

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, AHMEDABAD

**BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

ITA No. 387/Ahd/2020

Assessment Years : 2015-16

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| The DCIT, Circle 1(3), Ahmedabad | Vs | The Kalupur Commercial Co-op. Bank Ltd., Kalupur Bank Bhavan, Nr. Income Tax, Ashram Road, Ahmedabad 380009 PAN : AAAAT 9360 R |
| अपीलार्थी/ (Appellant) | | प्रत्यर्थी/ (Respondent) |
| Revenue by : | | Shri Vijay Kumar Jaiswal, CIT-DR |
| Assessee by : | | Shri S.N. Soparkar, Sr. Advocate, and Shri Parin Shah, AR |

सुनवाई की तारीख/Date of Hearing : 04/05/2022

घोषणा की तारीख /Date of Pronouncement: 11/05/2022

आदेश / O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal is preferred by the Revenue against the order of learned Commissioner of Income-Tax (Appeals)-10, Ahmedabad ("CIT(A)" in short) dated 19.02.2020 passed for Assessment Year 2015-16.

2. As noted at the outset, there is a delay of 58 days on the part of the Revenue in filing this appeal before the Tribunal. In this regard, the Revenue has moved an application for condonation of delay and keeping in view the reasons given therein, we find that there was a sufficient cause for the delay of 58 days on the part of the Revenue in filing this appeal before the Tribunal. The same is accordingly condoned and the appeal of the Revenue is accordingly being disposed of on merit.

3. The relevant facts of the case giving rise to this appeal are that the assessee is a Co-operative Bank which filed its return of income for the year

under consideration on 22.09.2015 declaring a total income of Rs.98,12,84,810/-. In the assessment completed under Section 143(3) of the Income-tax Act, 1961 ("the Act" in short) vide an order dated 30.11.2017, the total income of the assessee was determined by the Assessing Officer at Rs.1,08,68,86,394/- after making following additions/disallowances:-

- i. Disallowance of amortization of premium expenses - Rs. 3,15,80,885/-
- ii. Disallowance of Members' gift expenses - Rs. 1,10,80,735/-
- iii. Addition on account of deposits written off by merged banks - Rs. 2,99,07,611/-
- iv. Disallowance of Impact Fee - Rs. 10,43,353/-
- v. Disallowance of investment written off - Rs. 3,19,89,000/-

4. Against the order passed by the Assessing Officer under Section 143(3) of the Act, an appeal was preferred by the assessee before the learned CIT(A) and after considering the submissions made by the assessee as well as the material available on record, the learned CIT(A) allowed substantial relief to the assessee by deleting the various disallowances/additions made by the Assessing Officer to the total income of the assessee. Aggrieved by the order of the learned CIT(A), the Revenue has preferred this appeal before the Tribunal on the following grounds:-

1. *The ld. CIT(A) has erred in law and facts in deleting the addition on account of disallowance of Ammortized Premium amounting to Rs.3,15,80,885/-.*
2. *The ld. CIT(A) has erred in law and facts in deleting the addition of Rs.2,99,07,611/- on account of deposits written off with Madhavapura Mercantile Co-op. Bank held by the merged bank.*
3. *The ld. CIT(A) has erred in law and facts in deleting the addition of Rs.10,43,353/- on account of disallowance of Impact Fee.*
4. *The ld. CIT(A) has erred in law and facts in deleting addition of Rs.3,19,89,000/- on account of investment written off.*

5. We have heard the arguments of both the sides and also perused the relevant material available on record.

6. As regards Ground No.1, it is observed that the disallowance made by the Assessing Officer on account of amortization of premium amounting to Rs.3,15,80,885/- was deleted by the learned CIT(A) vide paragraph No.4 of his impugned order which reads as under:-

"4. The Ground No. 2 of the appeal is regarding disallowance of amortization of premium amounting to Rs. 3,15,80,885/-.The appellant submitted that the same issue came up before the CIT(A)-10, Ahmedabad, in the appellant's own case for A.Y.2013-14 and AY 2014-15 and issue has been decided in favour of appellant vide order no. Order No. CIT(A)-1C/ACIT.Cir.1(3)/ 10032/17-18 dated 30-6-2017 (para 5.1) and order no. order No. CIT(A)-10/DCIT.Cir.1(3)/391/15-16 dated 28.02.2016 (para 8). The issue is also covered by the decision of hon'ble ITAT in A.Y. 13-14. Hon'ble ITAT vide order dated 14-10-2019 in ITA No, 1088/Ahd/2017 has allowed amortization of premium on government securities. The relevant portion of the order hon'ble ITAT is as under:

"15. The next ground of deleting addition amortization of premium on Govt. Securities of Rs.52,74,57,365/-.

16. The capital expenditure has been challenged by the Revenue before us. We find Learned CIT(A) relying upon the order passed in A.Y. 2012-13 allowed such claim of the assessee. The Learned Advocate appearing for the assessee further relied upon the order passed by the Co-ordinate Bench in Assessee's own case for A.Y. 2012-13 in ITA No.2124/Ahd/2016; cops whereof has been submitted before us. On the contrary the Learned DR relied upon the order passed by the authorities below.

17. Heard the respective parties, perused the relevant materials available on record including the order passed by the co-ordinate Bench in ITA No.2124/Ahd/2016 the relevant portion whereof is as follows:

"8.During the year under consideration, the assessee has written off govt. security premium to the extent of Rs. 2,10,11,715/-. The assessing officer has disallowed the premium amount amortized by the assessee hank in respect of purchase of securities under the category held to be maturity stating that definitely the same is of capital only which cannot be allowed as expenditure.

9. Aggrieved assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has deleted the addition stating that his predecessor has deleted the same in the case of the assessee in the earlier years.

10. We have heard the rival contentions and perused the material on record carefully. The assessee has made investment in the HTM category as per the guidelines laid down by the RBI and claimed amortization of premium till the period of maturity. The assessing officer has disallowed the claim following the similar addition made by his predecessors on the ground that the premium amount paid for acquiring the capital investment cannot be allowed as a deduction expenditure. The ld. CIT(A) has deleted the addition by the decision of his predecessors. We have noticed that as per RBI guidelines dated 16th Oct. 2000, the investment portfolio of the bank is required to be classified into three categories viz. Held to Maturity (HIM), Held for Trading (HFT) and Available for Sale (ATS). Investment classified under HTM category needs to be marked to market and is carried at acquisition cost unless the face value is more than the market value in which case the premium should be amortized over the remaining period. Allowable expenses on premium on government securities has been provided under section 36(i)(iii) of the act and explained by CBDT vide instruction No. 17 of 2008 dated 26-11-2008. The Hon'ble High Court of Gujarat vide (2014) 43 taxmann.com 161 (Gujarat) in the case of CIT, Rajkot-II vs. Rajkot Dist. Co-op. Bank Ltd held that instructions clearly provide for amortization of premium paid on securities when the same are acquired at the rate higher than the face value. Such amortization would have to be for the remaining period of maturity. In view of the above stated facts and legal finding, we do not find any infirmity in the decision of the ld. CIT (A). Therefore, the appeal of the assessee is dismissed on this issue."

It appears that the Hon'ble Court has taken care of that the order passed by the Hon'ble jurisdictional High Court in the case of CIT, Rajkot-2 vs. Rajkot Dist Co-op. Bank Ltd. reported in (2014) 43 taxmann.com 161 (Gujarat) where it was held that the CBDT instruction providing for amortization of premium paid on securities when the same were acquired at the rate higher than the face value, such amortization would have to be for the remaining period of maturity.

Relying upon the same, we confirm the order passed by the ld. CIT(A). Hence, this ground of appeal preferred by the Revenue is dismissed."

Since the facts remain identical, and the issue remains the same, respectfully following the above orders, the addition of Rs.3,15,80,885/- made by the AO is deleted. This ground of appeal is allowed."

6.1 The learned CIT(A) thus allowed relief to the assessee on this issue by following the orders of his learned predecessors in assessee's own case for AYs 2013-14 and 2014-15 as well as the decision of the Tribunal rendered in assessee's own case for AY 2013-14 vide its order dated 14.10.2019 passed in ITA No.1088/Ahd/2017. At the time of hearing before us, the learned Counsel for the assessee has pointed out that even the order of the learned CIT(A), passed in assessee's own case for AY 2014-15 on which reliance *inter alia* is placed by the learned CIT(A) to decide this issue in favour of the assessee vide its impugned order, has been upheld by the Tribunal vide its order dated 18.06.2019 passed in ITA No. 1864/Ahd/2017. A copy of the said order is placed on record and a perusal of the same shows that a similar issue relating to disallowance of amortization of premium has been decided by the Tribunal vide paragraph No.8 as under:-

"8. Heard the respective parties, perused the relevant materials available on record. It appears from the records that while deleting the addition made by the Learned AO, the Learned CIT(A) observed inter alia as follows following the order passed by his predecessor. Relevant portion whereof is as follows:

"...6. After taking into consideration the submission of the assessee, Id. CIT(A) deleted the addition by observing as under:-

"2.3 I have considered the facts of the case and legal position on the issue. The allowability of amortized expenses on premium on Government Securities has been provided u/s. 36(1)(ii) of the provisions have been clarified and explained by CBDT, New Delhi vide Instruction No. 17 of 2008 dated 26.11.2008. As per this clarification, investments of banks classified under HTM (Held to Maturity) category need not be marked to market and are carried at acquisition cost unless these are more than the face value, in which case, the premium should be amortized over the period remaining to maturity. On the basis of this Instruction, different Tribunals, as mentioned above by assessee, have allowed the amortized expenditure. The AO has ignored the provisions of Instruction which is binding on him while discussing the issue and disallowing the expenditure. Since, the Instructions and Circulars are binding in nature on AOs and different Tribunals have given decisions against the revenue, respectfully following the same, ground of appeal of assessee is allowed and addition made by AO is deleted."

Since Id. CIT(A) has given relief to the assessee by placing reliance on various decisions of Tribunals on the issue in view of CBDT Instruction dated 26-11-2008, we feel no need to interfere with the order passed by him and the same is hereby upheld. This ground of the revenue is dismissed.

Respectfully following the order of CIT(A)-4, Ahmedabad as mentioned above dt. 03/05/2016 and my order vide No.CIT(A)-10/ACIT.Cir-1 (3)724/15-16 dated 20/06/2016, as the facts of the appellant's case in this year are identical to the facts of the case decided by the CIT(A)-4, Ahmedabad, the addition of Rs. 2,74,57,365/- made by the AO on this issue are deleted. This ground of appeal is allowed.

5.1 Since the facts remain identical and issue remains the same, respectfully following the order of CIT(A)-4, Ahmedabad, and my order No. CIT(A)-10/DCIT.CIR. 1(3)7391/15-16 dated 28/02/2016, the addition of Rs. 3,15,81,243/-- made by the A.O is deleted. This ground of appeal is allowed."

We have also carefully considered the order passed by the Learned Co-ordinate Bench in ITA No.2124/Ahd/2016 for A.Y. 2012-13. While deciding the identical issue in favour of the assessee the Hon'ble Co-ordinate Bench observed as follows:

"10. We have heard the rival contentions and perused the material on record carefully. The assessee has made investment in the HTM category as per the guidelines laid down by the RBI and claimed amortization of premium till the period maturity. The assessing officer has disallowed the claim following the similar addition made by his predecessors on the ground that the premium amount paid for acquiring the capital investment cannot be allowed as deduction expenditure. The Id. CIT(A) has deleted the addition by following the decision of his predecessors. We have noticed that as per RBI guidelines dated 16th Oct, 2000, the investment portfolio of the bank is required to be classified under three categories viz." Held to Maturity (HTM), Held for Trading (HFT) and Available for Sale (ATS). Investment classified under HTM category needs to be marked to market and are carried at acquisition cost unless these are more than the face value in which case the premium should be amortized over the remaining period. Allowable of amortized expenses on premium on government securities has been provided u/s. 36(1)(ii) of the act and explained by CBDT vide instruction No. 17 of 2008 dated 26-11-2008. The Hon'ble High Court of Gujarat vide (2014) 43 taxmann.com 161 (Gujarat) in the case of CIT, Rajkot-II vs. Rajkot Dist. Co-op. Bank Ltd. held that instructions clearly provide for amortization of premium paid on securities when the same are acquired at the rate higher than the

face value. Such amortization would have to be for the remaining period of maturity. In view of the above stated facts and legal finding, we do not find any infirmity in the decision of the Learned CIT(A). Therefore, the appeal of the revenue is dismissed on this issue."

Taking into consideration the judgment passed by the Co-ordinate Bench in the identical issue, we find no reason to interfere with the order passed by the Learned CIT(A) which in fact, followed the ratio as laid down by the Co-ordinate Bench. Hence, we confirm the same. The revenue's appeal is thus dismissed."

6.2 As the issue involved in the year under consideration as well as all the material facts relevant thereto are similar to that of AYs 2013-14 and 2014-15, we respectfully follow the orders of the Co-ordinate Bench of this Tribunal for AYs 2013-14 and 2014-15 and uphold the impugned order of the learned CIT(A) deleting the disallowance of Rs.3,15,80,885/- made by the Assessing Officer on account of amortization of premium. Ground No.1 of the Revenue's appeal is accordingly dismissed.

7. As regards the Ground No.2, it is observed that the addition of Rs.2,99,07,611/- made by the Assessing Officer on account of disallowance of deposits written off with Madhavpura Mercantile Co-op. Bank was deleted by the learned CIT(A) vide paragraph Nos. 6 to 6.2 of his impugned order which read as under:-

"6. The Ground No. 4 of the appeal is regarding an amount written off towards deposit of Madhavpura Mercantile Co. Op. Bank Ltd. to the tune of Rs. 2,99,07,611/-. Before this office, the appellant submitted that the same issue came up before the CIT(A)-10, Ahmedabad in the appellant's own case for A.Y. 2013-14. The appeal of the appellant for the AY 2013-14 was allowed vide order of Ld. CIT(A)-10, Ahmedabad vide order no. CIT(A)-10/DCIT.Cir.1(3)/391/15-16 dated 28.02.2016 (para 5) observing as under:-

"5. Ground no. 3 is regarding an amount written off towards deposit of Madhavpura Mercantile Co. Op. Bank Ltd. to the tune of Rs. 23,88,83,704/-. The A.O. dealt with this issue vide para-7 and 8 of the assessment order which is reproduced as under :-

"7. I have carefully perused the submission of the assessee. However the contention of- the assessee is not acceptable on the following facts.

i) The assessee has not filed any Corroboratory evidence or justification regarding the write off amounting to Rs.23,88,83,704/-. The assessee has furnished a letter dated 05/08/2010 issued by the Director, Ministry of agriculture, Department of Agriculture & Co-operation, Krishi Bhavan. New Delhi regarding the Gist of discussions taken in the meeting held on 26/05/2010 to discuss the possibilities of the revival of The Madhupura Mercantile Co-operative Bank Ltd. Ahmedabad. The letter clearly indicates that the Reserve Bank of India is in favour of Revival of Madhupura Mercantile Co-operative Bank. Further letter of Reserve Bank of India dated 02/12/2010 produced by the assessee is a letter to all Urban Co-operative banks to make full provision against their exposure to Madhupura Mercantile Bank as on 31/03/2010. However the assessee has not produced any other evidence or justification regarding write off or any other directions issued by the Reserve Bank of India.

ii) It is also noticed on verification of the Return of income filed by the Madhupura Mercantile Co-operative Bank for the Assessment Year 2013-14 that the bank is having Cash and Bank Balances amounting to Rs.654.89Cr. The assessee has not produced any evidence regarding any correspondence made with the Madhupura Mercantile Co-operative Bank or any legal action taken against the bank before the write off.

8. in view of the above discussion the reply given by the assessee is not acceptable and additions on account of fixed deposit write off amounting to Rs.238883704/- debited in the profit and loss account is disallowed and added back to the total income of the assessee.

The submissions filed by the appellant have been perused and placed on record. The matter was discussed at length with the A.R of the appellant. The assessment order passed by the A.O has also been gone through. In this case the appellant being a co-operative bank it is the normal business of the appellant of acceptance of deposits and giving loans and advances, making investments by way of purchase of securities etc. and forming part of the core activity of banking business. Therefore, the deposits placed with Madhupura Mercantile Co.op Bank Ltd. (MMCB) were in the normal course of business of the bank. The RBI has given clear directions to all the Urban Cooperative Banks (UCB) that any bank having exposure to MNCB to make full provision against their exposure to MNCB as on March

31st 2011, A copy of this letter has been filed by the appellant in the appeal proceedings.

The appellant has also filed a copy of the order cancelling the license of the MNCB Order dated Jun 7, 2012. The RBI conducted statutory inspection of the co-operative bank under section 35 of the Act with reference to its financial position as on 31st March, 2011. In this order it has clearly been mentioned by the RBI that the MNCB's net worth was assessed at (-)1316.50 crores and bank was not having adequate assets to meet its liabilities. It has further been observed in this order that the entire capital and reserves of the Co. Operative bank had eroded and the NPA were Rs 1126.55 crore i.e. almost 99.99% to its gross advances and the bank had accumulated loss of 1357.41 crores and deposit erosion was 100%. Therefore the observation of the A. O in the assessment order that on verification of the return of income filed by MNCB for A.Y.2013-14, the bank is having cash and bank balance amounting to Rs. 654.89 crore cannot be the reason for disallowing the claim of the appellant especially in view of findings of the RBI as given in the order cancelling the license of MNCB. All these findings have been given by the RBI after statutory instruction of the Co. Op. Bank u/s.35 of the Act with reference to its financial position as on March, 31st, 2011. It has also been confirmed by the appellant that nothing has been recovered till date since 2001 and nothing is likely to be recovered in the near future also. In view of the above the argument of the appellant are accepted and the addition made by the A.O. is deleted."

6.1 Further, the Revenue filed appeal before the Hon'ble ITAT, Ahmedabad, against the order of the CIT(A)-10, Ahmedabad, inter-alia challenging the deletion of the addition of Rs. 23,88,83,704/- made by the A.O., on account of FDR written off. The said ground of appeal was dismissed by the Hon'ble ITAT by making following observation under para 5 to 8 of its order dated 14/10/2019. Relevant Portion of which is reproduced hereunder.

"5. Ground No.1: The deletion of disallowance of deposit with the Madhavpura Mercantile Co. Op Bank Ltd. of Rs. 23,88,83,704/- has been challenged before us.

6. The assessee has debited on account of Madhupura Mercantile Co. Op. bank Ltd.....

7.....

8.In our considered

opinion, such clarification given by the Learned CIT (A) while deleting the addition is without any ambiguity so as to warrant

interference. Hence we confirm the same. In the result, department's appeal fails."

6.2 Since the facts remain identical and issue remains the same, respectfully following order of the Hon'ble ITAT in the appellant's own case and order of the CIT(A)-10, Ahmedabad, dated 28/02/2016, the addition of Rs. 2,99,07,611/- made by the A.O. is deleted and the ground of the appeal is allowed.

7.1 The learned CIT(A) thus allowed relief to the assessee on this issue by relying on the order of his learned predecessor passed in assessee's own case for AY 2013-14 which has already been upheld by the Tribunal vide its order dated 14.10.2019 (supra). As agreed by the learned representatives of both the sides, this issue is thus squarely covered in favour of the assessee by the order of the Co-ordinate Bench of this Tribunal passed in assessee's own case for AY 2013-14 and respectfully following the same, we uphold the impugned order of the learned CIT(A) deleting the addition of Rs.2,99,07,611/- made by the Assessing Officer on account of deposits written off with Madhavpura Mercantile Co-op. Bank . Ground No.2 of the Revenue's appeal is accordingly dismissed.

8. As regards Ground No.3, it is observed that addition of Rs.10,43,353/- made by the Assessing Officer on account of disallowance of Impact Fee was deleted by the learned CIT(A) vide paragraph Nos.7 to 7.1 of his impugned order which reads a under:-

"7. The Ground No. 5 of the appeal is regarding disallowance of Impact Fees of Rs.10,43,353/-. During the year under consideration, the appellant has paid impact fees of Rs.10,43,353/- to Ahmedabad Municipal Corporation for regularizing the illegal construction. According to AO there is no difference between unauthorized construction and illegal construction. Therefore the Impact Fees paid to regularize the same is in form of penalty and hence not allowed. The appellant submitted the facts of this case are similar to the facts of case decided by hon'ble ITAT Ahmedabad in case of Yadunandan Corporation Surat V. Department of Income Tax on 24.11.2011 vide ITA No. 92/Ahd/2009.

"1. On the facts and circumstances of the case and in law, the Ld. CIT (A), Surat has erred in deleting the addition of Rs.13,02,923/- on account of impact fee paid to Surat Municipal Corporation in violation and infraction of provisions of law?

There was only a violation of the sanction, and not any "infraction of any law". Further, it must be also appreciated that the contravention was not something which the SMC had detected and had levied penalty for such contravention.

It was voluntarily intimated to the SMC under the Gujarat Regularization of Unauthorized Development Act, 2001 which was a Scheme for regularizing unauthorized constructions.

The payment made for such regularization was therefore clearly in the nature of a 'compensatory payment' as explained by the Hon'ble Karnataka High Court in the case of Syndicate Bank CIT vs. Syndicate Bank, 261 ITR 528

Under such Scheme, a revised plan would have to be submitted showing the extra coverage and extra use of FSI. The charges being in nature of Impact Fees and Balcony Cover Charges were levied at the time of the revised plan being sanctioned; as in the case of Loknath and Co. (supra).

It cannot be said that it was a penalty levied for the infraction of any law, as in the case of Syndicate Bank. Being in the nature of a compensatory payment under the scheme floated by the Gujarat Government, the fees/charges paid by the assessee were clearly allowable as permissible deductions. The A.O. is directed to delete the addition of Rs. 73,02,923/-."

Further reliance is placed on decision of Honorable Hyderabad ITAT in case of Keerthi Estates P (Ltd) Vs. DCIT, Circle-2 (1), Hyderabad, dated 04.07.2017, ITA No. 271/Hyd/2016 wherein it was observed by tribunal that compounding fees paid to municipal corporation for regularizing a building plan is not in nature of offence nor prohibited by law therefore allowable as deduction. Copy of order is annexed herewith. Relevant extracts of the order are reproduced as under:

"In the above case the departmental representative relied on decision of Modi Builders Vs. JCIT [2015] 60 lawman.Com 54 (Pune tribunal) however, the ITAT observed that, as long as the actual completion of projects were within the parameters of approval, the corporation / approving authorities permit the projects as approved with nominal fine or compounding fees and if the project were illegal with offence it cannot be cured and the whole project are not approved. Hence, as the deviation were within limits and municipal corporation approved by

compounding fees, the same cannot be treated as in nature of offence and prohibition of law and therefore allowable."

7.1 *I have gone through the submission made by the appellant. It seems there was no "infraction of any law" but violation of the sanction. Considering various decisions cited by the appellant and following decision of the Ahmedabad ITAT in case of Yadunandan Corporation Surat V. Department of Income Tax on 24.11.2011 vide ITA No. 92/Ahd/2009, addition of Rs. 10,43,353/- made is hereby deleted, This ground of appeal is allowed.*

8.1 The learned CIT(A) thus allowed relief to the assessee on this issue by relying on the decision of Co-ordinate Benches of this Tribunal in the case of Yadunandan Corporation Surat (supra) and Keerthi Estates P. (Ltd) (supra). As further pointed out by the learned Counsel for the assessee at the time of hearing before the Tribunal, the Tribunal in its recent decision rendered in the case of Sanjay Bharkumar Shah Vs. ITO, vide its order dated 08.12.2021 passed in ITA No.1138/Ahd/2019, has also decided a similar issue in favour of the assessee vide paragraph No. 7 as under:-

"7. With the assistance of the Id. DR, we have gone through the record carefully. Municipal authorities have levied an impact fee and such expenses were to be borne by owner of the assessee's premises. The Revenue was of the view that this expenditure is penal in nature, and therefore, hit by Explanation-1 appended to section 37 of the Act. On the other hand, explanation of the assessee is that in order to run business, it was a necessary expenditure linked with the tenancy agreement. Hence, it is allowable under section 30 of the Act. It was also contended that impact fee is not a penal in nature, it is a compensatory. The assessee has made reference to decision of ITAT, Mumbai Benches in the case of Mumbai Vs. Layer Exports P. Ltd., (2017) 88 taxmann.cm 620. Similarly, he relied upon the decision of ITAT, Surat Bench in 1TA No.1901/Ahd/2009. In all these decisions, fees levied by the municipal authorities for regularization of minor irregularities in compliance of bye-laws at the end of owner have been allowed as deduction. In the present case, it is pertinent to note that though municipal authorities have imposed an impact fee of Rs.5,19,051/-, and the assessee has made provision of this amount also, but ultimately, assessee has recovered Rs.2,40,193/- from his owner and only claimed expenditure of Rs.2,78,858/- whereas the AO has disallowed total amount of impact fee. The expenditure claimed by the assessee is only Rs.2,78,858/-. This fact has duly been submitted by the assessee in his submission as discernible from the

submissions noted above. Therefore, it is not justifiable at the end of the AO to make an addition of Rs.5,19,051/- as against claim of Rs.2,78,858/-. In the present case, the assessee was under obligation to bear the expenditure as per the tenancy agreement. Therefore, we are of the view that the ld.CIT(A) has erred in disallowing claim of the assessee. We allow this ground and delete the impugned addition of Rs.5,19,051/-."

8.2 The issue relating to deletion by the learned CIT(A) of the disallowance made by the Assessing Officer on account of Impact Fee is thus squarely covered in favour of the assessee by three orders of the Co-ordinate Benches of this Tribunal as discussed above and respectfully following the same, we uphold the impugned order of the learned CIT(A) deleting the disallowance of Rs.10,43,353/- made by the Assessing Officer on account of Impact Fee. Ground No.3 of the Revenue's appeal is accordingly dismissed.

9. As regards Ground No.4, it is observed that the addition of Rs.3,19,89,000/- made by the Assessing Officer on account of disallowance of investment written off was deleted by the learned CIT(A) for the following reason given in paragraph Nos. 8 to 8.1 of his impugned order:-

"8. The Ground No. 6 of appeal is regarding disallowance of claim of Investment written off of Rs. 3,19,89,000/-. The Udhna Citizen Co-op. Bank Ltd., Surat got merged with your assessee bank during financial year 2013-14. The said bank has deposited Rs.3,19,96,075/- with Home Trade Ltd. Mumbai for purchasing government securities. The broker Home Trade Ltd. involved in some scandalous activities. The appellant has filed a suit before the civil judge at Surat and written off the amount. The AO has disallowed the amount on the basis that decision of Hon'ble civil court in this matter is awaited.

8.1 I have gone through the facts of the case and it is noticed that the appellant is not able to recover the amount from Home Trade Ltd. even after the decree passed by Cession Court in 2003. It is stated by the appellant that the company's name has been struck off from record of Registrar of company and the concerned individuals are not traceable. The appellant is allowed to write off the amount of Rs.31,98,9,000/- as business loss and the corresponding addition made by the AO is deleted".

9.1 At the time of hearing before us, the learned Counsel for the assessee has submitted that even though a Civil Suit was filed by the assessee before the Civil Judge at Surat for recovery of the amount in question, name of the concerned company M/s. Home Trade Ltd having been struck off from the record of Registrar of Companies and the concerned individuals not being traceable, the amount has become irrecoverable. He has contended that the resultant loss on this amount having become irrecoverable is incidental to the business of the assessee and the same thus is rightly allowed by the learned CIT(A) vide his impugned order. In support of this contention, he has relied on the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Rao Construction Pvt. Ltd. (Tax Appeal No. 579 of 2012) dated 25.03.2013 wherein it was held as under:-

"5. On thus considering submissions of both the sides and also on examining the material on the record, we are of the opinion that no interference is required. As could be noticed from the record, requirement was of the Government to furnish the bank guarantee from the nationalized bank or the scheduled bank. The Assessee had availed such bank guarantee facilities from the Visnagar Nagrik Sahakari Bank Ltd. and the sanctioned limit of such bank was of Rs. 2 crores. The prescribed norms of the bank had noted the purchase of the shares and margin money for using the bank guarantee also was required to be kept as a fixed deposit. This co-operative bank, when eventually was declared as sick bank, was unable to repay the deposits, the membership of the said bank also was cancelled and the steps were taken pursuant to the order of the Reserve Bank of India. Assessee-company, thereafter, had written off the balance of amount of Rs. 35,66,478/-. In such circumstances, both CIT(A) as well as the Tribunal were absolutely justified in applying the ratio laid down by the Apex Court in case of Ramchandra Shionarayan Vs. CIT (1978) (111 ITR 263)(SC) as also in case of Indian Aluminium Co. Ltd. Vs. CIT 84 ITR 735(SC) to hold that such expenditure were needed to be spent by the assessee for the purpose of carrying on its business and are incidental to the business, therefore, any loss shall have to be considered as the revenue cost and not the capital cost."

9.2 If the facts of the present case are considered in the light of the decision of Hon'ble jurisdictional High Court in the case of Rao Construction (P) Ltd (supra), cited by the learned Counsel for the assessee,

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we find ourselves in agreement with learned CIT(A) that the loss suffered by the assessee as a result of the amount in question having become irrecoverable from M/s. Home Trade Ltd is incidental to the assessee's business and the same is allowable as deduction. Even the learned DR has not been able to raise any material contention to dispute this position. We, therefore, uphold the impugned order of the learned CIT(A) giving relief to the assessee on this issue and dismiss Ground No.4 of the Revenue's appeal.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 11th May, 2022 at Ahmedabad.

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad, Dated 11/05/2022

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

TRUE COPY

Sd/-

(P.M. JAGTAP)
VICE-PRESIDENT

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad