

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ A ” BENCH, AHMEDABAD

सर्वश्री आर.पी.तोलानी, उपाध्यक्ष एवं प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष।
BEFORE SHRI R.P. TOLANI, VICE PRESIDENT &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.996/Ahd/2011
(निर्धारण वर्ष / Assessment Year : 1998-99)

Gujarat Urja Vikas Nigam Ltd. (Erstwhile Gujarat Electricity Board) Sardar Patel Vidyut Bhavan Race Course Circle, Baroda	बनाम/ Vs.	The Asst.CIT Circle-1(1) Baroda
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACG 8540 BN		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri J.P.Shah, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri R.I. Patel, CIT-DR

सुनवाई की तारीख / Date of Hearing	30/05/2017
घोषणा की तारीख/Date of Pronouncement	31/05/2017

आदेश / O R D E R

PER PRADIP KUMAR KEDIA, AM:

The captioned appeal by the Assessee is directed against the order of the Commissioner of Income Tax(Appeals)-I, Baroda [CIT(A) in short] dated 17/01/2011 for the Assessment Year (AY) 1998-99.

2. The grounds of appeal raised by the Assessee read as under:-

01. The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in setting aside the disallowance of ₹ 9,10,80,852/- on account of non-reconciliation of provision for Gratuity despite the fact that all the facts necessary for deciding the issue were submitted at the time of hearing of the appeal.

2.0 The learned Commissioner of income Tax (Appeals) has erred in law and on facts in setting aside the disallowance of ₹ 5,06,818/- on account of unpaid sales tax under section 43B of the IT Act despite the fact that all the facts necessary for deciding the issue were submitted at the time of hearing of the appeal.

3.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in setting aside the disallowance of ₹ 89,13,462/- on account of unpaid bonus under section 43B of the IT Act despite the fact that all the facts necessary for deciding the issue were submitted at the time of hearing of the appeal.

4.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the disallowance of prior period expenses amounting to ₹ 53,53,28,278/- without appreciating the fact that the entire expenditure was crystallized during the year.

4.1. The learned Commissioner (Appeals) ought to have appreciated that on exactly identical fact the Hon'ble ITAT in the appellant's own case for the Asst.Year 1997-98 has set aside the issue for re-verification.

5.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has dismissed the ground relating to the initiation of penalty proceedings under section 271(1)(c) of the I.T.Act.

6.0 The appellant craves leave to add to, alter, delete or modify and of the grounds of appeal either before or at the time of hearing of this appeal.

3. The assessee has raised certain grievances as per Ground Nos.1 to 3 against the order of the CIT(A) as noted above. These grounds concern certain disallowances by the Assessing Officer (AO) which were assailed before the CIT(A). On going through the order of the CIT(A), we notice that the CIT(A) has granted relief to the assessee subject to verification of attendant facts governing the issues involved as per these grounds. We find that the action of the CIT(A) is just and proper as warranted in the circumstances of the case and cannot be faulted. Thus, we do not see any merit in the grievances raised by the assessee as per Ground Nos.1 to 3 of its appeal. Resultantly, Ground Nos.1, 2 & 3 are dismissed.

4. Ground No.4 concerns disallowance of prior period expenses of Rs.53,53,28,278/-. In the course of hearing, the Ld.AR for the assessee Mr.J.P.Shah submitted that the assessee has credited prior period income of Rs.68,45,01,805/- in its Profit & Loss account concerning the earlier years. Likewise, total prior period expenses of Rs.1,21,98,30,083/- connected to earlier years have been debited during the year. Resultantly, the assessee has claimed net prior period expenses of Rs.53,53,28,278/- as its business expenses. The Ld.AR for the assessee submitted that the break-up of the prior period expenses have been provided to the AO which has been recorded in para-8 of its assessment order. He contended that the AO has wrongly disallowed the net prior

period expenses of Rs.53.53 crores as stated earlier on the premise that the assessee has failed to furnish proper reply in support of its claim. The Ld.AR submitted that the CIT(A) has also rejected the prior period expenses claimed by the assessee on wrong appreciation of facts and circumstances by a very brief and cryptic order. The Ld.AR referred to the decision of Hon'ble Gujarat High Court in the case of Pr.CIT vs. Adani Enterprises Ltd. in Tax Appeal No.573 of 2016 order dated 20/07/2016 for the proposition that when the expenditure of such nature having nexus to earlier year is a small fraction of the total transaction as in case of assessee and when the assessee is susceptible to tax at the same rate in the present year vis-à-vis earlier years, the claim of the assessee ought not to be rejected. The Ld.AR vehemently submitted that the assessee is a Public Sector Undertaking and its accounts are subjected to audit and review by the CAG. Therefore, the bonafides of the expenditure *per se* cannot be disputed. The limited dispute is the acceptability of expenses *qua* the current year income. The Ld.AR for the assessee submitted that the issue requires adjudication in the light of the decision of the Hon'ble Gujarat High Court(*supra*). The Ld.AR next submitted that similar issue arose in assessee's own case in ITA No.3796/Ahd/202 relevant to AY 1997-98 order dated 26/06/2009 where the issue was set aside to the file of AO adopting common sense approach. The Ld.AR accordingly pleaded for suitable relief.

5. The Ld.DR for the Revenue Mr.R.I.Patel, on the other hand, relied upon the order of authorities below and in furtherance submitted that the factual details concerning the expenses claimed requires to be verified which has not been placed on record before the lower authorities.

6. We have carefully heard the rival submissions and perused the orders of the authorities as well the case-laws referred. The assessee is aggrieved by the disallowance of prior period expenses of Rs.53.53crores as per Ground No.4 of its appeal. The disallowance has been made on the ground that the expenses under various heads as noted in the assessment order pertained to earlier years and the assessee which is following system of accounting should have made provision for expenses in those respective years and claimed them as deduction. We have gone through the break-up of the expenses as noted in para-8 of the assessment order and observe that certain expenses declared under the head ‘other adjustments Rs.30.75 crores’; ‘other charges Rs.79.34 lakhs’; ‘depreciation under provided Rs.7.86 crores’ etc. are ostensibly vague and does not indicate the nature of claim with sufficient particularity obscure. We simultaneously note that assessee is a State Government Undertaking and its accounts are subjected to review by CAG and therefore it cannot be postulated that there was any deliberateness in not furnishing relevant details before the revenue authorities. The

bonafides of the Assessee is also augmented by the facts that the Assessee has reported staggering carry forward losses in its returned income. Thus, there is no immediate tax advantage accrued to the assessee by the claim of impugned prior period expenses *per se*. We therefore deem it expedient to restore the issue back to the file of AO for examining the issue *de novo* after verifying facts as may be considered necessary and expedient in accordance with law. The AO shall bear in mind the ratio laid down by the Hon'ble Gujarat High Court in the case of Adani Enterprises Ltd. (supra) while adjudicating the issue. Needless to say, reasonable opportunity shall be provided to the assessee while adjudicating the issue. Hence, all the contentions of the assessee are kept open. The issue raised as per Ground No.4 is thus set aside to the file of AO in terms of directions noted above. As a result, Ground No.4 is allowed for statistical purposes.

7. Ground No.5 concerns initiation of penalty proceedings which is pre-mature and does not call for any separate adjudication and accordingly dismissed.

8. Ground No.6 is general in nature does not require any adjudication.

9. In the result, appeal of the assessee is partly allowed.

This Order pronounced in Open Court on 31 /05/2017

Sd/-
(आर.पी.तोलानी)
उपाध्यक्ष
(R.P. TOLANI)
VICE PRESIDENT

Sd/-
(प्रदीप कुमार केडिया)
लेखा सदस्य
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 31 / 05 /2017

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-I, Baroda
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad