

**IN THE INCOME TAX APPELLATE TRIBUNAL “GAUHATI” BENCH, GAUHATI
VIRTUAL HEARING AT KOLKATA**

[Before Shri Rajpal Yadav, Vice President (KZ) & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 110/Gau/2019
Assessment Year: 2008-09

ACIT, Circle-2, Dibrugarh	Vs.	Brahmaputra Valley Fertilizer Corporation Ltd. P.O. Parbatpur, Namrup, Dist. Dibrugarh, Assam-786623. (PAN: AABCB9399R)
Appellant		Respondent

&

C.O. No. 1/Gau/2022
I.T.A. No. 110/Gau/2019
Assessment Year: 2008-09

Brahmaputra Valley Fertilizer Corporation Ltd.	Vs.	ACIT, Circle-2, Dibrugarh
Cross Objector		Respondent

Date of Hearing	28.08.2023
Date of Pronouncement	06.10.2023
For the Revenue	Shri Soumendu Sekhar Das, DR
For the Assessee/Cross Objector	Shri Manas J. Barthakur, FCA

ORDER

Per Shri Rajesh Kumar, AM

Appeal filed by the revenue and the Cross Objection filed by the assessee are against the order of Ld. CIT(A), Dibrugarh dated 16.01.2019 for AY 2008-09.

2. The revenue has raised the following grounds:

“1. That whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition made for penal interest which is not allowable as per the provision of sub section 1 of section 37 of the Income Tax Act, 1961.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition made for penal interest, which was not actually paid and such not allowable as per provision of Section 43B of the Act.

3. Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the disallowance of prior period adjustment when such prior period expenses is not allowable to an assessee following the mercantile system of accounting.”

3. The issue raised in ground nos. 1 and 2 is against the deletion of addition of Rs.23,52,79,034/- on account of interest payment on loan taken from Govt. of India.

4. Facts in brief are that the AO during the course of assessment proceeding observed that assessee debited in P&L Account a sum of Rs.71,85,32,707/- as interest and the said interest includes penal interest of Rs.23,42,79,034/- and accordingly, a show cause notice was issued to the assessee as to why the same should not be disallowed and added to the income of the assessee. The assessee replied vide letter dated 13.12.2010 submitting that the penal interest is not in the nature of penalty imposed for any violation of law but for failure to timely pay the interest to the Govt. of India as envisaged in the loan agreement. It is submitted that it is not in the nature of expenditure as referred to in explanation to section 37(1) of the Act. However, the contention by the assessee did not find favour with the AO and he added the amount to the income of the assessee.

6. In appeal before the Ld. CIT(A), he deleted the addition observing as under:

"I have carefully considered the matter. The higher rate of interest payable is not penalty for infringement of law. The penal interest did not arise due to commission of offence prohibited by law. Higher rate of interest was chargeable on loan given by the Government. Assessee had not committed any offence against any law of the land. It was only liable to pay higher rate of interest in accordance to term set out by the lender. Hon'ble Gujarat High Court in the case of Gujarat State Financial Corporation Ltd. Vs. CIT (2013) 35 taxman.com 64 (Guj) held that penal interest charged for late re-payment of loan did not constitute penalty contemplated in explanation to section 37(1). Therefore, disallowance made by the AO in employing the said explanation is not sustainable. The next argument for disallowance is also not sustainable. Section 43B of the Act does not cover loan taken from the Government. It only covers loan from Public Financial Institution and Banks. Therefore, the action of the AO cannot be sustained."

7. After hearing the rival contentions and perusing the material available on record, we find that the higher rate of interest paid by the assessee is not for any infringement of law or due to commission of any offence. The Ld. CIT(A) has recorded a very clear cut finding to this effect besides, the Ld. CIT(A) has rightly relied on the decision of Hon'ble Gujarat High Court in the case of Gujarat State Financial Corporation Ltd. Vs. CIT (2013) 35 taxmann.com 64 (Guj.) wherein it has been held that penal interest charged for late repayment of loan did not constitute penalty as contemplated in explanation to section 37(1) of the Act. Accordingly, we do not find any infirmity in the order of Ld. CIT(A) and we are inclined to uphold the same by dismissing ground nos. 1 and 2 of the revenue.

8. The issue raised in ground no. 3 is against the deletion of addition of Rs.1,34,59,370/- on account of prior period expenses.

9. The facts in brief are that the AO, during the assessment proceeding, observed that assessee has debited net amount of Rs.1,34,59,370.65 as adjustment relating to prior period under various heads. AO also noted that in Schedule 25 of Tax Audit Report, the same was stated to be prior period and accordingly, the same was disallowed and added to the income of the assessee. In the appellate proceeding, ld. CIT(A) deleted the same by holding that prior period debits were Rs.1,55,94,000/- and credits were Rs.21,35,000/- and hence, the net of Rs.1,34,59,370/- was claimed in the account. The Ld. CIT(A) deleted the addition after relying on the decision of Coordinate Bench in the case of ACIT Vs. Meghalaya State Electricity Corporation (ITA No.359/Gau/2013 dated 13.05.2017) wherein it has been held that when prior period income is accepted the prior period expenses should not be disallowed.

10. After hearing the rival contentions and perusing the material available on record, we observe that assessee had debited prior period expenditure under various sub-heads upon crystallization of these expenses as the bills were received in the current year and therefore, these were claimed to be expenses pertaining to the current year only. We note that during the year, the assessee has earned income of Rs.21,35,000/- as prior period income and the expenses of prior period of Rs.1,55,94,000/- were netted against this income and a net expenses of Rs.1,34,59,370/- was claimed. We note that Ld. CIT(A) has rightly followed the decision of Coordinate Bench in the case of Meghalaya State Electricity Corporation (supra) wherein ratio has been laid down that if prior period income is accepted by the AO then prior period expenses has to be allowed. Accordingly, we do not find any infirmity in the order of Ld. CIT(A) and we are inclined to uphold the same and dismiss this ground of appeal of the revenue.

11. The Cross Objection has been filed by the assessee is in support of the order of Ld. CIT(A). Accordingly, the same is infructuous as we have dismissed the appeal filed by the revenue.

12. In the result, both the appeal of revenue as well as Cross Objection of the assessee are dismissed.

Order is pronounced in the open court on 6th October, 2023

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 6th October, 2023

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–
2. Respondent .
3. CIT(A), Dibrugarh
4. CIT, ,
5. DR, ITAT,

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata