

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**TAX APPEAL No. 1416 of 2011**

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**COMMISSIONER OF INCOME TAX-III - Appellant(s)**

**Versus**

**NAVAL TECHNOPLAST INDUSTRIES LTD - Opponent(s)**

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**Appearance :**

MS PAURAMI B SHETH for Appellant(s) : 1,

None for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**and**

**HONOURABLE MS.JUSTICE HARSHA DEVANI**

**Date : 24/09/2012**

**ORAL ORDER**

**(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)**

Revenue has challenged the judgment of the Customs, Excise and Service Tax Appellate Tribunal ('the Tribunal' for short) dated 24th September 2012. Following questions have been raised for our consideration:

“(i) Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs.33,33,032/- made on account of commission paid to related parties?”

“(ii) Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs.16,62,100/- made on account of interest income?”

Question No.(i) pertains to addition of Rs.33.33 lakhs (rounded off) made by the Assessing Officer towards the commission paid to related parties. The Assessing Officer made such addition despite the assessee pointing out that the parties to whom such commissions were paid were associated with the

associated company since its inception. The commission was paid for the services rendered by them for promoting sales. Such commission agents were assessed to income tax, TDS whenever required to be deducted had been deducted.

The assessee thereupon approached the CIT (Appeals) who deleted such additions in detail examining the evidence on record. The Revenue thereupon approached the Tribunal. The Tribunal, by the impugned order, confirmed the order of the CIT (Appeals) observing that the parties had sent confirmation of having received the commissions directly to the Assessing Officer, complete details of month-wise commissions were filed whenever TDS provisions were applicable, tax was deducted and that the CIT (Appeals) properly appreciated the evidence and deleted the additions.

Having heard learned counsel for the Revenue and having perused the documents on the record, we are of the opinion that the Commissioner (Appeals) and the Tribunal concurrently on the basis of the appreciation of evidence on record held that the payment of commission was genuine and proper. The necessary evidence and justification for such commission payment was on record. We are of the opinion that there is no perversity in such findings. No question of law, therefore, arises.

With respect to question No.2, we notice that the Assessing Officer made addition of Rs.16,62,000 of the interest on advances made by the assessee - company to certain concerns in which the Directors of the Companies were interested.

The CIT (Appeals), however, noted that the assessee had funds more than Rs.7,38,14,637 by way of share capital reserves and surplus on which no interest was incurred. The Commissioner, therefore, was of the opinion that the assessee had sufficient

funds to make interest-free advances and that borrowed funds on interest were not directed for making interest free advances.

Such conclusions of the Commissioner (Appeals) were confirmed by the Tribunal in the impugned judgment. Here also we notice that the observations of the Commissioner (Appeals), as confirmed by the Tribunal, are based on appreciation of evidence and material on record. When two authorities found on facts that no interest bearing funds were directed for making interest-free advances, in our view, no question of law would arise.

In the result, Tax Appeal is dismissed.

(Akil Kureshi, J.)

(Harsha Devani, J.)

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