

THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai  
Shri B.R. Baskaran (AM) & Shri Kuldip Singh (JM)

I.T.A. No. 3873/Mum/2017 (A.Y. 2011-12)

ACIT-1(1)(2) 579, Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Forbes & Company Ltd. Ground Floor, Forbes Building, Charanjit Rai Marg, Fort, Mumbai-400 001.  PAN : AAACF1765A
(Appellant)		(Respondent)

Assessee by	Shri Ketan Ved
Department by	Shri Achal Sharma
Date of Hearing	16.06.2022
Date of Pronouncement	01.07.2022

ORDER

Per B.R.Baskaran (AM) :-

The Revenue has filed this appeal challenging the order dated 20.3.2017 passed by learned CIT(A)-2, Mumbai and it relates to A.Y. 2011-12. The Revenue is aggrieved by the decision rendered by learned CIT(A) on the following issues :

- a) Disallowance made under section 14A of the I.T. Act
- b) Disallowance of provisions for inventory written off
- c) Disallowance of interest under section 36(1)(iii) of the Act
- d) Disallowance of bad debts written off

2. The assessee is engaged in the business of manufacturing of engineering tools for the automobile industry, manufacturing of electric motors. Besides the above, the assessee is also acting as shipping agent, carrying on investment activity and renting of premises etc. The assessment in the hands of the assessee was completed for the year under consideration under section 143(3) of the Act making various disallowances. The assessee challenged the additions made by the Assessing Officer by filing appeal before learned CIT(A) and which was partly allowed.

3. Aggrieved by the order passed by learned CIT(A) in granting relief in respect of above said issues, the Revenue has filed this appeal before us.
4. The first issue relates to disallowance of expenses under section 14A of the Act.
5. During the year under consideration the assessee did not receive any dividend and hence did not make any disallowance under section 14A of the Act. The Assessing Officer however computed disallowance as per Rule 8D and accordingly disallowed a sum of Rs. 67,77,174/- under rule 8D(2)(iii), being 0.5% of average value of investment. The Learned CIT(A) deleted the disallowance by following the decision rendered by him in A.Y. 2009-10 & 2010-11.
6. We have heard the parties on this issue. Since the assessee has not earned in dividend income, no disallowance is called for as per the decision rendered by Hon'ble Delhi High Court in the case of PCIT Vs. Il & Fs Energy Development Company (250 Taxman 0174). Since the decision rendered by Ld CIT(A) gets support from the above said decision, we do not find any reason to interfere with the order passed by him on this issue.
7. Next issue relates to disallowance of Provision for inventory written off. During the year under consideration the assessee has debited Rs. 3.88 crore to the profit and loss account on account of reduction in the value of inventory. The assessee had also reduced value of material consumption debited to the profit and loss account equal to the same amount. Before the Assessing Officer the assessee submitted that reduction made in the value from material consumption would offset claim of reduction in inventory. The Assessing Officer accepted that the debit made in the profit and loss account and reduction made in material consumption have mutual effect. However, since the closing stock of raw material is resultant figure after adjustment Rs. 3.88 crore, the Assessing Officer took the view that the same has resulted in double

deduction. Accordingly he disallowed Rs. 3.88 crore claimed by the assessee. The learned CIT(A) noticed that an identical disallowance made in A.Y. 2010-11 has been deleted by him. Following the same, the learned CIT(A) deleted the disallowance.

8. We have heard the parties and perused the record. We noticed that the Ld CIT(A) had confirmed identical disallowance made in AY 2009-10 and hence the assessee had challenged the same before Tribunal in A.Y. 2009-10 and the ITAT, vide its order dated 15.11.2021 passed in ITA No. 6013/Mum/2016, has deleted the disallowance by following the decision rendered by the Tribunal in assessee's own case in A.Y. 2008-09 in ITA No. 4960 & 4685/Mum/2014 dated 1.4.2021. The decision rendered by the Tribunal in A.Y. 2008-09 are extracted below :-

“9. Having considered rival submissions, we find that while deciding similar disallowance made by the assessing officer and confirmed by learned Commissioner of Income-tax (Appeals) in assessee's own case in assessment year, 2007-08, the Tribunal, in its order dated 25.07.2019 in ITA 5536/Mum/2011, has deleted the disallowance with the following observations:-

“17. We have considered the submissions of both the parties and gone through the orders of authorities below. We have a/so deliberated on the various case laws relied by Id. representative of the parties and by lower authorities. We have noted that the Assessing Officer disallowed the inventory written off by relying on the decision of CIT vs. Herdilla Chemicals Ltd. (supra). We have further noted that the Hon'ble jurisdiction High Court by considering the decision of Herdilla Chemicals Ltd. held that write off claimed is essential on the basis of obsolesces of any particular equipment that claimed as write off, which is essentially on account of deterioration of various material including raw-material over a period of time due to wear and tear and that assessee would be entitled to write off in Profit & Loss Account. We have further noted that the assessee's similar claim for A. Y, 2010-11 and 2011-12 has been allowed by First Appellate Authority in order dated 17.11,2016 and 20.03.2017 respectively. Therefore, considering the peculiarity of fact for the year under consideration, we are of the view that the assessee is entitled for inventory written off, however for limited purpose, the issue is restored to the file of Assessing Officer to verify the fact, if equivalent provision thereof had been made in the books and there is no impact: on Profit & Loss Account and allow the relief to the assessee in accordance with law.

In the result, this ground of appeal is allowed for statistical purpose."

10. There being no material difference in the factual position and considering' learned Commissioner of Income-tax (Appeals) has confirmed the disallowance following his predecessor's order for assessment year 2007-08, we follow the above referred order of the co-ordinate bench in assessee's own and delete the disallowance made by the assessing officer. This ground is allowed."
9. We notice that the Tribunal has restored the issue to the file of AO in AY 2007-08, but the disallowance has been deleted in AY 2008-09 and 2009-10. In any case, we notice that the assessee has done an accounting adjustment only, which may not lead to double deduction as presumed by the AO. Accordingly, following the order passed by the Tribunal in AY 2009-10, we confirm the relief granted by learned CIT(A) on this issue.
10. Next issue relates to disallowance of interest expenditure relating to loan given to the subsidiary. The Assessing Officer noticed that the assessee has advanced interest free loan to its subsidiary, group and associate companies. Accordingly he disallowed proportionate interest expenditure amounting to Rs. 1.47 crore under section 36(1)(iii) of the Act. The Learned CIT(A) noticed that identical disallowance made in A.Y. 2008-09 and 2010-11 has been decided by him in favour of the assessee. Following the same, the learned CIT(A) deleted the disallowance.
11. We have heard the parties on this issue and perused the record. We noticed that the Coordinate Bench of the Tribunal has decided an identical issue in favour of the assessee in A.Y. 2008-09 in the assessee's own case (supra). Decision rendered by the Tribunal in A.Y. 2008-09 is extracted below:-

26. We have considered the submissions of the parties and gone through the orders of authorities below. During the assessment, the Assessing Officer noted that the assessee has advanced interest free loan to subsidiaries of Rs. 63,72,10,739/- The Assessing Officer further noted that the assessee could not explain commercial expediency. Though the Assessing Officer recorded that the total available with the assessee are Rs. 59,77,26,82347- which includes interest bearing and interest free funds. The Assessing Officer worked out the disallowance of Rs. 2,58,65,688/-. The Id. CIT(A) confirmed the actions %£ Assessing Officer by following the decision of his predecessor

for A.Y. 2005-% dated 09.03.2009. We have noted that this issue is recurring issue from A.Y. 2002-03 to the year under consideration. We have further noted that the coordinate bench of Tribunal in assessee's own case for A.Y. 2006-07 in ITA No.5539/Mum/2011 dated 05.04.2017 passed the following order:

6. The one more issue in ITA No. 5533/Mum/2011 for AY 2006-07 of assessee's appeal is as regards to the disallowance of interest on loans to subsidiaries at Rs.42,71,250/-.

7. At the outset, the teamed Counsel for the assessee stated that these are old loans and Tribunal in ITA No. 3603/Mum/2009 for AY 2005-06 vide order dated 28-02 2017 has considered the issue following Tribunal's order in assessee's case for AY 2002-03 and 2003-04 by observing in Para 28 as under: -

"28. We have considered the submissions of the parties and perused material available 091 record. Though, the learned Authorised Representative had submitted before us that the issue is covered by earlier orders of the Tribunal for assessment year 2002-03 and 2003-04, however, after carefully examining the facts of the present case, vis-a-vis the orders of the Tribunal for the earlier assessment years, we find little difference in the facts. Undisputedly in the earlier assessment years, the first appellate authority had given a categorical finding that the loans and advances given to the subsidiaries were for commercial expediency. However, in the impugned assessment year the learned Commissioner (Appeals) has observed that the assessee has failed to establish the commercial expediency in advancing interest free funds to the subsidiary. Though, assessee had submitted before the learned Commissioner (Appeals) that the advances were made out of common pool having borrowed funds and self-generated funds, however, the learned Commissioner (Appeals) has observed that in the absence of any verification that the advances to the subsidiary companies was only out of self-generated income, assessee's claim cannot be accepted. In this context, it is necessary to observe, the Assessing Officer in Para 3.5 of the assessment order has mentioned that the total funds available with the assessee amounted to Rs, 370,18,68,522, out of which, 167,20,18,599, was borrowed funds. Thus, from the aforesaid figures, it is very much evident that the assessee was having sufficient self-generated/interest free funds available with it to make interest free advance of Rs.25,67,46,923- In fact, the learned Commissioner (Appeals) has also observed, advances have been made out of common funds available with the assessee which includes both self-generated funds and borrowed funds. As held by the Hon'ble Jurisdictional High Court in CIT v/s Reliance Utilities and Power Ltd. [2009] 313 ITR 340 (Bom), when mixed funds are available with the assessee, the presumption would be, the interest free advances have been made out of the interest free funds available with the assessee. Therefore, applying the ratio of the Hon'ble Jurisdictional High Court (supra), no notional disallowance/adding back of interest attributable to interest free advances can be made. The addition made is, therefore, deleted. Ground no.(v) is allowed."

6. In view of the above the learned Counsel for the assessee stated that loans advances which are under consideration have already been considered by the Tribunal in earlier years and decided the issue in favour of assessee allowing the claim of the assessee. The learned Counsel for the assessee stated that the issue now stands covered in favour of assessee. On the other hand, the learned Sr. DR fairly conceded that there is reduction in loans and advances what was in earlier years. We find that this issue is squarely covered in favour of assessee and against Revenue by the decision of the Tribunal in assessee's own case. Hence, respectfully following the same we allow the claim of the assessee. The orders of the lower authorities are set aside and this issue of assessee's appeal is allowed.

8. In view of the above the learned Counsel for the assessee stated that loans advances which are under consideration have a/ready been considered by the Tribunal in earlier years and decided the issue in favour of assessee allowing the claim of the assessee. The learned Counsel for the assessee stated that the issue now stands covered in favour of assessee. On the other hand, the learned Sr. DR fairly conceded that there is reduction in loans and advances what was in earlier years. We find that this issue is squarely covered in favour of assessee and against Revenue by the decision of the Tribunal in assessee's own case. Hence, respectfully following the same we allow the claim of the assessee. The orders of the lower authorities are set aside and this issue of assessee's appeal is allowed.

27. Considering the decision of the Tribunal on identical fact and respectfully following the same, we find that this issue is squarely covered in favour of the assessee. Hence, this ground of appeal is allowed.”

12. We notice that the Tribunal has deleted identical disallowance made in the earlier years on the ground that the loans to subsidiaries & group companies have been given out of own funds. During the current year, it is noticed from the order passed by Ld CIT(A), the outstanding amount of loan due from sister concerns was Rs.1,500/- crores. However, we could not find details of own funds/interest free funds available with the assessee. In the absence of relevant details, we have no other option but to restore this issue to the file of AO for examining this issue by following the ratio of the decision rendered by the Tribunal in the hands of the assessee in the earlier years after verifying relevant facts. Accordingly, we restore this issue to the file of AO.

13. The last issue relates to disallowance of bad debts claim of Rs. 2.01 crore. The assessee claimed bad debts/advance written off amounting to

Rs.2,01,91,000/-. It had debited Rs.151.64 lakhs in the Profit and Loss account and Rs.50.27 lakhs to the Provision for bad debts account. It was submitted that the provision for bad debts created in the earlier years had been disallowed. However, the Assessing Officer disallowed the claim observing that the assessee has not furnished any proof regarding its liability as per provisions of section 36(1)(vii) read with section 36(2) of the Act. The Learned CIT(A) deleted the disallowance by following its decision rendered for Asst. Years 2009-10 & 2010-11.

14. We have heard the parties and perused the record. We noticed that an identical issue has been decided in favour of the assessee by the Coordinate Bench in assessee's own case for A.Y. 2008-09 (supra) observing as under :

"29, Having heard the parties and perused materials on record we find that the amount written off by assessee is on account of TDS amounts for which TDS certificates were not received and towards some advances such as municipal taxes, travel expenses, freight payable to the parties which were beyond recovery, it is also noted from the order of learned Commissioner of Income-tax (Appeals), similar disallowance made in assessment years 2005-06 and 2006-07 were also deleted by the learned first appellate authority. Considering the aforesaid factual position, we decline to interfere with the decision of learned Commissioner of Income-tax (Appeals) on the issue. Accordingly, ground is dismissed."

15. In this year, the break-up details of bad debts written off have not be furnished. The main grievance of the AO is that the assessee has not proved the compliance of conditions prescribed in sec. 36(2) of the Act, i.e., the amount claimed as bad debts has been offered as income in the current year or in any of the earlier years. We notice that the Ld CIT(A) has also not examined this aspect. Accordingly, we are of the view that this issue also requires fresh examination at the end of AO. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of AO for examining it afresh. The assessee is also directed to furnish the details of compliance of requirement of sec.36(2) of the Act to the AO.

16. In the result, appeal filed by the Revenue is treated as partly allowed.

Order pronounced in the open court on 01.07.2022.

Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 01/07/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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