

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SMT. MADHUMITA ROY, JUDICIAL MEMBER, JUDICIAL
MEMBER

ITA No.905/Ahd/2017
Assessment Year : 2012-13

Elecon Engineering Co. Ltd. AnandSojitra Road VallabhVidyanagar 388 120 PAN : AAACE4644D	Vs.	DCIT, Anand Circle Anand.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
Assessee by :	Shri M.K. Patel, AR	
Revenue by :	ShriA.P. Singh, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 13/07/2022
घोषणा की तारीख /Date of Pronouncement: 29/07/2022

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the Id.Commissioner of Income-Tax (Appeals)-4, Ahmedabad [hereinafter referred to as "CIT(A)"] dated 26.12.2016 passed under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) pertaining to Asst.Year 2012-13.

2. Ground No.1 raised by the assessee reads as under:

"1. Disallowance of claim for deduction of loan & advances given to associate companies and non recoverable interest receivable from associate companies Rs.10,05,27,013/- (Refer Para 4.5. Page 13 of CIT(A) - 4 order) "

The learned Commissioner of Income Tax (Appeal) - 4, has erred in not deleting the disallowance of claim for deduction of loan & advances given to associate companies and non recoverable interest receivable from associate companies of the appellant. Appellant submits that the order passed by learned

Commissioner of Income Tax (Appeal) - 4, Vadodara is against the principles of natural justice as no opportunity for hearing is allowed to the appellant."

3. The ld.counsel for the assessee pointed out that the same relates to irrecoverable advances and loans as also interest on the same which were claimed as written off by the assessee, amounting in all to Rs.10,05,27,013/-. It was pointed out that these loans & advances and interest pertained to those given by the assessee in the preceding years to its overseas associate concerns in Australia, Africa and China, the details of which are reproduced at para-10 of the CIT(A)'s order as under:

<i>Particulars</i>	<i>Elecon Australia</i>	<i>Elecon Africa</i>	<i>Elecon China</i>	<i>Total</i>
<i>Loan given during F.Y.2003-04 to F.Y.2008-09</i>	<i>2,58,53,304</i>	<i>5,41,72,350</i>	<i>23,34,500</i>	<i>8,23,60,154</i>
<i>Accumulated interest thereon from FY 2005-06 to F.Y.2010-11</i>	<i>60,98,162</i>	<i>1,16,73,901</i>	<i>3,94,796</i>	<i>1,81,66,859</i>
<i>Total</i>	<i>3,19,51,466</i>	<i>6,58,46,251</i>	<i>27,29,296</i>	<i>10,05,27,013</i>

4. He pointed out that the AO disallowed claim of the assessee holding that it did not pertain to any debt incurred by the assessee which were related to any income earned by the assessee in the year and also for the reasons that impugned loans & advances were not incidental to the business of the assessee and did not spring directly from the carrying on of the business of the assessee. In this regard he drew our attention to para 5.4 of the assessment order as under:

"5.4 During the course of assessment proceedings it was found from the audited Profit & Loss Account that the assessee has debited Rs 1071.30 lakh as a provision for loan and investment in associates and has claimed Rs 1,00,52,701/- as an expenditure and Rs 66,03,007/- was offered for taxation. Therefore, the AR of the assessee was asked to explain the basis of deduction claimed. The assessee has provided the details of Rs 1071.30 lakh as under :

"The assessee has disallowed Rs 66,03,0077- [EleconAustralia Pty. Ltd Rs 31,44,757/- + Elecon Africa Pty. Ltd Rs 12,50,000/- + Elecon Suzhou Co. Ltd China Rs 22,08,2507] pertaining to amount written off towards value of investments in share capital of Associate Companies and added in computation of income above. The assessee has treated Rs 8,23,60,154/- [Elecon Australia Pty. Ltd. Rs 2,58,53,304/- + Elecon Africa Pty. Ltd Rs 5,41,72,350/- + Elecon Suzhou Co. Ltd. China Rs 23,34,500/-] pertaining to amount written off towards commercial loans given as business expense because said loans were given on account of commercial expediency and there is a convincing justification. The assessee has treated Rs 1,81,66,859/- (EleconAustralia Pty. Ltd Rs 60,98,162/- + Elecon Africa Pty Ltd Rs 1,16,73,901/- + Elecon Suzhou Co. Ltd. China Rs 3,94,796/-] pertaining to amount written off towards non-realizable interest receivable and shown as income and offered for tax in earlier years [AY 2006-07 Rs 39,18,985/- + AY 2007-08 Rs 42,50,000 + AY. 2008-09 Rs 48,01,539/-+ A.Y. 2009-10 Rs 49,15,504/- + AY 2010-11 Rs 1,38,925/- + AY 2011-12 Rs 1,41,906/-] as business expense."

Therefore, during the course of assessment proceedings the AR of the assessee was asked to explain the bad debt expenses and qualification of profit with fulfillment of conditions. In response to the query, the assessee has submitted the reply relying upon various decisions which are distinguishable on the facts and circumstances of the case. There are certain conditions for allowance of bad debts. The amount of debt should have been taken into account in computation income of the assessee of the relevant previous year. There must be existence of debt, it must not have been liquidated earlier under some agreement. The debt must be incidental to the business. The amount of debt must have been included in the income computation i.e. the amount of debt must have been considered in computation related to business. In the case of the assessee it has given the deposits and the advancing of the deposits is not incidental to the trade of the assessee. Therefore, it cannot be categorized as trade debt. Further, the debt has not been spring directly from carrying on the business and should be incidental to it and it cannot be just any loss sustained by it even if it has some connection with his business.

In view of the above, the claim of the assessee is not allowable and hence the amount of Rs 10,05,27,013/- is disallowed and added to the total income of the assessee."

He pointed out that before the Id.CIT(A) the assessee had contended that these loans & advances had been given for the purpose of advancement of its own business, and they were incidental to its business and write off of the same was therefore allowable. The Id.CIT(A) also dismissed this contention of the assessee stating that the assessee was not able to explain as to how advancement of these loans could be stated to be commercially expedient to it. In this regard, he drew our attention to the finding

of the ld.CIT(A) at para 4.4. of the impugned order, more particular at page no.10& 11 of the CIT(A)'s order where his submissions were recorded as under:

“The appellant also argued that the AO has completely overlooked the fact that the associate companies are promoted by the appellant and they are in the business of importing the products solely from the appellant and also procuring orders on behalf of the appellant. The above activities undertaken by these associate companies were exclusively for appellant and thus, ultimately led to expansion of appellant's business. Loans were given by appellant to these overseas associate companies during their normal business operations and to assist these companies tide over their cash crisis.”

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“According to the Ld. Authorized Representative, based upon the submissions made before the Assessing Officer, it is clear that the loan given is incidental to the business of the appellant. It is vehemently argued by the Authorized Representative that these associate companies have regularly done business with the appellant. They have directly imported material and also procured orders for the appellant. This is involving huge activity at the end of the appellant for manufacturing and export of goods and earning foreign exchange. These companies have exclusively purchased or marketed the products manufactured by the appellant. Appellant has promoted these overseas companies; these companies are in the business of exclusively marketing products manufactured by the appellant and thus giving loan and advances to these companies is in the greater interest of the appellant in view of the following.”

And page no.11 to the findings of the Ld.CIT(A) on the issue as under:

“However, the appellant has not been able to demonstrate with even single document as to how the business was undertaken between the assessee and these associate concerns. How the advancement of loan to these concerns can be said as "commercially expedient".

5. Before us, his contention was that vis-à-vis the interest components in the amounts written off, the same were allowable since the assessee had demonstrated to the authorities below that they had been treated as income of the assessee on accrual basis in earlier years, and since had become irrecoverable now therefore were being written off. Vis-à-vis the loan components in the same, the contentions of the Id.counsel for the assessee was that the assessee had established commercial expediency for granting these loans, and therefore, the write off of the same was allowable.

6. The Id.DR on the other hand, relied on the order of the CIT(A) and submitted that the assessee had failed to establish commercial expediency of the loans and advances granted.

7. We have heard contentions of both the parties. The issue before us relates to claim of write off of loans & advances and interest given to associate concerns of the assessee amounting in all to Rs.10,71,30,020/-. The fact that this amount included two components – loans & interest, is an admitted fact, the break up of which is reproduced in earlier part of our order above and at the cost of repetition is being reproduced hereunder again:

<i>Particulars</i>	<i>Elecon Australia</i>	<i>Elecon Africa</i>	<i>Elecon China</i>	<i>Total</i>
<i>Loan given during F.Y.2003-04 to F.Y.2008-09</i>	<i>2,58,53,304</i>	<i>5,41,72,350</i>	<i>23,34,500</i>	<i>8,23,60,154</i>
<i>Accumulated interest thereon from FY 2005-06 to F.Y.2010-11</i>	<i>60,98,162</i>	<i>1,16,73,901</i>	<i>3,94,796</i>	<i>1,81,66,859</i>
<i>Total</i>	<i>3,19,51,466</i>	<i>6,58,46,251</i>	<i>27,29,296</i>	<i>10,05,27,013</i>

Vis-à-vis the claim of write off of interest, amounting to Rs.1,81,66,859/- the position of law is very clear that such claim is

8. The Id.DR was unable to controvert the above contentions of the assessee.

In view of the same, we agree with the Id.counsel for the that the interest component in the loans and advances written off of Rs.1,81,66,859/-,having been earlier returned to tax on accrual basis, the same tantamounted to debts which on being written off in the books were allowable as per the provisions of section 36(1)(vii) of the Act as Bad Debts written off. The claim of the assessee therefore to write off of interest amounting to Rs.1,81,66,859/- is accordingly allowed.

9. Now coming to the portion of the loans & advances written off relating to the principal portion amounting to Rs.8,23,60,154/-, the contention of the Ld.Counsel for the assessee was that he had consistently and emphatically pleaded that these advances were given for commercially expedient purpose of the business of the assessee; that the commercial expediency of giving loans was also demonstrated to the Id.CIT(A) by pointing out that the three associate concerns to whom the advances were given were promoted by the assessee for selling products of the assessee only, and also for procuring orders on behalf of the assessee; that the assessee was exporting products to them and was also procuring orders through them,selling its products both directly to the said concerns and also indirectly through them Therefore, all three associate concerns were for the purpose of expanding business of the assessee alone. In this regard, he drew our attention to page no.10 of the CIT(A)'s order wherein his submissions in this regard were reproduced as under:

"...The appellant also argued that the AO has completely overlooked the fact that the associate companies are promoted by the appellant and they are in the business of importing the products solely from the appellant and also procuring orders on behalf of the appellant. The above activities undertaken by these associate companies were

exclusively for appellant and thus, ultimately led to expansion of appellant's business. Loans were given by appellant to these overseas associate companies during their normal business operations and to assist these companies tide over their cash crisis."

10. He further drew our attention to the submission made before the ld.CIT(A) as produced in his order at page no.11 as under:

"According to the Ld. Authorized Representative, based upon the submissions made before the Assessing Officer, it is clear that the loan given is incidental to the business of the appellant. It is vehemently argued by the Authorized Representative that these associate companies have regularly done business with the appellant. They have directly imported material and also procured orders for the appellant. This is involving huge activity at the end of the appellant for manufacturing and export of goods and earning foreign exchange. These companies have exclusively purchased or marketed the products manufactured by the appellant. Appellant has promoted these overseas companies; these companies are in the business of exclusively marketing products manufactured by the appellant and thus giving loan and advances to these companies is in the greater interest of the appellant in view of the following."

11. He further stated that evidences in this regard were also filed by way of detail showing the direct export by the assessee to these entities in the preceding years and the business directed through these entities in the preceding year placed before us at PB Page No.91 as under:

ELECON AUSTRALIA PTY. LTD.									
Particulars	F.Y. 2004-05	F.Y. 2005-06	F.Y. 2006-07	F.Y. 2007-08	F.Y. 2008-09	F.Y. 2009-10	F.Y. 2010-11	F.Y. 2011-12	TOTAL
	A.Y. 2005-06	A.Y. 2006-07	A.Y. 2007-08	A.Y. 2008-09	A.Y. 2009-10	A.Y. 2010-11	A.Y. 2011-12	A.Y. 2012-13	
	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)
Export of Finished Goods (Direct export to overseas associate company)	60.26	617.68	155.76	8.08	11.76	0.00	0.00	0.00	853.54
Business procured for which direct export is made to the customer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL	60.26	617.68	155.76	8.08	11.76	0.00	0.00	0.00	853.54

ELECON AFRICA PTY. LTD.									
Particulars	F.Y. 2004-05	F.Y. 2005-06	F.Y. 2006-07	F.Y. 2007-08	F.Y. 2008-09	F.Y. 2009-10	F.Y. 2010-11	F.Y. 2011-12	TOTAL
	A.Y. 2005-06	A.Y. 2006-07	A.Y. 2007-08	A.Y. 2008-09	A.Y. 2009-10	A.Y. 2010-11	A.Y. 2011-12	A.Y. 2012-13	
	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)
Export of Finished Goods (Direct export to overseas associate company)	34.58	24.59	93.64	60.50	23.08	1.85	1.86	0.00	240.10
Business procured for which direct export is made to the customer	57.80	442.90	126.50	416.60	0.00	0.00	0.00	0.00	1,043.80
TOTAL	92.38	467.49	220.14	477.10	23.08	1.85	1.86	0.00	1,283.90

ELECON SUZHOU CO. LTD., CHINA									
Particulars	F.Y. 2004-05	F.Y. 2005-06	F.Y. 2006-07	F.Y. 2007-08	F.Y. 2008-09	F.Y. 2009-10	F.Y. 2010-11	F.Y. 2011-12	TOTAL
	A.Y. 2005-06	A.Y. 2006-07	A.Y. 2007-08	A.Y. 2008-09	A.Y. 2009-10	A.Y. 2010-11	A.Y. 2011-12	A.Y. 2012-13	
	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)	(Rs. Lacs)
Export of Finished Goods (Direct export to overseas associate company)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Business procured for which direct export is made to the customer	0.00	0.00	0.00	0.00	83.10	0.00	0.00	0.00	83.10
TOTAL	0.00	0.00	0.00	0.00	83.10	0.00	0.00	0.00	83.10

12. The Id.counsel therefore stated that it was clearly stated and demonstrated before the Id.CIT(A) that loans & advances were given for the purpose of advancement of its own business in other countries, and therefore, the write off the same on account non-recoverability was allowable. He stated that the Ld.CIT(A) however had ignored all the above and denied the claim of write off recording an incorrect finding that the assessee was unable to establish the commercial expediency of these loans.

Ld.DR however relied on the order of the Ld.CIT(A) at para as under:

“... However, the appellant has not been able to demonstrate with even single document as to how the business was undertaken between the assessee and these associate concerns. How the advancement of loan to these concerns can be said as “commercial expedient”.

4.5. *In the case of Crescent Films (Supra) a film distributor had paid certain amount to the producer for distribution rights for a film under production. The producer having run into difficulty and finding himself unable to complete the film, approached the assessee for a certain sum to be lent to him, which sum was to be dealt with in a manner different from the earlier sum paid as consideration money. These sums were ultimately not repaid by the producer and the assessee claimed it as a trading loss. It is held by High Court that the loss to the assessee being a revenue loss which had been incurred in the course of business, the assessee was entitled to deduct the same under section 37. That commonality of objective has not been demonstrated by the appellant before me, thus, that ratio of this case does not apply. In case of S.A. Builders (Supra) this issue was allowability of interest on borrowed funds to a third party where commercial expediency was proved. As mentioned in para above, in present case, the appellant has not proved existence of "commercial expediency" in unequivocal manner before the Assessing Officer or before me. Other cases relied upon by the Authorized Representative also do not help the appellant because of lack of clear financial analysis of business transactions between the associate concerns. Moreover, these were dealing with allowability of interest under section 36(l)(iii) of the Income-tax Act, 1961 in case where assessee-company and its sister concern were in connected business and assessee advanced an amount to sister concern free of interest on account of commercial expediency and same was used by sister concern for purpose of business. In such cases, it was held that disallowance of interest paid by assessee on loans taken from banks was not justified. This is not the scenario here and the Assessing Officer has disallowed the write off of loan by rightly holding the same as purely capital advancement as appellant failed to demonstrate that the amount of debt had been taken into account in computation income of the assessee of the relevant previous year. Thus, none of the case law cited by the appellant apply to the present case. High Court of Gujarat in the case of Trustee Ashok Kumar Prahladbhai Vs CIT [2012] 20 taxmann.com 518 (Gujarat) have held that commercial expediency is distinct from ordinary needs of the assessee. Considering the totality of facts, it is held that the appellant has not been able to prove in any manner that the conditions of section 36(l)(vii) were fulfilled and the appellant had shown that the amount of loan to associate concerns had been taken into account in computation income of the assessee of the relevant previous year.*

Therefore, I upheld the order of the Assessing Officer and confirm addition of Rs.10,05,27,013/-. This ground of appeal is dismissed.”

13. We have gone through the orders of the authorities below ,have carefully heard both the parties and also the documents and submissions to which our attention was drawn.

We have noted that the assessee had contended that its business was closely linked with that of its associate concerns to whom the amounts written off of Rs.8,23,60,154/- were advanced as loans. The assessee 's claim to close connection of its business with the associate concerns is on account of the said concerns being promoted by it for selling its products both directly and indirectly by way of procuring orders for the assesses products. The assessee had even submitted a detail pointing out the direct and indirect sales of its products made through these concerns. The assessee had also contended that the amounts were advanced to the concerns during their normal business operations to tide over their cash crises. None of these averments of the assessee have been controverted by the Revenue authorities either before us or even by the Ld.CIT(A).

In this backdrop, when the assessee had clearly established that these associate concerns were selling goods of the assessee in other countries, surely the associate concerns were promoting the business of the assesseeonly. Therefore, theloans & advances given by the assessee to these associate concerns was directly for the advancement of its own business. The business of the associate concerns were directly linked and hence effected the business of the assessee, since they were selling products manufactured by the assessee. There is no doubt therefore that the advancement of loans to these associate concerns was incidental to the business of the assessee.Further the fact that the loans were advanced during the course of business to help the concerns tide over their financial

crises, reveals that the said loans were not for capital purposes. Write off of the same, was clearly therefore business loss to the assessee, which it was entitled in law to claim under section 28 read with section 29 of the Act. It is settled law that loans advanced in the course of or incidental to the business of the assessee are allowable when they become irrecoverable.

The Hon'ble apex court laid down the principles relating to allowance of business losses in its decision in the case of *Badridas Daga Vs CIT* 34 ITR 10(SC) . Dealing with the issue in the context of the Income Tax Act, 1922, in the backdrop of allowability of claim of loss by an assessee in money lending business, on account of embezzlement of money by employees, the Hon,ble court held that for allowability of business losses it should spring directly from the carrying on of business. The relevant portion of the order is as under:

"6. The result is that when a claim is made for a deduction for which there is no specific provision in s. 10(2), whether it is admissible or not will depend on whether, having regard to accepted commercial practice and trading principles, it can be said to arise out of the carrying on of the business and to be incidental to it. If that is established, then the deduction must be allowed, provided of course there is no prohibition against it, express or implied, in the Act.

7. These being the governing principles, in deciding whether loss resulting from embezzlement by an employee in a business is admissible from embezzlement by an employee in a business is admissible as a deduction under s. 10(1) what has to be considered is whether it arises out of the carrying on of the business and is incidental to it. Viewing the question as a businessman would, it seems difficult to maintain that it does not. A business especially such as is calculated to yield taxable profits has to be carried on through agents, cashiers, clerk and peons. Salary and remuneration paid to them are admissible under s. 10(2)(xv) as expenses incurred for the purpose of the business. If employment of agents is incidental to the carrying on of business, it must logically follow that losses which are incidental to such employment are also incidental to the carrying on of the business. Human nature being what it is, it is impossible to rule out the possibility of an employee taking advantage of his position as such employee and misappropriating the funds of his employer, and the loss arising from such misappropriation must be held to arise out of the carrying on of

business and to be incidental to it. And that is how it would be dealt with according to ordinary commercial principles of trading.

8. *At the same time, it should be emphasised that the loss for which a deduction could be made under s. 10(1) must be one that springs directly from the carrying on of the business and is incidental to it and not any loss sustained by the assessee, even if it has some connection with his business. If, for example, a thief were to break overnight into the premises of a money-lender and run away with funds secured therein, that must result in the depletion of the resources available to him for lending and the loss must, in that sense, be a business loss, but it is not one incurred in the running of the business, but is one to which all owners of properties are exposed whether they do business or not. The loss in such a case may be said to fall on the assessee not as a person carrying on business but as owner of funds. This distinction, though fine, is very material as on it will depend whether deduction could be made under s. 10(1) or not."*

In the case of T. J.LalvaniVs CIT (1970) 78 ITR 176 (Bom) ,the Hon'ble High Court of Bombay held that loans advanced to a party whose business was financed and controlled by the assessee in the course of his business activity could not be said to be unconnected with his business and irrecoverable amount was allowable as loss. The relevant portion of the order is as under:

"Now, the main question to be considered in the present case is whether, on the facts and circumstances of the present case, the loan of Rs. 6 lakhs advanced by the assessee to Lookmanji could be said to have been advanced in the course of his business. There can be no doubt whatsoever that unless the deduction, which the assessee has claimed, can be treated as a loss, which is connected with his business and incidental to it, it will not be claimable as a revenue loss. As has been observed in BadridasDaga vs. CIT (1958) 34 ITR 10 (SC) : TC14R.202 the loss for which a deduction is claimed must be one that springs directly from the carrying on of the business and not any loss sustained by the assessee even if it has some connection with business. In that case the loss in question was caused by the enbezzlement by an agent of the assessee. It was held that the loss sustained by the assessee as a result of the misappropriation by the agent was one which was incidental to the carrying on of the business and, therefore, deductible in computing the profits of the assessee under s. 10(1) of the Act. In CIT vs. Nainital Bank Ltd. (1965) 55 ITR 707 (SC) : TC14R.285 the Supreme Court observed :

"Under s. 10(1) of the Indian IT Act, 1922, the trading loss of a business is deductible in computing the profit earned by the business. But every loss is not so deductible unless it is incurred in carrying out the operation of the business and is incidental to the operation. Whether loss is incidental to the operation of a business is a question of fact to be decided on the facts of each case, having regard to the nature of the operations carried on and the nature of the risk involved in carrying them out. The degree of the risk or its frequency is not of much relevance but its nexus to the nature of the business is material."

Similarly irrecoverable advances made to sole selling agents were also allowed as business losses by the Hon'ble Allahbad High Court in the case of CIT vs Jwala Prasad Radha Kishan (1977) 107 ITR 540. In view of the above We hold that the assessee's claim of irrecoverable loans and advances of Rs.8,23,60,154/- was allowable as business loss since they were incidental to the business of the assessee.

Ground No.1 raised by the assessee is accordingly allowed.

15. Ground No.2 raised by the assessee reads as under:

"2. Disallowance of claim of depreciation on energy saving device of Rs.94.343/-. (Refer Para 6.3. Page 22 of CIT(A) - 4 order)

The learned Commissioner of Income Tax (Appeal) - 4, has erred in not deleting the disallowance of claim of depreciation on energy saving device. Appellant submits that the order passed by learned Commissioner of Income Tax (Appeal) - 4, Vadodara is against the principles of natural justice as no opportunity for hearing is allowed to the appellant.

16. The said ground was stated by the ld.counsel for the assessee before us as not being pressed. Ground no.2 is therefore dismissed as not pressed.

Ground No.3 raised by the assessee reads as under:

3. Excess interest of Rs. 2,81,081/- charged u/s. 234D. (Refer Para 3.3. Page 31 of CIT(A)-4 order

The learned Commissioner of Income Tax (Appeal) - 4, has erred in not allowing relief for excess interest charged u/s. 234D. Appellant submits that the order passed by learned Commissioner of Income Tax (Appeal) - 4, Vadodara is against the principles of natural justice as no opportunity for hearing is allowed to the appellant."

17. Ld.counsel for the assessee contended that the said ground related to excess interest charged under section 234D of the Act amounting to Rs.2,81,081/-. He stated that with respect to the same it was contended before the ld.CIT(A) that there was calculation error in the charging of interest which needed to be corrected, but the ld.CIT(A) had rejected this contention of the assessee stating that the assessee should have filed a rectification application, and ought not to have raised this ground before him. He drew our attention to para-9.1 to 9.3 of the order as under:

"9.1. During the course of the assessment proceedings, the Assessing Officer has observed as under:-

"7. Assessed u/s 143(3) of the Income-Tax Act, 1961. Income determined at Rs.1,08,43,90,520/- (Rupees one hundred eight crore forty three lakh ninety thousand five hundred twenty only). Tax calculation u/s 115JB as per the Law.Charged interest u/s 234A, 234B and u/s 234C of the income Tax Act.Recovered interest u/s 234D of the Income Tax. Allowed prepaid taxed and issued demand notice and challan accordingly. The computation of income and tax payable as per separate sheet forms part of this order:"

9.2. The Ld. Authorized Representative has made written submission as under:-

"7. Ground No. 7: Excess interest charged u/s. 234D:

AO has erred in charging excess amount of interest u/s. 234D to the extent of Rs. 2,29,844/- on the appellant. AO has charged interest u/s. 234D of Rs. 7,46,993/-as against Rs. 5,17,149/-chargeable to the appellant As per the impugned order AO has made addition to the total income which has resulted in raising demand. Therefore AO has charged interest u/s. 234D on the amount of refund paid earlier to the appellant as per intimation u/s. 143(1). Appellant submits that as per intimation u/s. 143(1) refund of Rs.1,14,92,196/- determined. The intimation is dated 26-03-2014 and received by appellant on 22-07-2014. It is mentioned in the intimation u/s. 143(1) that

Rs.33,25,450/- has been adjusted from the refund. Balance amount of refund of Rs.81,66,750/- (Rs. 14,92,196/- less Rs.33,25,450/-) is received on 10-07-2014 through a cheque dated 05-07-2014 issued by SBI, Mumbai. A copy of the intimation u/s. 143(1) and refund cheque received from SBI, Mumbai are attached and marked Annexure -14. Appellant submits that the processing of return which was suffering from limitation bar after 31st of March, 2014 was though processed on 26th March, 2014 but not issued to the appellant. Appellant made follow up with the office of the AO after the refund cheque was received from SBI, Mumbai on 10-07-2014. Only due the follow up and inquiry by the appellant the intimation u/s. 143(1) dated 26-03-2014 was given to the appellant as late as on 22-07-2014.

It is also submitted that the at the time of passing the impugned order AO has charged interest u/s. 234D from the month in which order u/s. 143(1) was passed till the month in which order u/s. 143(3) is passed i.e. March 2015. Thus interest u/s. 234D has been calculated for 13 months as per calculation given below.

Calculation of interest charged by AO is as under.

Date of Intimation	26.03.2014
Date of Order u/s 143(3)	31.03.2015
No. of months from intimation to order	13
Amount of refund as per intimation	1,14,92,196
Rate of interest per month	0.50%
Interest on Rs.1,14,92,196/- for 13 months @ 0.50% per month	7,46,993

The above calculation of interest u/s 234D is made in absence of any details of how AO has calculated the interest u/s 234D. Appellant submits that the correct calculation based upon when the actual refund was paid to the appellant is as under:

Date of Intimation	26.03.2014
Date of which actual refund cheque is received	10.07.2014
Date of Order v/s 143(3)	31.03.2015
No. of months from actual refund cheque received to order	9
Amount of refund as per intimation	1,14,92,196
Rate of interest per month	0.50%

<i>Interest on Rs.1,14,92,196/- for 09 months @ 0.50% per month</i>	5,17,149
<i>As against this AO has charged actual amount of interest</i>	7,46,993
<i>Excess amount of interest charged by AO</i>	2,29,844

Appellant most respectfully submits that the excess amount of interest of Rs.2,29,844/- charged u/s 234D may please be refunded. The appellant reserves the right to add, amend or delete any of the grounds of appeal before final hearing."

9.3. The appellant has taken this ground for excess charging of interest u/s 234D of the Act. I am not inclined to accept this ground because, the appellant has not bothered to file any rectification application before the Assessing Officer. That was the normal procedure and when an easy remedy lies with the appellant, he is duty bound to seek relief from the concerned authority instead of increasing litigation by filing of appeal. Accordingly, this ground of appeal is dismissed. The appellant is directed to file rectification application before the Assessing officer in accordance with the procedure."

18. The ld.counsel for the assessee contended that his limited prayer was that the issue be restored back to the file of the Ld.CIT(A) for adjudication.

19. We have heard both the parties and we agree with the ld.counsel for the assessee that any grievance raised by him needed to be addressed and adjudicated and not dismissed merely for the reason that there were alternative remedies available with the assessee which he ought to have pursued. The assessee is well within his right to contest / challenge the order of the AO on any grounds which are to its prejudice. The fact that alternative remedies are available to the assessee is for the benefit of the assessee and cannot be exercised by adjudicating authorities for refusing to adjudicate the issue on the ground that the assessee ought to have pursued alternative remedy. In view of the same, the issue of excess interest charged under section 234D is restored to the

file of the Id.CIT(A) to adjudicate it afresh after considering the contentions of the assessee in this regard.

Ground of appeal No.3 is allowed for statistical purposes.

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

Order pronounced in the Court on ____ July, 2022 at Ahmedabad.

**(MADHUMITA ROY)
JUDICIAL MEMBER**

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad,dated/07/2022