGIRATH MAL BIYANI)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 30th day of March, 2022

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Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *Commissioner*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*