

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH, AHMEDABAD**

**BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.1839/Ahd/2019
Assessment Year: 2005-06**

DCIT, Circle-2(1)(1),
Circle – 2(1)(1), Ahmedabad.

vs. M/s. Gujarat Lease Financing
Limited,
1st Floor, Hasubhai Chambers,
Opp. Town Hall, Ellisbridge,
Ahmedabad.
[PAN – AAACG 8354 N]

(Appellant)

(Respondent)

Appellant by : Shri Vijay Kumar Jaiswal, CIT DR
Respondent by : Shri Vartik Choksi, A.R. &
Shri Dhrunal Bhatt, A.R.

Date of hearing : 01.06.2022

Date of pronouncement : 13.07.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This is an appeal filed by the Revenue against the order dated 16.09.2019 passed by the CIT(A)-2, Ahmedabad for the Assessment Year 2005-06.

2. The ground of appeal are as under:

"1. *The Ld. CIT(A) has erred in law and on facts in granting relief of Rs.14,41,03,321/- to the assessee holding that in the scheme of compromise and arrangement sanctioned by the High Court the waiver of interest did not include interest on debenture.*

3. The assessee company is engaged in the business of financing, leasing and investment. The company filed its return of income on 28.10.2005 declaring total income of Rs. Nil after claiming set off business loss of earlier years. The scrutiny assessment was completed under Section 143(3) of the Income Tax Act, 1961 on 20.11.2007 assessing the income at Rs.56,63,42,637/-. The Assessing Officer

observed that during the original assessment proceedings the assessee company offered amount of Rs.98,70,14,000/- which was not routed through Profit & Loss account but in statement of computation of income. The said amount has been offered being the interest waived by the Banks on account of final settlement scheme of compromise and arrangement between assessee and a consortium of 16 Banks on 27.07.2004 under Section 391 of the Companies Act, 1956. The said amount of Rs.98,70,14,000/- has been offered on remission of liabilities of interest expenditure claimed by the assessee company in preceding years but the same was not allowed in respect of interest expenditure and, therefore, the assessee filed appeal before the CIT(A) and the CIT(A) vide order dated 24.03.2008 directed the Assessing Officer to reduce the income of the assessee by the amount of Rs.66,93,93,117/- for the year under consideration. The CIT(A) further stated that as the appeals for A.Ys. 2001-02, 2002-03 & 2003-04 are pending before ITAT, in case of further interest is allowed or disallowed in addition to disallowance of Rs.22.52 Crores of interest for A.Y. 2001-02 and if further amount of interest is allowed for other two years, the same shall be considered and the quantum of relief shall be reworked depending on final amount which shall be allowed by the Tribunal in appeal proceedings for A.Ys. 2001-02 to 2003-04.

4. Aggrieved by the order of CIT(A), the Revenue filed appeal before the Tribunal and the Tribunal vide composite order dated 16.11.2017 disposed of the appeals and cross appeals by the assessee. The Tribunal observed that since the issue is inter-related with the findings in A.Y. 2002-03 and 2003-04 and since the claim of interest expenditure has been dismissed in those years, there is no question of any remission of liability and directed the Assessing Officer to decide the issue afresh.

5. Thereafter, the Assessing Officer passed order under Section 143(3) read with Section 254 dated 24.12.2018 thereby making the effective order of giving relief of Rs.52,52,89,796/-

6. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A) and the CIT(A) partly allowed the appeal of the assessee

7. The Ld. DR submitted that the CIT(A) has erred in granting relief of Rs.14,41,03,321/- to the assessee and incorrectly held that in the scheme of compromise and arrangement sanctioned by the High Court the waiver of interest did not include interest on debenture. The Ld. DR submitted the letter dated 31.05.2022 issued by ACIT, Circle – 2(1)(1), Ahmedabad and filed the details regarding the waiver of interest of Rs. 98.70 crores.

8. The Ld. AR submitted that the scheme of compromise and arrangement specifically mentioned waiver of interest which did not include interest on debenture. Ld. AR further submitted that the CIT(A) has rightly held that since the assessee has not offered interest expenditure on earlier years, the same needs to be reduced in respect of A.Y. 2005-06. Ld. AR further submitted that the Gujarat High Court has approved the scheme of compromise and arrangement. The assessee offered Rs.98.70 crores under Section 41(1) being the interest waived by the Bank. There is a categorical finding by the CIT(A) that the Assessing Officer was incorrect in holding that there was waiver of debenture interest of Rs.14.41 Crores under this scheme.

9. We have heard both the parties and perused all the relevant material available on record. Since the debenture interest is not part of scheme of compromise and arrangement which can be set out from the scheme of compromise and arrangement approved by the Gujarat High Court the categorical finding of CIT(A) since debenture interest does not form part of scheme, there is no case for it to be taxed under Section 41(1) of the Act. The Ld. DR has filed certain details vide letter dated 31.05.2022, but the Ld. AR submitted that the same are not proper and needs to be verified. Hence we direct the Assessing Officer to verify the same in accordance with the findings of the CIT(A) and after verifying the same give the benefit to the assessee if the assessee is entitled for the same. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. The appeal of the Revenue is partly allowed for statistical purpose.

10. In the result, appeal of the Revenue is partly allowed for statistical purpose.
Order pronounced in the open Court on this 13th day of July, 2022.

Sd/-
(P.M. JAGTAP)
Vice President

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 13th day of July, 2022

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad