

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

(Convened through Virtual Court)

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 2857/Ahd/2015

(निर्धारण वर्ष / Assessment Year : 2008-09)

Dakshin Gujarat Vij Co. Ltd. Sardar Patel Vidyut Bhavan, Race Course Circle, Vadodara-390007	बनाम/ Vs.	Dy. Commissioner of Income Tax Circle 1(1), Vadodara - 390007
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

&

I.T.A. No. 2788/Ahd/2015

(निर्धारण वर्ष / Assessment Year : 2008-09)

The Dy.CIT, Circle 1(1)(1), Vadodara (Old:- Circle 1(1), Baroda) 1 st Floor, Aaykar Bhavan, Race Course Circle, Vadodara - 390007	बनाम/ Vs.	Dakshin Gujarat Vij Co. Ltd. Sardar Patel Vidyut Bhavan, Race Course Circle, Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCD8912C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Assessee by :	Shri M. K. Patel, A.R.
राजस्व की ओर से/Revenue by :	Shri O. P. Sharma, CIT.DR & Shri L. P. Jain, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	19/07/2021
घोषणा की तारीख / Date of Pronouncement	20/07/2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned cross appeals have been filed by the assessee as well as by Revenue against the order of the Commissioner of Income Tax (Appeals)-1, Vadodara ('CIT(A)' in short), dated 31.07.2015 emanating from the assessment order dated 22.01.2013 passed by the Assessing Officer (AO) under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act) concerning assessment year 2008-09.

2. We shall first take up Revenue's appeal in ITA No. 2788/Ahd/2015 concerning AY 2008-09.

ITA No. 2788/Ahd/2015-AY-2008-09 (Revenue's appeal)

3. The ground of appeal raised by the Revenue reads as under:-

"1. On the facts and in the circumstances of the case and in law, the Ld.CIT(Appeals) erred in deleting the addition of Rs.151.81 lakhs made on account of disallowance of claim of guarantee fees paid to Government of Gujarat. The disallowance was made by disallowing the claim as revenue expenditure as it is of enduring nature in the assessee's business and hence capital in nature."

4. When the matter was called for hearing, the learned counsel for the assessee pointed out that identical issue towards disallowance of guarantee fees paid to Government of Gujarat was reversed in the appellate proceedings in the other case, namely,

DCIT vs. Gujarat Energy Transmission Corporation Ltd. ITA No. 633/Ahd/2013 concerning A.Y. 2009-10 order dated 05.09.2019. The learned counsel for the assessee accordingly submitted that the issue is squarely covered in favour of the assessee in identical fact situation, the order of the CIT(A) on the issue cannot be faulted.

5. The Id. Departmental Representative for the Revenue, on the other hand, placed reliance upon the order of the AO without any specific rebuttal.

6. We have carefully considered the rival submissions and also perused the orders of the AO and CIT(A).

6.1 The CIT(A) has disposed off the issue in favour of the assessee as under:

"5.1.4. I have considered the appellant's submission and the AO's observations. The guarantee fee paid by the appellant to the GOG is for the purposes of obtaining loan. Similar issue in the case of sister concern of the appellant namely M/s. Gujarat Energy Transmission Corporation Ltd. has been decided by my predecessor in Appeal No. CAB-I/333/08-09 vide order dated 30.03.2010 as follows:

"5.1. In appeal, the arguments taken at the assessment stage were reiterated. It was further pointed out that the assessee company was one of the seven resulting companies out of the demerger of the erstwhile GEB. In the past, GEB had issued bonds and other financial instruments for raising funds from the public and from financial institutions, GOG guaranteed to the public and the financial institutions that in case of failure on the part of GEB to redeem the bonds and other financial instruments, the same would be made good by the Government of Gujarat, In lieu of this, commission @ 1% of the outstanding value of unsecured loans was charged from the assessee. No capital expenditure was involved. Hence the addition of Rs, 8,39,04,550/- may be deleted.

5.2. I have considered the submissions of the Id. AR and the facts of the case. The issue relating to whether an item of expenditure lies in the capital or the revenue field

has exercised the courts in numerous cases. From an analysis of such cases a few guiding principles/tests can be identified. One of the important tests for categorizing any expenditure as capital in nature is whether the laying out of the impugned expenditure results in the acquisition or creation of any new asset. Where no such asset is created, it would be indicative of an expenditure which was not capital in nature. Another test relates to the principle of "enduring benefit". "Enduring benefit" may be in the form of long lasting use of an asset or the acquisition of a right to exploit certain commercial processes, etc. In the instant case, the assessee did not acquire any right to exploit a commercial technology or process, and neither was the benefit "enduring", since the payment of guarantee commission was an annual charge. The benefit derived from payment of such commission thus lasted for exactly one year only. Such shortlived benefit cannot be categorized as "enduring". Hence, I am inclined to the view that the payment of guarantee commission was a revenue expenditure.

5.3 *Further, the jurisdictional Bench of ITAT had occasion to consider the allowability of guarantee commission paid to a Director of the company in respect of loans taken from the bank. In the case of Himalaya Machinery Pvt. Ltd, (ITA No. 738/Ahd/2009) for AY 2006-07, the Tribunal held, vide order dt. 5.6.2009, following the decision of the Rajasthan High Court in CIT v Metalising Equipment Co. Pvt. Ltd, 8 DTR 12, that the payment of commission for guaranteeing repayment of loan was allowable as revenue expense. In the instant case, the loan has been guaranteed by the Government of Gujarat. Hence, quite apart from the other sound reasons for treating the expenditure as revenue, it would be unrealistic to say that the appellant company could derive any undue advantage or collateral benefit by making such payment to the GOG. In view of the totality of the circumstances, I am of the opinion that the AO was not justified in treating the payment of guarantee commission (Rs. 8,39,04,550/-) as capital in nature. The addition is directed to be deleted."*

5.1.5. *Besides, the Hon'ble Supreme Court of India in its decision in the case of Sivakami Mills Ltd. 95 Taxmann 73 (SC) has held that guarantee commission paid to the bank to secure the due payment of the installments of loans taken for the purchase of machinery from foreign country on deferred payment basis was revenue expenditure and was allowable as such. Following this decisions as well as the decision in the case of Gujarat Energy Transmission Corporation Ltd.(supra), this ground of appeal is allowed and disallowance made by the AO is directed to be deleted."*

6.2 The issue has already been subjected to judicial consideration in *The DCIT vs. Gujarat Energy Transmission Corporation Ltd. ITA No. 633/Ahd/2013* concerning A.Y. 2009-10 order dated 05.09.2019 and thus is no longer *res integra*. In parity with the view expressed by the co-ordinate bench, we do not see any error in the conclusion drawn by the CIT(A) in favour of the assessee.

7. In the result, appeal of the Revenue is dismissed.

ITA No. 2857/Ahd/2015-AY-2008-09 (Assessee's appeal)

8. The ground of appeal raised by the Assessee reads as under:-

“1.0 The learned Commissioner of Income Tax (Appeals) has erred in law and facts has confirmed the disallowance of the entire prior period expense Rs.31,01,27,000/- on the ground that the same is not allowable expense without appreciating the fact that such expenditure crystalized during the year and that the same has never been claimed to in earlier years.

The learned Commissioner of Income Tax (Appeals) has erred in law and failed to appreciate that the prior period Expenses inter-alia included an item of Rs.2664.86 lacs being the excess provision written back which was already offered as income in earlier years and has been taxed twice by disallowing during the year.”

9. When the matter was called for hearing, the learned counsel for the assessee adverted our contention to the decision rendered by the Tribunal in *Gujarat Urja Vikas Nigam Ltd. vs. ACIT ITA No.996/Ahd/2011* order dated 31.05.2017 and submitted that the prior period expenses claimed is without any tax advantage and revenue neutral in nature.

10. The learned DR for the Revenue, on the other hand, relied upon the observations made in assessment order and the first appellate order.

11. We have carefully considered 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.31,01,27,000/- as per its ground of 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 ought to have made provision for expenses in those respective years for eligibility of claim. On perusal of the appellate order, it is observed that the explanations offered by the assessee are ostensibly vague and do not indicate the nature of claim with sufficient particularity. It is merely submitted that the majority of expenditure out of prior period expenses on account of excess provision written back. The explanation appears obscure in the absence of proper details. 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 *Pr.CIT vs. Adani Enterprises Ltd. Tax Appeal No. 573 of 2016* judgment dated 20.07.2016 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 in its ground of appeal is thus set aside to the file of AO in terms of directions noted above. As a result, the ground of assessee's appeal is allowed for statistical purposes.

12. In the result, appeal of the assessee is allowed for statistical purposes.

13. In the combined result, appeal of the Revenue is dismissed, whereas, assessee's appeal is allowed for statistical purposes.

This Order pronounced on 20/07/2021

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad: Dated 20/07/2021

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।