

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL

“D” BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

& SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.2584/Ahd/2012

WITH

CROSS OBJECTION No. 18/Ahd/2013

(निर्धारण वर्ष / Assessment Year : 2009-10)

D.C.I.T.(OSD), Circle-8, Ahmedabad	बनाम/ Vs.	M/s. Torrent Cable Limited, 6 th Floor, Pelican Building Off Ashram Road, Ahmedabad – 380009
M/s. Torrent Cable Limited, 6 th Floor, Pelican Building, Off Ashram Road, Ahmedabad - 380009	& Vs.	D.C.I.T.(OSD), Circle-8, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AA ACT5457B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri O. P. Pathak, Sr. D.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri S. N. Soparkar, A.R.

सुनवाई की तारीख / Date of Hearing	02/05/2018
घोषणा की तारीख /Date of Pronouncement	11/ 06/2018

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Revenue against the order of the CIT(A)-XIV, Ahmedabad ('CIT(A)' in short), dated 27.08.2012 arising in the assessment order dated 29.12.2011 passed by the Assessing Officer (AO) u/s.143(3) of the Income Tax Act, 1961; (the Act) concerning assessment year 2009-10. The assessee has also filed cross objection in the Revenue's appeal as captioned above.

2. The grounds of appeal raised by the Revenue reads as under:

- “1). *The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad erred in and on facts in deleting the addition of amount disallowed u/s. 14A of the Act while computing the book profit/income u/s. 115JB of the Act”.*
- 2). *The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the addition made u/s145A of the Act”.*
- 3). *The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in restricting the disallowance made on account of disallowance of commission expenses at Rs .8.7 lacs/- as against the disallowance made by the AO at Rs 3553269/-”.*
- 4). *The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in directing to allow the set off and carry forward of depreciation”.*
- 5). *On the facts and in the circumstances of the case, the Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad ought to have upheld the order of the Assessing Officer.*
- 6) *It is therefore, prayed that the order of the Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad may be set-aside and that of the order of the Assessing Officer be restored.”*

3. When the matter was called for hearing, the learned AR for the assessee pointed out in the Revenue's appeal that ground no.1 relates to adjustment on account of disallowances made u/s. 14A (under the

normal provisions of the Act) for the purposes of special provisions of Section 115JB of the Act concerning taxability on the basis of book profits. The learned AR pointed out that the issue is no longer *res integra* and is covered in favour of the assessee by the decision of the Special Bench in the case of ACIT & Anr. vs. Vireet Investment Pvt. Ltd. & Anr. 165 ITD 27 (Delhi) [SB].

3.1 We find that the issue is squarely covered in favour of the assessee. Our view is supported by the decision of the co-ordinate bench of Tribunal in case of Arvind Ltd. vs. DCIT in ITA No.1816/Ahd/2011 where the decisions of the hon'ble Gujarat High Court and Delhi High Court were also referred for deciding the issue in favour of the assessee. The relevant operative para of the decision of the co-ordinate bench in Arvind Ltd. (supra) is reproduced hereunder:

“6. We notice that issue is evolved and developed by certain judicial precedents. We find at the first instance that the identical issue came up for consideration before the Hon'ble Gujarat High Court in the case of Alembic Ltd. (supra) where the substantial question of law on the point as to whether adjustment made on account of disallowance under S.14A of the Act can be similarly made for the purposes of computation of 'book profit' under S.115JB of the Act was answered against the Revenue and in favour of the assessee. We also take note of decision of the Special Bench rendered in ACIT vs. Vireet Investment Pvt.Ltd. & Anr. 165 ITD 27 (Delhi)[SB] where it was held that the AO was not entitled to tinker with book profits contemplated under S.115JB towards disallowance made under s. 14A of the Act. We similarly find that judgement of Hon'ble Bombay High Court in CIT vs. Bengal Finance and Investments Pvt. Ltd. in ITA No.337 of 2013 order dated 10/02/2015 also complements the issue. Thus, seen on the anvil of the judicial fiat available squarely on the issue, we are disposed to assign merits to the contentions on behalf of the assessee. At this juncture, we pause to note the concern of revenue seeking to plead possible redundancy of clause(f) to Explanation to s.115JB in the event of disagreement with the action of AO. We are alive to such concerns. However, as noted, we are governed by the superior wisdom available in this regard. Hence, remedy to revenue, if any, perhaps lies elsewhere. Accordingly, respectfully following the decisions governing the field, we direct the AO to delete the adjustments made on account of estimated

disallowance determined under s.14A of the Act while computing 'book profit' under s.115JB of the Act."

3.2 In view of the aforesaid discussion, ground no.1 of the Revenue's appeal is dismissed.

4. Ground no.2 relates to addition of Rs.2,90,28,909/- made by the AO u/s.145A, which was deleted by the CIT(A). The learned AR submitted that the aforesaid ground represents addition on account of unutilized CENVAT/MODVAT credit, which is not permissible in view of the principles laid down by the hon'ble Gujarat High Court in case of CIT vs. Bell Granito Ceremica Ltd., Tax Appeal Nos. 436-437 of 2011, judgment dated 13.06.2012. The learned AR next submitted that the CIT(A) has correctly concluded the issue in favour of the assessee also having regard to the fact that effect of provisions of Section 145A would be nil in the case of assessee. We find that the CIT(A) has analyzed the issue objectively in detail as per para 5 of its order. The conclusion drawn by the CIT(A) is in consonance with the decision of the hon'ble Gujarat High Court in case of Bell Grantio (supra). We also take note of the decision of the hon'ble Gujarat High Court in the case of Pr.CIT vs. Oracle Granito Pvt. Ltd., Tax Appeal No. 1030 of 2017 order dated 14th February, 2018, which supports the case of the assessee squarely. Therefore, we decline to interfere with the order of the CIT(A) in this regard. Ground no.2 of the Revenue's appeal is therefore dismissed.

5. Ground no.3 concerns disallowance of Rs.8,70,000/- sustained by the CIT(A) out of commission expenses as against disallowance of Rs.35.53 Lakhs made by the Assessing Officer. The CIT(A) has objectively dealt with the issue and found that commission is relatable to the sales. It was claimed on behalf of the Assessee that the commission has been paid by account payee cheques. Similar commissions have been paid in the earlier year as well which has been

duly accepted. The CIT(A) however has rejected the commission payment of Rs.8.7 Lakhs on the ground that the liability is only provisional and not ascertained liability.

6. We have carefully gone through the para no.6 of the CIT(A)'s order dealing with the issue and do not see any reason to interfere therewith. Ground no.3 of the Revenue's appeal is accordingly dismissed.

7. Ground no.4 concerns claim of set off and carry forward of unabsorbed depreciation a part of which relates to assessment year 2002-03. It is the case of the assessee that set off of unabsorbed depreciation available to the assessee on 01.04.2002 (A.Y.2002-03) will be dealt with in accordance with the provisions of Section 32(2) of the Act as amended by the Finance Act, 2001 and not by the provisions of Section 32(2) of the Act as it stood before the said amendment. We find that the controversy raised in the assessment order is already settled in favour of the assessee by the decision of the hon'ble Gujarat High Court in the case of General Motors (I) Pvt. Ltd. vs. Dy.CIT 354 ITR 244 (Guj). Thus, we do not see any anomaly in the conclusion drawn by the CIT(A) in favour of the assessee. Thus, we decline to interfere. Ground no.4 of the Revenue's appeal is dismissed.

8. Other grounds taken by the Revenue are squarely and/or general and does not call for any specific adjudication.

9. In the combined result, appeal of the Revenue is dismissed.

10. We shall now advert to the cross objection filed by the assessee in Revenue's appeal. The cross objection as concised on behalf of the assessee is reproduced hereunder:

- “1. *In law and in the facts and circumstances of the respondent's case, the learned CIT(A) has grossly erred in dismissing Ground No. 1 of the respondent's appeal before him challenging the validity of the assessment order impugned before him, by observing that the assessment order had been passed after giving adequate opportunity of hearing to the respondent, even as the respondent's challenge to the assessment order was primarily on the ground that it had been passed without application of mind.*
2. *In law and in the facts and circumstances of the respondent's case, the learned CIT(A) has grossly erred in sustaining the addition of Rs.10,66,376 on account of interest income from banks on the ground that the respondent had not reconciled the difference in the amounts of interest as per the AIR and the corresponding amount accounted in the respondent's books.*
3. *In law and in the facts and circumstances of the respondent's case, the learned CIT(A) has grossly erred in upholding the disallowance of Rs. 39,502 on account of interest expense and of Rs.5,68,828 on account of administrative expenditure made u/s. 14A read with Rule 8D, on the ground:*
 - (a) that the respondent had failed to demonstrate that its investments in tax-free income producing assets had been made from interest free funds by showing a clear nexus between the two;*
 - (b) that it cannot be accepted that no expenditure had earning exempt income;*
 - (c) that the Assessing Officer had given his finding disallowance after applying Rule 8D after considering the explanation.*
4. *In law and in the facts and circumstances of the respondent learned CIT(A) has grossly erred in upholding the addition made by the learned Assessing Officer on the ground that the s furnished by the respondent to the bank showed its closing 27,18,38,000 as against the closing stock as per its Balance Rs.27,10,52,734.*
5. *In law and in the facts and circumstances of the respondent learned CIT(A) has grossly erred in dismissing Ground N respondent's appeal challenging levy of interest u/s. 234A, 234B and 234C.*
6. *In law and in the facts and circumstances of the respondent learned CIT(A) has grossly erred in dismissing Ground respondent's appeal challenging initiation of penalty pro 271(1)(c), as being premature in nature.”*

11. Ground nos. 1, 5, 6 & 7 are general and/or consequential and therefore does not call for separate adjudication.

12. Ground no.2 of the cross objection concerns addition of Rs.10,66,376/- made by the AO on account of reconciliation of interest as per data available in AIR (Annual Information Report) vis-à-vis books of account of the assessee. As submitted on behalf of the assessee, the CIT(A) has wrongly sustained the addition of Rs.10,66,376/- on account of interest income from banks on the ground that the assessee has not reconciled the difference in the amounts of interest as per the AIR and the corresponding amount accounted in the books of the assessee. In this regard, the learned AR for the assessee submitted that the whole of interest appearing in the AIR has been accounted for either in the assessment year 2009-10 in question or in the subsequent assessment year as and when the interest has become accrued and due to the assessee. The learned AR emphasized that no income whatsoever has escaped assessment on this score. After perusal of the case records, we consider it expedient to set aside the issue back to the file of the AO for re-examination of facts. The assessee shall provide the reconciliation of difference in question and shall support its claim of taxability in one or the other year. The AO shall adjudicate the issue in accordance with law after proper opportunity given to the assessee in this regard. The ground no.2 of the cross objection is thus allowed for statistical purposes.

13. Ground no.3 concerns disallowance of Rs.6,08,330/- under s.14A read with Rule 8D of the Income Tax Rules. The disallowance under Rule 8D comprises of Rs.39,502/- on account of interest expenses and Rs.5,68,828/- on account of administrative expenses. The AO observed that assessee has made huge investments and earned substantial exempt income of Rs. 97,68,386/-. The assessee has made

a *suo motu* disallowance of Rs.8000/- attributable to exempt income. However, The AO re-computed the disallowance by applying Rule 8D of the Income Tax Rules amounting to Rs.6,08,330/-. As regards disallowance on proportionate interest component, we find merit in the plea of the assessee that in view of the substantial own funds available at the disposal of the assessee in excess of the corresponding investments giving rise to tax free income. There is no warrant for making disallowance in view of long line of judicial precedent. However, we do not see any merit for setting aside the disallowance towards administrative and general expenses pleaded on behalf of the assessee. The presence of administrative involvement qua the investment activity cannot be ruled out in view of the statutory presumption in this regard, under Rule 8D(2)(iii) of the IT Rules. Therefore, while the assessee gets relief towards disallowance to the extent of Rs.39,502/- attributable to interest expense, we decline to interfere with the balance disallowance of Rs.5,68,828/- made under Rule 8D of the IT Rules. Ground no.3 is thus partly allowed.

14. Ground no.4 consists addition towards under valuation of closing stock as sustained by the CIT(A) to the extent of Rs. 7,85,266/-. As noted by the Revenue Authorities, the assessee has shown value of closing stock at the end of the financial year on 31.03.2009 as per balance sheet at Rs.27,10,52,734/- whereas the value of stock declined as per stock statement given to bank at Rs.27,18,38,000/-. The AO accordingly held that the assessee has undervalued the stock in its books of accounts by Rs.7,85,266/-. The CIT(A) confirmed the aforesaid action. In this context, it can be seen, the closing stock value is pegged at a staggering amount of Rs.27.10 Crore on which a discrepancy of meager amount of Rs.7.85 Lakhs has been observed. Needless to say, the closing stock statements filed with the bank are provisional and there is always a room for such small variations. The stock statement is ordinarily given immediately

at the end of the financial year whereas it is the case of the assessee that the finalization of account and audit takes place after a time lag which may give rise to some smaller differences in the business of this scale. Having regard to the quantum of stock, the addition merely based on a stock statement filed with bank is not at all justified. Due to smallness of the difference, the bonafides of the assessee is rather implicit. Therefore, we cannot approve a narrow and pedantic approach of the Revenue in this regard. The addition on this score is therefore directed to be deleted. Ground no.4 of the cross objection of the assessee is therefore allowed.

15. In the result, the cross objection of the assessee is partly allowed.

16. In the combined result, the appeal of the Revenue is dismissed whereas the cross objection filed by the assessee is partly allowed.

This Order pronounced in Open Court on 11/06/2018

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER
Ahmedabad: Dated 11/06/2018

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।