

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 354, 355, 1115 & 1116/JP/2016, 536/JP/2017,
निर्धारण वर्ष/Assessment Years : 2006-07, 11-12, 12-13 & 13-14.

Rajasthan Financial Corporation, Udyog Bhawan, Tilak Marg, Jaipur.	बनाम Vs.	The ACIT, Circle-6, The ITO, Ward 6(2) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AACCR 2385 J		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 1063/JP/2016,
निर्धारण वर्ष/Assessment Year : 2012-13.

The ACIT, Circle-6, Jaipur.	बनाम Vs.	Rajasthan Financial Corporation, Udyog Bhawan, Tilak Marg, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AACCR 2385 J		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Shri Sanjeev Kumar Mathur &
Shri Satish Ajmera (CAs)

राजस्व की ओर से/ Revenue by: Shri Varinder Mehta (CIT)

सुनवाई की तारीख/ Date of Hearing : 10.07.2018.
घोषणा की तारीख/ Date of Pronouncement : 16/07/2018.

आदेश / ORDER

PER BENCH :

These five appeals by the assessee for the assessment years 2006-07, 10-11 to 13-14 and cross appeal by the revenue for the assessment year 2012-13 are directed against the respective orders of Id. CIT (A). First, we take up the assessee's appeal for the assessment year 2006-07 in ITA No. 354/JP/2016 wherein the assessee has raised the following grounds :-

- “ 1. The learned commissioner of Income Tax (Appeals)-II has erred in not accepting that the initiation of the proceeding u/s 148 of IT Act, 1961 was erroneous because the assessee has submitted all details/information and no new facts were available to the AO.
2. The learned Commissioner of Income Tax (Appeals)-II has erred in holding that the Provision of Bad Debt Written off u/s 36(1)(vii)(a)(c) @ 5% of the income (para 3 of the order) should be calculated after allowing deduction u/s 36(1)(vii) of the Income Tax Act, by wrongly interpreting the Act and not holding that the bad debts written off can only be set off to the extent of the balance in the Provisions for bad debts account (created under section 36(1)(vii)(a)(c) accounts which have been allowed in the earlier assessments.
3. The assessee craves the right to add, alter or in any way amend the grounds of appeal or before the hearing.”

2. At the time of hearing, the Id. A/R of the assessee has stated at Bar that the assessee does not press ground no. 2 of the appeal and the same may be dismissed as not pressed. The Id. D/R has raised no objection if the ground no. 2 of the assessee's appeal is dismissed as not pressed. Accordingly, the ground no. 2 of the assessee's appeal is dismissed being not pressed.

The only ground pressed is ground no. 1 regarding validity of reopening of the assessment.

3. The Id. A/R of the assessee has submitted that the AO has reopened the assessment vide notice under section 148 dated 7th March, 2013 which is after the expiry of four years from the end of the assessment year. The original assessment was completed under section 143(3), therefore, in the absence of any allegation by the AO that income chargeable to tax has escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts necessary for its

assessment, the reopening of the assessment is not sustainable. The Id. A/R has further submitted that the AO has reopened the assessment to disallow the claim under section 36(1)(vii)(a)(c) of the Act. Thus when the AO has not made any allegation in the reasons recorded that assessee failed to disclose fully and truly all material facts necessary for its assessment, the reopening after four years is not sustainable. In support of his contention he has relied upon various decisions of Hon'ble High Courts.

3.1. On the other hand, the Id. D/R has objected to the ground no. 1 of the assessee on the ground that the assessee did not press this ground before Id. CIT (A) and, therefore, once this issue has attained the finality as assessee has made a statement that he does not press the ground of validity of reopening, the same cannot be raised before this Tribunal.

4. We have considered the rival submissions as well as the relevant material on record. At the outset, we note that the Id. CIT (A) has dismissed this ground against the validity of reopening in para 2 and 2.1 as under :-

“ 2. Ground No.1 as under –

The Id. A.O. has erred in initiating the proceeding u/s 148 of I.T. Act, 1961 because the assessee had submitted all details/information and no new facts were available to the AO.

2.1. This ground is not pressed by the appellant, hence is dismissed.”

Thus it is clear that though the assessee raised this ground even before the Id. CIT (A), but the same was not pressed by the assessee. Thus it was dismissed by the Id. CIT (A). The Id. A/R has not disputed this fact recorded by the Id. CIT (A) that the assessee did not press this ground before the Id. CIT (A). Therefore, in the facts and circumstances of the present case when the assessee has not raised any other grounds except the validity of reopening and the said issue was not pressed before the Id. CIT (A), thus the assessee cannot be permitted to by-pass the first appellate authority on the issue of validity of reopening of the assessment. Accordingly, in the facts and circumstances of the case when the only issue raised in this appeal by the assessee is validity of reopening, which was not pressed before the Id. CIT (A) amounts to abiding the decision of the Id. CIT (A) on this issue and then taking the same directly to this Tribunal cannot be entertained. Accordingly, in the facts and circumstances of the case, we decline to entertain the ground no. 1 of the assessee's appeal.

5. In the result, appeal of the assessee is dismissed.

ITA NO. 355/JP/2016 A.Y. 2010-11 :

6. The assessee has raised the solitary ground as under :-

- " 1. The learned Commissioner of Income Tax (Appeals)-II has erred in holding that the Provision of Bad Debt Written off u/s 36(1)(vii)(a)(c) @ 5% of the income (para 2.2 of the order) should be calculated after allowing deduction u/s 36(1)(vii) of the Income Tax Act, by wrongly interpreting the Act and not holding that the bad debts written off can only be set off to the extent of the balance in the Provisions for bad debts account

(created under section 36(1)(vii)(a)(c) accounts which have been allowed in the earlier assessments.

3. The assessee craves the right to add, alter or in any way amend the grounds of appeal or before the hearing."

7. At the time of hearing, the Id. A/R of the assessee has stated at Bar that the assessee does not press this ground and, therefore, the appeal of the assessee may be dismissed as not pressed. The Id. D/R has not raised any objection if the ground of the assessee's appeal is dismissed as not pressed. Accordingly, in view of the statement of Id. A/R of the assessee that the assessee does not press this solitary ground raised in this appeal, the appeal of the assessee is dismissed being not pressed.

In the result, appeal of the assessee is dismissed.

ITA NO. 536/JP/2017 A.Y. 2011-12 :

8. The assessee has raised the following grounds :-

- " 1. The learned Commissioner of Income Tax (Appeals)-II has erred in holding that the Provisions for Bad Debt u/s 36(1)(vii)(c) @ 5% of the total income is not allowable as the Corporation has not made provision for bad and doubtful debts during the year, whereas the Corporation has made fresh provisions in some accounts and written back provisions in another accounts and there is a balance in provision for bad and doubtful debts account at the year end.
2. The learned CIT (Appeals-II) has erred in holding that Contingent Provision for standard Assets is not allowable by wrongly interpreting the Act.

3. The assessee craves the right to add, alter or in any way amend the grounds of appeal or before the hearing."

9. The Id. A/R of the assessee has submitted that the AO has disallowed the claim of Provision of Bad Debt written off under section 36(1)(viiia)(c) of the IT Act by considering the closing balance in the Provision as credit balance. The Id. A/R has submitted that the AO has ignored the fact that during the year under consideration the assessee has made fresh provision though there are written back of provision in respect of some other accounts and the net closing balance in the NP Account is credited. However, when the assessee has made new provision during the year then the claim of deduction under section 36(1)(viiia)(c) of the Act cannot be denied. He has referred to the details of the provisions made during the year as well as the provision written back by the assessee and submitted that due to the provisions written back by the assessee in some other accounts, the closing balance in the NP Account comes to a credit balance. Hence the Id. A/R has submitted that to the extent of new provision made by the assessee the claims should be allowed.

9.1. On the other hand, the Id. D/R has submitted that these details and facts were not brought on record by the assessee either during the assessment proceedings or during the proceedings before Id. CIT (A), therefore, these facts requires verification at the end of the AO if at all the same are to be considered for the purpose of deduction under section 36(1)(viiia)(c) of the Act.

10. Having considered the rival submissions as well as the relevant material on record, we note that the AO has disallowed the claim of the assessee with the statement that the assessee has already taken a lot of time and the case was time

barred on 31st March, 2014. Accordingly a final opportunity was given to the assessee to give details by 18.03.2014. However, no reply was received by the AO and accordingly the claim of the assessee was disallowed considering the fact that there was no new provision for bad and doubtful debts made by the assessee. Now the assessee has filed the details of provision made for bad and doubtful debts and submitted that the assessee has made fresh provision to the extent of Rs. 21,64,58,670/- though the written back of provision was more than the new provision made during the year, therefore, there was a credit balance in the NP Account. Having considered these facts and circumstances of the case, as the assessee did not furnish the relevant details before the authorities below, we set aside this issue to the record of the AO for verification of necessary details and particularly the fact of new provision made by the assessee during the year under consideration and then decide the issue as per law. Needless to say, the assessee be given an opportunity of hearing before passing the fresh order.

11. In the result, appeal of the assessee is allowed for statistical purpose.

ITA NO. 1115/JP/2016 A.Y. 2012-13 :

12. The assessee has raised the following grounds :-

- " 1. The learned Commissioner of Income Tax (Appeals)-II has erred in holding that the Provision for Bad Debt U/s 36(1)(vii)(a)(c) @ 5% of the income is not allowable as the Corporation has written back the provision for bad & doubtful debts made in earlier years without considering the fact that fresh provision for bad & doubtful debts made in earlier years without considering the fact that fresh provision for bad & doubtful debts in some accounts made during the current year.

2. The learned Commissioner of Income Tax (Appeals)-II has erred in upholding the calculation of rebate u/s 36(1)(vii) of Income Tax Act, 1961.
3. The learned Commissioner of Income Tax (Appeals)-II has erred in holding that the contingent provision for standard assets is not allowable by wrongly interpreting the Act.
4. The assessee craves the right to add, alter or in any way amend the grounds of appeals or before the hearing.

13. The only issue raised in this appeal of the assessee is regarding disallowance of claim under section 36(1)(vii)(c) of the Act which is identical as the issue raised for the assessment year 2011-12. The Id. A/R as well as the Id. D/R has reiterated their contentions as made on this issue for the assessment year 2011-12. Both the parties have admitted the fact that the AO has disallowed the claim on identical ground as the assessee has not made any fresh provision during the year under consideration. Accordingly, in view of our finding on this issue for the assessment year 2011-12 this issue is set aside to the record of the AO for proper verification and examination and then decide afresh after giving an opportunity of hearing to the assessee.

14. In the result, appeal is allowed for statistical purposes.

ITA NO. 1063/JP/2016 A.Y. 2012-13 :

15. In this cross appeal, the revenue has raised the following grounds :-

- "1. Whether on the facts and circumstances of the case and in law, the Id. CIT (Appeals) was justified in holding that the assessee

can not be termed as a company with in the meaning of section 2(18)(a) of the I.T. Act and provisions of section 115JB are not applicable on the assessee.

2. Whether on the facts and circumstances of the case and in law, Id. CIT (Appeals) was justified in deleting the disallowance of Rs. 3,04,000/- made on account of prior period expenses.
3. The appellant craves its rights to add, amend or alter any of the grounds on or before the hearing."

16. Ground No. 1 is regarding the addition made by the AO while computing the book profit under section 115JB of the Act which was deleted by the Id. CIT (A) by holding that MAT provisions are not applicable in the case of the financial corporations as the accounts are not maintained as per Schedule-VI of the Companies Act.

17. We have heard the Id. D/R as well as the Id. A/R of the assessee and considered the relevant material on record. At the outset, we note that an identical issue was decided by the Hon'ble Jurisdictional High Court in assessee's own case for the earlier assessment years vide decision dated 6th July, 2017 in DBIT Appeal Nos. 593/2008, 552/2009, 157/2010 and 261/2016. The Hon'ble High Court in assessee's own case after considering a series of decisions on this issue has held in para 9 to 11 as under :-

" 9. We have heard counsel for both the sides.

10. Before proceeding with the matter, the question of law which has been framed is very clear whether the respondent assessee will be governed under section 115JA read with Section 2(18)(a). On a plain

reading as reproduced above and in view of forgoing conclusion and even as per statement of Mr. Mathur, it will not be covered. However, he has tried to take support of Section 43 which is misconceived. While interpreting the taxing statute, the Court has to rely upon the taxing statute and not any other provisions.

11. In that view of the matter, the issue is answered in favour of the assessee against the department."

Accordingly, in view of the decision of the Hon'ble Jurisdictional High Court in assessee's own case, we find no error or illegality in the order of Id. CIT (A) qua this issue.

Ground No. 2 is regarding deletion of disallowance of expenditure made by the AO on account of prior period.

18. We have heard the Id. D/R as well as the Id. A/R and considered the relevant material on record. The AO has made a disallowance of Rs. 3,01,764/- on account of rent paid of the earlier years to the Directorate of Estate, Government of Rajasthan for Bikaner House expenses, New Delhi, on the ground that these expenses pertain to the earlier years and, therefore, cannot be allowed for the year under consideration. On appeal, the Id. CIT (A) has allowed the claim of the assessee in para 3.3 as under :-

"3.3. I have perused the facts of the case, the assessment order and the submissions of the appellant. This ground relates to an amount of

Rs. 3,01,764/- on account of rent paid of earlier years to the Director Estates Government of Rajasthan, for Bikaner House expenses, in New Delhi. The Assessing Officer held the same to be prior period expenditure and also that since the assessee was following the accrual basis hence, the same should have been accounted for in the relevant year. In the present proceedings, it has been stated that this demand raised by the government in this year and the same crystallized during the year itself and so has been rightly accounted for. Since, the demand was raised by the Government of Rajasthan in this relevant year and in the case of government corporation's approvals and sanctions have to be taken and as has been consistently held by the ITAT in such cases, the expenditure of this nature is allowable in the year in which such expenses are finally sanctioned and approved. Reliance is placed on the order of ITAT in the case of Rajasthan State Mines & Minerals Ltd. dated 12.02.2016 for the assessment year 2012-13. The ground of appeal is allowed. The addition made is deleted."

Thus the Id. CIT (A) has given the finding that the demand was raised by the Government of Rajasthan during the year under consideration and, therefore, the same was crystallized during the year itself. Once the fact of raising the demand by the Government of Rajasthan during the year has not been disputed by the AO, therefore, we do not find any error or illegality in the order of Id. CIT (A) in allowing the claim of expenditure on the ground that the same is crystallized during the year under consideration.

19. In the result, appeal of the revenue is dismissed.

ITA NO. 1116/JP/2016 A.Y. 2013-14 :

20. The assessee has raised the following grounds :-

- " 1. The learned Commissioner of Income Tax (Appeals)-II has erred in adding the amount of Rs. 10,20,90,000/- without going into the facts of matter and the facts of matter and the fact that this amount has been written back from the provisions made as per RBI directions and was never allowed in Income Tax Assessments.
2. The assessee craves the right to add, alter or in any way amend the grounds of appeal or before the hearing.

21. The AO has made an addition of Rs. 10,20,90,000/- on account of the Provision made against NPA which was written back during the year under consideration. The assessee challenged the action of the AO but could not succeed as the Id. CIT (A) has confirmed the addition made by the AO on the ground that the assessee has not furnished the relevant year-wise details to substantiate its claim.

22. Before us, the Id. A/R of the assessee has referred to the Profit & Loss account for the year under consideration and submitted that the assessee has duly credited this amount of Rs. 10,20,90,000/- in the Profit & Loss account as written back of the provision for bad and doubtful debts. He has further submitted that since the said provision was not allowed by the AO in the earlier years in the income-tax proceedings, therefore, the assessee while computing the income has reduced to the said amount. The AO has made the addition of the said amount on the ground that the assessee has claimed the deduction under the provision for bad and doubtful debts. The Id. A/R has referred to the computation of income and submitted that once the amount was added in the Profit & Loss account and was not

allowed in the earlier years when the provision was made, then the same cannot be taxed during the year under consideration when it is written back by the assessee.

22.1. On the other hand, the Id. D/R has submitted that the assessee has not furnished the details as required by the authorities below to support and substantiate its claim. He has relied upon the orders of the authorities below.

23. Having considered the rival submissions as well as the relevant material on record, we note that as per the Profit & Loss account the assessee has duly credited this amount of Rs. 10,20,90,000/- in the Profit & Loss account and thereafter in the computation of total income the assessee has reduced the said amount. It is also undisputed fact that in the earlier years as we have dealt with the issue for the assessment years 2006-07, 10-11 to 12-13, the AO disallowed the claim of provision for bad and doubtful debts. However, we have already directed the AO to reconsider the claim of the assessee for the assessment years 2011-12 and 12-13 after verification of the new provision made during those years. Further, if any part of the amount which is written back by the assessee during the year under consideration was already allowed in the earlier assessment years then to that extent the written back amount has to be included in the income of the assessee. The amount of written back of provision which was never allowed by the AO in the assessment proceedings cannot be added to the income of the assessee. Accordingly we set aside this issue to the record of the AO for verification of all the details relevant to this issue as how much of the amount written back during the year under consideration was allowed in the earlier years and only to that extent the

same has to be added to the income of the assessee. Needless to say, the assessee be given an opportunity of hearing before passing the fresh order.

24. In the result, appeal of the assessee is allowed for statistical purposes.

25. Resultantly the appeals of assessee in ITA No. 354 & 355/JP/2016 are dismissed, ITA Nos. 536/JP/2017, 1115/JP/2016 and 1116/JP/2016 are allowed for statistical purposes and appeal of the Revenue in ITA No. 1063 is dismissed.

Order pronounced in the open court on 16/07/2018.

Sd/-

(विक्रम सिंह यादव)

(VIKRAM SINGH YADAV)

लेखा सदस्य / Accountant Member

Jaipur

Dated:- 16/07/2018.

Das/

Sd/-

(विजय पाल रॉव)

(VIJAY PAL RAO)

न्यायिक सदस्य / Judicial Member

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

1. The Appellant- Rajasthan Financial Corporation, Jaipur.
2. The Respondent – The ACIT Circle-6/The ITO Ward 6(2), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 354(6)/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

