

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

**R/TAX APPEAL NO. 1 of 2021**

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PRINCIPAL COMMISSIONER OF INCOME TAX-1

Versus

M/S ADANI INFRASTRUCTURE AND DEVELOPERS PVT. LTD.

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Appearance:

MRS MAUNA M BHATT(174) for the Appellant(s) No. 1

MR B S SOPARKAR(6851) for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**

and

**HONOURABLE MR. JUSTICE ILESH J. VORA**

Date : 08/01/2021

**ORAL ORDER**

**(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. This Tax Appeal under Section 260 A of the Income Tax Act, 1961 (for short "the Act, 1961") is at the instance of the Revenue and is directed against the order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C' dated 16.10.2019 in ITA No.2173/AHD/2015 for the A.Y. 2011-2012.

2. The Revenue has proposed the following two substantial questions of law for consideration of this Court:

*"[A] Whether the Appellate Authority has erred in law and on facts in not treating the Professional Fees of Rs.25,04,970/- as income during the year and also in ignoring Section 199 of the Act read with Rule 37BA, by allowing TDS credit to be given in the year prior to the year in which such income is held to be liable to tax ?*

*[B] Whether the Appellate Tribunal has erred in law and on facts in deleting the*

*disallowance of Rs.4,01,30,089/- made under Section 14 A of the Act in respect of interest expenditure ?*

*[C] Whether the Appellate Tribunal has erred in law and on facts in restricting the addition made to book profit under section 115JB of the Act from Rs.4,51,72,278/- to Rs.30,03,637/- being a mere 1 % of exempt income ?"*

3. We have heard Mr. Manish Bhatt, the learned Senior Counsel appearing for the Appellant - Revenue and Mr. Bandish Soparkar, the learned counsel appearing for the respondent - Assessee.
4. The first question as proposed by the Revenue is with respect to the provisional fees not being treated as income during the year by ignoring the Section 199 of the Act read with Rule 37BA of the Rules. As regards the first question, the findings recorded by the Tribunal are as under:

*"21. We have heard the rival contentions of both parties and perused the relevant materials available on record. Admittedly there is no provision under the Act to tax the same income twice as done in the instant case. The contention of the assessee that the impugned income has been offered to tax in the subsequent year has not been disregarded by the authorities below. Therefore, we are of the considered view that, if any addition is made in the year under consideration, then it will amount to double addition which is against the provision of law.*

*21.1 The income tax has to be levied in the hands of the right assessee and the right assessment year, but the fact of the present case are different so far as the assessee is liable to pay tax under the provision of MAT. Thus, we agree with the contention of the "Ld. AR, that even if the impugned income is added to the total income of the assessee then also it will be tax neutral exercise. It is because there*

*will not be any change on the tax amount as the assessee is paying tax under the provision of MAT.*

*21.2 There is no dispute that the impugned income is taxable under the Act, and therefore the same has been offered to tax in the subsequent assessment year. Thus there cannot be any benefit to the Revenue by adding the impugned income to the total income of the assessee in the year under consideration. Hence, we are not inclined to uphold the findings of the authorities below. Accordingly, we set aside the order of the "Ld.CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is allowed.*

*The next issue raised by the assessee is that the "Ld.CIT(A) erred in confirming the addition of Rs.2,35,338/- out of the total development expenses of Rs.12,89,839/- despite the fact the same was not debited in the profit and loss account."*

5. Thus, it appears that the Tribunal has taken the view that the assessee had offered tax in the subsequent year and if any addition is made in the year under consideration, the same may amount to double addition, which would be contrary to the provisions of law. In such circumstances, we are of the view that no error could be said to have been committed by the Tribunal in taking such view.

6. The second question as proposed is with respect to the deletion of the disallowance made under Section 14A of the Act in respect of the interest expenditure. In this regard, we may look into the findings recorded by the Tribunal as under:

*"7. We have heard the rival contentions of both the parties and perused the materials available on records. The assessee in the instant case has earned dividend income of Rs.30,03,6,727/- which was received from its subsidiary company namely Adani*

Mundra SEZ Infrastructure Pvt. Ltd. and from the mutual fund. The assessee against such income has not made any disallowance of the expenses. Therefore the AO made the disallowance of the expenses amounting to Rs.4,51,72,278/- in pursuance to the provisions of Section 14A r.w. Rule 8D of the Act.

7.1 On appeal the "ld.CIT(A)" was pleased to delete the addition made by the AO for Rs.3,84,43,112/- in part on account of interest expenses. Thus, the "Ld. CIT(A)" restricted the addition on account of interest expenses amounting to Rs.16,86,977/- only. The "Ld. CIT(A)" also upheld the addition made by the AO on account of administrative expenses amounting to Rs.50,42,189/-

7.2 Regarding the disallowance of the interest expenses, admittedly the interest income exceeds interest expenditure claimed in the profit and loss accounts. IN fact there was no interest expenditure claim by the assessee in the profit and loss account. The disallowance of the interest income and interest expenditure stands as under:

Particulars	Amount Rs.
Interest Income	32,05,71,036/-
Interest Income from Partnership Firm	3,40,45,823/-
Less: Interest expenses	31,51,07,023/-
Net interest Income (expenses)	3,95,09,836/-

7.3 We further note that the ITAT in the own case of the assessee bearing No.162/Ahd/2013 vide order dated 06.09.2018 has deleted the addition made by the AO on account of interest expenses by observing that the interest income exceeds interest expenses. The relevant extract of the order is reproduced as under:

10. In the course of scrutiny proceedings, the AO inter alia noticed that the assessee has earned dividend income to the tune of Rs.30,42,833/- which is exempt from tax. The AO accordingly invoked the provisions of Section 14A of the Act and computed disallowance of expenditure attributable to such exempt income by resorting to formula provided in the Rule 8D of the Income Tax Rules, 1962. The disallowance under Rule 8D also included disallowance of

interest amounting to Rs.28,38,6477/- in terms of Rule 8D(2)(ii) of the IT Rules which is subject matter of controversy.

11. IN first appeal, the CIT(A) granted relief to the assessee against the aforesaid action of proportionate disallowance of interest of the AO and deleted such disallowance.

12. Aggrieved, the revenue preferred appeal before the Tribunal.

13. We have carefully considered the rival submissions on the issue. We notice the plea on behalf of the assessee on gross outgo of interest is Rs.126.49 Crores, whereas the assessee has also earned interest income simultaneously of a bigger sum of Rs.130.02 Crores. Thus, essentially, there is excess of interest earned over interest expenditure. It is the contention on behalf of the assessee that in view of these facts it cannot be said that the assessee has claimed any expenditure on interest per se. It is thus, the case of the assessee that netting of interest income and outgo is required to be done while invoking Rule 8D (2)(ii) of the IT Rules in the light of the decision of the Hon'ble Gujarat High Court in the case of Pr.CIT Vs. Nirma Credit & Capital (P.) Ltd. [2017 85 Taxmann.com 72 (Gujarat)]. In view of the decision of the Hon'ble Gujarat High Court holding that interest earned by the assessee is required to be factored for the purpose of ascertaining the amount of expenditure incurred by the assessee by way of interest, we find merit in the plea of the assessee that Rule 8D(2)(ii) shall have no application in the given facts where the interest income earned outweigh the interest expenditure. In consonance with the decision of the Hon'ble Gujarat High Court, we decline to interfere with the conclusion drawn by the CIT(A) on the issue in favour of the assessee."

7. We are quite convinced with the reasonings assigned by the Tribunal with respect to the Question No.2, as proposed by the Revenue.

8. The third question as proposed by the Revenue is with respect to restricting the addition made to book profit under Section 115JB of the Act, being a mere 1 % of the exempt income. In this regard, there is some debate between the parties.
9. Mr. Bhatt, the learned Sr. Counsel appearing for the Revenue would submit that, this particular question as proposed deserves consideration as it is a subject matter of consideration in Tax Appeal No.206 of 2020, which has been admitted vide order dated 17.09.2020.
10. On the other hand, Mr. Soparkar, the learned counsel appearing for the respondent would argue that the issue is concluded by the order of this Court dated 24.06.2019 passed in Tax Appeal No.128 of 2019. Mr. Soparkar would argue that on the very same question as proposed in the present case, this Court agreed with the findings recorded by the Tribunal, which in turn relied on the decision of this Court in the case of **Commissioner of Income Tax (I) Vs. UTI Bank Ltd., [2013] 32 taxmann.com 370 (Gujarat)**.
11. This Tax Appeal stands dismissed so far as Questions Nos.2[A] and [B] are concerned. We **admit** this Tax Appeal on Question No.2[C], which reads as under:

*"[C] Whether the Appellate Tribunal has erred*

*in law and on facts in restricting the addition made to book profit under section 115JB of the Act from Rs.4,51,72,278/- to Rs.30,03,637/- being a mere 1 % of exempt income ?”*

No Notice to be issued to the respondents as Mr. Bandish Soparkar, the learned counsel has already entered his appearance.

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

SUCHIT

