

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ "B", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" B " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

1. ITA No.294/Ahd/2024

2. ITA No.295/Ahd/2024

Assessment Years : 2016-17 & 2017-18 respectively

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| The DCIT<br>Central Circle-3<br>Vadodara | Vs | BTW Atlanta Transformers<br>India Pvt.Ltd.<br>3 <sup>rd</sup> Floor, Shreeji Complex<br>Vasana Bhaili Road<br>Opp. Taksh Complex<br>Vadodara - 390 015 |
| PAN:AAECB 9579 N                         |    |  |
| <b>अपीलार्थी/ (Appellant)</b>            |    | <b>प्रत्यर्थी/ (Respondent)</b>  |
| Assessee by :                            |    | Ms. Chandni Shah, CA &<br>Shri Amol Mahajan, CA  |
| Revenue by :                             |    | Shri Nitin Vishnu Kulkarni, Sr.DR  |

सुनवाई की तारीख/Date of Hearing : 13/06/2024  
घोषणा की तारीख /Date of Pronouncement: 20/06/2024

**आदेश/ORDER**

**PER SHRI MAKARAND V. MAHADEOKAR, AM:**

Both the appeals are filed by the Department against the separate orders dated 20/12/2023 passed by the Ld.Commissioner of Income-tax (Appeals)-12, Ahmedabad ["Ld.CIT(A)" in short] for Assessment Years (AYs) 2016-17 & 2017-18.

2. Since both these appeals pertaining to same assessee and are based on similar issue and identical facts, the same are adjudicated together by taking ITA No.294/Ahd/2024 pertaining to AY 2016-17 as lead case and its findings will be applicable to the other appeal of the Revenue pertaining to the AY 2017-18.

3. Common Grounds of appeal(s) taken by the Department are as under:

*"1) On the facts and in the circumstance of the case and in law, the Ld.CIT(A) has erred in granting the relief of Rs.2,96,67,323/- [for AY 2016-17] and Rs.2,99,42,445/- [for AY 2017-18] to the assessee on account of interest income despite the fact that the facts of the case of M/s.Adani Power Maharashtra Limited (on which Hon'ble ITAT, Ahmedabad relied upon in ITA Nos.1642 & 1643/Ahd/2018) are different as in the instant case as the assessee did not claim capitalization of interest in ITR, while in the case of Adani Power Maharashtra Limited assessee itself claimed in ITR.*

*2) on the facts and in the circumstances of the case and in law the learned CIT(A) erred in granting relief of Rs.2,96,67,323/- [for AY 2016-17] and Rs.2,99,42,445/- [for AY 2017-18] to the assessee on account of interest income holding that the same is capital receipts ignoring the facts that interest income on FD is assessable under the head 'Income from other sources' as held by the Hon'ble Supreme Court in the case of CIT Vs. Autokast Ltd [2001] 116 Taxman 244 (SC) and despite the fact that the assessee itself declared the interest income as taxable income in the return of Income.*

*3) On the facts and circumstances of the case and in law, the Ld.CIT(A) ought to have upheld the order of the AO.*

*4) It is, therefore, prayed that the order of the Ld.CIT(A) may be set aside and that the AO may be restored to the above extent.*

*5) The appellant craves to add, amend, alter, substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before*

*or during the course of the hearing of the appeal on the basis of submissions to be made.”*

4. The brief facts of the case are that the assessee-company filed its return of income for Asst.Year 2016-17 on 31/11/2017 through electronic-media declaring total loss of Rs.(-)24,33,767/-. The case was selected for scrutiny assessment and a notice u/s.143(2) and u/s.142(1) of the Act was issued to the assessee. The assessment was completed u/s.143(3) on 29/09/2021, wherein the Assessing Officer computed the total income of Rs.2,90,81,990/-.

5. Being aggrieved by the assessment order, the assessee filed the appeal before the Ld.CIT(A). The Ld.CIT(A) partly allowed the appeal of the assessee.

6. The Ld.DR submitted that the assessee-company had itself shown the interest income of Rs.2,96,67,323/- on FDs as taxable in its return of income. Under the circumstances, it was not proper for the Ld.CIT(A) to hold that the said “interest income” was in the nature of “capital receipt”.

7. The Ld.AR submitted that an identical issue was involved in assessee’s own case for AYs 2013-14 & 2014-15 and the Ld.ITAT Ahmedabad Bench “B” had held in ITA Nos.1642 & 1643/Ahd/2018 vide order dated 06/03/2020 that the interest income earned on Fixed Deposits pertaining to prior period commencement of business of the assessee should be treated as “capital receipt”. Thus, the issue is squarely covered in favour of assessee by the earlier decision of the Tribunal.

8. We have carefully considered the submissions of both the sides. It is found that an identical issue was involved in the appellant's own case for the AYs 2013-14 & 2015-16 before the Tribunal, which was decided in favour of assessee vide order dated 06/03/2020(supra). The operative part of the said order is as under:

*"In the light of the above facts and after considering the various judicial pronouncements of the Hon'ble High Courts and Co-ordinate Benches of the ITAT as cited above, we consider that the impugned interest receipt by the assessee company is related to the prior period to commencement of business which is in nature of capital receipt and was required to be set off against pre-operative expenses. Therefore, first ground of appeal of the assessee for treating expenses to the amount of Rs.2,33,36,037/- as revenue expenditure is dismissed. However, the alternative ground of appeal of the assessee for treating the interest income earned on fixed deposit pertaining to prior period commencement of business is allowed by treating the impugned interest income as capital receipt which is adjusted against pre-operative expenses of the assessee. Therefore, the alternative ground of appeal of the assessee is allowed."*

8.1. There is no dispute to the fact that the business activities of the assessee-company had not commenced in the Financial Years (FYs) 2015-16 and 2016-17 as well. The Assessing Officer has given a categorical finding, in this regard, in the assessment order itself. Thus, the interest earned on FDs during the year was prior to commencement of business of the assessee-company and was in the nature of "capital receipt" as held in the assessee's own case in the AYs 2013-14 & 2014-15. The objection of the Department is that the assessee had not shown any nexus between the funds borrowed and the specific investment made by it, is not found relevant as such nexus has to be examined in the year in which the

investments were made for the first time. In the present case, the investments were made in the earlier years that is continuing in the current year and the assessee-company is deriving interest income on the Fixed Deposits made by it in the earlier years. Respectfully following the decision of the Co-ordinate Bench in the AYs 2013-14 & 2014-15, we hold that the interest income earned on Fixed Deposits pertaining to the prior period commencement of business was in the nature of "capital receipt". As held in that year the preoperative expenses of the assessee has to be adjusted with this "capital receipt" and only the balance expense, if any, need to be amortized as per provisions of Section 35D of the Act. Accordingly, the Ld.CIT(A) had rightly allowed the claim of the assessee.

9. In the result, the appeal filed by the Department in ITA No.294/Ahd/2024 for AY 2016-17 is dismissed.

**ITA No.295/Ahd/2024 for AY 2017-18**

10. This appeal of the Revenue is based on similar issue and identical facts to the ITA No. 294/Ahd/2024 for AY 2016-17 as adjudicated above in this order. Therefore, without reiterating the facts and findings as discussed above in this order, the Revenue's claim of treating interest income of Rs.2,99,42,445/- as "income from other sources" is dismissed, after applying the finding elaborated in adjudicating Revenue's appeal vide ITA No. 294/Ahd/2024 as above, in this order, by treating the interest income as capital receipt which is to be adjusted against pre-operative expenses of the

assessee. Therefore, this ground of Revenue's appeal raised in ITA No.295/Ahd/2024 for AY 2017-18 is dismissed.

10. In the combined result, both the appeals of the Revenue are dismissed.

**Order pronounced in the Open Court on 20<sup>th</sup> June, 2024 at Ahmedabad.**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**  
Ahmedabad, Dated 20/06/2024

**Sd/-**  
**(MAKARAND V.MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

*टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS*

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)-12, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad