

**THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, MUMBAI**

**SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**I.T.A. No. 5949/Mum/2013  
(A.Y. 2010-11)**

ICICI Home Finance Com. Ltd. 7 <sup>th</sup> floor, West wing, South Tower, ICICI Bank Towers, BKC, Bandra(E) Mumbai-400051 <b>PAN AAACI6285N</b>	Vs.	ACIT 10(1) 4 <sup>th</sup> Floor, Aayakar Bhawan, Mumbai 400021
<b>(Appellant)</b>		<b>(Respondent)</b>

**I.T.A. No. 5906/Mum/2013  
(A.Y. 2010-11)**

ACIT 10(1) 4 <sup>th</sup> Floor, Aayakar Bhawan, Mumbai 400021	Vs.	ICICI Home Finance Com. Ltd. 7 <sup>th</sup> floor, West wing, South Tower, ICICI Bank Towers, BKC, Bandra(E) Mumbai-400051 <b>PAN AAACI6285N</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Ms. Aarati Visanji
Department by	Shri K.C Selvamani, & Shri Ujjwal Chavhan
Date of Hearing	25.05.2023
Date of Pronouncement	31.05.2023

**ORDER**

**PER AMARJIT SINGH :-**

Both the appeals filed by the revenue and the assessee are arised from the order of Learned Commissioner of Income-Tax-21, Mumbai (hereinafter "CIT(A) pertaining to assessment year 2010-11. These appeals based on similar facts and identical issues are adjudicated together by this common order.

2. Then Start with revenue's appeal ITA No. 5906/Mum/2023 A.Y.

**Grounds of Appeal of the Revenue.**

*1 (i) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the interest expenditure incurred by the assessee holding that the same was not attributable for earning exempt income."*

*1(ii)"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in restricting the disallowance without appreciating the fact that as per the provisions of the Act, if the AO is not satisfied with the working of sec.14A of the assessee then, the AO has to re-work the disallowance u/s.14A r.w. Rule 8D."*

*2."On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the claim of the assessee u/s.36(1)(viii) of the Act."*

*3. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) in deleting addition of Rs.6,04,155/- representing delay in Govt. payments towards interest paid for delay in PT payment of service tax and contribution to welfare fund."*

*4. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting addition of Rs.6,38,64,336/- u/s.40(a)(ia) based on the remarks of the Auditor in the tax Audit Report without remanding the issue to the AO for verification. It is now pleased that this grounds should be set aside to the file of the AO for verification thereof."*

*5. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.*

6. The appellant prays that the order of CIT(A) on the above ground be set aside and that of the assessing officer be restored.

**Grounds of Appeal of the Assessee.**

[1] Being aggrieved by the order bearing No. CIT(A)21/IT/186/2012-13 dated July 2, 2013 issued by the Commissioner of Income-tax (Appeals) - 21, Mumbai (hereinafter called the CIT(A)) under section 250 of the Income-tax Act, 1961 [hereinafter called The Act] and communicated to the Appellant on August 13, 2013, the Appellant appeals against and on the following amongst other grounds which are without prejudice to each other.

**B Re: Special Reserve Deduction u/s 36(1)(viii)**

[2] On the facts and circumstances of the case and in law, the CIT(A) erred in excluding the following income on the ground that the same do not qualify for deduction under section 36(1)(viii) without appreciating the facts explained by the appellant during the course of appeal hearings:

[3] On the facts and circumstances of the case and in law, the CIT(A) erred in considering gross income as per financial statements, for the purpose of computing the ratio of housing income from eligible business qualifying u/s 36(1)(viii) of the Act, instead of considering the income of Profits and Gains under the head of "Profits and gains of business or profession" as per Income Tax Act 1961.

Re: Disallowance for delay in Govt. Payments amounting to ? 1,55,166/-

[4] The Assessing Officer failed to appreciate the deduction claimed under section 37(1) by the appellant amounting to 1,55,166/- towards interest paid for delay in payment of Deduction of Tax at Source under section 201(1A) of the Income Tax Act, 1961,

[5] The Assessing Officer also failed to appreciate the disclosure made by the Tax Auditor, in his Tax Audit Report under section 43AB of the Act in 3CD dated September 27, 2010 under clause 17(e) thereof, for appellant's submission on treatment of the said interest payment as revenue expense and towards claiming deduction under section 37(1) of the Act

*[6] The Assessing Officer erred in appreciating arbitrarily the said interest expense incurred on delay in payment of government dues as penal in nature or which is an offence or which is prohibited by law under section 37(1) of the Act and failed to appreciate the submissions filed by the appellant during assessment proceedings.*

*[D] GENERAL:*

*[7] The Appellant craves leave and reserves its rights to vary, amend, alter and/or add/or withdraw any or all the grounds of appeal and to produce such oral and documentary evidence and file such compilation of documents as may be necessary at the time of hearing of the appeal.*

3. Facts in brief is that the return of income declaring total income of Rs 160,80,76,381/- was filed on 31.03.2012. The assessment u/s 143(3) of the Income-Tax Act (hereinafter “the Act”) was finalized on 30.01.2013 and total income was assessed at Rs 191,51,98,624/- after making various disallowances. The further facts of the case are discussed while adjudicating the grounds of appeal filed by the revenue and assessee as follows.

4. **Grounds no.1 of revenue’s appeal (disallowance u/s 14(A) r.w. Rule 8 D).**

During the course of assessment the AO noticed that assessee has received dividend from companies amounting to Rs 51,12,18,589/-. The assessee has Suo Motto disallowed a sum of Rs 61.83.550/- u/s 14A of the Act as expenditure incurred for earning exempt income. However, the assessing officer was not satisfied with the correctness of claim of the assessee regarding incurring of expenditure towards earning exempt income. Therefore, AO has computed the disallowance in accordance with the Sub Rule 2 of Rule 8D of the IT Rule, 1962 and computed disallowance u/s 14A to the amount of Rs 11,76,80,199/- and added to the total income of the assessee.

5 The assessee filed appeal before Ld. CIT(A). The Ld. CIT(A) has referred the decision of his predecessors for assessment year 2009-10 in the case of the assessee itself vide order dated 15.11.2012 wherein the Ld. CIT(A) held after following decision of Hon'ble High Court of Mumbai in the case of CIT v/s Reliance Utilities vide ITA No. 313 ITR 340 that where assessee has his own fund as well as borrowed funds, a presumption can be made that the advances for non business purposes have been made out of own funds and that the borrowed funds have not been used for this purpose. The Ld. CIT(A) has also referred the decision of Co-ordinate bench of the ITAT Mumbai in the case of DCIT v/s HDFC bank Ltd. ITA no 4529/Mum/2005 wherein held that if the assessee's own funds and non interest bearings funds are more than tax free investment then there is no basis for deeming that the assessee has borrowed funds for making investment in tax free securities hence no disallowance can be made in respect of interest on borrow funds to the extent of the availability of the share capital and profit reserves.

6. Regarding the administrative and management expenses the Ld. CIT(A) stated that AO had applied Rule 8D and disallowed 0.5% of the average investment of the assessee as expenditure. The Ld. CIT(A) has confirmed the expenditure computed by the AO in respect of administrative expenditure up to 0.5 % of the average investment as per Rule 8D of section 14A of the Act.

7. Heard both the sides and perused the material on this issue. It is undisputed fact that in the case of the assessee during the year under consideration the assessee's own funds and non interest bearing funds were to the amount of 12814,90,47,744/- where as assessee had made investment as per schedule VI of balance sheet as on 31/03/2010 to the amount of Rs. 13,27,97,32,572/- only. Therefore, we are agreed with finding of the Ld. CIT(A) that no disallowance of interest expenditure is required to be made in the case of the assessee following the judicial pronouncement as referred supra, since noninterest bearing funds available in the assessee were more than tax free investments made by the assessee during

the year under consideration. We consider that Ld. CIT(A) has rightly confirmed the disallowance at the rate of 0.5% of the investment as per Rule 8D of section 14A of the Act in respect of management and administrative expenditure, therefore we do not find any infirmity in the decision of Ld. CIT(A). Accordingly, these Grounds of appeals of the revenue are dismissed.

8. **Grounds no 2 of Revenue appeal & Ground no. 2 to 6 of Assessee's appeal pertaining to Deduction u/s 36(1) (viii) of the Act.**

9. During the course of assessment the assessing officer noticed that assessee has claimed deduction u/s 36(1) (vii) of Rs 12,19,80,023/- on special reserves. On verification of the account and submission made by the assessee during the course of assessment proceedings, the AO noticed that assessee company had discontinued the issue and disbursement of fresh home loan for housing finances business since 2001 instead all the loans were being disbursed by the ICICI bank ltd. The AO further stated that ICICI bank has made reimbursement to the assessee in respect of expenses incurred for such services pertaining to new home loans by the assessee. The AO was of the views that free income and interest on GOI securities and FD's were not income earned from long time finance for construction of residential houses, therefore the assessee was not eligible for deduction u/s 36(v)(viii).

10. On query the assessee explained that it has fulfilled the conditions prescribed u/s 36(1)(viii) of the Act and it was eligible for deduction under said section. However, the assessing officer has not agreed with the submission of the assessee company. The assessing officer stated that deduction was allowable to the assessee who carry on the business of giving home loan and in the case of the assessee company it was ICIC Bank Ltd. who disburses the home loan and possessing fees for such loan portfolios were earned by the assessee company. The AO held that assessee was no more into Home Financing therefore its claimed of deduction u/s 36(1)(viii) of the Act was rejected.

11. Aggrieved assessee filed appeal before Ld. CIT(A). The Ld. CIT(A) after following the decision of his predecessor in the case of the assessee itself on the same issue and identical facts for assessment year 2009-10 vide order dated 15.11.2012. The Ld. CIT(A) has directed the AO to compute the eligible deduction u/s 36(1) (viii) as per computations directed by his predecessor in his findings in the above referred decision reproduced at para 3.3 in the order of CIT appeal.

12. During appellate proceedings before us at the outset the Ld. Counsel submitted that coordinate bench of the ITAT Mumbai in the case of the assessee itself for assessment year 2009-10 vide ITA No. 1358/Mum/2013 has decided the similar issue and identical facts in favor of the assessee.

13. On the other hand, the Ld. DR supported the order of the AO.

14. Heard both the sides and perused the material on the record. With the assistance of Ld. Representatives' we have perused the above referred decision of the Coordinate Bench of ITAT Mumbai on the issue of claim of deduction made by the assessee company u/s 36(1)(viii) of the Act. The relevant operating part of the decision is reproduced as under:

*22. Considered the rival submissions and material placed on record, we observe from the record that there is enough evidence from the facts of the assessee's case and as held by the Hon'ble Bombay High Court decision in the assessee's own case in which they dismissed the revenue case at preadmission stage with the observation that the facts of the company itself establish that the company was entitled for claiming deduction u/s 36(1)(viii) of the Act. Therefore, Ld CIT(A) has clearly brought on record that the assessee has primarily engaged in the providing long term financing and also the profit was derived from providing long term housing finance. Therefore, there is no dispute with findings of Ld CIT(A) and detailed submissions of the assessee in the regard to activities of the assessee, hence we are inclined to accept the regard. Accordingly, the grounds raised by the revenue is dismissed.*

15. Following the decision of the ITAT has referred supra on the similar issue and identical facts we do not find any reason to interfere in the decision of Ld.CIT(A).

16. Therefore, this ground of appeal of the revenue stands dismissed.

17. In respect of the assessee's grounds of appeal that Ld. CIT(A) erred in excluding the interest on Buyout Portfolio to the amount of Rs 170,74,90,097/-, The Ld. Counsel submitted that ITAT in the case of the assessee itself on 20/04/2023 vide MA 242//Mum/2022 and ITA No. 1325/Mum/2013 for assessment year 2009-10 has decided the issue of claim of deduction u/s 36(1)(viii) in respect of interest on Buyout Portfolio in favor of the assessee.

18. Heard both the sides and with the assistance the Id representative we have perused above decision of ITAT and relevant part of the decisions is reproduced as under.

*11." Considered the rival submissions and material placed on record, we observe from the record that assessee has provided long term finance by refinancing to the customers of other banks by adopting buyout i.e. purchase of housing loan portfolio from other banks. Since the condition prescribed in the section for financing long term residential projects which the assessee has satisfied in this case by providing long term finance by purchase of housing loan portfolio from other banks. There is no bar to finance only direct finance, it includes refinance, as long as it satisfies the condition for financing long term for the residential projects. Therefore, this branch of financing also comes under eligible business as defined u/s.36(1)(viii) of the Act. Therefore, we are inclined to allow the claim made by the assessee in ground no. 4(i) of grounds of appeal.*

19. Following the decision of ITAT as referred above we direct the assessing officer to allow the claim of deduction of interest on BuyoutPortfolio as directed in the decision of ITAT in the case of the assessee as referred above.

20. The assessee has not pressed the ground of appeal pertaining to the deduction in respect of other different interest except in respect of interest on corporate loan and during the course of hearing no detail was available pertaining to interest on corporate loan, therefore, this part of the ground of appeal stand dismissed.

21. Regarding claim of deduction u/s 36(1)(viii) in respect of interest income- securitization cases, the ITAT in the case of the assessee vide order ITA No. 1325/Mum/2013 dated 03/06/2022 held that it is not eligible for the said deduction, therefore following the decision of the coordinate bench this ground of appeal of the assessee is dismissed.

22. In the result ground of appeal of the assessee is partly allowed and ground of appeal of the revenue stand dismissed.

**23. Ground no 3.of Revenue regarding Disallowance of interest paid of Rs.6,04,155/- for delay in government payment and grounds 4 to 6 of the appeal of the assessee for disallowance of Rs.1,55,166**

24 During the course of assessment AO noticed in the AuditReport as mentioned at clause 7(e) that assessee had paid interest of Rs 6,04,155/- in respect of delay in various payment as per items (i) to (v) of para 8 of the assessment order. The AO treated the same as penal in nature and disallowed u/s 37(1) of the Act.

25. The assessee field appeal before the Ld. CIT(A). The Ld. CIT(A) after following decision of his predecessor on similar issue and identical facts for assessment year 2009-10 has partly allowed the appeal of the assessee by restricting disallowance to the extent of Rs 1,55,166/- for delayed payment after

following the decision of the Hon'ble Bombay High Court in the case of Ferro Alloys Corporation Ltd. Vs CIT(1992) 196 ITR 406(BOM)

26. During the course of appeal proceedings before us the Ld. Counsel submitted that identical issue on similar fact has been decided by the ITAT Mumbai in the case of the assessee itself for assessment year 2009-10.

27. Heard both the sides and perused the material on the record. We have perused the decision of ITAT Mumbai in the case of the assessee itself as referred (supra) vide ITA 1325/Mum/2013 for A.Y.2009-10 on this issue. The relevant part of the decision is reproduced as under.

*14. Considered the rival submissions and material placed on record, it is settled principle that interest on late payment of TDS is not penal in nature, since it is compensatory in nature, it is eligible for deduction u/s.37 of the Act as it is expended wholly and exclusively for the business purpose and payment of interest on late remittance of TDS is neither an offence nor prohibited by law, as held in the case of Lachmandas Mathura v. CIT (254 ITR 799) (SC). Therefore, we direct AO to allow the claim of the assessee, hence the ground raised by the assessee is allowed.*

28. In respect of allowing the deduction on payment of interest in respect of delay in P.T. payment, service tax and work contract, we find justification in the finding of ld. CIT(A) that such interest is of compensatory nature. Therefore, we do not find any infirmity in the decision of Ld. CIT(A). Following the decision of co-ordinate bench we direct the AO to allow the claim of deduction to the assessee in respect of payment of interest on delayed payment of TDS. Therefore, ground of appeal of the assessee is allowed and grounds of appeal of the revenue stand dismissed.

**29 Ground No 4 of the revenue relating to deleting disallowance under 40(a)(ia) of the Act.**

30. During the course of assessment the AO noticed from the audit report that in the form 3CD vide clause 27(b) the auditor have put remarks that assessee has not deducted TDS out of provisions for expenses amounting to Rs 80,92,99,985/- pertaining to the year under consideration. On verification of the details filed by the assessee, AO noticed that assessee has deducted TDS on amount of FD interest of Rs 74,54,35,649/- however, it had not deducted TDS on amount of Rs 6,38,64,336/- pertaining to expenses in respect brokerage, commission, professional fees. Consequently, the AO has disallowed the claim of the expenses of Rs 6,38,64,366/- u/s 40(a)(ia) of the Act and added to the total income of the assessee.

31. The assessee preferred the appeal before CIT(A). The Ld. CIT(A) has allowed the appeal of the assessee after following the decision of his predecessor for assessment year 2009-10 of similar issue and identical facts by holding that assessee had reversed the provisions for expenses in the next assessment year and the income was offered as taxable income in the next assessment year.

32. During appellate proceedings the Ld. counsel contended that similar issue and identical facts has been adjudicated by the ITAT in the case of assessee itself for assessment year 2009-10 vide ITA no. 1358/Mum/2013. With assistance of Ld. representative we have perused the decision of co-ordinate bench of the ITAT Mumbai in the case of the assessee itself for assessment year 2009-10 vide ITA no. 1358/Mum/2013. The relevant part of the decision is reproduced as under.

*28. Considered the rival submissions and material placed on record, we observe that the assessee had created provisions during this year and not deducted the TDS on the amount of Rs. 21.92 crores as the provision was on the payees, who are unidentifiable at the year end and the assessee had*

*reversed the same on the beginning of the next assessment year and offered for taxation. This is regular method of accounting adopted by the assessee and consistently followed method. Therefore, there is no loss to the revenue and assessee has followed double entry system of accounting which requires the matching principle of recording the transaction of revenue and related expenditure. Therefore, we do not see any reason to remit this issue back to Assessing Officer as prayed by Ld DR. Accordingly, the ground raised by the revenue is dismissed.*

33. Following the decision of the co-ordinate bench as referred (supra) We do not find any infirmity in the decision of Ld. CIT(A), since assessee has made provision for expenses pertaining the brokerage, commission, and professional fees amounting to Rs 6,38,64,366/- and same was reversed on the beginning of next assessment year. Therefore following the decision of ITAT(supra) we do not find any reason to interfere in the decision of Id. CIT(A) . Therefore, this ground of appeal of the Revenue is dismissed.

34. In the result the appeal of the revenue stand dismissed and the appeal of the assessee is partly allowed.

Order pronounced in the open court on 31.05.2023.

Sd /-

**(AMIT SHUKLA)**

**JUDICIAL MEMBER**

Sd/ -

**(AMARJIT SINGH)**

**ACCOUNTANT MEMBER**

Mumbai;

Dated : 31/05/2023

Aniket G. Rajput (STENOGRAPHER)

**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