

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 248/Rjt/2018

(निर्धारण वर्ष / Assessment Year : 2014-15)

The Income Tax Officer Ward-1, Bhuj	बनाम/ Vs.	Ashapura Aluminium Limited Plot No.206, Madhapar Tal. Bhuj-Kutch
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGCA4997B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Shramdeep Sinha, Sr.D.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Gaurang Sanhgvi, A.R.

सुनवाई की तारीख / Date of Hearing	16/10/2023
घोषणा की तारीख /Date of Pronouncement	01/12/2023

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal at the instance of the Revenue is directed against the order dated 23.03.2018 passed by the Ld. Commissioner of Income Tax (Appeals)-3, Rajkot (in short ‘CIT(A)’) arising out of the order dated 30.12.2016 passed by the ITO, Ward-1, Bhuj-Kutch under Section 143(3) of

the Income Tax Act, 1961, (hereinafter referred to as 'the Act') for Assessment Year 2014-15 with following revised grounds:

“1. The ld. CIT(A) has erred in law and on facts in deleting the addition on of Rs.18,50,00,000/- made by the A.O on account of written back loan advanced by holding company Ashapura Mine Chem Limited.

2. The ld. CIT(A) has erred in law and on facts in deleting the addition on account of interest income of Rs.7,11,217.”

2. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

3. The brief facts leading to this case is this that the Ashapura Aluminium Limited having CIN U27203GJ2007PLC051421 registered with ROC On 02.08.2007 is 100% owned subsidiary of Ashapura Minechem Ltd. The assessee company was established for setting up the Aluminium Refinery Project in Bhuj and for the particular purpose, the holding company advanced interest free loans to the tune of Rs.18,50,00,000/- to the said subsidiary company. This is to enable the subsidiary company to initialize the establishment of the said Alumina Refinery. Unfortunately, the said project never took off and had to be aborted. The subsidiary company would not be able to repay the said loans advanced by the holding company in A.Y. 2009-10 and thus the loan amounts were written off in the books of the assessee company and claimed as capital expenditure. Relevant to mention that in the accounts and also in the statement of income, the same was set off against the capital work-in-progress of Rs.15,15,73,698/- and the net amount of Rs.3,34,26,302/- was claimed as capital receipt. The assessee was not allowed to set off the pre-operative expenses as no business activities were

commenced. The addition was made under Section 41(1) of the Act with the following observation by the Ld. AO:

“5.11 If we go through totality then also something is not in order. Fact is that total net pre-operative expenditure in instance case is Rs.15,15,73,698/ Whereas holding company debited Rx 19,50,00,000/- That means they debited excess Rs. 3,34,26,302/-in Profit & Loss A/c which was found credited in P & L of M/s Ashapura Aluminum Ltd. (Subsidiary Company) but not offered for taxation. Further the pre-operative expenditure capital nature is required to be capitalized when they put to use their assets. Instance case no such assets were put to use by them. Further as per section 35D of the I.T. Act, 1961 they can amortize there preliminary expenditure after only commencement of business. That is also one fifth of such expenditure. In this case no business activity till date carried out by the group on project further they have not put to use the any assets during the year under consideration. Therefore assessee is not allowed to set-off such pre-operative expenses as no business activities were commenced. Without any justification holding company has written off the amount of Rs. 18,50,00,000/-

5.12 Further amount shown as un-secured loan and no agreement or other details were provide in respect of Rs. 18,50,00,000/-. After set-off the pre-operative expense balance amount of Rs. 3,34,26,302/- remains with the assessee and available in Profit & loss account. It is apparent that loan taken for trading and ultimately, upon waiver the amount was retained in the business by the assessee. The amount had become the assessee's income and was assessable. From above discussion it is clear that section 41(1) of the I.T. Act, 1961 is applicable. Accordingly addition of Rs. 18,50,00,000/- is hereby made to the total income of the assessee.”

4. Section 41(1) reads as follows:

“41. (1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year.”

5. It appears that the fundamental principle as envisaged in the above Section is this that as loans or deduction has been made in assessment for any year in respect of loss, expenditure or trading liability. It is also a fact that the assessee never claimed in deduction or allowance so as to loan advanced to it

by the holding company to the tune of Rs.18,50,00,000/-. The Ld. CIT(A) taking into consideration this particular aspect of the matter, deleted the addition.

6. The Ld. CIT(A) as it appears from the order impugned has relied upon the judgment passed by the Hon'ble Supreme Court in the case of CIT vs. Mahindra and Mahindra Ltd., reported in 404 ITR 0001 (SC) on the identical facts and circumstances of the case. As the loan was advanced in the earlier year for capital purposes and not for trading activities, same was found not as revenue receipt. The loan written off were neither received during course of normal trading business by the assessee but further capital purposes for establishing the Alumina Refinery project and on that score to write off has not been treated as revenue receipt. The Ld. CIT(A) has also taking into consideration this particular aspect of the matter that in the case of holding company lying before the CIT(A)-51, Mumbai was finalized to this effect that the loan given to the assessee before it was clearly in the nature of capital receipt and its write off cannot be allowed as deduction under Section 37 of the Act. Thus, taking into consideration the entire aspect of the matter, the impugned order of deletion of addition made by the Ld. CIT(A) is found to be just and proper so as to warrant interference, this ground of appeal is, therefore, found to be devoid of any merit and thus dismissed.

7. So far as the interest income of Rs.7,11,217/- is concerned, the Ld. AO held that since there is TDS on the said interest income claimed by the assessee, the interest income to which it relates automatically becomes liable to tax and cannot be considered as capital receipt. It is also a fact that the assessee company had not yet commenced its business and as it appears from

the records that the interest income pertains to the FD of Rs.1 Crore drawn with Federal Bank Ltd. against Performance Bank Guarantee of Rs.10 Crores given to GMDC through EXIM Bank. The said GMDC was to entire as a joint venture partner in this project and the bank guarantee was provided in terms of agreement with said GMDC. The said income was not arising from any surplus parking of funds by the assessee company. In that view of the matter, interest earned was correctly reduced from the pre-operative expenses following the Hon'ble Apex Court's decision in the case of CIT vs. Bokaro Steel and Bonngaigaon Refinery & Petrochemicals vs. CIT as held by Ld. CIT(A) while deleting addition. The relevant observations made by the Ld. CIT(A) is as follows:

“5.4 Ground 3 & 4 are regarding treatment of interest received from the bank as income from other sources. The assessing officer has made this addition on the basis of his observation that i) even though more than 8 years have passed, the appellant is still showing itself as in pre-operative stage and not offering interest received from banks as taxable income, li) it has claimed benefit of TDS deducted on the said interest without offering same for taxation. The submissions of the Id. AR have already been reproduced wherein has been clearly stated that interest earned from Federal Bank is on account of Fixed Deposits kept there for getting Performance Bank Guarantee of Rs. 10 crore. This guarantee was to be given to GMDC in order to secure uninterrupted supply of raw material once production gets commenced. On the basis of these facts the appellant has stated the Interest earned was inextricably connected with the Performance Bank Guarantee which was required for refinery project and therefore interest earned was correctly reduced from pre- operative expenses following the Apex court's decision the CIT Steel and Bonngaigaon Refinery Petrochemicals vs. CIT. It been stated that the decision Apex Court in case Tuticorin Alkali Chemicals Fertilizers Ltd. vs. CIT is applicable in present case because that was a case keeping surplus funds voluntarily invested the of the bank with purpose to interest income. I fully agree with the Id. AR that the said interest receipts correctly utilized reduce pre-operative expenses. Moresoever, deduction of TDS will determine chargeability of income receipt, it has to determined by the facts circumstances surrounding receipts and by regard deleted.”

8. Under the above facts and circumstances of the case, as the deduction of TDS will determine chargeability only of any income receipt, the deletion of addition is found to be sustainable as made by the Ld. CIT(A), the same is, therefore, confirmed. This ground of appeal preferred by the Revenue is found to be devoid of any merit and thus dismissed.

9. In the result, appeal preferred by the Revenue is dismissed.

This Order pronounced on 01/12/2023

Sd/-

(ANNAPURNA GUPTA)

ACCOUNTANT MEMBER

Ahmedabad; Dated 01/12/2023

S. K. SINHA

True Copy

Sd/-

(MADHUMITA ROY)

JUDICIAL MEMBER

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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

By order/आदेश से,

Deputy/Asstt. Registrar
ITAT, Rajkot

- 1.Date of dictation on 17.11.2023
- 2.Date on which the typed draft is placed before the Dictating Member 20.11.2023
- 3.Date on which the approved draft comes to the Sr.P.S./P.S. 01.12.2023
- 4.Date on which the fair order is placed before the Dictating Member for pronouncement 01.12.2023
- 5.Date on which the fair order comes back to the Sr.P.S./P.S 01.12.2023
- 6.Date on which the file goes to the Bench Clerk 01.12.2023
- 7.Date on which the file goes to the Head Clerk.....
- 8.The date on which the file goes to the Asstt. Registrar for signature on the order.....
- 9.Date of Despatch of the Order.....