IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI NARENDER KUMAR CHOUDHRY, JM

ITA No. 2951/Mum/2022
(Assessment Year:2015-16)

ACIT, Circle 5(1)(1) r.no.568, Aaykar Bhavan, M.K. Road, Mumbai-400 020	Vs.	M/s Essar Shipping Limited Essar House, 11, KK Marg, Mahalaxmi, Mumbai-400 034
(Appellant)		**(Respondent)**

PAN No. AACCE3707D

Assessee by	:	Shri Rishav Patawari, AR
Revenue by	:	Shri Manoj Sinha, CIT DR

Date of hearing:	20.10.2023
Date of pronouncement :	09.01.2024

O R D E R

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by The Assistant Commissioner Of Income Tax, Circle – 5 (1) (1), Mumbai (The Learned AO) against the appellate order passed By The Commissioner Of Income Tax, Appeals – 56, Mumbai (the learned CIT – A) dated 7/9/2022 for Assessment Year 2012 – 13 wherein the appeal filed by the assessee against assessment order passed under section 143 (3) read with section 144C of The

Income Tax Act 1961 (The Act) dated 6/5/2016 by The Deputy Commissioner Of Income Tax, Central Circle – 5 (1) (2), Mumbai was allowed.

02. The learned assessing officer is aggrieved with that order and has raised the following grounds

"1.1 "Whether on the facts and circumstances of the case and in law, the Id. CITA) is justified in not appreciating that Section 115VA starts with "Notwithstanding any to the contrary contained in section 28 to section 43...", therefore it overrides Section 28 to Section 43 only and therefore the Arm's Length Pricing adjustment made under provisions of Section 92 to Section 92F under Chapter X is fully applicable."

1.2 "Whether the Id. CIT(A) is right in law in holding that the Arm's Length Pricing adjustment made under Chapter X has no application in cases where assessee has computed tax on presumptive basis under Tonnage Tax Scheme as per Chapter XII-G of the Act even when CBDT Circular No 05/2005 dated 15.07.2005 explicitly confirms that principles pertaining to arm's length price will be applicable to transactions between tonnage tax companies and unconnected (as well as connected) non- tonnage and tonnage tax entities"

1.3 "Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in ignoring the intent of the legislature evident in the fact that Chapter XII-G has specific sections to address exclusions i.e. Sections 115VL & 115VM and does not have any section that specifically provides for exclusion / non-applicability of Transfer Pricing Provisions."

1.4 "Whether, on facts and circumstances of the case and in law, the Id. CIT(A) was justified in deleting the adjustment made on account of interest on ship acquisition on BBCD basis (hire purchase basis) by relying on Hon'ble ITAT's decision in assessee's own case, without deciding on the merits of benchmarking of the transaction and without appreciating that the judgment relied upon by Hon'ble ITAT has been contested on merits by the Department & is pending for adjudication before the Hon'ble Bombay High Court?"

2.1 "Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in holding that the fee for the negative lien issued by the instant assessee, which is in the nature of corporate guarantee, should be charged at 0.25%, without realizing the fact that the transfer pricing study is highly facts-based and it differs from case to case and that all the factors in Rule

10B have to be considered for every case and every year independently and that a rate decided in a different case for different set of facts and for different year cannot be adopted as such to the instant assessee, which would be violative of the specific provisions in Rule 10B?"

2.2 "Whether on the facts and circumstances of the case and law, the Id. CIT(A) is right in arriving at the 0.25% rate of fee for the negative lien issued by the instant assessee, which is in the nature of corporate guarantee, without providing any basis, which is in violation of provisions of Rule 10B of IT Rules as credit ratings and the interest rate vary every year?"

2.3 "Whether on the facts and circumstances of the case and in law, the Id. CIT (A) is right in directing to restrict the TP adjustment of fee for the negative lien issued by the instant assessee, which is in the nature of corporate guarantee, to 0.25% instead of 0.5% charged by the AO without discussing the facts of the case and deciding the issue on the merits of the case?"

2.4 Whether on the facts and circumstances of the case and in law, the Id. CT(A) is right in arriving at the ad hoc rate of 0.25%, without adopting any of the methods prescribed in Section 92C which is violation of law?"

2.5 "Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in not recognizing the facts of the case that the assessee has given negative lien, which is in the nature of a corporate guarantee, for its AE, thereby exposing itself to a 'lending business' risk, foreign exchange rate risk, country specific risk as well as the 'single customer' risk without charging any fee for such guarantee which the assessee would have done, had it stood guarantee to any third party in uncontrolled conditions as in section 92F(ii)?"

2.6 "Whether, on facts and circumstances of the case and in law, the Id. CIT(A) was justified in deleting the adjustment of Rs. 36,50,000/- by relying on Hon'ble ITAT's decision in assessee's own case, without deciding on the merits of benchmarking of the transaction and without appreciating that the decision of the Hon'ble ITAT cited has been contested on merits by the Department & is pending for adjudication before the Hon'ble Bombay High Court?"

3.1 "Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is justified in not appreciating that Section 115VA starts with "Notwithstanding any to the contrary contained in section 28 to section 43...."; therefore it overrides Section 28 to Section 43 only and *therefore the Arm's Length Pricing adjustment made under provisions of Section 92 to Section 92F under Chapter X is fully applicable."*

3.2 "Whether the Hon'ble ITAT is right in law in holding that the Arm's Length Pricing adjustment made under Chapter X has no application in cases where assessee has computed tax on presumptive basis under Tonnage Tax Scheme as per Chapter XII- G of the Act"

3.3 "Whether, on facts and circumstances of the case and in law, the ITAT was justified in deleting the adjustment of Rs. 92,46,826/- made on account of hire charges payable for the ships by relying on its own decision in the case of Van Oord India Pvt Ltd, without deciding on the merits of benchmarking of the transaction and without appreciating that the judgment cited has been contested on merits by the Department & is pending for adjudication before the Hon'ble Bombay High Court?"

4. On the facts and circumstances of the case, whether the Ld. CIT (A) has not erred in holding that the income received in the nature of interest out of inter corporate deposits advanced to subsidiary company is in the nature of business income and not in the nature of 'income from other sources' and thereby treating the Income from interest receipts of Rs.55,50,56,455/- under *the head 'business income' instead of the head 'income from other sources'?*

5. On the facts and circumstances of the case, whether the Ld. CIT (A) has not erred in deleting the disallowance of deduction u/s 57 (iil) of the Act on account of Interest paid to LIC of Rs.45,52,43,826/- and holding that the loan obtained by the assessee from LIC was not used for advancing ICD to subsidiary and not for the purpose of earning interest income under the head 'Income from Other Sources'?

6. On the facts and circumstances of the case, whether the Ld. CIT (A) has not erred in deleting the disallowance of Interest Expenditure of Rs.1,18,73,42,551/- claimed u/s 36(1)(iii) of the Income Tax Act, 1961?

7. On the facts and circumstances of the case, whether the Ld. CIT (A) has not erred in holding that interest expenditure is periodic cost of borrowing incurred for the purpose of financing business activities and common interest expensed have to be apportioned on the basis of cost of financing and not in the ration of turnover of tonnage and non-tonnage activities?

8.1 On the facts and circumstances of the case, whether the Ld. CIT (A) has not erred in *admitting the additional ground raised by the assessee in spite of the assessee's erroneous act of not filing revised return of income even after having ample time and raising an issue at the appeal stage?*

8.2 On the facts and circumstances of the case, whether the Ld. CIT (A) has not erred in admitting the additional ground raised by the assessee in spite of the objection of the Assessing Officer and disregarding the decision of Hon'ble Supreme Court in the case of Goetze India Ltd v CIT 284 ITR 323 wherein it is clear that there is no provision in the Act to make amendment in the return of income by modifying an application at the assessment stage without revising the return?

8.3 On the facts and circumstances of the case, whether the Ld. CIT (A) has not erred in allowing the claim of the assessee not made through the revised return and instead made through addition ground at appeal stage?

The appellant prays that the order of the Ld. CIT (A) be set aside and the order of the AO be restored."

03. Assessee is a company engaged in the operation of ships and other services, filed its return of income on 29/11/2013 declaring a total loss of ₹ 813,300,364/–

which was subsequently revised on 31/3/2014 at a loss of ₹ 811,807,537/–. The return was picked up for scrutiny under section 143 (2) of the Act by issuing notice on 8/8/2013.

04. As the assessee has entered into several international transaction the reference was made to the learned Joint Commissioner of Income Tax (Transfer Pricing) – 2 (1), Mumbai (the learned TPO). He passed the order under section 92CA (3) of the act wherein he proposed five adjustment to the international transaction.

1. The transactions were coming from assessment year 2009 – 10 wherein Assessee entered In to an agreement dated 22 July 2008 and acquired two ships on bare boat charter cum Demise basis from its associated enterprises Essar shipping and logistics Ltd Cyprus for an amount of US$ 148 million. Under such type of agreements by paying a fraction of the total cost of the ship as down payment, the balance sum is paid as per the said contract in 120 equal monthly installments payable from October 2008 to September 2018 with interest rate of 6% and bullet payment of the remaining amount at the end of the period. As in assessment year 2009 – 10 the purchase

price of one ship of US $ 75 million shown by the assessee, ld TPO computed ALP of US$ 73.75 million. For another ship where the transacted price is shown to be US$ 73 million, the learned TPO computed the arm's-length price at US$ 71.75 million. Accordingly, the interest disallowance is made for the excess payment made by the assessee company to its associated enterprises in each of the assessment years. For this assessment year such interest payment was made at ₹ 329,283,564 which should have been made by the assessee according to the transfer pricing officer of ₹ 323,721,858/– and therefore there is an excess payment made by the assessee of ₹ 5,661,760 –. The TPO proposed this adjustment for this year. Therefore this is a consequential adjustment to the total income of the assessee on account of international transaction entered into in earlier years but has impacted in the profit and loss of this year.

2. During financial year 2010 – 11 assessee has issued non-lien undertaking to the lenders of Essar global Ltd who is the ultimate holding parent company of the assessee and that company has obtained

loan from ICICI bank Hong Kong branch and Singapore branch. The assessee has given an undertaking that it will not transfer its 49% of the equity shares in its subsidiary company without prior approval of the lenders. The cost of the investment is ₹ 730,000,000 being 49 percent and value of negative lien comes to ₹ 35.77 crores. The assessee was asked to show cause as to why the fee for providing above-mentioned lien on shares shall not be charged at the rate of 0.5% as is decided by the learned transfer-pricing officer in the case of the assessee for assessment year 2011 – 12. The assessee has not charged any fees. The reply of the assessee was as in the earlier years also and saying that it is not an international transaction. As for assessment year 2011 – 12 such fee is considered to be at arm’s-length at the rate of 0.5% on negative lien facility by the LD TPO, the learned transfer pricing Officer similarly computed the remuneration on such agreement at the rate of 0.5% for 365 days making an adjustment of ₹ 3,650,000/– on this issue.

3. Assessee has paid vessel hire charges of ₹ 54.73 crores as stated in form number

3CEB whereas actual amount is ₹ 68.82 crores. Assessee has taken various ships on hire from its associated enterprises from Essar shipping and Logistics Ltd Cyprus. Assessee uses these ships for providing end-to-end logistics services to a some group of entities. The assessee benchmarked this transaction by taking the assessee itself as a 'tested party' adopting the most appropriate method of 'transactional net margin method' and taking the 'profit level indicator' of operating profit/operating cost of the assessee at 19.51% and of the margins of comparable companies were 10.60% on the three years average basis and on the single year basis, it was found to be in case of comparable at 4.99%. Therefore, it was stated that the above international transaction is at arm's-length price. The learned AO/TPO computed the margin of the assessee and the margin of the comparables. The learned TPO noted that assessee has benchmarked the international transaction by using Clarkson database where the most of the companies taken as a comparable are into logistic businesses whereas the assessee company is paying only vessel hire charges and not in to logistic business. The learned transfer pricing officer asked assessee to submit benchmarking for vessel charges based on Clarkson database, as the time charter rates are available in that database. Assessee was also asked to compare the rates paid by the assessee to its associated enterprises compared with that database. The assessee contested that Clarkson database shows the rates on 'time charter bases whereas the assessee has given vessel hire charges on 'voyage charter bases and therefore there is no comparison. Assessee also stated that it has taken on hire 20 vessels, data for which was submitted. The learned assessing officer examined the rates paid by associated Enterprises to third parties in US dollars per day and therefrom he derived time charter rate of per day of vessels. He also found time charter rates as per Clarkson US database applying thereto number of days for the ship hiring and applying the exchange rate of US dollar held that ₹ 9,246,823 is the higher rate paid by the assessee. Thus, the LD TPO took the voyage charter rates paid by the assessee, computed the voyage chartered paid for number of days, calculated per day charter rates, compared these rates and found the ALP.

4. The learned transfer-pricing officer found that assessee is earning income of provision of support services from its associated enterprises of US$ 199,200 per annum. The assessee was supposed to prepare bill at the end of the each month which assessee has not prepared and prepared a consolidated bill as on the last day of the accounting year and therefore the learned TPO was of the view that interest at the rate of 1% per month should have been received by the assessee within a month of the provision of the services on monthly basis and therefore the outstanding receivable should be subject to interest. He computed such interest by adopting interest rate of 1% per month where the assessee stated that it should be only LIBOR only. Accordingly an adjustment of 4,67,059/– was made by the learned TPO.

5. Assessee is also providing services of supervision charges to Essar shipping Cyprus Ltd. During the year, three invoices were raised. As recovery was

after more than 30 days and therefore the learned AO computed the interest for number of days the payment is delayed by adopting the interest rate of 12% making an adjustment amounting to ₹ 271,764/–.

05. Accordingly the total Transfer pricing adjustment to the International transaction of Rs 1,92,97,355/– was made by passing an order under section 92CA (3) of the act on 29/1/2016.

06. On receipt of the order of the learned transfer-pricing officer, the transfer pricing adjustments were incorporated by the AO.

07. The learned AO further noted and made corporate adjustments. Disallowances as under :-

i. He found that based on earlier years, there is a disallowance of interest expenditure required to be made of ₹ 1,187,342,551/–. Learned assessing officer noted that assessee has incurred the interest expenditure in the non-tonnage activities of the above sum such as interest paid to YES Bank for loan utilized for investment in subsidiary, interest paid on nonconvertible debentures from life insurance Corporation of India for loan taken for acquisition of the vessel given to wholly owned subsidiary and further interest on fully compulsorily convertible bonds which are invested in subsidiaries. The assessee stated by letter dated 16/3/2016 that assessee has been earning money with investment in subsidiaries in oilfield business and logistic business and such interest expenditure by the assessee is allowable under section 36 (i) (iii) of the act as it is incurred on the borrowings for the strategic purposes of the business. The learned assessing officer examined the interest and stated that the assessee has paid this interest in the non-tonnage income segment of the assessee and therefore it is disallowable. It was stated that assessee’s income is offered on tonnage tax activities and the claim of allowability of interest is not related to tonnage tax scheme and therefore it is not allowable. Accordingly, the disallowance of ₹ 1,187,342,551 of the interest expenditure was made.

ii. The AO further found that assessee has claimed common interest expenditure of ₹ 434,479,990/– which have been apportioned to the tonnage and non-tonnage activity. He found that the revenue of the assessee is 99.41 % from tonnage income and 0.59% from non-tonnage income. The assessee has allocated common interest expenditure of ₹ 43.44 crores to tonnage income and ₹ 33.16 crores non-tonnage income. He found that there is a disparity in the same. Therefore, he applied the ratio of tonnage income and non-tonnage income and made the addition of ₹ 32.91 lakhs holding that assessee has allocated more common interest expenditure to non-tonnage tax activities instead of tonnage tax activities.

iii. The assessee has made a disallowance of ₹ 16,671,018/– because of section, 14 a read with rule 8D. The learned assessing officer computed the disallowance under section 14 A according to the rule 8D of ₹ 2, 03, 21,018 and made the additional disallowance of ₹ 3,650,000/–.

08. The assessment order was passed on 16/ 5/2016 at ₹ 626,450,031/– under section 144C (3) read with section 143 (3) of the income tax act.

09. Aggrieved with assessment order assessee preferred appeal before the learned CIT – A whole of the appeal of the assessee was allowed and therefore the assessing officer is aggrieved.

010. The ld AR at the initial stage submitted a chart and stated that all the issues raised by the ld AO in his appeal are covered by the decision of coordinate benches in assesses own case for number of Assessment years, therefore the whole of the appeal is covered against the revenue.

011. Ground number 1 is with respect to the transfer pricing adjustment made on account of differential interest on account of bareboat Charter cum demise lease. This issue was decided as per ground number 3 of the appeal of the assessee by the learned CIT – A at paragraph number 5 of the order wherein he followed the decision of the coordinate bench for assessment year 2011 – 12 and assessment year 2013 – 14 in case of the assessee passed by the coordinate bench holding that it's a recurring issue allowed in favour of assessee holding that when the assessee has offered income on the Tonnage tax Scheme basis, the T P provisions does not apply.

012. The learned departmental representative reiterated the findings of the learned transfer-pricing officer.

013. The learned authorized representative stated that this issue is squarely covered in favour of the assessee by the decision of the coordinate bench in assessee's own case for assessment year 2013 – 14 and further for assessment year 2015 – 16 to assessment year 2018 – 19.

014. We have carefully considered the rival contention and find that the assessee has offered income under tonnage tax scheme for it shipping operations. The coordinate bench in case of the assessee for assessment year 2013 – 14 has held as under :-

"5. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that during the year under consideration, the assessee had purchased two ships under Bare Boat Charter cum Demise (BBCD) agreement from Essar Shipping and Logistics Limited, Cyprus. The purchase price was agreed at USD 75 million and USD 73 million. However, the TPO had determined ALP of the said transactions at USD 73.75 million and USD 71.75 million respectively. The TPO has treated the excess payment as advance given to AE and adjustment has been made on account of interest receivable from AE on purchase price of said ships. Against which the assessee is in further appeal before the ITAT.

6. We have also gone through the orders of the Tribunal dated 26/06/2019 in assessee's own case for the A.Y. 2010-11. From the record, we found that the assessee is offering its income as per tonnage taxation scheme under Chapter XII-G of the Act. The Ships so purchased are qualifying ships as per tonnage tax provision, income from which has been offered and accepted accordingly. The manner of computing income under tonnage tax scheme has been prescribed u/s 115VE of the Act. According to which profits of tonnage taxation shall be *computed separately from profits and gains of any other business. The formulae for calculating tonnage income has been prescribed and is dependent on presumptive rate of daily tonnage income and number of days of operation. Once the assessee opts for tonnage tax scheme, the income of the assessee has to be computed as per the provisions prescribed in the said chapter. Chapter XII-G is a complete code in itself and income has to be computed strictly as per the said provisions.*

7. From the record we found that the similar additions were made by the TPO in assessees own case in the A.Y. 2011-12 and were confirmed by the DRP, the assessee has been demerged from Essar Ports Limited w.e.f. 01/10/2010 i.e. A.Y. 2011-12. From the record we also found that since earlier the activities of assessee being carried on by Essar Ports Ltd., the assessment was made in case of Essar Ports Ltd. up to 30/09/2010. For the similar disallowance, the assessee came in appeal before the Tribunal and the Tribunal vide its order dated 26/06/2019 for the A.Y. 2011-12, deleted the similar addition so made by the A.O. after observing as under:

10. We have considered the submission of ld. Authorized Representative (AR) of the assessee *and ld. Departmental Representative (DR) for the revenue and perused the material available on record. The ld. AR of the assessee submits that the assessee has exercised the option of offering its income to tax on a presumptive basis under the Tonnage Tax Scheme covered under chapter XII-G of the Act. The option was exercised since AY 2005-06 till Ay 2014- 15. This fact is not disputed by ld. DR for the revenue as well as by the lower authorities. We have noted that on similar set of facts the coordinate bench of this Tribunal in Van Oord India Private Ltd. vs. ACIT (supra) held as under :*

6. We have carefully considered the rival submissions, perused the relevant material, including the orders of the lower authorities as well as the case laws referred at the time of hearing. Notably, the controversy before us primarily revolves around the applicability of transfer pricing provisions to the income that is covered by Chapter XII-G of the Act i.e. Tonnage Tax Scheme. The TTS was introduced in the Finance (No. 2) Act, 2004, with the intention of increasing foreign direct investment in the Indian shipping industry and making it globally competitive. The income of a tonnage tax company depends on the tonnage capacity of the qualifying ships and the number of days *for which it has been held. A reading of the provisions of TTS in Chapter XII-G suggest that the TTS is a charging section for the income generated by carrying out business of operating ships. Further, it also prescribes the mechanism for computation of income which is to be brought to tax. Thus, TTS is a presumptive basis of taxation, whereby the taxability of income from qualifying ships is restricted to the framework provided in the TTS. Further, the tonnage tax company is liable to pay taxes even in a case where the financial statements reveal a loss on actual operations. Further, all expenses, deduction, allowances or tax incentives are deemed to be allowed while computing the total income of a company as per TTS. The income thus computed shall be deemed to be the income chargeable to tax under the head 'Profit and gains of business or profession'. Hence, it is clear from the above that actual receipts/revenues earned and expenses incurred are not taken into consideration for the purpose of determining the tonnage income of the company. The entire computation of the tonnage income depends on the tonnage capacity of qualifying ships and number of days it has been held. At this stage, we may contrast the sphere in which the transfer pricing provisions of Chapter-X* *operate. The transfer pricing provisions envisage computation of income from specified international transactions of receipt or expenditure, ofcourse with reference to the stated price of such transactions. This is completely in contrast to Chapter-XII G, where the stated price of the transaction has no relevance to the computation of income of qualifying ships, which is based on the weight of the ship and the number of days it has been held. In other words, the determination of income/ expense having regard to arm's length price as envisaged in Chapter-X has no relevance, as it would not affect the computation of income liable for taxation in Chapter- XII G.*

7. Section 115VA of the Act starts with Notwithstanding any to the contrary contained in section 28 to section 43.".

TTS thus, provides for computation of income to the exclusion of section 28 of the Act. In case of an assessee entering into international transactions with associated enterprise, the amount of allowable expenses is required to be determined as per the arm's length principle as per the machinery provisions of Chapter X (Section 92 to section 92F). The amount of allowable expenses determined as per the arm's *length principle under section 92(1) of the Act would thus be relevant to compute business profits as provided for in sections 28 to 43C of the Act. The Assessee has opted to be governed by TTS, thus the provisions of section 115VA would override section 28 to section 43C and hence income has to be calculated with reference to the registered tonnage of the ships and not on basis of net profits depicted in the financial statements or as per the profits adjusted in terms of Chapter-X. In fact, the related party transactions are not relevant for computing income chargeable to tax as per Chapter-XII G of the Act and therefore, the arm's length price determined under transfer pricing provisions would be of no relevance. In other words, determination of income/ expense having regard to arm's length price would not alter the computation of income and the taxability of tonnage income of an assessee covered by TTS.*

8. Further, tonnage income is based on the weight of the vessel and not on "arm's length price". Section 92C prescribes methods for computation of arm's length price. None of the methods prescribed can have any application to computation of the tonnage income. In these circumstances, the computation provisions of Chapter X of the Act would fail and therefore, *application of Chapter X of the Act in such circumstances has to fail. Tonnage tax provisions determine the entire chargeable income earned by the tonnage tax vessel including income from an international transaction with associated enterprise. In contrast, transfer pricing provisions apply only to international transactions entered with associated enterprises. It is not possible to segregate what portion of the final taxable tonnage income is relatable to international transactions with associated enterprises and then apply transfer pricing provisions to such transactions, because the statutorily prescribed formula to compute income under chapter XII-G is based on the weight of the qualifying ship and number of days it has been held, irrespective of whether the ship has been used for a related party or an unrelated party. Once again, therefore, the computation provisions of Chapter X of the Act fail and in such circumstances, the application of Chapter X of the Act fails.*

9. In this context, the learned Counsel pointed out that a similar situation has been considered by the co-ordinate bench of this Tribunal in the case of Shreyas Shipping Logistics Ltd (supra) which has held as follows:

Now we would like to discuss the TTS. Section 115VA of the Act is unique in the sense that it deals with the computation of income from the business of operating qualifying ships which opt for Tonnage Tax Scheme(TTS).The method of computation of income under the scheme, as provided by the section, stipulates that income has to be assessed in a particular manner. In other words, no expenditure can be allowed or disallowance can be made, while computing the income under TTS. The income of the assessee is computed at affixed rate and all other provisions of the Act are not to be applied, once an assessee opts for the scheme. In short, if the assessee cannot claim any expenditure after opting out of the scheme, then the AO is also barred by making any disallowance for incurring of expenditure. Legislature, in its wisdom, has allowed the assessee for opting for the said scheme and with a specific purpose. Therefore, while computing the income of the assessee u/s. 115VP, the AO has to put on blinkers and assess the income as suggested by the Parliament. There is no scope for tinkering with the provisions of section 115 VP of the Act. He has to follow the simple rule that no deduction is to be allowed or no disallowance is to be made under any of the normal provisions of the Act, once it is found that an assessee is to be *assessed as per the provisions of chapter XIIG of the Act. Section 14A is not an exception to the TTS. Rather the scheme is an exception to the normal computation provisions, including the section 14A.Therefore,it cannot be said that when the income of the assessee from the business of operating ships was computed under the special provisions of Chapter XII-G, expenditure other than the expenditure incurred for the purpose of the business had been allowed. Considering the twin factors i.e. not claiming any expenditure against the nonshipping business income by the assessee and opting for TTS for shipping business, we are of the opinion that the order of the FAA does not suffer from any legal or factual infirmity. Therefore, confirming his order, we decide the effective ground of appeal against the AO. (underlined for emphasis by us)*

10. On yet another occasion, our co-ordinate bench in the case of Tag Off shore(supra) was concerned with a situation where the Revenue sought to make an addition by invoking the provisions of Section 14A of the Act in case of a tonnage tax company, whose income was computed under the special provisions of Chapter XII-G. The Tribunal set aside the addition observing thus' No disallowance under section 14A is warranted in *this case when the assessee has admittedly not claimed any expenditure, towards taxable income i.e. it has not claimed any deduction of expenditure debited in the Profit & Loss account while computing the total income.*

11. Further, the co-ordinate bench of this Tribunal in the case of CGU Logistics Ltd (supra) while dealing on the issue under TTS has held as under: 10.a.We find that section 115VP deals method and time of opting for TTS, Section 115VQ is about period for which tonnage tax option remains in force. Renewal of TTS is subject matter of section115VR.Circumstanes and conditions where in tonnage tax scheme cannot be opted are the subject matter of Section 115VS.As per the provisions of section 115VT every Asses see has to transfer profits to tonnage tax reserve account at a fix rate and has to utilise it for specific purpose, once he opts of TTS. Companies opting for TTS have to comply with minimum training requirement as required by Section 115VU.Limit for charter in of tonnage has been determined by section 115VV.Maintenance and audit of accounts of the TTS companies is governed by the provisions of section 115VW of the Act, whereas section115VX determines tonnage. Amalgation is subject matter of section 115VY. Next section *i.e. Section 15VZBtakes care of the tonnage tax companies which are found to be a party to any transaction or arrangement that amounts to an abuse of the scheme. Last section, section115VZC, deals with exclusion from TTS. From the above it is clear that chapter XII-G is a complete code in itself and it provides for non applicability of section 28 to 43C of the Act i.e. chapter IV of the Act, when income is to be computed as per the provisions of the said section. Chapter-XII-G, was introduced by the Finance (No.2)Act,2004,with effect from April 1,2005,and it provides for TTS, which is optional. The Notes on Clauses appended to the Finance (No.2) Bill,2004, referring to clause 28 as regards the introduction of section 115VA specifically states that the provision relates to the computation of profits and gains of the shipping business. Tonnage tax was intended to make the industry internationally competitive and also to induce more ships to fly the Indian flag. As the whole of FEFG is covered by the provisions of chapter XII- G of the Act, there is no justification in computing it under a different chapter or section. (underlined for emphasis by us)*

12. Before parting, we also think it apposite to refer to the judgment rendered by the Hon'ble Supreme Court in the case of Trans

Asian Shipping Services Pvt Ltd (supra). In the said case, the Supreme Court observed that .It may be stated in brief that in view of the stiff competition faced by the Indian shipping companies vis-a-vis foreign shipping lines, and in order to ensure an easily accessible, fixed rate, low tax regime for shipping companies, the Rakesh Mohan Committee in its report (of January, 2002) recommended the introduction of the TTS in India, which was similar to, and adopted some of the best global practices prevalent. The whole purpose of introduction of the Scheme was to make the Indian shipping industry more competitive in the global space by rationalising its tax cost... The Honble Supreme Court further observed that, we would also like to refer to Circular No. 05/2005 dated 15.07.2005 explaining the need and essence of the introduction of these provisions which was issued contemporaneously by the Central Board of Direct Taxes (CBDT). The Circular clarifies that the Scheme is a "preferential regime of taxation". It also clarifies that "charging provision is under Section 115VA read with Section 115VF and Section 115VG.."

13. It has also been brought to our notice that an identical situation arose in assessees own case for AY 2013-14 where the Dispute

Resolution Panel(DRP) vide its order dated 18.09.2017 held that transfer pricing regulations do not apply to the assessee to the extent of operations carried out through operating qualifying ships where the income is taxed under TTS.

14. To sum up, Tonnage Tax Scheme, as per Chapter XIT-G of the Act, is a separate code by itself in as much as it provides a self- contained changing provision as well as 'method of computation of income in the chapter, and, the method of computation of income under TTS is not dependent on receipt or expenditure of the assessee. Under Tonnage Tax Scheme, the income has to be computed as per the method prescribed in section 115VG. The income as per Tonnage Tax Scheme is computed on the basis of the weight of the vessel and number of days it is held, irrespective of its revenue realisations and the expenditure incurred for the purpose of the business. Hence, neither the business receipts nor the business expenditure of the assessee has any bearing on the method prescribed for computation of income under TTS as per section 115VG. The tonnage tax scheme, in that sense, is a presumptive method of computation of taxable income which is not dependent on actual receipts and expenditure of the assessee.

15. In fact, the fallacy in the approach of the Assessing Officer can be gauged from a perusal of the computation of taxable income made in para 11 of the assessment order. The Assessing Officer has sought to add ` 5,40,887/- as a separate line item captioned as Proposed adjustment/addition in view of the above discussion. Thus, as per the perception of Assessing Officer, chapter X of the Act creates an independent or a separate charge of income, an aspect which is contrary to the judgment of the Hon'ble Bombay High court in the case of Vodafone Services Pvt.ltd. vs. UOI (2015) 53 Taxman.com 286 (Bom), wherein after referring to an earlier judgment dated 10th October, 2014 in the case of same assessee reported in 50 taxmann.com 300 (Bom) interalia , held that chapter X does not contain any charging provision but is a machinery provision to arrive at an arms length price of a transaction between associated enterprises.

16. In the final analysis, it is seen that in the instant case, the provisions of chapter X have been invoked to alter an expenditure, namely the mobilisation and demobilisation charges paid for a qualifying ship, an item which has no bearing on the income as computed under Chapter XIIG and accordingly the provisions of Chapter X have no application in computing the *income of the assessee chargeable to tax as per Chapter XII-G of the Act.*

17. In view of the aforesaid discussion, in our considered view, the transfer pricing regulations do not apply to the assessee to the extent of operations carried out through operating qualifying ships where the income is taxed under TTS.

11. Considering the decision of coordinate bench of the Tribunal as referred above, the provisions of transfer pricing regulations are not applicable to the assessee to the extent of operation carried by assessee through qualifying ships which is covered by Tonnage Tax Scheme. Thus, we hold that the grounds of appeal No. 2 to 6 &9 are covered in favour of the assessee and against the revenue. In the result the ground No.2 to 6 & 9 are allowed.

8. As the facts and circumstances during the year under consideation are same, respectfully following the order of the Tribunal in assessees own case, we do not find any justification for the addition made by the A.O. in respect of interest on purchase price of two ships. Accordingly, we direct the A.O. to delete the same."

015. Coordinate bench has held that the provisions of transfer pricing regulations are not applicable to the assessee to the extent of operation carried by assessee through qualifying ships *which is covered* by Tonnage Tax Scheme. Thus we find that this issue has already been decided by the coordinate bench in assessee's favour in assessee's own case for earlier years and also in case of subsequent assessment years. The learned departmental representative could not point out us any reason to deviate from the same and this judicial precedent binds us. As the learned CIT – A has also followed the decision of the coordinate bench we do not find any infirmity in the order of the first appellate authority in deleting the above addition of ₹ 5,661,760/ – and therefore his order is confirmed. The main ground and sub grounds of ground number 1 are dismissed.

016. Ground number 2 of the appeal is with respect to the transfer pricing adjustment of ₹ 3,650,000 which was made at the rate of 0.5% in respect of negative lien provided in favour of associated enterprises for obtaining bank loan by AE. The assessee has stated it has provided a negative lien of not transferring the shares owned by assessee without the prior approval of the bankers of the associated enterprises. The learned CIT – A decided the issue in favour of the assessee holding that in the case of the assessee's own case for assessment year 2011 – 12 and 20 13 – 14 the Tribunal has held that

the arm's-length price of the rate of 0.25% as against 0.5% adopted by the transfer pricing officer in both the years should be adopted. The facts are not different in this year too.

017. The learned Department representative stated that there is no infirmity in the order of the learned transfer pricing officer in determining the no lien right at the rate of 0.5% and the learned CIT – A merely followed the decision of the coordinate bench in assessee's own case in earlier years and adopted 0.25%. He submitted that the transfer pricing provisions shows that the benchmarking has to be done every year.

018. The learned authorized representative submitted that the transaction has arose in the earlier years which has continued in this year also. The coordinate bench on identical facts and circumstances has held that 0.25% is the ideal benchmark rate for the purpose of taking obligation of the assessee for not to sale the investment in the subsidiary company. Therefore, the issue is squarely covered in favour of the assessee.

019. We have carefully considered the rival contention and find that this issue is squarely covered in favour of the assessee by the decision of the coordinate bench in assessee's own case for assessment year 2013 – 14 first and thereafter it has followed for assessment year 2011 – 12 and 2015 – 16, 2016 –

17 and 2017 – 18. Coordinate bench for assessment year 2013 – 14 has held as under:-

> "14. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that the TPO/AO has made adjustment for providing letter of negative lien by assessee to the bank. The TPO has equated the said transaction with that of guarantee given to bank. In case of guarantee there is a possibility of a liability arising to the guarantor on account of providing guarantee. However, in the present case, even if EGL defaults in payment of loan, there will be no liability on assessee for paying any amount since assessee is not a guarantor. Hence, there would never be any liability on assessee even in case of default. However, keeping in view the nature of negative lien letter given by the assessee and the totality of facts and circumstances of the case and the terms of letter of negative lien given by the assessee, we direct the A.O. to make adjustment by applying 0.25% to the said transaction instead of 0.5% applied by the AO. We direct accordingly."

020. On carefully considering the decision of coordinate bench, we find that undertaking by the assessee to not to transfer its holding in another company

without prior approval of the bankers of the AE is an international transaction resulting in to a benefit to the AE in obtaining loan. IT needs to be benchmarked. Coordinate bench has held that benchmarking at rate of 0.25 % of the amount of investment. As the issue is decided by the coridnate bench in assessee's own case , we do not find any reason to disturb the order of the learned CIT – A as the transaction has originated in the earlier years and not in this year and further there is no difference in the facts and circumstances as well as the risk and assets employed by the assessee pointed out before us. In view of this, the benchmarking at the rate of 0.25% adopted by the learned CIT – A was found to be correct as same is also not agitated by assessee, accordingly ground number 2 and its sub- grounds are dismissed confirming the order of the learned CIT appeal.

021. Ground number 3 is with respect to the transfer pricing adjustment on hire charges. The learned CIT – A has decided this issue holding that in assessment year 2011 – 12 and assessment year 2013 – 14 on identical facts and circumstances the coordinate bench has deleted the adjustment. Therefore the learned CIT – A following the decision of the coordinate bench decided in favour of the assessee. Main reason is that when income of assessee is chargeable under tonnage tax scheme, there is no applicability of transfer pricing provisions.

022. The learned departmental representative vehemently supported the order of the learned transfer-pricing officer.

023. The learned authorized representative supported the order of the learned CIT – A.

024. We have carefully considered the rival contention and perused the orders of the lower authorities. The fact that is undisputed is that the assessee has offered income under the tonnage taxation scheme for its shipping operation and as it has been held that since tonnage tax scheme actual receipt and expenses incurred are not taken into consideration for the purpose of determining the income of the assessee but it is decided on the basis of the tonnage of the ship and therefore transfer pricing provisions do not apply. This was held by the coordinate benches in assessee's own case for earlier years and therefore we do not find any infirmity in the order of the learned CIT – A who followed the decision of the coordinate bench in assessee's own case. Accordingly, ground number 3 of the appeal of learned AO is dismissed and order of the learned CIT – A is confirmed.

025. Ground number 4 of the appeal of the AO is with respect to the consideration of the interest of ₹ 555,056,455/– treated by the assessee as income from business, which is treated by the learned assessing officer as income from other sources. The

learned AO noted that assessee has earned interest income of ₹ 54.14 crores on inter corporate deposit given to Essar oilfield services India Ltd which is a wholly-owned subsidiary of the assessee. The remaining interest of ₹ 13,618,906 has been received forms banks. The learned assessing officer found that the assessee has shown this as the income from business which should be taxed under the head income from other sources. When the assessee challenged the same before the learned CIT – A, he held that identical issue arose in case of the assessee for assessment year 13 – 14 wherein the coordinate bench has held in assessee's own case that the interest income of ₹ 1.36 crores received from the banks and ₹ 54.15 crores received from the group companies during the year is the business income chargeable to tax under the head Income from business profession. Therefore, respectfully following the decision of the coordinate bench the learned CIT – A decided so . The learned AO is aggrieved.

026. The learned departmental representative vehemently submitted that the interest of Rs. 54.15 crores received by the assessee from subsidiary companies is not the business income of the assessee and further the bank interest of ₹ 1.36 crores received by the assessee cannot be said to be the business income and therefore it has been rightly charged by

the learned assessing officer as income from other sources.

027. The learned authorized representative vehemently supported the order of the learned CIT – A which followed the decision of the coordinate bench in assessee's own case for earlier years and therefore stated that the issue is squarely covered in favour of the assessee and the judicial discipline demands that same judgment should be followed in absence of any change in the facts and circumstances of the case.

028. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that for assessment year 2013 – 14 coordinate bench decided the issue in favour of the assessee vide paragraph number 28 of that decision wherein the interest received from the group concern was held to be the business income and further by paragraph number 30 the bank interest income was also held to be business income for the reason that assessee has put the margin money with the bank for business purpose of the assessee. The money With the bank as margin money was out of the business compulsion and not as per the will of the assessee and therefore such interest income was also considered to be taxable as business income. There is no change in the facts and circumstances of the case and therefore respectfully following the decision of the coordinate bench in assessee's own

case for assessment year 2013 – 14, we have no hesitation in holding that interest received from subsidiary company and the bank are for the purpose of the business and therefore same is required to be charged to tax under the head income from business and not income from other sources. Accordingly ground number 4 of the appeal of the learned assessing officer is dismissed.

029. Ground number 5 and 6 are with respect to the interest expenditure disallowed of ₹ 1,187,342,551/– as business expenditure under section 36 (1) (iii) of the act. The learned assessing officer has made this addition that the borrowed funds were not used for the purposes of the business. The learned CIT – A has held that the utilization of borrowed funds by the assessee company is allowable business expenditure under that section. The learned CIT – A has followed the decision of the coordinate bench in assessee's own case for assessment year 2013 – 14.

030. The learned departmental representative vehemently supported the order of the learned assessing officer holding that when the interest expenditure incurred by the assessee is not for the purpose of the business of shipping, same cannot be allowed as deduction to the assessee under section 36 (1) (iii) of the act.

031. The learned authorized representative vehemently supported the order of the learned CIT – A stating

that the interest expenditure has been held to be allowable under section 36 (1) (iii) of the act by the coordinate bench in assessee's own case , in absence of any change in the facts and circumstances of the case, it needs to be followed as the issue is squarely covered in favour of the assessee.

032. We have carefully considered the rival contention and perused the orders of the lower authorities. We have also considered the decision of the coordinate bench in assessee's own case for earlier years i.e. assessment year 2013 – 14 where the identical issue arose about the interest expenditure of ₹ 1,368,229,021/– which has been decided by the coordinate bench as per paragraph number 32 as under:-

"32. We had carefully gone through the entire details placed on record and found that the interest expenditure of Rs. 136,82,29,021 (174,57,93,544 - 37,75,64,523) is as under:

Sr.No. Particulars Amount (Rs) and Purpose of loan

1. Interest paid to Yes Bank 19,91,29,094 Amount borrowed in A.Y. 2012-13 and used for investment in shares of Essar Oilfields Services Ltd Mauritius which is wholly owned subsidiary of assessee established for purpose of carrying out oilfield business.

2. Interest paid on NCS from LIC 48,03,11,032 Amount received from LIC in A.Y. 2010-11 was utilized for giving ICD to subsidiary company for carrying out oilfield business. The income from ICD has been offered as business income under non tonnage activity.

3. Interest on FCCB 67,31,05,2015 Amount borrowed in A.Y. 2011-12 and used for investment in preference shares in wholly owned subsidiary for carrying out oilfield business.

4. Interest on aircraft taken on lease 1,56,83,680 Income earned from operation of aircraft has been offered as business income under non tonnage activity.

Total 136,82,29,021/-

33. It is evident from the above chart that interest expenditure of Rs. 135,25,45,341/- has been incurred on amount borrowed for purpose of giving ICD to its subsidiary and interest of Rs. 1,56,83,680/- has been incurred on aircraft taken on lease.

34. As discussed hereinabove, the assessee derives business income from tonnage activity and non-tonnage activity. One of the activities, income from which is offered as business income under non

tonnage, is oilfield business. As per object clause of the memorandum, one of the main object of the assessee was to carry out oil drilling business, which is also evident from the Directors report placed on record. Since the oil drilling business was carried out by the assessee through its subsidiary, loan was taken for giving as ICD to its subsidiary and assessee invested in subsidiary to acquire complete control over it since the assessee was to carry out its business of oil drilling through its subsidiaries. Therefore, the interest expenditure should be allowed as business expenditure U/s 36(1)(iii) of the Act. Since the investment was made in the group company for strategic purpose and not for earning dividend. Thus, the interest expenditure is allowable U/s 36(1)(iii) of the Act in so far as we have already held that the income on ICD earned from subsidiaries was liable to be taxed under the head income from business. From the record we found that the said interest expenditure was effectively incurred for oil drilling business of assessee and hence the same is on account of business and allowable u/s 36(1)(iii) of the Act. In order to support our proposition, reliance is placed on following decisions;

a) CIT v. Phil Corporation Ltd [244 CTR 226 (Born)]

b) CIT vs. Colgate Palmolive India Limited [(370 ITR 728) (Bom)]

c) CIT v. Investa Industrial Corpn. Ltd. [(119 FUR 380) (Bom.)]

d) CIT v. RPG Transmission Ltd. [359 ITR 673 (Mad)]

e) Raptakos Brett & Co. Ltd vs. PCIT. (ITA No. 2251/Mum/2015) (Mumbai Tribunal)

35. In all the above cases, it has been held that if the investment is made in subsidiary for the purpose of business, the loss or expenditure incurred by assessee would be allowable as business expenditure. With respect to interest on aircraft taken on lease, we observe that assessee had offered income earned from operation of aircraft as business income, the interest paid for aircraft taken on lease is essentially allowable as business expense u/s.36(1)(iii) of the IT Act.

36. We also observe that even otherwise the interest expenditure incurred on the loans which are given to its subsidiaries as ICD on which interest was received by the assessee, such interest expenditure is eligible to be allowed U/s 57(iii) of the Act while computing net interest income, our this observation is without prejudice to our above observation that interest on loan is eligible for deduction U/s 36(1)(iii) of the Act.

37. It was also argued by the ld AR that no interest disallowance on old/outstanding loan can be made in the current year, if the same was allowed in earlier year. It was submitted that the said interest

expenditure pertaining to amount borrowed from LIC has been allowed in A.Y. 2010-11 in case of Essar Ports Limited and A.Y. 2011-12 in case of assessee by the Assessing Officer in the scrutiny assessment order passed u/s 143(3) of the Act. In order to support this proposition, reliance was placed on the following decisions;

a) CIT v Sridev Enterprises [192 ITR 165 (Kar)]

b) Escorts Ltd. v. ACIT [104 ITD 427 (Del)]

c) Maiwa Cotton Spg. Mills v. ACIT [89 ITD 65 (TM)(Chd)]

d) ITO v. J.M.P. Enterprises [101 ITD 324 (SMC)(Asr)]

e) Virendra R. Gandhi v. ACIT (Tax Appeal No. 20 of 2004 with Tax Appeal No. 124 of 2005) dated 27.11.2014((Gujarat High Court)

38. Since we have already directed the A.O. to allow deduction of interest expenditure U/s 36(1)(iii) of the Act, even following the rule of consistency, the A.O. should have allowed the same as per the treatment given by him in earlier years since there is no change in facts and circumstances of the case during the year under consideration. Thus, even on the doctrine of consistency, we find sufficient force in the argument of the ld AR that the interest expenditure which have already been allowed under business

head of income in earlier year, the same should be allowed in the similar manner even during the year since there is no change in the facts and circumstances of the case.

39. We had also carefully perused the bank statement demonstrating the said nexus which is placed on record. It is evident from the said bank statement and ledger account that there is a direct nexus between the borrowed funds and the funds advanced to the subsidiary and hence the interest expenditure should otherwise be allowed as deduction U/s 57(iii) of the Act.

40. We are also of the view that even if the interest income is taxed as income from other sources, then the interest expenditure so incurred for earning the same should be allowed as deduction U/s 57(iii) of the Act. Since there was a direct nexus between the funds borrowed from the LIC and the money advanced to the subsidiary company and hence the interest expenditure of Rs. 48,03,11,032/- is otherwise liable to be allowed U/s 57(iii) of the Act. We direct accordingly.

41. From the record we found that AO had disallowed the interest paid on the funds borrowed which was given to subsidiaries / group companies. Since the ICDs were given to subsidiary in order to promote the business since an amount advanced to subsidiary would ultimately benefit the assessee,

the interest paid is allowable as business expenditure. In order to support the said contention reliance is placed on the decision of the Hon'ble Supreme Court in the case of S.A, Builders v. CIT (288 ITR1). In the said decision the Hon'ble Supreme Court has held that if the assessee has borrowed funds and advanced the same to its subsidiary in order to promote the business of its subsidiary, then the interest paid by the assessee on borrowed funds is a business expenditure and no interest disallowance can be made u/s 36(l)(iii) of the Act. In the present case, the assessee has advanced ICD to its subsidiary in order to promote their business and charged interest thereon. Applying the ratio laid down by the Hon'ble Supreme Court in the case of S.A. Builders v. CIT (supra), wherein it has been held that interest expenditure incurred by the assessee is allowable as business expenditure, the interest income earned by the assessee on ICD given to subsidiary to promote their business would be taxable as business income. The said decision of the Hon'ble Supreme Court in the case of S.A. Builders v. CIT (supra) was followed by the Hon'ble Supreme Court in the case of Hero Cycles v. CIT (379 ITR 347). Further reliance is also ITA No. 7371/Mum/2017 Essar Shiping Ltd. Vs ACIT placed on the decisions of the Hon'ble Bombay High Court in the case of CIT v Piramal Glass limited in Income Tax Appeal No 566 of 2017 dated 11.06.2019 (Bom), CIT v Sesa Resources Ltd. [404 ITR 707 (Bom)] and CIT v Reebok India Company (98 taxmann.com 413) in order to support our contention that interest expenditure is to be allowed u/s.36(1)(iii) while computing the income under head of business and profession. Corresponding interest income is to be assessed under head of business income.

42. The interest expenditure of INR48.03 crores was incurred during the year on the loan taken from LIC for giving the same as ICD to EOSIL on which interest income of INR53.97 crores was earned. As per the bank statement, there is direct nexus between the loan received from LIC and the ICD given, therefore, without prejudice to our conclusion that the income from ICD forms part of the business income of the assessee, corresponding interest expense has to be allowed against interest income earned by the assessee irrespective of the head of the income under which it is assessed. Thus, we observe that interest expenditure is otherwise allowable u/s.57(iii) since there is direct nexus between the interest expenditure and interest income earned by assessee.

43. From the record we also found that the money was borrowed from LIC and advanced to its wholly

owned subsidiary EOSIL as ICD in the earlier A.Y. 2010-11. The assessee was demerged from Essar ports Limited w.e.f. 01.10.2010 i.e. in A.Y. 2011-12. The money was advanced by Essar Ports Limited to EOSIL in A.Y. 2010-11 and Essar Ports Ltd received interest which was offered as business income. The same has been accepted by Assessing Officer in A.Y. 2010-11 as business income in the assessment order passed in case of Essar Ports Limited . Subsequently also in the assessment proceedings for A.Y. 2011-12, the same has been accepted by Assessing Officer as business income in case of Essar Ports limited and in case of assessee also as business income in scrutiny assessment framed u/s 143(3) of the Act. The relevant assessment order so passed U/s 143(3) of the Act for the A.Y. 2010-11 and 2011-12 are placed on record. However, during the year under consideration, the assessee continued to receive similar interest income on the ICD from EOSIL which was given out of money borrowed from LIC. The assessee offered the same as business income but the he A.O. treated the same as income from other sources. There is no change in the facts and circumstances of the case during the year under consideration as compared to earlier years wherein the AO had assessed the very same income under the head of business income. Hence, even on the principles of consistency, the interest income received by the assessee should be taxed as business income. In order to support the said contention reliance is placed on the decision of the Honble Supreme Court in the case of CIT vs. Excel Industries (358 ITR 295). Accordingly, we do not find any justification in the order of AO for treating interest income as income from other sources.

44. In view of the above discussion, we direct the AO to treat interest income as income from business and to allow interest expenditure u/s.36(1)(iii) of the I.T. Act. We direct accordingly."

033. As the above issue is decided by the coordinate bench on the basis of the facts and circumstances prevailing in that year which are also prevailing for this year undisputedly, therefore, respectfully following the decision of the coordinate bench in assessee's own case for earlier years, we held that the disallowance made by the learned assessing officer has been correctly deleted by the learned CIT – A of ₹ 1,187,342,551/– of the business interest expenditure under section 36 (1) (iii) of the act. Accordingly ground number 5 and 6 of the appeal of the learned assessing officer is dismissed confirming the order of the learned CIT – A.

034. Ground number 7 of the appeal of the learned assessing officer is with respect to the disallowance of common interest expenditure of ₹ 329,101,317/–.

The brief facts of the case show that the learned assessing officer has apportioned the common interest expenditure of ₹ 43.44 crores based on the revenue on from the tonnage and non-tonnage tax activities of the assessee and thereafter applied the ratio of the same to the total income and allocated total interest expenditure. According to that he found that a sum of ₹ 32.91 crores is required to be located to shipping activities covered under the tonnage tax scheme and therefore the amount of interest allowable for non-tonnage activities of the assessee was required to be disallowed and increased by ₹ 32.91 crores.

035. The learned CIT – A the decision of the coordinate bench in assessee's own case for assessment year 2013 – 14 wherein identical issue arose.

036. The learned departmental representative supported the order of the learned assessing officer whereas the learned authorized of Representatives submitted that the learned CIT – A has followed the decision of the coordinate bench in assessee's own case for earlier years which has not been challenged by the learned assessing officer and therefore same is required to be followed. He referred to the order of the coordinate bench for assessment year 2013 – 14 and also for assessment year 2015 – 16 to 2018 – 19.

037. We have carefully considered the rival contention and perused the orders of the lower authorities. We found that the identical issue arose in the case of the assessee for assessment year 2013 – 14 wherein the coordinate bench has held as under:-

> "45. The last grievance of the assessee relates to disallowance of common interest expenditure of Rs. 35,98,89,248/-. The A.O. has dealt with the issue at page No. 11 and 12. From the record we found that the assessee had claimed common interest expenditure of Rs. 48,82,67,263/- which has been apportioned to tonnage and non tonnage activity. The assessee allocated the said expenditure in the ratio of assets employed between tonnage and non tonnage activities. The Assessing Officer apportioned the said expenditure on the basis of turnover between tonnage and non tonnage activities. We do not find any merit in the order of the A.O. in so far as the interest expenditure is periodic cost of borrowing incurred for the purpose of financing business activities. Therefore it has to be apportioned on basis of cost of financing i.e. value of assets and not on basis of turnover, since the turnover of the business has got no relation with the interest expenditure so incurred by the assessee.

We, accordingly, restore this issue to the file of the A.O. to recompute the same by allocating interest expenditure in the ratio of assets employed between the tonnage and non tonnage activities. We direct accordingly."

038. The learned CIT – A followed the decision of the coordinate bench in assessee's own case for earlier years and therefore we do not find any infirmity in his order in deleting the disallowance as the learned departmental representative could not show us any reason to deviate from the same. Accordingly, ground number 7 of the appeal of the learned assessing officer is dismissed.

039. Ground number 8 of the appeal of the learned assessing officer is with respect to admission of the additional ground by the learned CIT – A. The learned CIT – A admitted the additional claim made by the learned assessing officer for set off of tonnage business income of the current year loss by following the decision of the honourable Bombay High Court in case of 349 ITR 336. Ld CIT (A) has given findings in paragraph number 18 of the appellate order after obtaining the remand report from the assessing officer. The ground was admitted by the learned CIT – A subject to verification of the learned assessing officer. The learned departmental representative did not agitated the same before us stating any specific

reason that why the learned CIT – A is not correct in admitting the additional ground of appeal. The facts clearly show that the assessee company in the return of income has shown tonnage tax business income and non-tonnage business loss and computed thereafter the net business loss. However while calculating the tax liability the assessee made an error of calculating the tax at the rate of 30% inadvertently. It was merely an arithmetic error which required to be rectified, allowed by the learned CIT – A in the additional ground. In view of this we do not find any infirmity in the order of the learned CIT – A in admitting the additional ground and directing the learned assessing officer to compute the correct taxable income. Accordingly, the ground number 8 of the appeal of the learned assessing officer is dismissed.

040. In the result, appeal filed by the learned AO is dismissed.

Order Pronounced in the open court on 09.01.2024.

Sd/-	Sd/-
(NARENDER KUMAR CHOUDHRY)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 09.01. 2024
Sudip Sarkar, Sr.PS/ Dragon

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai