

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DLEHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 5969/Del/2017
Assessment Year: 2014-15**

Addl. CIT, Spcl. Range-7, vs. PNB Housing Finance Ltd.,
New Delhi. 9th Floor Antriksh Bhawan,
22, K.G. Marg, New Delhi.

**C.O. No. 18/Del/2021
(in ITA No. 5969/Del/2017
Assessment Year: 2014-15**

PNB Housing Finance Ltd., vs. Addl. CIT, Spcl. Range-7,
9th Floor Antriksh Bhawan, New Delhi.
22, K.G. Marg, New Delhi.

PAN : AAACP3682N
(Appellant)

(Respondent)

Assessee by : Sh. S. Krishnan, Advocate
Revenue by : Sh. Farhat Khan, Sr. DR

Date of hearing: 07/07/2021
Date of order : 24/08/2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 27.06.2017 passed by the Commissioner of Income Tax (Appeals)-38, New Delhi ("Ld. CIT(A)") for the assessment year 2014-15 in the case of PNB Housing Finance Ltd., ("the assessee"), the Revenue preferred this appeal. The assessee has also preferred cross objections in this appeal.

2. Brief facts of the case are that the assessee is an approved housing finance company engaged in the business of providing housing loans to individuals and body corporate for construction, purchase and up-gradation of houses. For the assessment year 2014-15, they filed their return of income on 29.11.2014 declaring an income of Rs.1,43,38,89,780/- and revised the same on 29.03.2016 declaring income of Rs.1,45,07,34,980/-. Income of the assessee was, however, determined by the Assessing Officer at Rs.1,50,83,94,920/-, after making addition of Rs.1,88,65,937/- under section 36(1)(viii) of the Income-tax Act, 1961 ("the Act") on account of the amount transferred to special reserve and Rs.3,87,94,000/- u/s. 14A of the Act read with Rule 8D of the Income-tax Rules.

When the assessee preferred appeal, learned CIT(A) deleted both the additions. Hence, the Revenue is aggrieved by such deletion and preferred this appeal. Assessee also filed cross objections claiming that they are entitled to deduction for a sum of Rs.1,02,40,893/- against its business income on account of education cess and higher and secondary education cess.

In so far as the addition of Rs.1,88,65,937/- is concerned, Id. Assessing Officer recorded that for the assessment year 2010-11 also, while not accepting the method adopted by the assessee, similar addition was made and, therefore, while following the same for this year also, the disallowance u/s. 36(1)(viii) of the Act to the tune of Rs.1,88,65,937/- was made. On this aspect, learned CIT(A) recorded that, as a matter of fact, this issue is falling for consideration from the assessment year 1998-99 to 2012-13 and every year in appeal, CIT(A) has been granting relief. Learned

CIT(A) places reliance on the orders of her predecessors for the assessment years 2007-08 and 2010-11 and granted relief.

Learned AR brought to our notice that for the assessment year 2009-10 and 2010-11 also, this issue was considered by the coordinate Bench of this Tribunal in ITA No. 2123/Del/2015 and batch of cases and granted relief. The coordinate Bench, on this aspect, observed thus :

“16. We have carefully considered the rival contentions. The appellant is a subsidiary of Punjab National Bank and is engaged in the business of retail lending and also offers long term finance for construction of homes. The assessee the business income of Rs. 876230348/- before deduction u/s 36(1)(viii) of the Act. Subsequently, assessee claimed deduction stating that Rs. 2817156893/- was on account of total interest on housing loans and out of it Rs. 1767869838/- was on account of interest on long term housing loan. Thus assessee stated that 62.75% in on account of interest on long term housing loan and worked out applying that percentage on the total business income calculated a sum of Rs. 549834543/- pertaining to long term housing loan and computed deduction @20% of Rs. 10.99 crores as deduction. The Id Assessing Officer changed the above ratio from 62.75 % to 55.89% as he considered the total receipt of business for the purpose of working out proportion. In the present case the methodology adopted by the assessee is consistently followed for last eight years. Same was accepted by the revenue without any objection. The only issue is with respect to how the profit of the business for the purpose of long term housing finance shall be worked out. The only issue is that assessee is computed with respect to the total income with respect to the interest income whereas the Id AO has applied the above ratio to the total receipt. When the method has been consistently accepted for the above year we do not find any reason to defer from that. In view of this we do not find any infirmity in allowing the assessee claim of deduction u/s 36(1)(viii) of the Act applying the ratio of 62.75%. In the result we do not find any merit in ground No. 1 of the appeal. Hence, it is dismissed.”

In view of the consistent view taken by the first appellate authority right from 1998-99 to 2012-13 and also the Tribunal for assessment years

2009-10 and 2010-11, in the absence of any change of either facts or law, we find it difficult to take a different view and consequently uphold the findings of the Id. CIT(A). Hence, ground No. 1 of the Revenue's appeal is dismissed.

In so far as the addition of Rs.3,87,94,000/- by invoking the provisions of section 14A read with Rule 8D is concerned, it is the finding of fact by the Id. CIT(A) that no dividend was earned by the assessee on the investment of Rs.79261.48 lakhs appearing as opening balance as on 01.04.2013 and investment of Rs.75914.59 lakhs appearing as closing balance considered by the Assessing Officer. Learned CIT(A) followed the binding precedent in the case of Joint Investments (P)Ltd. vs. CIT, 372 ITR 694 and deleted the addition. It is not established before us that the finding of fact by the Id. CIT(A) is in any way wrong. We, therefore, are of the opinion that in view of the binding precedent followed by the Id. CIT(A), findings of CIT(A) cannot be found fault with. Ground No. 2 of the Revenue's appeal is accordingly dismissed.

Now coming to the cross-objections in respect of entitlement of the assessee for deduction in respect of education cess and higher and secondary education cess paid during the year, Id. AR places reliance on the decision of Hon'ble Bombay High Court in the case of Sesa Goa Ltd. v. JCIT (2020) 117 taxmann.com 96 (Bom) and prayed that relief may be granted. Learned DR submitted that this plea was not taken before either of the authorities below and therefore, the facts need to be verified. Id. AR reports no objection. Recording the same, we leave the issue open to be adjudicated before the Assessing Officer. For this purpose, we remand the issue to the file of Assessing Officer for verification and taking a view in accordance with law.

In the result, the appeal of the Revenue is dismissed and the cross objection of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this the 24th day of August, 2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER
Dated: 24/08/2021

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER