

आयकर अपीलीय अधिकरण ,अहमदाबाद न्यायपीठ 'बी' अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL

“ B ” BENCH, AHMEDABAD

सर्वश्री प्रमोद कुमार लेखा ,सदस्य एवं महावीर प्रसाद न्यायिक ,सदस्य के समक्ष ।

BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER And

SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos.200 & 279 /Ahd/2012

(निर्धारण वर्ष / Assessment Year : 2008-09)

RASNA PVT. LTD., Opp. Sears Tower, Gulbai Tekra, Ahmedabad – 380 006 & JCIT(OSD), Circle – 5, Ahmedabad.	बनाम / Vs.	Dy.CIT Circle – 5, Ahmedabad. & Rasna Pvt. Ltd. Rasna House Opp. Sears Tower, Panchwati Ahmedabad.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCR 5577 P		

&

आयकर अपील सं./I.T.A. Nos. 2573& 2833/Ahd/2012

(निर्धारण वर्ष / Assessment Year : 2009-10)

RASNA PVT. LTD., Opp. Sears Tower, Gulbai Tekra, Ahmedabad – 380 006 & ACIT, Circle – 5, Ahmedabad.	बनाम / Vs.	JCIT, S.K. Range, Himatnagar, Now ACIT, Cir -5, A'bad & Rasna Pvt. Ltd. Rasna House Opp. Sears Tower, Panchwati, Ahmedabad – 380 015.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACW 4408 M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by :	Shri Mudit Nagpal, Sr. D.R.
Assessee by :	Shri K. C. Thaker, A.R.

सुनवाई की तारीख / Date of Hearing	14/02/2018
घोषणा की तारीख /Date of Pronouncement	08/03/2018

आदेश / O R D E R

PER MAHAVIR PRASAD, JUDICIAL MEMBER :

These are four appeals by the assessee and revenue against each other against the order of the Commissioner of Income Tax (Appeals)-XI & VIII, Ahmedabad, dated 25/11/2011 & 27/09/2012 for the Assessment Years (AYs) 2008-09 & 2009-10.

2. Since in all four appeals assessee are same and issues are common only amounts and assessment years are different. Therefore, for the sake of convenience, we would like to dispose of all four appeals by way of a common order.

3. First we take up ITA No.200/Ahd/2012 for A.Y. 2008-09. Following Grounds has taken by the assessee in this appeal.

- “1. *The ld. C.I.T. (appeals) has erred in law and on facts in not restricting the disallowance u/s.14A of Rs.88,279/- as claimed by the appellant and holding that the provision of section 14A and r.w.s. Rule 8-D will be applicable to the facts of the appellant.*
2. *The ld. C.I.T.(appeals) has erred in law and on facts in upholding the addition of Rs.14,04,455/- being provision for doubtful advances without properly appreciating the facts of the appellant.*
3. *The learned C.I.T. (appeals)has erred in law and on facts in treating the entire amount of Rs.4,22,75,321/- as provision for liability for damaged goods in as much as that the provision for A.Y.2008-09 was only*

Rs.2,13,68,444/- and therefore the provision amount should have been taken at Rs.2,13,68,444/- only .

4. *He has erred in law and on facts in directing the verification of actual expenditure incurred in the subsequent years for the entire amount of Rs.4,22,77,321/- instead of restricting the same for Rs.2,13,68,444/- which is provision for A.Y.2008-09 for which claims will be received in the subsequent years in as much as that the other amount of Rs.2,09,06,877/- is the actual expenditure & not the provision.”*

4. The relevant facts as culled out from the materials on record are as under:-

The assessee company is mainly dealing in distribution of soft drink concentrate. The company buys soft concentrate in bulk quantity from supplier M/s. Pioma Industries and sells through various clearing and forwarding agents as well as through own Depot to the stockiest. The assessee also prepares a mixture of sugar and instant mixture and sales thereof after packing in bottles and cartoons.

5. During the year under consideration, on verification of Schedule-P of other expenses of the company's audited account, it is noticed that the assessee has debited Rs.4,22,75,321/- under the head "Liability for Damaged goods". Out of above said amount Rs.2,13,68,444/- being the provision made and computed for damaged goods return claimed for A.Y. 2008-09 on the basis of last year. Rs.2,09,06,877/- actual amount of DGR claimed borne by the assessee remained unabsorbed from provision already made in earlier year. Thereafter, AO issued a show-cause notice to the assessee for disallowance of above said claim.

In his reply assessee stated that issue of disallowance of provision of damaged goods had arisen in A.Y. 1997-98 and the Department has filed appeal before the ITAT. The appeal of the department has been decided by the ITAT and it has been held that the expenditure incurred in the subsequent year was to be allowed and the surplus in the provision for A.Y. 1997-98 was not allowed. Assessee has furnished a copy of the order dated 24/02/2006 of the ITAT. Ld. AO was not agree with the contention of the assessee and disallowance of Rs.4,22,75,321/- was made.

6. It was seen by the AO that assessee has shown investment of Rs.32,99,16,000/- in shares/mutual funds, income from which does not form part of total income. Thereafter, AO issued a notice to the assessee. Assessee stated that it has furnished working of disallowable expenses as per Rule 8D of the I.T. Rules, 1962. Therefore, there is no dispute that the provision of Section 14A are applicable. In view of the provision of section 10(35)/10(38) of the Act, the prospective dividend income of such investments would be an exempted income. Therefore, considering the facts and circumstances, it is clear that the investments in mutual funds bearing tax free returns amounts to diversion of the business fund. By using the business funds of such nature for other financial activities, which did not yield any taxable return, amounted to an effort towards reduction in the tax liability while claiming interest expenditure incurred on funds utilized for such investments. But ld. AO was not agree with the contention of the assessee and disallowance of Rs.18,81,765/- was made.

7. Against the said order assessee preferred first statutory appeal before the ld. CIT(A) who partly allowed the appeal of the assessee.

8. We have gone through the relevant record and impugned order. So far as issue pertaining to damaged goods return is concerned. The appellant company deals in food items which have span of life for three years in respect of standard package of Rasna and less than 3 years in respect of other brands. On the passage of time, these products develop change of taste and also get deteriorated and for other reason, like breakage of packs, bottles and humidity etc., the goods become defective. Such damaged and defective products have to be accepted back from the traders who have to be compensated in this regard. This is a practice prevailing in the market and is followed by other companies, who are in to FMCG Production and trading.

9. Assessee cited an order of ITAT in assessee's own case in ITA No.25/Ahd/2011 dated 14/02/2014. ITAT has allowed such relief in favour of the assessee and relevant Para of the same is reproduced as under:

"3. The first ground relates to disallowance of Rs.8,5,813/- made on account of provision for damaged goods.

4. Ld. CIT(A) has dealt this ground as under:-

"2.2. I have considered the submissions made by the A. R. of the appellant and the observations of the assessing officer in the assessment order. I am inclined to accept the contentions put forth by the A.R. of the appellant. Similar issue arose in the appellant's own case for earlier assessment years and the same has already been decided in favour of the appellant by my predecessor as well as Hon'ble jurisdictional

I.T.A.T., Ahmedabad. In the immediately preceding A. Y. 2006-07, similar disallowance was deleted by my predecessor vide his order dated 30-06-09. The Tribunal vide its order dated 29-10-2009 in ITA No.2491/Ahd/2009, upheld the order of CIT(A). However, in the subsequent order dated 09-07-2010 in ITA No.1951/Ahd/2008 for A.Y. 2005-06, Tribunal's finding on this issue is as under:-

"We find that the details of actual expenditure incurred in the subsequent year by the assessee out of the provision of Rs.54,41,218/- made during the year have not been brought on record. In absence of the above, we are unable to adjudicate the issue completely. We therefore, restore the issue back to the Learned Assessing Officer and direct him to adjudicate the issue afresh in light of the decision of the Tribunal quoted above and after allowing proper opportunity of hearing to the assessee. Thus, this ground of appeal of the Revenue is allowed for statistical purposes."

2.2.1.it is seen that the provision made during the year is Rs.2,07,14,615/-. A.O. is directed to verify the actual expenditure incurred in the subsequent year by the appellant out of the said amount. If the actual expenditure is equal to or more than the said sum, he shall delete the entire disallowance. If the actual expenditure is less than the said sum, disallowance to the extent of the short-fall will survive, and the balance disallowance will get deleted. Thus, subject to verification, this ground of appeal is allowed."

Since Ld.CIT(A) has followed the earlier order of the Tribunal for A.Y.2005-06 in assessee's own case, we are not inclined

to interfere with the order of Ld.CIT(A) and the same is hereby upheld. This ground of revenue's appeal is dismissed.”

10. Apart from that assessee also filed a copy of the Jurisdictional High Court in the matter of CIT vs. Hewlett Packard India Sales (P.) Ltd. [2014] 49 taxmann.com 166 (Karnataka). In this judgment similar relief was granted by the Hon'ble High Court and relevant Para of the said judgment is reproduced as under:

“6. Heard learned advocates for both the sides. Mainly two issues have arisen from the present set of appeals namely (i) disallowance of the provision made for the current years under appeal and (ii) disallowance of actual liability pertaining to earlier years. So far as the issue with regard to deletion of addition by the CIT(A) being the provisions made for damaged goods for the current year and earlier years, the Tribunal has proceeded on the basis of the assessee's own case in the previous years. The Tribunal has considered the fact that the issue is squarely covered by the decision of the Tribunal in assessee's own case for previous years, the facts being exactly identical in the case on hand also.

7. It is required to be noted that there is a change in the method of accounting employed during the years under review from that of employed in the immediately preceding year. We have also considered the Government Notification No.9949 dated 25.01.1996 whereby certain accounting standards for assessees following mercantile system of account have been made compulsory from A..Y. 1997-98 and. find that the case of the assessee is covered by the same. The decisions cited by learned advocate for the assessee also applies on the facts and circumstances of the present case.

*8. The Apex Court in the case of **Rotork Controls India (P.) Ltd (supra)** observed that a provision is a liability which can be measured only by using a substantial degree of*

estimation and that a provision is recognized when (a) an enterprise has a present obligation as a result of a past event; (b) it is probable that an outflow of resources will be required to settle the obligation and (c) reliable estimate can be made of the amount of the obligation. The Apex Court observed that if these conditions are not met, no provision can be recognized. Therefore we are of the view that the CIT(A) and the Tribunal have rightly disallowed the addition made by the Officer. We do not find any error in the same.

9. In view of the above, the questions raised in the present appeals are answered in favour of the assesses and against the revenue. The orders passed by the Tribunal are confirmed. No costs.”

11. Therefore, respectfully following the order of co-ordinate bench and jurisdictional high court’s judgment, we allow this ground of appeal in favour of the appellant.

12. Now we come to ground related to disallowance u/s.14A. As we can see Rule 8D, provision was made from the A.Y. 2008-09 and present appeal is also pertains to A.Y. 2008-09. As we can see appellant was containing that interest bearing fund has not been invested in the stock and bonds, the income from which provision of income tax. However, the appellant has not furnished any evidence to prove its contention and appellant contention was that in respect of income which is exempt, the investment in tax free bond thereof are made in earlier years. Normal expenditure incurred during the year which cannot be identified precisely are not considered as expenditure incurred in relation to such income. Such disallowance in terms of Section 14A have not been made even in the past assessments. As rule 8D have incorporated for the A.Y. 2008-09 and before the lower authorities appellant could not furnished any evidence to prove its contention and even before us. Therefore, in our considered opinion, appellant

case is wholly and squarely covered with the provision of Section 14A(3) which makes it mandatory to make disallowance as per the provision of section 14A (2) r.w. rule 8D of Income-Tax Rules, 1962.

13. We do not find any infirmity in the order passed by the ld. CIT(A). Therefore, this ground of appeal is dismissed.

14. So far as ground related to doubtful advances of Rs.14,04,455/- is concerned. The AO has dealt with this addition in Para 7 of the assessment order and stated that it is seen that the assessee, in Schedule-‘P’ of the profit and loss account has shown provisions for doubtful advances of Rs.14,04,455/- which is not allowable as expenses, as it is a provision made by the assessee. Ld. AR of the assessee fairly conceded that such expenses are not allowable. These expenses were inadvertently left to be added in the computation of income. Therefore, an addition of Rs.14,04,455/- was made. In appeal ld. CIT(A) held that it is seen that appellant has conceded the disallowance during the assessment proceedings and accordingly, appellant cannot contest this disallowance before him.

15. Since appellant has conceded before the lower authority. Therefore, we do not want to interfere in the order passed by the lower authority. In the result we confirm the addition of Rs.14,04,455/-.

16. In the result, assessee’s appeal in ITA No.200/Ahd/2012 is partly allowed.

17. Now we come to ITA No.2573/Ahd/2012 for Asst Year 2009-10:

- “1. The learned CIT(Appeals) has erred in law and on facts in upholding the disallowance of Rs.7,01,708/- U/S.14A of the Act without properly appreciating the facts of the appellant.*
- 2. He has erred in law and on facts in upholding the disallowance of Rs.12,47,754/- being provision for doubtful advances without properly appreciating the facts of the appellant.*
- 3. He has erred in law and on facts in upholding the disallowing gross profit loss of Rs.26,99,595/- without properly considering the facts and evidence adduced by the appellant.”*

18. So far disallowance of Rs.7,01,708/- u/s.14A of the Act is concerned. We have already confirm this disallowance made by the lower authorities as we have decided in ITA No.200/ahd/2012 so same findings apply here.

19. So far ground related to disallowance of Rs.12,47,754/- being provision for doubtful advances is concerned. In ITA No.200/Ahd/2012 before the lower authorities, assessee himself conceded. Such expenses are not allowable and on the basis of assessee's admission, this addition was made.

20. So far as ground related to disallowance of gross profit loss of Rs.26,99,595/- is concerned. Since the issue in respect of finished goods at the Boarder of Bangladesh is in dispute and matter is pending before the civil court, the loss claimed on this account cannot be allowed and hence, the same added back to the total income by the lower authorities.

21. We have gone through the assessment order and the submission of the appellant very carefully. There is no doubt about the fact of litigation and bonafide dispute about the goods at the Bangladesh border. It is thus a reasonable foreseeable loss. It is a well settled legal position that while an income is booked only when it actually crystallizes, a loss is brought to the books at the point of time when it can be reasonably foreseen. This approach underlies the accountancy principle of conservatism which is duly recognized by Hon'ble Supreme Court in the case of **Chainrup Sampatram vs. Commission of Income Tax [(1953) 24 ITR 481(SC)]**.

In view of these discussions, the disallowance made by the lower authorities is deleted. The ground of the appellant is dismissed.

22. In our considered opinion, ld. CIT(A) has passed reasoned and detailed order with regard to this ground. Therefore, we do not want to interfere meaning thereby this ground of appeal is dismissed.

23. In the result, assessee's appeal in ITA No.2573/Ahd/2012 is partly allowed.

24. Now we come in ITA No.279/Ahd/2012 for Asst Year 2008-09:

- “1. *The Ld. Commissioner of Income tax (A) has erred in law and on facts in directing the Assessing Officer to verify the actual expenditure incurred by the Assessee in the subsequent year, out of the provision made by it of Rs.4,22,75,321/- under the head 'Liabilities for damaged goods', in contravention of Sec.251 of the IT. Act.*

2. *The Ld. Commissioner of Income tax (A) has erred in law and on facts in directing the Assessing Officer to decide the issue of depreciation of Rs.27,25,296/- claimed on 'goodwill', in the light of the final decision of the Hon'ble High Court for the A.Y. 2002-03, in contravention of Sec. 251 of the I.T. Act.*
3. *The Ld. Commissioner of Income tax (A) has erred in law and on facts in setting aside the issue of disallowance of the Assessee's claim of expenditure of Rs.18,81,765/- U/S.14A of the I.T. Act to the file of the Assessing Officer, in contravention of Sec. the I.T. Act."*

25. So far as Ground No.1 is concerned. Since, we have already given relief to the assessee in ITA No.200/Ahd/12 with regard to damage goods return (DGR).

26. So far as depreciation of Rs.27,25,296/- claimed on 'goodwill' is concerned. In our considered opinion, on account of several judicial precedence, ld. CIT(A) has rightly allowed the claim of depreciation on goodwill. Therefore, we are not incline to interfere in the order passed by the ld. CIT(A).

27. So far disallowance of the Assessee's claim of expenditure of Rs.18,81,765/- u/s.14A of the I.T. Act is concerned. In our considered opinion, CIT(A) has rightly set aside the issue of disallowance of the assessee's claim because assessee has shown several investment and has rightly directed the AO to verify whether income from these instrument are taxable or not. Ld. CIT(A) has merely given the direction to the AO to see whether benefit should be given to appellant or not, after going through the facts and figures provided by the assessee. Therefore, we are not incline to interfere in the order passed by the ld. CIT(A).

28. In the result, appeal of the department in ITA No.279/Ahd/2012 is dismissed.

29. In the last we come to ITA No.2833/Ahd/2012 for Asst Year 2009-10:

- “(i). The ld. CIT(A) has erred in law and on facts in deleting the disallowance of liabilities for damaged goods of Rs.1,89,45,235/-.*
- (ii). The Id. CIT(A) has erred in law and on facts deleting the disallowance of depreciation of Rs.20,43,972/- on goodwill.*
- (iii) The ld.CIT(A) has erred in law and on facts in deleting the disallowance of Rs.2,67,184/- for late payment of employee's contribution to provident fund by ignoring the provisions of section 36(1) (va) r.w.s. 2(24)(x) of the Act.*
- (iv) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs.32,28,899/- on account of destroyed stock.”*

30. With regard to disallowance of liabilities for damaged goods of Rs.1,89,45,235/- is concerned. We have already given relief to the assessee in this case on the basis of co-ordinate bench order and judgment of the Hon'ble High Court. Therefore, this ground of appeal is dismissed.

31. So far as disallowance of depreciation of Rs.20,43,972/- on goodwill is concerned. We have already held in connecting appeal that assessee is allowed for depreciation on goodwill. Therefore, this ground of appeal is dismissed.

32. So far as late payment of employee's contribution to provident fund is concerned. Hon'ble Gujarat High Court is very much clear that late payment of employee's contribution to provident fund will be added to the income of the assessee. Respectfully following the judgment of CIT vs. GSRTC [2014] 41 taxmann.com 100(Gujarat), we allow this ground of appeal of department.

33. So far as deleting the disallowance of Rs.32,28,899/- on account of destroyed stock is concerned. This amount has been disallowed on the ground that similar addition was made in the A.Y. 2008-09 in the case of Waves Foods Pvt. Ltd. on the ground that claim of the assessee regarding stock become absolute on account of expiry date has not been accepted by the department. Accordingly, addition of Rs.32,28,899/- was made. The product dealt by the Rasna Pvt. Ltd. has shelf life of 18 to 24 months depending upon products. After the period of shelf life products become non-saleable or non re-usable for public consumption. Further, as all the Rasna Products of foods consisting of sugar proteins, products are cut and after verification it is either sold as waste or destroyed depending upon the damages/loss of the contents of finished goods. These products are consumed by the public and they are also subject to Govt. Health Department inspection and item which is perishable in nature after the expiry of its shelf life. Such item has to be destroyed and the loss of consumable stock can be held as accidental to the business of allowability. In our considered opinion, ld.CIT(A) has given relief to the assessee as per law. Therefore, we do not want to interfere in the order passed by the ld.CIT(A).

34. In the result, appeal of the department in ITA No.2833/Ahd/2012 is partly allowed.

31. In the result, appeals filed by the assessee in ITA Nos.200 & 2573/Ahd/2012 are allowed. Appeals filed by the department in ITA No.279/Ahd/2012 is dismissed and ITA No. 2833/Ahd/2012 is partly allowed.

This Order pronounced in Open Court on

08/03/2018

Sd/-
(प्रमोद कुमार)
लेखा सदस्य
(PRAMOD KUMAR)
ACCOUNTANT MEMBER

Sd/-
(महावीर प्रसाद)
न्यायिक सदस्य
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 08/03/2018
Priti Yadav, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)- XI & VIII, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad