

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.1877/Del/2007  
Assessment Year: 1996-97

DCIT, Central Circle-6, New Delhi	<b>Vs.</b>	M/s. Sahara India Financial Corporation Ltd., 1, Kapoorthala Complex, Aliganj, Lucknow, UP
<b>PAN :AADCS8698C</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Ajay Vohra, Sr. Advocate Sh. Arpit Goel, Advocate
Department by	Sh. P. Praveen Sidharth, CIT (DR)

Date of hearing	18.04.2023
Date of pronouncement	16.06.2023

**ORDER**

**PER SAKTIJIT DEY, JM:**

This is an appeal by the Revenue against order dated 22.01.2007 of learned Commissioner of Income Tax (Appeals)-1, New Delhi, for the assessment year 1996-97.

2. The Revenue has raised the following grounds:

1. *Deleting the addition of Rs.81,50,93,579/- made on account of disallowance of reimbursement of expenses to agent.*

2. *Deleting the addition of Rs.50,12,45,795/- made on account of disallowance of claimed of expenses instead of deposits.*
3. *Directing the AO to allow claimed of Rs.62,50,000/- made on account of write back of dividend income.*

3. As could be seen from the ground no. 1, the dispute is in relation to disallowance of Rs.81,50,93,579/- (wrongly mentioned as 81,93,579/-) representing reimbursement of expenses to agent.

4. Briefly the facts relating to this issue are, the assessee had claimed the aforesaid deduction on account of expenditure reimbursed to its agent, Sahara India Corporation. While completing the original assessment under section 143(3) of the Income-tax Act, 1961 (in short 'the Act') vide order dated 23.04.1999, the Assessing Officer restricted the deduction on the expenditure claimed by the assessee to Rs.25,65,76,128/-, being 3% of the total deposit of Rs.855 crores mobilized during the year and disallowed the balance amount of Rs.81,50,93,579/-. Contesting the aforesaid disallowance, assessee preferred an appeal before learned Commissioner (Appeals). While deciding the appeal, learned first appellate authority, vide order dated 29.04.2000, deleted the disallowance holding the expenditure to be within reasonable limits. Against the aforesaid order of first

appellate authority, the Revenue went in appeal before the Tribunal. The Tribunal, vide order dated 20.05.2003 in ITA No.747/All/200, though, held that the approach of the Assessing Officer in estimating the expenditure at 3% cannot be upheld, however, the order of learned first appellate authority was set aside to the Assessing Officer with a direction to examine, whether in the case of Agent, viz., Sahara India Firm, the expenditure was examined and, in case, such expenditure has been allowed, then assessee's claim of deduction should be allowed. However, while implementing the direction of the Tribunal, the Assessing Officer again made the disallowance adopting the same approach of estimating the deduction at 3% of the total deposits mobilized during the year. In other words, he again repeated the disallowance of Rs.81,50,93,579/- as was made in the original assessment order. While deciding the issue in appeal, learned first appellate authority having found that similar addition made in assessee's case in assessment years 1997-98 and 1998-99 has been deleted by learned Commissioner (Appeals), deleted the disallowance in the impugned assessment year, as well.

5. We have heard Sh. Ajay Vohra, learned Senior Advocate for the assessee and Sh. P. Praveen Sidharth, learned Departmental Representative. From the materials on record, it is observed that while setting aside the order of learned Commissioner (Appeals) deleting the disallowance made by the Assessing Officer, the Tribunal has specifically disapproved estimation of deduction at 3% and had further directed the Assessing Officer to verify the factual position relating to such payment in case of Sahara India Firm for the assessment year 1996-97. However, without implementing the direction of the Tribunal in letter and spirit, the Assessing Officer has again repeated the addition.

6. From the materials placed before us, it is observed that in the assessment order passed in case of the Agent, viz., Sahara India firm, the payment has been accepted without any adverse finding. It is further observed, in the impugned assessment year, the reimbursement of expenses to the agent works out to 11.81% of the total deposits mobilized during the year. Whereas, in assessee's own case in assessment year 1994-95, the Tribunal has accepted the expenditure at the rate of 10.3% of the deposits mobilized to be reasonable expenditure. In the assessment year 1995-96 the Tribunal has allowed reimbursement expenses,

which worked out to 13.06% of the deposits mobilized during the year. Thus, in view of the aforesaid factual position, we hold that learned Commissioner (Appeals) was justified in deleting the disallowance. This ground is dismissed.

7. In ground no. 2, the Revenue has challenged the disallowance of Rs.50,12,45,795/- on account of interest and deposits.

8. Briefly the facts are, in course of original assessment proceeding, the Assessing Officer while examining the allowability of expenditure claimed towards interest on deposits, amounting to Rs.70,22,80,000/- restricted the claim to Rs.20,10,34,205/-. Whereas, he disallowed the balance amount of Rs.50,12,45,795/- Contesting the disallowance, the assessee preferred an appeal before learned Commissioner (Appeals). Vide order dated 29.04.2000, learned Commissioner (Appeals) set aside the issue to the Assessing Officer with a direction to the assessee to provide the actual interest liability. Against the said decision of learned First Appellate Authority, Revenue went in appeal before the Tribunal.

9. During the pendency of Revenue's appeal before the Tribunal, the Assessing Officer while implementing the direction

of learned first appellate authority passed a fresh assessment order on 26.02.2002 repeating the disallowance as was made in the original assessment order. Contesting the disallowance, the assessee again preferred an appeal before learned Commissioner (Appeals). Vide order dated 10.05.2022, learned Commissioner (Appeals) deleted the disallowance on the reasoning that the addition made under section 68 of the Act has been deleted by him. Revenue's appeal against such order of learned Commissioner (Appeals) was dismissed by the Tribunal vide order dated 22.07.2005 in ITA No.709/Luc/2002. In the meanwhile, Revenue's appeal challenging the order dated 29.04.2022 of learned Commissioner (Appeals), which arose out of original assessment, was disposed of by the Tribunal by setting aside the order of the first appellate authority with a direction to the Assessing Officer to decide the issue afresh. While implementing the direction of the Tribunal in the impugned assessment order, the Assessing Officer again made the disallowance of Rs.50,12,45,795/-

10. We have considered rival submissions and perused the materials on record. As could be seen from the facts discussed above, the Tribunal in order dated 22.07.2005 passed in ITA

No.709/Luc/2002 has upheld the decision of learned Commissioner (Appeals) in deleting the very same addition made by the Assessing Officer. That being the factual position emerging on record, we do not find any infirmity in the decision of learned Commissioner (Appeals) in deleting the disallowance. This ground is dismissed.

11. Ground no. 3 relates to deletion of disallowance of write back of provision of dividend income amounting to Rs.62,50,000/-.

12. We have considered rival submissions and perused the materials on record. Briefly the facts are, since, the assessee was following mercantile system of accounting, it made a provision of Rs.62,50,000/- on account of dividend receivable from 'Canpep - 92' in its accounts, based on the past history of the dividend declared by 'Canpep -92' and offered it to tax, however, no dividend was declared on 'Canpep -92' in financial year 1994-95 due to be received in financial year 1995-96. Since the amount was already offered as income in assessment year 1995-96, the Assessing Officer reversed the provision in assessment year 1996-97 and claimed it as deduction, as, actually no dividend on 'Canpep -92' was received. While completing the original

assessment, the Assessing Officer did not allow the deduction claimed. Though, the assessee contested the aforesaid decision of the Assessing Officer before learned Commissioner (Appeals), however, disallowance was upheld.

13. Against the said decision of the first appellate authority, the assessee went in appeal before the Tribunal. While deciding the appeal vide order dated 20.05.2003, the Tribunal restored the issue to the Assessing Officer with a direction to examine, whether the assessee has offered the amount as income in assessment year 1995-96. However, the Assessing Officer without examining the issue, again upheld the disallowance. While deciding the issue in appeal, learned first appellate authority having found that the assessee has offered the amount to tax in assessment year 1995-96, deleted the disallowance.

14. Having perused the materials on record, we find, though, the assessee created the provision for dividend in assessment year 1995-96 and offered it as income, however, actually it did not receive any dividend. Therefore, the provision was reversed in assessment year 1996-97 and assessee claimed the deduction of the amount already offered to tax in the immediately preceding assessment year. The aforesaid factual position remains

uncontroverted. Thus, it is apparent, the Assessing Officer without properly examining the fact in accordance with the direction of the Tribunal, has repeated the disallowance. That being the case, we do not find any infirmity in the decision of learned first appellate authority. Accordingly, we uphold the same by dismissing the ground raised.

15. In the result, the appeal is dismissed.

***Order pronounced in the open court on 16<sup>th</sup> June, 2023***

***Sd/-***  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 16<sup>th</sup> June, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi