

आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH : : NAGPUR

VIRTUAL HEARING

BEFORE S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.123/NAG/2017

निर्धारणवर्ष / Assessment Year : 2007-08

Veer Jagdeorao Kapus Utpadak Sahakari Soot Girni Ltd., Nandura Road, Malkapur – 443101. Dist: Buldhana.	Vs	The ACIT, Akola Circle, Akola.
PAN: AAV 0208 Q		
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri S.C.Thakar – AR
Revenue by	Shri G.J.Ninawe – DR
Date of hearing	17/11/2022
Date of pronouncement	14/02/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee against the order of Id.Commissioner of Income Tax(Appeals)-1, Nagpur dated 21.12.2016 emanating from the order of ACIT(AO), Akola under section 143(3) of the Act, 1961, dated 30.10.2009 for A.Y. 2007-08.

The Assessee has raised the following grounds of appeal :

“1] *Learned C.I.T.(A) erred in disallowing the assessee’s appeal and confirming the addition amounting to Rs.1,89,80,888/- U/s.43B made by the A.O.*

- 2] *Learned C.I.T.(A) erred in confirming the disallowance of interest made by the A.O.*
- 3] *Learned C.I.IT(A) erred in not properly consider/understood the appellant's submission and various documents filed before her.*
- 4] *Appellant craves to urge additional grounds at the time of hearing, if necessary."*

2. **Brief facts:** The Assessing Officer (AO) disallowed interest amount of Rs.1,89,80,888/- under section 43B of the Act. In this case, assessee had taken following loans :

a.	ICICI Bank	Rs.1,55,45,000
b.	IDBI Bank	Rs.3,00,30,000
c.	IFCI	<u>Rs.1,23,60,000</u>
	Total :	<u>Rs.5,79,35,000</u>

3. These loans were taken in earlier years i.e. 1993-94 as mentioned in the assessment order. Subsequently, Co-operative Marketing and Textile Ministry, Government of Maharashtra repaid these loans by sanctioning loan to the assessee under a scheme, in the year 2003-04, as Government of Maharashtra was Guarantor for the loans taken from the Banks by the assessee. Assessee has provided for interest in his books for the loan given by the Government of Maharashtra. The AO stated that the loans pertain to Banks and assessee has not paid the interest amount, whereas the interest shown

by the assessee in the books of Rs.1,89,80,888/- is on the basis of accrual, therefore, it is not allowable as per section 43B of the Act. Aggrieved by the order of the AO, the assessee filed appeal before the Id.CIT(A). The Id.CIT(A) held as under:

“As per AO, unpaid interest of Rs. 1,89,80,888/- pertains to the period from F.Y 2002-03 to 2006-07 in respect of loans received from ICICI, IDBI & IFCI & remaining outstanding. In my considered view, AO is found justified in making the said disallowance. There has been me/e restructuring of the earlier loans which have been taken from scheduled commercial Banks & Financial Institutions. The mere fact that Government of Maharashtra, in exercise of its sovereign and state functions, has paid outstanding principal amounts to the banks & then disbursed assistance amounts to specified spinning mills does not take away the nature & character of these amounts as loans. Further, letter dated 22.10.2002 issued by concerned Government Department itself mentions that disbursed amounts been sanctioned on terns & conditions mentioned therein with interest chargeable at prevailing rates. Thus, the appellant’s contention that it was under belief that these amounts been sanctioned interest free is not found correct. No interest been found paid which .as now been become a statutory enforceable liability nor even any provision made for any of the intervening years from F.Y. 2002-03 till 2006-07. However for the assessment year under consideration, provision of Rs.1,89,80,888/- made by the appellant in its books of accounts & as mentioned in notes to Accounts (SI. No. 9) in the Auditor’s Report. Appellant’s reliance on decision of Hon’ble AAR passed in case of Jodhpur Vidyut Vitaran Nigam (Supra) is not found acceptable being distinguishable on facts & given in the context of allowability of prior period expense as business expenditure u/s 36(1) of the IT

Act.)”

4. Aggrieved by the order of Id.CIT(A), the assessee filed appeal before this Tribunal.

5. We have heard both the parties and perused the records. The only issue for our consideration is whether assessee is eligible for claiming deduction of Rs.1,89,80,888/-. There is no dispute in the fact that Government of Maharashtra has repaid the loan taken by the assessee from following banks :

a.	ICICI Bank	Rs.1,55,45,000
b.	IDBI Bank	Rs.3,00,30,000
c.	IFCI	<u>Rs.1,23,60,000</u>
	Total :	<u>Rs.5,79,35,000</u>

These repayments were in the year 2002-03 and 2003-04 as mentioned by the Ld.CIT(A) in the order.

6. Section 43B as applicable for A.Y.2007-08 is reproduced as under:-

43B. ⁵⁵*Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—*

⁵⁶*[(a) any sum payable by the assessee by way of tax⁵⁷, duty, cess or fee, by whatever name called, under any law for the time being in force, or]*

(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees,⁵⁸[or]

⁵⁹[(c) any sum referred to in clause (ii) of sub-section (1) of section 36, ⁶⁰ [or]

⁶⁰[(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution ⁶¹[or a State financial corporation or a State industrial investment corporation], in accordance with the terms and conditions of the agreement governing such loan or borrowing ⁶²[, or]

⁶²[(e) any sum payable by the assessee as interest on any ⁶³[loan or advances] from a scheduled bank in accordance with the terms and conditions of the agreement governing such loan ⁶⁴ [or advances],] ⁶⁵[or].....

7. Thus, after 2003-04, there was no loan outstanding in the books of the assessee in the name of ICICI, IDBI and IFCI Banks. The loan outstanding in the books of assessee was the loan given by Government of Maharashtra. As per Audit Report, notes to accounts at Sr.No.9 the Auditor has mentioned as under:

“During the year provision has been made for interest on term loan obtained from Government of Maharashtra at Rs.1,89,80,888/-.”

8. The AO has reproduced the above mentioned Auditor’s Remarks in the assessment order. The AO has not disputed this fact that since 2003-04 the loan outstanding in the account of the assessee was loan given by Government of Maharashtra. Section 43B does not apply to interest payable on loan taken from State Government. In this case, assessee has obtained loan from State Government. Therefore, Section 43B is not applicable on interest payable of Rs.1,89,80,888/- on the loan obtained from State Government.

Therefore, the disallowance made by AO is bad in law and AO is directed to delete it. Accordingly, grounds of appeal of the assessee are allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 14th February, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 14th Feb, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपु रबेंच,
नागपुर/ DR, ITAT, Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.