

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/TAX APPEAL NO. 338 of 2022**

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THE PRINCIPAL COMMISSIONER OF INCOME TAX, VADODARA 1  
Versus  
GUJARAT STATE ELECTRICITY CORPORATION LTD.

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Appearance:

MR.VARUN K.PATEL(3802) for the Appellant(s) No. 1  
MR MANISH J SHAH(1320) for the Opponent(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA**  
and  
**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**Date : 06/09/2022**

**ORAL ORDER**

**(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. This appeal is filed by the Revenue under section 260A of the Income Tax Act, 1961 (For short "the Act") feeling aggrieved by the judgment and order dated 30.09.2021 passed by the Income Tax Appellate Tribunal, Ahmedabad "C" Bench (For short "the Tribunal") in ITA No. 1778/Ahd/2017 for the assessment year 2007-2008 whereby the Tribunal allowed the appeal filed by the respondent assessee

deleting the penalty under section 271(1)(c) of the Act amounting to Rs.1,46,48,271/- levied by the Assessing Officer and confirmed by the CIT(Appeals).

2. Following substantial questions of law are proposed:

"(a) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is justified in deleting the penalty levied u/s 271(1)(c) of the Income Tax Act against the assessee for furnishing inaccurate particulars of income in respect of the addition made on account of disallowance of interest expenses by observing that the assessee has corrected the mistake by showing the same as income in the subsequent assessment year, without appreciating the fact that the assessee is maintaining regular books of accounts and the same were audited by a qualified Chartered Accountant as required by the provisions of the Income tax Act, 1961 and hence the wrong claim of huge interest expenses cannot be said to be a bonafide mistake?

(b) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is justified in deleting the penalty levied u/s 271(1)(c) of the Income Tax Act, without appreciating the fact that the assessee had made legally unsustainable and

wholly untenable claim in its books of accounts which was discovered by the Assessing Officer only during scrutiny assessment proceedings?

(c) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is justified in deleting the penalty levied u/s 271(1)(c) of the Income Tax Act, without appreciating the fact that the assessee has made legally unsustainable and untenable claim of interest expenses in the audited Profit & Loss Account during the year under consideration and the same was shown as prior period income in the subsequent year only after the case was selected for scrutiny assessment and notice u/s 143(2) of the Income Tax Act was issued and served upon the assessee on 15.09.2008 whereas the return of income for the subsequent assessment year was filed only on 30.09.2008?

(d) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is justified in deleting the penalty levied u/s 271(1)(c) of the Income Tax Act, without appreciating the fact that the assessee had made claim of interest expenses twice in the Profit & Loss Account for the year under consideration but the assessee had neither initiated any remedial action to rectify this error nor submitted any satisfactory explanation for making such wrong claim of interest leading to conclusion that the assessee had made malafide intentions for making wrong claim of interest expenses in the Profit & Loss

Account and thus this case is covered by Explanation 1 to Section 271(1) of the Income Tax Act, 1961?"

3. Brief facts of the case are that the assessee Gujarat State Electricity Corporation Ltd. filed return of income for the assessment year 2007-2008 on 24.10.2007 declaring total income of Rs. Nil.
4. During the course of scrutiny assessment, it was noticed by the Assessing Officer that the assessee has accounted interest expenses of Rs.11,92,00,000/- twice. The Assessing Officer therefore, disallowed the same and added it to the total income of the assessee under the regular provision as well as in the book profit under section 115JB of the Act. The Assessing Officer also disallowed 1,13,55,000/- under section 14A of the Act and considering both the disallowances levied penalty under section 271(1)(c) of the Act at 100% amounting to Rs.1,46,48,271/-.

5. It is not in dispute that the assessee accounted for provision of interest twice by mistake and on realising such mistake, necessary rectification entries were passed in the subsequent year and the same was offered as income.

6. CIT (Appeals) in the appeal filed by the assessee deleted the penalty on account of disallowance made under section 14A of the Act but confirmed the penalty with regard to addition of provision for interest expenses made twice in computation of book profit of the assessee on the ground that the assessee ought to have filed revised return of income by offering the amount as part of its book profit for the year under consideration and as the assessee failed to do so, penalty on account of such legally untenable claim was confirmed.

7. The assessee therefore, preferred appeal before the Tribunal with regard to the order sustaining penalty by CIT(Appeals) for interest expenses of Rs. 11.90 crores which was accounted twice.

8. The Tribunal however, considering the fact that the assessee was a public sector undertaking and bona fide mistake of twice accounting the provision for interest expenses was rectified by showing the said interest expenses as prior period income in the subsequent year 2008-2009, allowed the appeal deleting the penalty under section 271(1)(c) of the Act.

9. The Tribunal has arrived at finding of fact that the assessee under bona fide mistake, made provision for interest expenses of Rs. 11.90 crores twice which was rectified in the subsequent years by showing the said

expenditure as prior period income. The Tribunal also relied upon the decision of the Hon'ble Supreme Court in case of **CIT, Ahmedabad v. Reliance Petro-Products Pvt. Ltd** reported in 322 ITR 158(SC) and in case of **Price Watercoopers Pvt. Ltd. v.CIT, Kolkatta** reported in 348 ITR 306, wherein it is held that merely because assessee has claimed expenditure which claim was not acceptable to revenue then that would not attract penalty under section 271(1)(c) of the Act more particularly, when the mistake was rectified by the assessee in subsequent year.

10. Learned advocate Mr. Varun Patel for the appellant Revenue submitted that the assessee ought to have filed revised return on realisation of the mistake and could not have rectified such mistake by showing the said interest expenditure as prior period income in subsequent year. It was submitted that for

the year under consideration, the mistake was not rectified and therefore, the Assessing Officer as well as CIT(Appeals) were justified for levy of penalty upon the assessee on the expenditure which could not have been claimed by the assessee.

11. We have considered the submissions made by learned advocate for the Revenue and in view of finding of fact arrived at by the Tribunal to the effect that the assessee on realisation of the mistake, has rectified the same by offering the provision for interest of Rs. 11.90 crores as prior period income in subsequent year and therefore, in view of such necessary correction done by the assessee on detecting the mistake pointed out by the Assessing Officer during the assessment proceedings for the year under consideration, it can be inferred that there is no mensrea on part of the assessee so as



to attract the penalty under section 271(1)  
(c) of the Act.

12. We are therefore, of the opinion that no interference is required to be made in the impugned order passed by the Tribunal as no question of law much less any substantial question of law proposed or otherwise arise from the impugned order of the Tribunal.

13. The appeal accordingly stands dismissed.

सत्यमेव जयते

(N.V.ANJARIA, J)

THE HIGH COURT  
OF GUJARAT

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR

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