IN THE INCOME TAX APPELLATE TRIBUNAL " D " BENCH, AHMEDABAD

(BEFORE SHRI SHAILENDRA Kr. YADAV, J.M. & SHRI ANIL CHATURVEDI, A.M.)

I.T. A. No. 1921 to 1923 /AHD/2010
(Assessment Year: 2005-06 to 2007-08)

The D.C.I.T., Circle-1(2), Baroda	V/S	Jyoti Ltd. Nanubhai Amin Marg, Industrial Area, P O Chemicals Industries, Baroda
(Appellant)		(Respondent)

I.T. A. No. 2010 to 2012 /AHD/2010
(Assessment Year: 2005-06 to 2007-08)

Jyoti Ltd. Nanubhai Amin Marg, Industrial Area, P O Chemicals Industries,Baroda	V/S	The D.C.I.T., Circle-1(2), Baroda
(Appellant)		(Respondent)

PAN: AAACJ4909N

Appellant by : Shri B.L. Yadav, Sr. D.R.
Respondent by : Shri J.P. Shah, A.R.

(आदेश)/ORDER

Date of hearing : 10-06-2015
Date of Pronouncement : 25 -06-2015

PER SHRI ANIL CHATURVEDI,A.M.

1. These 6 appeals of which 3 are filed by the Assessee and the other 3 are filed by the Revenue, are against the order of CIT(A)-IV, Baroda dated 17.03.2010 for A.Ys. 2005-06 to 2007-08.

2. Before us, at the outset both the parties submitted that though the appeals relate to 3 different assessment years but most of the grounds are identical except for the assessment years and amounts and the submissions are also common for all those grounds in the appeals and therefore all the appeals can be heard together. We therefore proceed to dispose of all the appeals together for the sake of convenience and thus proceed with the facts in A.Y. 2005-06.

3. The relevant facts as culled out from the material on record are as under.

4. Assessee is a company stated to be engaged in the business of manufacturing of engineering goods. Assessee filed its return of income for A.Y. 2005-06 on 29.10.2005 declaring total loss of Rs. 1,25,95,376/-. The case was selected for scrutiny and thereafter the assessment was framed under section 143(3) vide order dated 30.04.2007 and the total income, before adjustment of carry forward unabsorbed business loss, was determined at Rs. 2,93,00,155/-. Aggrieved by the order of A.O., Assessee carried the matter before ld. CIT(A) who vide order dated 17.03.2010 granted partial relief to the Assessee. Aggrieved by the aforesaid order of ld. CIT(A), Assessee & Revenue are now in appeal before us. The grounds raised by the Revenue in ITA No. 1921/AHD/2010 reads as under:-

l(a). On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) erred in deleting the additions of Rs.45,78,683/- made on account of disallowance employees' (staff) contribution to Provident Fund which were not paid on due dates.
l(b). The Id.CIT(Appeals) erred in deleting the additions of Rs.59,25,030/- made on account of disallowance employees' (workers) contribution to Provident Fund which were not paid on due dates.
l(c). The Id.CIT(Appeals) erred in deleting the additions of Rs.10,29,515/- made on account of disallowance employees' contribution to ESI which were not paid on due dates.

1(d) The Id.CIT(Appeals) erred in not appreciating that under the provisions of section 36(l)(va) r.w.s.2(24)(x) of the Act disallowance of the payment of employees' contribution to Provident Fund and disallowance employees' contribution to ESI beyond the due date is mandatory.

2. On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) erred in deleting the addition of Rs.5,39,217/- in respect of long standing debts owned by the assessee. The Id.CIT(Appeals) erred in not appreciating that the assessee was no longer required to discharge the liability as the claim of the .creditors would not survive as the period of 3 years as being agitation period had elapsed in view of the decision in the case of ***CIT vs Chaudhary Cotton Ginning & Pressing Factory, 2005, 271 ITR 17 (PH).***

3. On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) erred in deleting the addition made on account of disallowance out of welfare expenses of Rs.4,83,380/- as the assessee has failed to establish that the entire expense was incurred for business purpose.

4. On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) erred in deleting the addition of Rs.1,98,164/- made u/s.37(l) of the Act on account of disallowance out of misc. expense claimed to have incurred for maintenance of garden and guest house as the assessee has failed to establish that the entire expense was incurred for business purpose

We first proceed with the appeal of Revenue in ITA No. 1921/Ahd/2010

1st ground and its sub grounds are with respect to deletion of addition on account of Employees Contribution Fund and ESIC.

5. During the course of assessment proceedings, A.O noticed that the employees contribution to provident fund and ESIC was not paid by the Assessee though it had become payable on the various due dates. He accordingly disallowed the employees contribution of provident fund of staff of Rs. 45,78,683/-, contribution of Provident Fund of Rs. 59,25,030/- and ESIC contribution of Rs. 10,29,515/-. Aggrieved by the order of A.O., Assessee carried the matter before ld. CIT(A) who granted partial relief to the Assessee by holding as under:-

2.2. I have considered the matter. Appellant's contention is that the amounts in question did not come within the purview of provisions of section 36(l)(va) r.w.s. 2(24)(x) due to salary being paid late. As discussed in Order dated 2.3.2009 by the ITAT, Ahmedabad

Bench in ITA No.2609/Ahd/2008 for A.Y.2004-05 in the case of Gujarat Containers Ltd., para 30 of Employees' Provident Fund Scheme imposes obligation on the employer to remit both the shares of contribution, i.e. employer's as well as employees' in the first instance. The ITAT noted that initial responsibility for making payment of contribution lies on the employer irrespective of the fact whether the wages are paid in time or not. Appellant's contention that provisions of section 2(24)(x) are not applicable due to salary payment being late is therefore not acceptable. However, in view of Supreme Court's decision in the case of Alom Extrusions Ltd. and also ITAT, Ahmedabad's aforesaid decision in ITA No.2609/Ahd/2008, in the case of Gujarat Containers Ltd., even employees' contribution if paid before due date of filing of return are allowable as deduction. ITAT, Ahmedabad by referring to decision of Delhi High Court in the case of P.M.Electronics, 220 CTR (Del) 635 and Supreme Court's decision in the case of Vinay Cement Ltd. 213 CTR 268, held that employees' contribution towards provident fund, if made within the due date of filing of return is allowable as a deduction. The Supreme Court in the decision of Alom Extrusions Ltd. held that first proviso to section 43B is applicable even before amendment in section 43B by Finance At, 2003. The Supreme Court in para 10 of its Order referred to employees' contributions also. Following these decisions, it is held that employees' contribution to PF and ESIC, if paid before due date of filing the return are allowable as deduction after including the same as income u/s.2(24)(x). The Assessing Officer is directed to allow the amounts paid before the due date of filing of return for the assessment year in question, after verification.

6. Aggrieved by the order of ld. CIT(A), Revenue is now in appeal before us.

7. Before us, at the outset ld. A.R. submitted that the issue raised in the present ground is covered in favour of the Department by the decision of Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Road Transport Corporation 366 ITR 170 and therefore the issue has to be decided against the Assessee. Ld. D.R. agreed with the submission of ld. A.R.

8. We have heard the rival submissions and perused the material on record. It is an undisputed fact that the employees contribution of P.F and ESIC has been deposited late by the Assessee. Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Road Transport Corporation (supra) has held has under:-

"any sum with respect to the employees contribution as mentioned in s. 36(l)(va), assessee shall be entitled to the deduction of such sum towards the employees contribution if the same is deposited in the accounts of the concerned employees and in the concerned fund such as Provident Fund, ESI Contribution fund, etc provided the said sum is credited by the assessee to the employees accounts in the relevant fund or funds on or before the "due date" under the Provident fund Act, ESI Act, Rule, Order or Notification issued thereunder or under any Standing Order, Award, Contract or Service or otherwise. .."

9. In view of the submission of ld. A.R. and D.R. and in view of the fact that the contribution of provident fund and ESIC not being paid before the due dates and in the absence of any contrary binding decision and respectfully following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Road Transport Corporation (supra) we set aside the order of ld. CIT(A) on this issue and uphold the decision of A.O. Thus this ground of Revenue is **allowed.**

Ground no. 2 is with respect to deletion of addition in respect of long outstanding debts.

10. A.O on perusing the details of creditors reflected in the Balance Sheet noticed that Assessee owed debts to certain creditors which were more than 3 years old and the aggregate of such debts was Rs.5,39,217/-. A.O was of the view that since the law of limitation prescribes the period of 3 years as being the gestation period within which any claim for recovery of debt is required to be enforced, and since that period has elapsed, the liability shown by the Assessee being payable to those creditors has ceased to exist. He accordingly made addition of Rs. 5,39,217/- Aggrieved by the order of A.O., Assessee carried the matter before ld. CIT(A) who after considering the submissions of the Assessee decided the issue in favour of the Assessee by holding as under:-

4.2. I have considered the matter. Amounts were shown as outstanding in appellant's balance sheet, i.e. they were still considered as liability. As held by High Court of Bombay in the case of Chaugule & Co. Pvt. Ltd. (1991) 189 ITR 473 (Bom), mere fact that a liability became time barred by law, does not lead to the conclusion that there is remission or cessation of liability - assessee may as well have the intention of honouring the debts as and when somebody comes forward to claim the same - in the absence of any material suggesting that the assessee had no intention of honouring the debts after writing them back, no profit could be said to accrue. The decision relied upon by the Assessing Officer in the case of Chaudhary Cotton Ginning &. Pressing Factory is in a different context altogether and is not applicable. Addition of Rs.5,39,217/- u/s.41(l) is deleted.

11. Aggrieved by the order of ld. CIT(A), Revenue is now in appeal before us.

12. Before us, ld. D.R. relied on the order of A.O. On the other hand ld. A.R. reiterated the submissions made before A.O and ld. CIT(A) and further submitted that the issue is now covered in favour of the Assessee by decision of Hon'ble Gujarat High Court in the case of CIT vs. Nitin Garg reported in 2012 28 Taxman.com 16 and the decision of Hon'ble Gujarat High Court in the case of CIT vs. Bhogilal Ramjibhai Atara reported in (2014) 222 Taxman.com 313 (Guj). He also placed on record the copy of the aforesaid decisions. He thus supported the order of ld. CIT(A).

13. We have heard the rival submissions and perused the material on record. We find that ld. CIT(A) while deleting the addition has noted that the amounts outstanding in the Assessee's Balance Sheet were considered as liability by the Assessee and in the absence of any material suggesting that the Assessee had no intention of honoring the debts, no profit could be said to accrue. We further find that the issue in the present case is also covered in Assessee's favour by the decision of Hon'ble Gujarat High Court in the case of CIT vs. Bhogilal Ramjibhai Atara (supra). Before us, Revenue has

not brought any material on record to controvert the findings of ld. CIT(A) nor has brought any contrary binding decision in its support. In view of the aforesaid facts, we find no reason to interfere with the order of ld. CIT(A) and thus this ground of Revenue is **dismissed.**

Ground no. 3 is with respect to deleting the addition on account of welfare expenses.

14. On perusing the details of welfare expenses, A.O noticed that the expenses debited to welfare expenses included expenses in respect of grocery, pulses and other requirement to run the canteen. He also noticed that the canteen facility provided to the employees of the Assessee could have been used by other than employees also and therefore he was of the view that the outsiders enjoying the facility of canteen cannot be ruled out. He therefore considered 10% of such expense amounting to Rs. 3,19,015/- as being not wholly and exclusively for the purpose of business of the Assessee. He also noticed that from the other general expenses, the use for non business purpose could not be ruled out. He accordingly considered 10% of general expenses amounting to Rs. 1,64,365/- to be not for the purpose of business and accordingly made an aggregate disallowance of Rs. 4,83,380/-. Aggrieved by the order of A.O., Assessee carried the matter before ld. CIT(A) who deleted the addition by holding as under:-

8.2. I have considered the matter. Identical disallowance in appellant's case was cancelled by CIT(A)-I, Baroda for A.Y.2000-01 in CAB/I-0032/2003-04 through Order dated 25.8.2003. Following this decision, disallowance of Rs.4,83,380/- is cancelled.

15. Aggrieved by the aforesaid order of ld. CIT(A), Revenue is now in appeal before us.

16. Before us, ld. D.R. supported the order of A.O. On the other hand ld. A.R. reiterated the submissions made before A.O and ld. CIT(A).

17. We have heard the rival submissions and perused the material on record. We find that ld. CIT(A), following the order in Assessee's own case for A.Y. 2000-01 has deleted the addition by a cryptic order. Before us none of the parties have placed the order of ld. CIT(A) for A.Y. 2000-01 that was relied by ld. CIT(A) while deleting the addition nor could throw light as to whether the order of ld. CIT(A) for A.Y. 2000-01 has attained finality. In view of the aforesaid facts, we restore the issue back to the file of ld. CIT(A). In case the order of ld. CIT(A) for A.Y. 2000-01 that was relied by ld. CIT(A) for deciding the present ground has been accepted by Revenue and attained finality, then no interference to the order of ld. CIT(A) for the year under consideration is called for. In case the order of ld.CIT(A) for A.Y. 2000-01 has been decided at a higher forum, ld. CIT(A) is directed to follow the same. Thus this ground of Revenue is **allowed for statistical purposes.**

Ground no. 4 is with respect to deletion of addition of miscellaneous expenses.

18. A.O on perusing the details of miscellaneous expenses noticed that the expenses included expenses on account of gardening, guesthouse, hotel expenses for guest, aggregating to the Rs. 19,81,644/-. A.O was of the view that the expenses in the entirety cannot be considered to have been incurred

wholly and exclusively for the purpose of business. He accordingly considered 10% of such expenses amounting to Rs. 1,98,164/- being for non business and accordingly disallowed the same. Aggrieved by the order of A.O., Assessee carried the matter before ld. CIT(A) who deleted the addition by holding as under:-

9.2. I have considered the matter. Following the decision of CIT(A)-I, Baroda for A.Y. 2000-01, where by following appellate orders for earlier years and by noting that adhoc addition in the absence of adverse report by the auditor cannot be sustained, disallowance of Rs.1,98,164/- is cancelled.

19. Aggrieved by the aforesaid order of ld. CIT(A), Revenue is now in appeal before us.

20. Before us, ld. D.R. supported the order of A.O. On the other hand ld. A.R. reiterated the submissions made before A.O and ld. CIT(A) and further placed reliance on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Torrent Pharmaceuticals Ltd. (2013) 263 CTR 683 (Guj). He thus supported the order of ld. CIT(A).

21. We have heard the rival submissions and perused the material on record. We find that the A.O has made an ad hoc disallowance of 10% of miscellaneous expenses. While disallowing the expenses, he has not pointed out any expenditure which is not for the purpose of business. At the same time, we find that ld. CIT(A) following the decision for A.Y. 2000-01 has also noted that no such disallowance were made in earlier years and ad hoc addition, in the absence of adverse report by the auditor, cannot be sustained. Before us, Revenue has not brought any material on record to any controvert the

findings of ld. CIT(A) nor has pointed out any contrary binding decision. In view of the aforesaid facts, we find no reason to interfere with the order of ld. CIT(A) and thus this ground of Revenue **is dismissed.**

22. In the result, the appeal of Revenue is partly allowed for statistical purposes.

We now proceed with Revenue's appeal for A.Y. 2006-07 in ITA No. 1922/A/2010.

23. The grounds raised by Revenue reads as under:-

l(a). On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) erred in deleting the additions of Rs.30,65,472/- made on account of disallowance employees' (staff) contribution to Provident Fund which were not paid on due dates.
l(b). The Id.CIT(Appeals) erred in deleting the additions of Rs.21,64,065/- made on account of disallowance employees' (workers) contribution to Provident Fund which were not paid on due dates.
l(c). The Id.CIT(Appeals) erred in deleting the additions of Rs.6,96,502/- made on account of disallowance employees' contribution to ESI which were not paid on due dates.
1(d) The Id.CIT(Appeals) erred in not appreciating that under the provisions of section 36(l)(va) r.w.s.2(24)(x) of the Act disallowance of the payment of employees' contribution to Provident Fund and disallowance employees' contribution to ESI beyond the due date is mandatory.
2. On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) erred in deleting the addition of Rs.4,65,003/- in respect of long standing debts owned by the assessee. The Id.CIT(Appeals) erred in not appreciating that the assessee was no longer required to discharge the liability as the claim of the .creditors would not survive as the period of 3 years as being agitation period had elapsed in view of the decision in the case of ***CIT vs Chaudhary Cotton Ginning & Pressing Factory, 2005, 271 ITR 17 (PH).***
3. On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) erred in deleting the addition made on account of disallowance out of welfare expenses of Rs.4,66,650/- as the assessee has failed to establish that the entire expense was incurred for business purpose.
4. On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) erred in deleting the addition of Rs.1,73,531/- made u/s.37(l) of the Act on account of disallowance out of misc. expense claimed to have incurred for maintenance of garden and guest house as the assessee has failed to establish that the entire expense was incurred for business purpose.

24. Before us, at the outset both the parties submitted that the facts and circumstances of the case in all the grounds raised in the present appeal are identical to the grounds raised by Revenue in its appeal A.Y. 05-06 except for the amounts and the submissions made by them while arguing the appeal for A.Y. 05-06 would be applicable to the present grounds. In view of the aforesaid submissions and for the reasons stated hereinabove while deciding the appeal of Revenue for A.Y. 2005-2006 in ITA No. 1921/AHD/2010 (supra) and for similar reasons decide the grounds of Revenue in the present appeal.

25. In the result, the appeal of Revenue is **partly allowed for statistical purposes**.

We now proceed with Revenue's appeal for A.Y. 2007-08 in ITA No. 1923/A/2010.

26. The grounds raised by Revenue reads as under:-

1. *On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) erred in deleting the addition of Rs.1,24,821/- made on account of disallowance in respect of payment of ESI employees' contribution. The Id.CIT(Appeals) erred in not appreciating that under the provisions of section 36(l)(va) r.w.s.2(24)(x) of the Act disallowance of the payment of ESI employees contribution beyond the due date is mandatory.*
2. *On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) erred in deleting the addition of Rs.197,117/- in respect of long standing debts owned by the assessee. The Id.CIT(Appeals) erred in not appreciating that the assessee was no longer required to discharge the liability as the claim of the creditors would not survive as the period of 3 years as being agitation period had elapsed.*
3. *On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) erred in deleting the addition made on account of disallowance out of welfare expenses of Rs.4,76,712/- as the assessee has failed to establish that the entire expense was incurred for business purpose.*
4. *On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) erred in deleting the addition of Rs.3,01,805/- made u/s.37(l) of the Act on account of disallowance out of misc. expense claimed to have incurred for maintenance of*

garden and guest house as the assessee has failed to establish that the entire expense was incurred for business purpose.

5. *On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) erred in deleting the addition of Rs.49,85,800/- made on account of disallowance of bad debt without appreciating the fact that the assessee had failed to discharge their onus to prove the debts as really bad with supporting documentary evidence.*

27. Before us, both the parties submitted that the facts and circumstances of the case for the ground no. 1 to 4 raised in the present appeal are identical to the grounds raised by Revenue in A.Y. 05-06 except for the amounts and the submissions made by them, while arguing the appeal of Revenue for A.Y. 05-06 would be applicable to the present grounds. In view of the aforesaid submissions and for the reasons stated hereinabove while deciding the appeal for A.Y. 2005-2006 in ITA No. 1921/AHD/2010 (supra) and for similar reasons decide the grounds no. 1 to 4 of Revenue in the present appeal.

Ground no. 5 is with respect to deletion of disallowance of bad debts.

28. During the course of assessment proceedings, A.O noticed that Assessee has claimed bad debts of Rs. 49,85,000/- (the list of which is reproduced by A.O at page 4 of the assessment order). A.O was of the view that Assessee has not substantiated its claim of the efforts made for the recovery of bad debts nor has furnished any documentary evidence to testing the claim of bad debts. He accordingly denied the claim of bad debts Aggrieved by the order of A.O., Assessee carried the matter before ld. CIT(A) who deleted the addition by holding as under:-

6.2. Assessing Officer's reasons for making the disallowance are identical to A.Y.2006-07. The bad debts are directed to be allowed after making verification as directed in

appellate order for A.Y.2006-07 in appellant's case in CAB/IV-292/09-10 through my Order dated 17.3.2010.

29. Aggrieved by the order of ld. CIT(A), Revenue is now in appeal before us.

30. Before us, ld. D.R. supported the order of A.O. On the other hand ld. A.R. reiterated the submissions made before A.O and ld. CIT(A) and further submitted that ld. CIT(A), following the Hon'ble Supreme Court decision in the case of TRF Ltd. vs. CIT 323 ITR 397 has decided the issue and therefore no interference to the order of ld. CIT(A) is called for. He thus supported the order of ld. CIT(A).

31. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to writing off of bad debts. We find that Hon'ble Supreme Court in the case of TRF Ltd. vs. CIT (supra) has held as under:-

"After the amendment of section 36(i)(vii) of the Income-tax Act, 1961, with effect from April 1 1989, in order to obtain a deduction in relation to bad debts, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable, it is enough if the bad debt is written off as irrecoverable in the accounts of the assessee.

32. Before us, Revenue has not brought any contrary binding decision in its support nor has controverted the findings of ld. CIT(A). We therefore respectfully following the decision of Apex Court in the case of TRF Ltd (supra), find no reason to interfere with the order of ld. CIT(A) and thus this ground of Revenue is **dismissed.**

33. In the result, the appeal of Revenue is partly allowed for statistical purposes.

Now we take up Assessee's appeal for A.Y. 2005-06 In ITA No. 2010/A/10

1. *The Learned Commissioner of Income Tax (Appeals)-IV has erred in confirming the addition of Provident Fund Employees Contribution to the extent amount paid after due date of return. On the fact and circumstances of the case the Learned Commissioner of Income Tax (Appeals)-IV, ought to have allowed the same. Alternatively it is submitted that if the amount is ultimately held be not allowable in the year under reference, the same be directed to be allowed in the year of actual payment.*
2. *The Learned Commissioner of Income Tax (Appeals)-IV has erred in confirming the revenue expenditure of Rs.2,85,747/- on repairs to building as capital. On the fact and circumstances of the case the Learned Commissioner of Income Tax (Appeals)-IV ought to have deleted the addition.*
3. *The Learned Commissioner of Income Tax (Appeals)-IV has erred in disallowing up-gradation charges paid to Gujarat Electricity Board amounting to Rs. 1,85,508/- as capital. On the fact and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals)-IV ought to have allowed the payment as revenue.*
4. *The Learned Commissioner of Income Tax (Appeals)-IV has erred in confirming partly the payment made by the company towards Credit Card expenses incurred by the director for and on behalf of the company. On the fact and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals)-IV ought to have allowed the entire expenses.*
5. *The Learned Commissioner of Income Tax (Appeals)-lV has erred in confirming the addition of Rs.2,02,97,974/- being interest payment made by the appellant to the bank. On the fact and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals)-IV ought to have allowed the same.*

34. Ground no. 1 is with respect to disallowance of delayed payment of employee's P.F share of contribution. We find that the present ground raised by the Assessee is interconnected to the ground no. 1 of Revenue's appeal in ITA No. 1921/Ahd/2010 for A.Y. 05-06. We while deciding the Revenue's appeal and for the reasons stated hereinabove have decided the issue in

favour of Revenue. We therefore for similar reasons dismiss the present ground of Assessee. Thus this ground of Assessee is **dismissed.**

2nd ground is with respect to addition on account of repairs to building.

35. On perusing the details of repairs to building, A.O noticed that a sum of Rs. 1,75,231/- was incurred in respect of labour charges for making and fixing partition with doors, renovation and extending the toilet area and for making storage unit. He also noticed that a sum of Rs. 1,42,310/- was incurred in respect of repairs carried it Corporate Office building towards labour charges for making and fixing staff table, making and fixing filing storage unit, making and fixing fooden paneling etc. A.O was of the view that on incurring the aforesaid expenditure, Assessee was getting long term benefit and the nature of repairs did not fall under the nomenclature of current repairs and the expenditure were of capital in nature. He therefore after allowing flat rate of 10% depreciation (amounting to Rs. 31,754/-) added the balance amount of Rs. 2,85,787/-. Aggrieved by the order of A.O., Assessee carried the matter before ld. CIT(A) who upheld the order of A.O by holding as under:-

5.2 I have considered the matter. The expenditure incurred brought into existence new assets or it was for substantial renovation. Such an expenditure is of capital nature. Addition of Rs. 2,85,787/- is confirmed.

36. Aggrieved by the aforesaid order of ld. CIT(A), Assessee is now in appeal before us.

37. Before us, ld. A.R. reiterated the submissions made before A.O and ld. CIT(A) and further submitted that the expenses were of routine in nature and it was common that when cabins are re-arranged on the re-arrangement toilet blocks are also relocated. He therefore submitted that the amounts spent cannot the considered to be capital in nature. Ld. A.R. also relied on the decision of CIT vs. Delhi Press Samacharpatra Pvt. Ltd. 322 ITR 590. The ld. D.R. on the other hand supported the order of A.O and ld.CIT(A).

38. We have heard the rival submissions and perused the material on record. We find that ld. CIT(A) while upholding the addition has by a very cryptic order upheld the order of A.O. We further find that there is no finding of ld. CIT(A) with respect to the nature of expenses incurred by the Assessee. In such circumstances, we are of the view that the issue needs to be re-considered and therefore we remit the issue back to the file of ld. CIT(A) to decide the issue afresh after giving a clear finding on the expenses. Needless to state that ld. CIT(A) shall grant reasonable opportunity of hearing to both the parties. In the result, this ground of Assessee is **allowed for statistical purposes.**

3rd ground is with respect to deletion of charges paid to GEB.

39. A.O noticed that Assessee has paid one time charges to GEB for augmentation of the capacity utility for supply of power. He was of the view that the incurring of expenditure culminated in additional benefit and advantage of enduring nature. He therefore considered the expenditure to be of capital in nature and accordingly disallowed the amount of Rs. 1,85,508/-.

Aggrieved by the order of A.O., Assessee carried the matter before ld. CIT(A) who upheld the order of A.O by holding as under:-

6.2. I have considered the matter. The amount in question is a refundable deposit, which cannot be claimed as an expense. Appellant's contention that the deposit is not likely to be returned at any point of time in future, unless business is closed down is not tenable. This deposit cannot be compared with deposit under OYT Scheme, which is under different terms and conditions and is of a much smaller almost insignificant amount. Disallowance of Rs.1,85,508/- is confirmed.

40. Aggrieved by the aforesaid order of ld. CIT(A), Assessee is now in appeal before us.

41. Before us, ld. A.R. reiterated the submissions made before A.O and ld. CIT(A) and further submitted that the expenditure was in respect of old unit and no new asset has been acquired and the expenditure has been incurred for the working of the unit. The ld. A.R. also placed reliance on the decision of CIT vs. Gujarat Mineral Development Corporation Ltd 132 ITR 377 (Guj). The ld. D.R. on the other hand supported the order of A.O and ld.CIT(A).

42. We have heard the rival submissions and perused the material on record. We find that ld. CIT(A) while upholding the disallowance made by A.O has noted that the deposit with GEB cannot be compared with deposit under OYT scheme which is under different terms and conditions. We find that ld. CIT(A) has not pointed out as to how the scheme of deposit with GEB is different from OYT scheme which was relied upon by Assessee. In such circumstance, we are of the view that the issue needs to be re-examined in the light of the submissions made by ld. A.R, the case law relied upon by ld.

A.R. and on the basis of facts and circumstances of the case. Ld. CIT(A) shall give a categorical finding with respect to the nature of expense. The Assessee is also directed to co-operate by furnishing all the required details called for by ld. CIT(A). In the result, this ground of Assessee is **allowed for statistical purposes.**

Ground no. 4 is with respect to additions of the payments made towards Credit Cards expenses incurred by the Director.

43. During the course of assessment proceedings, A.O noticed that Assessee has reimbursed the expenses incurred by Shri R.N. Amin and Smt. Tejal Amin, the directors of the Assessee company. The submissions of the Assessee that Shri R.N. Amin had incurred expenditure towards the purchase of books and other useful items for use by the Assessee and the expenses were therefore reimbursed by the Assessee was not found acceptable to the A.O. With respect to the expense incurred by Smt. Tejal Amin, A.O noted that no details of expenses incurred by the Assessee were furnished. He therefore considered the expenses of Rs. 1,48,584/- incurred by Shri R.N. Amin and Rs. 1,12,438/- incurred by Smt. Tejal Amin, aggregating to Rs. 2,61,022/- to be for the non business purpose and accordingly disallowed the same. Aggrieved by the order of A.O., Assessee carried the matter before ld. CIT(A) who upheld the order of A.O by holding as under:-

7.2. I have considered the matter. The details of expenses in the case of Smt. Tejal Amin filed by the appellant show that the expenses were in respect of purely personal items. Such expenses are clearly disallowable in the case of appellant company. In case of Shri Rahul Amin, considering the nature of expenses, part of the expenses are accepted to be for the business and out of disallowance of Rs.1,48,584/-, 50% disallowance is sustained.

To sum up, out of disallowance of Rs.2,61,022/-, disallowance of Rs.1,81,730/- is confirmed, being expenses not proven to be wholly and exclusively for appellant's business and the balance, i.e. Rs.74,292/- is deleted.

44. Aggrieved by the aforesaid order of ld. CIT(A), Assessee is now in appeal before us.

45. Before us, ld. A.R. reiterated the submissions made before A.O and ld. CIT(A) and further relied on the decision of Gujarat High Court in the case of Sayaji Iron & Engineering Company vs. CIT 253 ITR 749. The ld. D.R. on the other hand supported the order of A.O and ld.CIT(A).

46. We have heard the rival submissions and perused the material on record. We find that the expenses incurred by the Directors of the Company through Credit Cards were considered to be personal in nature by the A.O. On the other hand, it is Assessee's submission that the expenses have been incurred on behalf of the Company and no personal element is involved. The Assessee has also placed reliance on the decision of Sayaji Iron & Engineering Company vs. CIT (supra). Considering the fact that ld. A.R. has also placed reliance on the decision of Sayaji Iron (supra) and in the absence of any finding by ld. CIT(A) on the nature of expenses and in the light of the aforesaid decision of Gujarat High Court which has been relied upon by ld A.R., we are of the view that the issue needs to be re-examined in the light of the aforesaid decision and in accordance with law. We therefore set aside the issue back to the file of ld. CIT(A) to decide the issue afresh in accordance with law. Needless to state that CIT(A) shall grant adequate

opportunity of hearing to the Assessee. In the result, this ground of **Assessee is allowed for statistical purposes.**

Ground no. 5 is with respect to addition on account of interest payments u/s. 43B(e)

47. During the course of assessment proceedings, A.O noticed that Assessee had debited bank interest relating to various facilities availed from Central Bank of India, Dena Bank, Bank of Maharashtra. He also noticed that Assessee had availed a CDR Package by virtue of which certain portion of interest was funded and converted into FITL account. A.O on perusing the details of interest noticed that certain portion of interest liability was not serviced by the Assessee and had remained unpaid at the end of the financial year and also remained unpaid till the due date of furnishing of return of income. A.O thereafter on detailed analysis of the various accounts (at page 13 to 20 of the assessment order) was of the view that as per the provisions of Section 43B(e), the interest liability to the extent unpaid cannot be allowed as deduction. He accordingly worked out the amount of disallowance at Rs. 2,02,97,974/- and added to the income. Aggrieved by the order of A.O., Assessee carried the matter before ld. CIT(A) who upheld the order of A.O by holding as under:-

10.2. I have carefully considered facts of the case and appellant's submissions. Appellant's contention is that the Assessing Officer has disallowed the interest u/s.43B(e) primarily due to availing of debt restructuring scheme / CDR package by the appellant and by wrongly interpreting CBDT's Circular No.7 of 2006. The Assessing Officer separately analyzed appellant's various loan accounts on which interest was paid, i.e. cash credit account, working capital term loan account, term loan account for other purposes and FITL, In respect of all the accounts, Assessing Officer gave credit for interest serviced by the appellant through deposit of sale proceeds or otherwise and disallowed the remaining interest only, which was not paid till the last day of financial year, though it was debited to appellant's accounts by the bank. Assessing Officer

referred to CBDT's Circular No.7 of 2006 only in respect of that portion of interest on cash credit account or other loan account, which was converted into FITL account. As per Board's Circular, the conversion of existing liability of interest in loan should not be considered as actual payment of interest and such conversion would still attract provisions of section 43B(e), unless interest is actually paid to the bank. Appellant's contention that it was sanctioned additional term loan titled Funded Interest Term Loan (FITL) and the additional loan sanctioned had nothing to do with interest payable by the appellant on various loans taken earlier, is not correct. Appellant has itself stated that the quantum of additional loan was decided by amount of interest payable by the appellant on earlier loans. Moreover, in letter dated 9.3.2007, Central Bank of India, copy of which is filed by appellant clearly mentioned as under:-

"However, in terms of CDR packages, the company had been sanctioned new and additional term loan equal to the interest charged by bank titled as FITL account".

In any case, the Assessing Officer has worked out the interest to be disallowed by giving credit for interest actually paid/serviced by the appellant to the bank. Another contention of the appellant that the interest refunded by the bank was offered to tax is irrelevant to the issue at hand, since no disallowance was made in respect of such refunded interest. Another contention of the appellant is that entire interest charged by the banks in appellant's accounts was duly taken credit of by them in their profit and loss account and thus, it means interest debited to appellant's account stands serviced. Further contention of the appellant is that due to debiting of interest by the bank to appellant's loan accounts, recovery was made by the bank of the interest. The arguments of the appellant are not acceptable. "Payment" for the purpose of section 43B would be actual payment in money terms of interest by the appellant to the bank. Merely because the bank accounted for the interest charged as its income or the same was debited to appellant's loan accounts cannot mean that the interest was paid by the appellant. The fact that interest remained outstanding in appellant's loan accounts on the last date of financial year establishes that it was not paid. Appellant has also relied upon letters dated 9.3.2007 and 1.9.2009 by Central Bank of India, Baroda. In these letters, the bank has only certified the amount of interst charged to appellant's accounts, which was taken as income in bank books. As discussed above, this cannot mean that interest was paid by the appellant. Disallowance of Rs.2,02,97,974/-under section 43B(e) is confirmed

48. Aggrieved by the aforesaid order of ld. CIT(A), Assessee is now in appeal before us.

49. Before us, ld. A.R. reiterated the submissions made before A.O and ld. CIT(A) and further placed reliance on the decision of Karnataka High Court in the case of Vinir Engineering Pvt. Ltd. vs. DCIT reported in 313 ITR 154.

He therefore submitted that the disallowance made by the A.O be deleted. The ld. D.R. on the other hand supported the order of A.O and ld.CIT(A).

50. We have heard the rival submissions and perused the material on record. The issue in the present case with respect to disallowance u/s. 43B(e). The relevant portion of Section 43B along with the Explanation which is relevant for the present issue, reads as under:-

43B. *Notwithstanding anything contained n any other provision of this Act, a deduction otherwise allowable under this Act in respect of –*
(a)…….
(b)…….
(c)…….
(d)…….
(e) any sum payable by the assessee as interest on any loan or advances from a scheduled bank in accordance with the terms and conditions of the agreement governing such loan or advances.
Shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him:
Provided that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.
Explanation 1……
Explanation 2……
Explanation 3……
Explanation 3A……..
Explanation 3B……..
Explanation 3C……
Explanation 3D- For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause(e) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or advance shall not be deemed to have been actually paid.

51. On perusing Section 43B(e), it is seen that interest on any loan or advance from a schedule bank, in accordance with terms and conditions of the agreement governing such loans or advance, would be allowed as deduction

in the previous year in which sum is actually paid by the Assessee. We further find that Explanation 3D has been inserted by Finance Act, 2006 with retrospective effect from 01.04.1997 and the Explanation 3D states that for the removal of doubt it is declared that the deduction, being interest payable, shall be allowed if such interest has been actually paid and any interest referred to in clause (e) which has been converted into a loan or advance shall not be deemed to have been actually paid. In the present case, it is an undisputed fact that a portion of interest has been converted into loan pursuant to the CDR package approved by the Bankers of the Assessee. Considering the express provision of the Act read along with Explanation 3D and in view of the aforesaid facts, we are of the view that the A.O was right in disallowing the claim of Assessee. Before us, ld. A.R. has also relied on the decision of Karnataka High Court in the case of Vinir Engineering Pvt. Ltd. (supra) We are of the view that the ratio of the aforesaid decision would not be applicable to the facts of the present case more so when in that case, the interest was payable to a Finance Corporation and not to a Scheduled Bank and the issue of disallowance was also not with respect to Section 43B(e) of the Act. Thus considering the provisions of the Act in the light of Explanation 3D which has been inserted with retrospective effect from 01.04.1997, and in the absence of any contrary binding decision in support of the Assessee, We find no reason to interfere with the order of ld. CIT(A) Thus this ground of Assessee is **dismissed.**

52. In the result, the appeal of Assessee is partly allowed for statistical purposes.

We now proceed with Assessee's appeal for A.Y. 2006-07 in ITA No. 2011/A/2010.

53. The ground raised by Assessee reads as under:-

1. The Learned Commissioner of Income Tax (Appeals)-IV has erred in confirming partly the payment made by the company towards Credit Card expenses incurred by the director for and on behalf of the company. On the fact and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals)-IV ought to have allowed the entire expenses.

54. Assessee vide letter dated 27.11.2013 has raised additional ground which reads as under:-

"The amounts by way of Provident Fund and ESI paid after the due date of the return for Asst. Year 2005-06 and disallowed in that year be kindly directed to be allowed in Asst. Year 2006-07 being the year of payment."

55. Before us, both the parties submitted that the ground with respect to the expenses paid through credit cards raised in the present appeal is identical to the grounds no. 4 raised by Assessee in its appeal for A.Y. 05-06 and the additional ground raised with respect to disallowance of P.F and ESIC contribution is similar to ground no. 1 of Assessee's appeal for A.Y. 05-06 and the submissions made by them, while arguing the appeal for A.Y. 05-06 would be applicable to the present grounds. In view of the aforesaid submissions and for the reasons stated hereinabove while deciding the appeal for A.Y. 2005-2006 in ITA No. 2010/AHD/2010 (supra) and for similar reasons decide the grounds of Assessee in the present appeal. Thus this ground of Assessee with respect to disallowance of delayed contribution to PF is dismissed and the ground with respect to credit cards expenses is remitted back to ld. CIT(A) **is dismissed.**

56. In the result, the appeal of Assessee is **partly allowed for statistical purposes.**

We now proceed with Assessee's appeal for A.Y. 2007-08 in ITA No. 2012/A/2010.

57. The ground raised by the Assessee reads as under:-

1. *The Learned Commissioner of Income Tax (Appeals)-IV has erred in confirming partly the payment made by the company towards Credit Card expenses incurred by the director for and on behalf of the company. On the fact and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals)-IV ought to have allowed the entire expenses.*

58. Before us, both the parties submitted that the ground raised in the present appeal are identical to the ground no. 1 raised by Assessee in A.Y. 05-06 and the submissions made by them, while arguing for A.Y. 05-06 would be applicable to the present grounds. In view of the aforesaid submissions and for the reasons stated hereinabove while deciding the appeal for A.Y. 2005-2006 in ITA No. 2010/AHD/2010 (supra) and for similar reasons decide the grounds of Assessee in the present appeal. Thus this ground of Assessee is **allowed for statistical purposes.**

59. In the result, the appeal of Assessee is **allowed for statistical purposes.**

60. **In the result, Revenue's appeal in ITA Nos. 1921, 1922 & 1923/AHD/2010 & Assessee's appeal in ITA Nos. 2010, 2011/Ahd/2010 are partly allowed for statistical purposes and Assessee's appeal in ITA No 2012/AHD/2010 is allowed for statistical purposes.**

Order pronounced in Open Court on 25- 06 - 2015.

Sd/- Sd/-

(SHAILENDRA Kr. YADAV) (ANIL CHATURVEDI)
JUDICIAL MEMBER ACCOUNTANT MEMBER
Ahmedabad. TRUE COPY

Rajesh

Copy of the Order forwarded to:-
1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad