

**IN THE INCOME TAX APPELLATE TRIBUNAL,
SURAT BENCH, SURAT
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND SHRI O. P. MEENA, ACCOUNTANT MEMBER
I.T.A. No. 1815/AHD/2016: Assessment Year: 2011-12**

M/s. Shree Padamavati Engineers (I) Pvt. Ltd. , B14/15, Ground Floor, Western Edge II, Western Express Highway, Borivali (East) Mumbai PAN: AAGCS 3122A	Vs.	Additional Commissioner of Income-tax, Bharuch
Appellant		Respondent

Assessee by	Shri Kiran Kapadia , CA
Revenue by	Ms. Anupama Singla, Sr. D.R.
Date of hearing	01.05.2019
Date of pronouncement	02.05.2019

ORDER

PER O. P. MEENA, AM

- 1.** This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-1, Vadodara (in short “the CIT (A)”) dated 08.03.2016 pertaining to Assessment Year 2011-12.
- 2.** Ground No. 1 relates to confirming addition of Rs. 4,69,408 made by the Assessing Officer (the AO) on the ground that the assessee has advanced interest free loans out of interest bearing funds.
- 3.** Succinct facts are that the assessee has the AO found that the assessee has advanced interest free loans/advances amounting to Rs.

3,97,35,149 to directors and relatives. The AO noted that the assessee has paid interest of Rs. 4,69,408 on overdraft loan taken from bank. It was explained that the loan on which interest is paid is against the loan taken against fixed deposits kept with bank. This fixed deposits is out of money received from customers as mobilization advance. Hence, the assessee has not utilized interest bearing funds for advancing loans and advances to its directors and relatives. However, the AO was of the view that as per balance sheet the assessee company is holding fixed deposits at Rs. 2,04,11,820 whereas maxim balance during the year for loans and advances was at Rs. 5,33,21,495. Therefore, it cannot be said that interest free advances are out of own interest-free funds. Hence, the AO made disallowance of interest paid at Rs. 4,69,408 as against the interest payable worked out on interest free advances/loans at Rs. 47,68,218.

4. Being aggrieved, the assessee filed an appeal before the Id. CIT (A). Wherein it was submitted that small disallowance were deleted by the CIT(A) in A.Y. 2010-11. However, this contention was not accepted by the CIT(A) on the ground that in A.Y. 10-11, the CIT (A) deleted disallowance of interest as the assessee was having interest-free funds more than the interest free advances made by it. But, in the current year, a perusal of the balance sheet shows that interest-free funds available with the

appellant in the form of share capital and reserves and surplus is Rs. 2,08,80,680 whereas the loans and advances given interest-free to directors are at Rs. 3,97,35,149 at the year end. The appellant has claimed that interest paid by it was on account of loans borrowed for working capital. But at the same time, the Appellant has also accepted that it is not possible to identify the nexus between the amount borrowed from banks and interest free advances made. It has been accepted that this is a mixed funds, which the appellant has failed to discharge. Hence, the disallowance of interest made was confirmed.

5. Being dissatisfied, the assessee has filed this appeal before Tribunal. The learned counsel for the assessee submitted that the assessee was having mixed funds , but it was having interest-free funds of Rs. 4,44,56,047 on account of share capital, balance in Profit & Loss Account , mobilization advance , retention money at its disposal as against interest free advances of Rs. 3,97,35,149. Therefore, relying on the decision in the case of CIT v. Hotel Savera [1999] 239 ITR 795 (Mad) wherein it was held that in absence of any material on record to indicate that firm had advanced money out of borrowed funds, the presumption would arise that the money advanced out of its own funds. The learned counsel for the assessee referred Paper Book Page No. 14 , being schedule III of secured

loan , according to which the assessee has obtained secured loan of Rs. 1,09,61,000. Paper Book Page No. 15, showed that the assessee made fixed deposits of Rs. 2,04,11,820 out of mobilization advance against which overdraft has been taken on which the assessee has paid interest of Rs. 4,69,408 and interest on fixed deposits of Rs. 19,53,971 was earned. Therefore, It was contended that as per presumption there was no interest bearing funds which were utilized in giving interest free loans and advances. It was further submitted that similar disallowance of interest were deleted by the Ld. CIT (A) in A.Y. 2010-11 on same facts.

6. Au contraire, the ld. Sr. D.R. submitted that interest-free funds of Rs. 4,44,56,047 have been utilized in working capital, fixed assets. Hence, these funds cannot be said to be available without the assessee for giving interest free loans.

7. We have heard the rival submissions and perused the relevant material on record. We find that there is no interest bearing funds taken by the assessee from third party except bank overdraft which has been taken against fixed deposits pledged with bank out of advances received from customers as mobilization advances. We also observe that similar disallowance were deleted by the Ld. CIT (A) in assessment year 2010-11. The interest-free funds fund available with the assessee are at Rs. Rs.

4,44,56,047 on account of share capital, balance in Profit & Loss Account , mobilization advance , retention money at its disposal as against interest free advances of Rs. 3,97,35,149. Therefore, relying on the decision in the case of CIT v. Hotel Savera [1999] 239 ITR 795 (Mad) wherein in absence of any material on record to indicate that the assessee had advanced money out of borrowed funds, the presumption would arise that the money advanced out of its own funds. However, there is no clear cut nexus but the facts remains that the assessee has more interest-free funds at its disposal than the interest free loans/advances. Therefore, disallowance of interest of Rs. 4,69,408 is therefore, deleted. This ground of appeal is therefore, allowed.

8. Ground No. 2 relates to confirming disallowance of Rs. 1,22,969 made by the AO on account of Employees Contribution towards Provident Fund and ESIC.

9. Succinct facts are that the assessee has EPF of Rs. 1,18,811 and Rs. 4,158 ESIC after due date prescribed under the retrospective statutes.

10. Being aggrieved, the assessee filed an appeal before the Id. CIT (A). The Id. CIT (A) has confirmed the said disallowance by following the judgement of Hon'ble Gujarat High Court in the case of CIT v. Gujarat State Road Transport Corporation [2014] 366 ITR 170 (Guj

11. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that the assessee belongs to Mumbai hence, decision of Hon'ble Gujarat High Court is not applicable.

12. *Au contraire*, the ld. Sr. D.R. submitted that the issue is squarely covered against the assessee by Hon'ble jurisdictional High Court's judgment in the case of CIT vs. Gujarat State Road Transport Corporation, 366 ITR 170 (Guj.), wherein it is categorically held that in the case of delayed deposit of employees contribution to PF, the same will not be deductible in computing income under section 28 of the Act.

13. We have heard the rival submissions and perused the relevant material on record. We find that the issue is squarely covered against the assessee by the decision of Hon'ble Gujarat High Court in the case of CIT v. Gujarat State Road Transport Corporation [2014] 366 ITR 170 (Guj) : 223 Taxman 398 : [2014] 41 taxmann.com 100 (2014) (1) TML 502 -Guj-HC, wherein it was held that section 43B does not apply to employees contribution. Only section 2 (24) (x) read with section 36(1)(va) is applicable and therefore, employees contribution is disallowed if not paid

within due dates prescribed under relevant Provident Fund /ESI Act. We are, therefore, of the considered opinion that there is no mistake in the orders of lower authorities in making disallowance in the light of the ratio laid down by the Hon'ble Gujarat High Court in the above case (supra). The law so laid down by the Hon'ble jurisdictional High Court is binding on us. Accordingly, this ground of appeal is dismissed.

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

15. The order pronounced in the open Court on 02.05.2019.

Sd/-
(H. S. SIDHU)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Surat: Dated: 2nd May,2019/opm

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

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Assistant Registrar, Surat.