

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
and
LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 907/H/2019 Assessment Year: 2014-15		
Bharat Financial Inclusion Ltd., Hyderabad. PAN-AAICs2940J (Appellant)	Vs.	Dy. Commissioner of Income-tax, Circle - 1(2), Hyderabad. (Respondent)
ITA No. 252/H/2018 Assessment Year: 2012-13		
Dy. Commissioner of Income-tax, Circle - 1(2), Hyderabad (Appellant)	Vs.	Bharat Financial Inclusion Ltd., Hyderabad. PAN-AAICs2940J (Respondent)
Assessee by:	Shri K.C. Devdas	
Revenue by:	Shri Sunil Kumar Pandey	
Date of hearing:	22/02/2021	
Date of pronouncement:	20/04/2021	

ORDER

PER L.P. SAHU, A.M.:

This appeal in ITA No. 907/H/2019 filed by the assessee is directed against CIT(A) - 1, Hyderabad's order dated 28/03/2019 involving proceedings u/s 143(3) of the

Income Tax Act, 1961 ; in short “the Act”. Revenue’s appeal in ITA No. 252/H/2018 is directed against CIT(A) – 3, Hyderabad’s order dated 17/11/2017 involving proceedings u/s 143(3) of the Act.

2. First, we take up the revenue’s appeal wherein the revenue has raised the following grounds of appeal:

"1. The order of the Ld.CIT(A) is erroneous on facts as well as in law.

2. The Ld.CIT(A) erred in deleting the disallowance of Employee Stock Expenditure (ESOP) of Rs.26,59,559/-.

3. The Ld.CIT(A) erred in deleting the disallowance made u/s 43B towards Gratuity provision amounting to Rs.1,28, 79,193/- which remained unpaid as on date of filing of the return of income.

4. The Ld.CIT(A) erred in deleting the disallowance of interest expenditure of Rs.48,75,175/-.

5. Any other ground that may be urged at the time of hearing of appeal."

3. The brief facts of the case are that the assessee company engaged in financial services sector providing micro finance services to rural poor through joint liability groups filed its return of income for the AY 2012-13 declaring a loss of Rs. 1321,09,72,018/-. The AO completed the assessment u/s 143(3) of the Act by making the following disallowances:

i) Disallowance of ESOP Expenses

ii) Disallowance of notional interest

iii) Disallowance u/s 43B of the Act

4. When the assessee carried the matter in appeal before the CIT(A), the CIT(A) allowed the appeal of the assessee, against which the revenue is in appeal before the ITAT.

5. The revenue has raised 5 grounds of appeal, out of which ground No. 1 & 2 are general in nature, hence, need no adjudication.

6. As regards ground No. 2 against the action of CIT(A) in deleting the disallowance of Employee Stock Expenditure (ESOP) of Rs. 26,59,559/-, the AO noticed from the computation for the AY under consideration that the assessee had added back an amount of Rs. 9,42,65,855/- crores as ESOP Expenditure disallowed to the extent of options not exercised during the year. From the P&L Account, the AO noticed that the actual debit to the profit & loss account was at Rs. 9,69,25,414/- and this implies that the assessee had not added back the entire provision of Rs. 9,69,25,414/- and claimed an amount of Rs. 26,59,559/-, which is the amount of loss suffered by the company on account of stock options being exercised by the employees. The assessee submitted that the loss suffered by the company is a revenue expenditure since ESOP is an incentive given to the employees which is on par with any

perquisite or remuneration. However, the AO relying on the decisions of the Hon'ble Supreme Court in the case of Brooke Bond India Ltd., Vs. CIT 225 ITR 798 and CIT Vs. Punjab State Industrial Development Corporation Ltd. 225 ITR 792, held that the expenditure claimed by the assessee cannot allowed as a revenue expenditure and disallowed the above amount of Rs. 26,59,559/- which was incurred by the assessee on account of ESOPs and added back to the total income of the assessee.

6.1 Before the CIT(A), the assessee made submissions elaborately along with various case law, which were extracted by the CIT(A) in his order.

6.2 The CIT(A) after considering the submissions of the assessee and following the decision of ITAT, Hyderabad in assessee's own case in ITA No. 1316/Hyd/2015 for AY 2011-12 vide order dated 27/09/2017, deleted the disallowance made by the AO towards ESOP expenditure of Rs. Rs. 26,59,559/-.

6.3 After considering the submissions of both the parties and perusing the material on record as well as the orders of revenue authorities, we are of the view that the decision of the CIT(A) is in consonance with the decision of ITAT, therefore, we do not find any infirmity in the order of the

CIT(A) and upholding the same, we dismiss the ground No. 2 raised by the revenue on this issue.

7. As regards ground No. 3 against the action of CIT(A) in deleting the disallowance made u/s 43B towards gratuity provision amounting to Rs. 1,28,79,193/-, the AO noticed from the audit report that an amount of Rs. 1,28,79,193/- was claimed as “provision for gratuity” which remained unpaid as on the date of filing of return and the same was not disallowed in the computation of income. Referring to the provisions of section 43B(b) of the Act, the AO disallowed the sum of Rs. 1,28,79,193/- u/s 43B by holding that the same had not been paid before the due date.

7.1 The CIT(A) after considering the submissions of the assessee, allowed this ground by observing as under:

“The submissions brought out supra were perused. It is seen from the judicial decisions and the decisions of the Tribunal that the provisions made for contribution to approved gratuity fund should be allowed as deduction as per the provision of Section 40A(7)(b). The decisions of the Hon'ble ITAT in the case of Hinduja Exports vs. JCIT 9 SOT 349 (Bang), the decision of the Hon'ble ITAT, Jaipur in the case of Mewar Sugar Mills Limited vs. DCIT [65 ITD 163], CIT vs Commonwealth Trust Pvt. Ltd., (Ker.) [269 ITR 290], Chakola Spinning and Weaving Mills Ltd. vs. CIT (Ker.) [178 ITR 603] which have been referred to supra old merit. Respectfully following these judicial decisions, Ground No.3 in appeal is allowed.”

7.2 We have considered the submissions of both the parties and perused the material on record as well as gone through the orders of revenue authorities. In the case of CIT Vs Commonwealth Trust (P) Ltd., (269 ITR 0290), on which reliance placed by the assessee, the Hon'ble High Court of Kerala held that provision towards an approved gratuity fund is allowable u/ s 40A(7)(b) as deduction and is not hit by section 43B of the Act. The Hon'ble High Court of Kerala in the case of Chacko las Spinning and Weaving Mills Ltd Vs CIT (178 ITR 603) held that provision made for contribution to approved gratuity fund shall be allowed as deduction u/s 40A(7)(b) of the Act and it is not necessary that there should be a payment by the assessee of for contribution towards an approved gratuity fund existing on the day when the provision is made or during the period for which the provision is made. Therefore, we see no reason to interfere with the order of CIT(A) in allowing the ground of assessee and upholding the same, we dismiss ground No. 3 raised by the revenue.

7.3 The assessee has raised a similar ground in its appeal in ITA No. 907/Hyd/2019 for AY 2014-15 that the CIT(A) erred in directing the AO to allow deduction on the basis of section 43B of the Act for provision made for an approved gratuity fund of Rs. 50,07,765/- which is deductible u/s 40A(7) of the Act.

7.4 Following the conclusions drawn at para 7.2 in respect of Revenue' appeal (supra), we set aside the order of the CIT(A) and direct the AO to allow the deduction of gratuity fund of Rs. 50,07,765/- u/s 40A(7) of the Act.

8. As regards ground No. 4 of the revenue against the action of CIT(A) in deleting the disallowance of interest expenditure of Rs. 48,75,175/-, the AO noticed from the schedule 10 of the balance sheet of the assessee that the assessee had advanced an amount of Rs. 5,41,68,606/- to SKS Micro Finance Employees Benefit Trust. Since the assessee did not conclusively prove that the entire contribution made by it to the employees welfare trust was out of non interest bearing funds, the AO calculated the interest @ 9% on the loan outstanding of Rs. 5,41,68,606/-, which comes to Rs. 48,75,175/- and disallowed the same.

8.1 Before the CIT(A), the assessee furnished its submissions with case law and after considering the same, the CIT(A) allowed the ground of the assessee.

8.2 After considering the submissions of both the parties and perusing the material on record, it is observed that before the CIT(A) the assessee submitted that it has sufficient internal accruals to fund the advance to the Trust and considering the same it is deemed that the loan to trust has been made from such internal accruals and not from

borrowings. In this connection, the assessee relied on the CIT Vs. Reliance Utilities and Power Ltd., [313 ITR 340] (Bombay HC) wherein the High Court held that if there are interest free funds available which is sufficient to meet the investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest free funds available. The AR of the assessee submitted that no fresh loans were taken during the impugned AY and the earlier loan's outstanding was carried forward in the current year. He also placed reliance on the decision of the ITAT, Hyderabad in assessee's own case for AYs 2009-10 and 2010-11 before the CIT(A), wherein the Tribunal has held as under:

"We restore this issue to the file of the AO for the limited purpose of verifying as to whether same loan given by the assessee company to its employees welfare trust is continued even during the year under consideration. If this factual position is found to be correct on such verification, the AO shall delete the disallowance made on account of interest for both the years under consideration. The relevant grounds of the assessee appeal are accordingly treated allowed for statistical purposes"

8.3 After considering the submission of the assessee that sufficient internal accruals to fund the advance trust as well as considering the AO's observations in assessee's own case for AY 2008-09 following the Tribunal decision in AYs 2009-10 and 2010-11 that the loan to trust was made out of internal accruals and not from the borrowed funds, the

CIT(A) allowed the ground of the assessee. The ld. DR could not bring any contrary decision against the decision of the Tribunal for AYs 2009-10 and 2010-11. Therefore, upholding the decision of the CIT(A), we dismiss the ground raised by the revenue on this issue.

9. In the result, appeal of the revenue in ITA No. 252/Hyd/2018 is dismissed and appeal of the assessee in ITA No. 907/hyd/2019 is allowed.

Pronounced in the open court on 20th April, 2021.

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 20th April, 2021.

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3 & 4	<i>CIT(A) - 3 and CIT(A) - 1, Hyderabad</i>
5 & 6	<i>Pr. CIT - 3 and Pr. CIT - 1, Hyderabad.</i>
7	<i>ITAT, DR, Hyderabad</i>
8	<i>Guard File.</i>