

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "G" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Narender Kumar Choudhry (JM)

I.T.A. No. 2568/Mum/2023 (A.Y. 2016-17)
I.T.A. No. 2569/Mum/2023 (A.Y. 2015-16)
I.T.A. No. 2570/Mum/2023 (A.Y. 2014-15)

Small Industrial Development Bank of India SME Development Centre C-11, G-Block, Bandra Kurla Complex, Bandra-E Mumbai-400 051. PAN : AABCS3480N (Appellant)	Vs.	DCIT, Circle-3(3)(2) Aayakar Bhavan M.K. Road Churchgate Mumbai-400 020. (Respondent)
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Assessee by	Shri Gaurave Kabra
Department by	Shri Prakash Rastogi
Date of Hearing	06.12.2023
Date of Pronouncement	07.12.2023

ORDER

Per Bench:-

All the three appeals filed by the assessee are directed against separate orders passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and they relate to A.Y. 2014-15 to 2016-17. Common issue urged in all these appeals relates to disallowance of proportionate amount of lease premium paid to Mumbai Metropolitan Regional Development Authority (MMRDA) in respect of leasehold land.

2. The Learned Counsel appearing for the assessee submitted that the assessee bank had acquired a leasehold land from MMRDA at Bandra Kurla Complex in 1991 for constructing its office premises. As per the terms of lease agreement, the lease period is eight years. The assessee was required to pay lump sum amount of Rs. 60,70,783/- as lease premium and further a

nominal rent as lease amount. The assessee claimed the above said lease amount as deferred revenue expenditure and claimed proportionate amount of lease premium. In the earlier years, the Assessing Officer took the view that the same is capital in nature and accordingly disallowed the proportionate claim for deduction made in that years. Following the above said view, the Assessing Officer disallowed proportionate amount of lease premium claimed in these three years also. The Ld CIT(A) also confirmed the disallowance.

3. The Ld A.R submitted that the disallowance so made in the earlier years has been confirmed by the ITAT, i.e., this issue has been decided against the assessee by the Tribunal in the earlier years. In this regard, the Learned AR invited our attention to the decision dated 25.9.2018 passed in assessee's own case by the Tribunal in ITA No. 4046/Mum/2011 and others relating to A.Y. 20005-06 and others.

4. The Learned AR submitted that the assessee has challenged the orders passed by the Tribunal in earlier years confirming the disallowance of proportionate amount of lease premium by filing the appeals before Hon'ble High Court of Bombay and substantial question of law raised by the assessee has been admitted by Hon'ble Bombay High Court. In this regard, the learned AR also placed before us a copy of the order dated 18.3.2013 passed by Hon'ble Bombay High Court in ITA No. 792 of 2012, wherein following question has been admitted by Hon'ble Bombay High Court:-

“Whether on the facts and in the circumstances of the case and in law the amount paid by the appellate to MMRDA as “lease premium” constituted revenue expenditure and the appellant was entitled to claim a proportionate part of the said “premium” as a deduction in the current assessment year?”

The Learned AR submitted that the assessee is filing applications before Hon'ble Tribunal for all the three years in terms of section 158A of the Act in the prescribed Form No. 8, since identical question of law is pending before

Hon'ble Bombay High Court. He submitted that the assessee shall not raise the above said question of law before any of the appellate authorities, if the above said declaration is not objected to by AO and accepted by the Tribunal.

5. In view of the above, the learned DR was requested forward the copies of applications filed the assessee in Form no.8 to the Assessing Officer and obtain a report from him. Accordingly, the Assessing Officer has furnished his report through email stating that the claim made in the declarations filed by the assessee under section 158A of the Act was found to be correct and further stated that the order of Hon'ble High Court is awaited. Since the AO did not raise any objection to the applications filed by the assessee in Form no.8 for all the three years under consideration, we proceed to dispose of these three appeals in terms of sec. 158A(4) of the Act.

6. We noticed earlier that the issue contested by the assessee in all the three years relate to the disallowance of proportionate amount of lease premium claimed by the assessee. We noticed that the AO had made identical disallowance in the earlier years also and the same has been confirmed by the Tribunal. Hence we do not prefer to take a different view and accordingly, confirm the order passed by Ld CIT(A) on this issue in all the three years under consideration.

7. However, since the question of law with regard to the impugned addition has been admitted by Hon'ble Bombay High Court and since the assessee has filed applications in Form no.8 in terms of sec.158A and since the AO has not objected to the said applications, we direct the Assessing Officer to apply the decision that will be rendered by Hon'ble Bombay High Court on the identical issue contested in the earlier years for these years also, after receiving decision of Hon'ble Bombay High Court on this issue.

8. We also make it clear that, in terms of section 158A(4) of the Act, the assessee shall not be entitled to raise such question of law in appeal before any appellate authority or in appeal before High Court under section 260A or Hon'ble Supreme Court under section 261.

9. In the result, all the three appeals are treated as allowed for statistical purposes.

Order pronounced on 07.12.2023.

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 07/12/2023

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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