

ITA No 778/MUM/2022
Nayara Energy Limited
[On behalf of Vadinar Oil Terminal Limited]
V
ACIT Central Circle -2 (1), Mumbai
A Y 2017-18

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE

SHRI PRASHANT MAHARISHI, AM AND RAHUL CHAUDHARY, JM

ITA NO 778/MUM/2022		Assessment year 2017 - 18
Nayara energy Ltd (On behalf of merged entity Vadinar Oil terminal limited) Fifth floor, Jet Airways Godrej BKC Plot C - 68, G Block Bandra Kurla complex Bandra (East) Mumbai - 400051		The Assistant Commissioner of Income Tax Central Circle - 2 (1) Room number 804, Pratistha Bhavan Old CGO Annexe M K Road Mumbai 400020
PAN		AABCV2626D
Assessee by		Shri Nitesh Joshi, advocate Shri Sagar Devani CA
Revenue by		Sri S. Srinivasu CIT DR
Date of hearing		20 June 2024
Date of pronouncement		11.09.2024

ORDER

Per Prashant Maharishi, Accountant Member

1. This appeal is filed by Nayara Energy Ltd (on behalf of merged entities Vadinar Oil Terminal Ltd[VOTL]) for assessment year 2017 - 18 against appellate order passed by The Commissioner of Income tax (A)- 48, Mumbai [The learned CIT(A)] dated 25/2/2022 wherein appeal filed by the assessee against the assessment order passed by The Assistant Commissioner Of Income

Tax, Circle – 14 (3) (1), Mumbai (The AO) on 28/12/2019 under section 143 (3) of The Income Tax Act, 1961 (The Act) wherein the total income of the assessee returned at a loss of Rs. 203,979,700/- and book profit computed at a loss of Rs. 8,822,243,600/- was assessed at as income of Rs. 1,681,776,090/- and book profit at loss of Rs. 8,822,243,600/-, was dismissed.

2. Assessee aggrieved with the same has raised following grounds of appeal: –

Disallowance of loss on account of assignment of certain receivables and payable is pursuant to valuation and reassessment of companies' ability to collect the amount of Rs. 251,30,00,000/-

1. On the facts and in the circumstances of the case, The Learned Commissioner of Income Tax (Appeals) – 48 and the learned assessing officer erred on facts and in law in disallowing loss of Rs. 2,513,000,000/- actually incurred during the year up on assignment of identified receivables and payable is comprising intercorporate deposits, interest thereon, security deposits, other receivables, and payable is from or to Essar group entities based on incorrect facts and surmises. The appellant submits that the net losses incurred on assignment of receivables and payable is based

on a detailed evaluation by an independent valuer are deductible under section 36 (1) (vii) of the income tax act, 1961(The Act).

2. The learned CIT – A and the learned AO erred in rejecting the alternate claim of the deductibility of the loss on assignment under section 28 (i) of the act on the basis that the loss was not incidental to the business but was a future anticipated loss, disregarding the appellant’s regular activity of taking and giving ICD is in line with the object clause of the memorandum of Association (MOA). The learned CIT (A) and the learned AO further erred in not appreciating that this loss was actually incurred ahead of its holding company being taken over by the third parties and should be allowed as a business loss.

The appellant prays that the adjustment in relation to disallowance of loss on account of company’s ability to amount specified amount of Rs. 251.30 crores by the learned AO and upheld by the learned CIT (A) be deleted.

Partial disallowance of interest expenses claimed in excess of interest income earned on intercorporate deposits Rs. 1,581,200,000/-.

3. The learned CIT (A) and the learned AO erred on facts and in law impartially disallowing interest expenses in excess of interest income earned amounting to Rs. 158) of Blacks on the basis of irrelevant and erroneous observations and conjectures, without appreciating the fact that the interest expenses, incurred for the purposes, and in the course of business, is allowable under section 36 (1) (iii) of the act and the business expediency of such interest cannot be determined on the basis of quantum incurred. The appellant submits that the entire amount of interest expenses of Rs. 253.30 crores be allowed as claimed, without restricting the amount of interest income of Rs. 95.38 crores and during the year.
4. Without prejudice to the above, the learned CIT (A) and the learned AO erred in disallowing the interest expenses on ICD is being a business expenditure under section 37 (1) of the act.
5. The learned AO erred in considering the interest income from ICD is under the head income from other sources instead of considering the same under the head profits and gains of business and profession in complete disregard of the fact that the appellant was carrying on a systematic and continuous business activity of

taking ICD is an giving ICD is and is assessable under the head profits and gains of business or profession. The appellant submits that the interest income arising from its regular business activity, be assessed as profits and gains from business or profession as was done in the prior assessment years.

The appellant prays that the adjustment made by the learned AO and upheld by the learned CIT (A) in respect of partial disallowance of interest expenses claimed in excess of interest income on ICD is be deleted.

Disallowance of interest expenses incurred for the loan taken for investment in Ennegaon Limited, Mauritius, Rs. 171,57,00,000

6. The learned CIT (A) and the learned AO erred in on facts and in law in disallowing interest expenses incurred on financial assistance obtained from banks for making strategic equity investment in foreign company, completely overlooking the facts and circumstances relating to the investment. The appellant submits that the interest, being squarely covered under the specific provisions of section 36 (1) (IIA) be held as deductible as claimed.

7. Without prejudice to the above, the learned CIT (A) and the learned AO erred on facts and in law in not allowing the interest expenses incurred for investment for furtherance of business of the appellant under section 37 (1) of the act.

The appellant prays that the adjustment made by the learned AO and upheld by the learned CIT (A) pertaining to the disallowance of interest expenses incurred for the loan taken for investment in Ennagaon Ltd, Mauritius be deleted.

Grant of short TDS credit of Rs. 2.29 crores

8. The learned CIT (A) and the learned AO erred on facts and in law in not /short granting of TDS credit of Rs.2.29 crores while determining the refund of the appellant for the year.

The appellant prays that the TDS credit should be granted of Rs. 2.29 crores while computing the refund which was not granted by the learned AO and upheld by the learned CIT (A)

Order bad in law in the absence of an opportunity for personal hearing

9. The learned CIT (A) order in passing the order without providing an opportunity of personal hearing though requested by the appellant.

The appellant prays that the order being passed in violation of principles of natural justice and against the provisions of the income tax act, 1961 is bad in law and should be quashed.

3. Fact shows that the assessee is a company engaged in the business of handling crude oil and petroleum products. Its facility consists of an offshore single-point mooring, two jetties for handling liquid petroleum products, tanks for storage of crude oil and petroleum products and rail and road gantries for dispatch of petroleum products.
4. Assessee filed its return of income on 8/2/2018 declaring a total loss of Rs. 203,979,700/- and computed the book profit under section 115JB at a loss of Rs. 8,822,243,600/-. The return of income was picked up for scrutiny by issue of notice under section 143 (2) of the act on 27/8/2018 and further notice under section 142 (1) of the act was also issued.
5. After scrutiny, the assessment order was passed under section 143 (3) of the act on 28/12/2019 wherein the total income of the assessee was assessed at Rs.

5,605,920,300/- and the book profit remained unchanged.

6. Against this, assessee preferred an appeal before the learned CIT – A wherein appellate order was passed on 25/2/2022 dismissing the appeal of the assessee. Therefore, assessee is in appeal before us. Before us assessee has filed a rectified form number 36 which is taken on record.
7. Assessee has also made an application for admission of additional evidence and filed a paper book starting from page number 629 – 914 (paper book – III) as additional evidence containing eighteen documents. Out of that it was stated that thirteen documents are already part of departmental records however not submitted during the assessment proceedings for assessment year 2017 – 18. With respect to documents mentioned at serial number 14 is a memorandum of Association of the company, board note relating to investments in Enneagon Limited Mauritius (serial number 15), audited financial statements of Enneagon Limited Mauritius (serial number 16) and board resolution for assignment of receivables and payable (serial number 17) are the additional evidence. At serial number 18 assessee has submitted the computation of income for assessment year 2017 – 18. With respect to serial number 1 to 13 the contention of the assessee was that about documents are part departmental records for the respective assessment

years and the assessing officer has relied on the same in the assessment order for assessment year 2017 - 18. The same are now being relied upon by the assessee company to substantiate that interest income on intercorporate deposits given by the appellant were offered to tax in respective years in return of income as business income and have been assessed also as business income. Further for documents at serial number 14 the assessee submitted that one of the objects of the assessee under the head objects incidental or ancillary to the attainment of the more main objects in its memorandum of Association which allows the assessee to lend money. The said fact was mentioned by the assessee in its submission however neither the assessing officer nor the CIT (A) has called for the copy of this document and therefore assessee wants to rely on the same to substantiate its submission. With respect to documents at serial number 15 and 16 it referred to the board note relating to investment in Ennagoan Ltd Mauritius discusses and details on the proposal relating to availing of financing facility of US\$ 450 million and use of proceeds for equity infusion into overseas subsidiary and audited financials of the said subsidiary for the year ended March 31, 2017. Both these documents are relied upon by the assessee to demonstrate the business rational and the business activity carried out by that subsidiary for the year ended March 31, 2017. With

respect to document at serial number 17 which is a board resolution relating to assignment is to demonstrate that the competent authority of the appellant has taken the decision regarding the said transaction after taking into account the larger scheme of things. It was the claim of the assessee that the above documents are relevant documents which could not have been furnished before the lower authorities and therefore those documents must be admitted deciding the issue.

8. The learned authorised representative pressed for its admission whereas the learned departmental representative opposed its admission.
9. Ld. AR submitted that submissions were made before the learned CIT – A on 18 February 2021 which is placed at page number 307 – onwards wherein at page number 316 the assessee has cited the decision of the honourable Supreme Court in case of SA builders versus CIT [2007] 288 ITR 1 (SC) and further at page number 317 assessee has submitted that assessee needs time before the learned CIT – A of 10 – 15 days further to supplement the above submission in view of the statutory timeline to file the return of income for assessment year 2020 – 21 was approaching on 15 February 2021 and further the appellant has filed several VSV applications for earlier years which were required for to frequently visit tax office to clear pending rectification orders and order giving effects. Under these circumstances considering

that due to Covid – 19 related restrictions, the assessee wanted further time. Therefore, it was submitted that assessee could not submit the detail. As this was the sufficient cause for not adducing these details before the Id. Lower Authorities, now it should be admitted.

10. The learned departmental representative vehemently objected to the same and submitted that the learned CIT – A has disposed of the appeal of the assessee on 25/2/2022. The assessee is relying on his letter dated 18 February 2021 wherein assessee is seeking time. He submits that the assessee has made a further submission on 8 November 2021 before the learned CIT – A wherein once again the assessee has sought time of 10 days. He further submitted that since 8 November 2021 to 25/2/2022, 4 months' Time was available with the assessee, but nothing was submitted before the learned CIT – A. Therefore, the claim of the assessee is that no time was granted to the assessee by the learned CIT – A for submission of the additional evidence is devoid of any merit and is an incorrect statement. He submits that there is no reason given for non-submission before Id. AO. Hence, he submitted that additional evidence should not be admitted as no sufficient cause is shown by assessee.
11. We have carefully considered the rival contention and find that these documents are relevant for the assessee to demonstrate its case before the tribunal for effective

disposal of the grounds raised. It is undoubtedly clear that on 18 February 2021 assessee has sought time before the learned CIT – A for furnishing further information. Further another letter dated 8 November 2021 was once again submitted before the learned CIT – A, in the last line itself the assessee has also sought 10 days' time to supplement the above submission. Appellate order was passed on 25/2/2022. Thus, it is evident that assessee has been given enough opportunities to submit the details. There is no reason stated that why these documents were not submitted before the Id. AO. However, we find that the additional evidence starting from serial number 1 – 13 are with respect to the return of income and computation for the earlier years. The only additional evidence that has been submitted by the assessee is with respect to the Board Note relating to investment in subsidiary company, audited financial statement of the subsidiary company and board resolution of assignment of receivable and payable. We find that the Board note relating to investment in subsidiary and its annual accounts are the main reason for which the disallowance has been made on account of interest expenditure on investment made in subsidiary. Therefore, to decide that issue, these documents are as such required by the authorities. In view of this, we admit the additional evidence furnished.

12. First ground of appeal is with respect to disallowance of loss on account of assignment of certain receivables and payables pursuant to valuation and reassessment of the company's ability to collect the amount of Rs. 2,513,000,000/-.
13. Issue is that Assessee has sold ICD receivables from Essar Group Companies of Rs 955 Crs along with the Essar Group ICD payable of Rs 699 Crs having Net asset value of Rs 256 Crores is transferred to a sister concern [fellow subsidiary] at Rs 4.98 Crs, resulting in to loss of Rs 251.30 Crs. This loss is claimed as deduction by the assessee.
14. The brief facts of the grounds are dealt with by the Ld. assessing officer in paragraph number 4 of the assessment order and by the learned CIT - A in paragraph number 5 of the appellate order.
15. The learned assessing officer has noted as under: -
 - "4.1 During the year under consideration the assessee has declared earnings before exceptional items and tax at Rs. 347.5 crores. The assessee has claimed Rs. 918.68 Crores as exceptional items due to which its profit before tax shrinks to a loss of Rs. 570.83 crores.
 - 4.2 it is seen from the notes to accounts, item 40 deals with the exceptional items. The assessee was asked to provide details of such expenses vide notice under section 142 (1) dated 11/11/2019.

Vide its submissions dated 6/12/2019, the assessee has provided details of such expenses claimed in the profit and loss account.

4.3 Item 40 (a) to the notes deals with the 'Debit to profit or loss on reassessment of the company's ability to collect the amount specified in note 56'. The amount debited towards this head is Rs. 177.50 crores. It is further seen that this amount has not been added back to the total income of the assessee. The assessee was shown caused to explain why such amount should not be added back to the total income of the assessee.

4.4 Vide submissions dated 11/12/2019 the assessee has provided the following explanation: -

"Pursuant to the agreement between the company and Ibrox Aviation and Trading Private limited (IAPL) certain identified assets and liabilities comprising of ICDs, security deposits, other receivables, interest on ICDs and payables from /to the Essar group were assigned to IAPL. In view of the same, VOTL received an amount of Rs. 4.79 crores from IAPL as a consideration for transfer of net value of identified assets and liability. (Copy of agreement attached herewith).

Pursuant to the said agreement, the company incurred one-time exceptional loss of Rs. 177.54

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crores (net of expected credit loss (ECL) of Rs.
73.80 crores) for the year which has been
accounted in the books of account as under: -

Particulars	Amount in (Rs. in cr.)
David to profit of loss on reassessment of the company's ability to collect the amount specified	251.30
Less ECL	(73.80)
Net charge to exceptional item	177.50

4.5 the assessee further goes on to explain the allowability of various items mentioned in the assignment agreement as per the income tax act. The submission of the assessee is discussed below:

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“Loss on transfer of ICDs and interest thereon: -

Section 36 (1) (vii) of the act provides that subject to the provisions of section 36 (2) of the act, the amount of bad debt which is written off as irrecoverable in the accounts of the assessee shall be allowed as a deduction in computing business income. Further, section 36 (2) of the act provides the condition for claiming deduction under section 36 (1) of the act, inter alia including.

- Debt or part thereof in respect of which deduction is proposed to be claimed should be taken into account in computing the income of the assessee of the previous year in which this amount of such debt or part thereof is written off of an earlier year, or
- Debt or part thereof in respect of which deduction is proposed to be claimed represents money lent in the ordinary course of business of money lending under section 36 (1) (vii) of the act.

In the case of the company, the loss of assignment inter alia includes ICDs and interest on ICDs. The interest on ICDs have been offered to tax as business income in previous years. Consequently, based on the provisions of the law and fact of our case, this amount is clearly allowable as a deduction.”

4.5.2 The submissions made by the assessee in relation to loss on transfer of ICDs and interest thereon have been perused. As per the assessee’s own submissions vide submissions dated 12/9/2019, the assessee’s business is that of integrated oil terminal situated at vadinar, Gujarat.

It has a capacity of 58 MMTPA and handles crude oil and petroleum products. These facilities cater to provide services only to Nayara Energy Ltd (formerly known as Essar oil Ltd.).

4.5.3 The assessee is taking refuge only on the thin ground that in earlier year it has recognised interest income as business income. Hence it may be construed to be in money lending business. The surmise of the assessee is not acceptable. To put things in perspective the following facts should be noted: -

1. The assessee – Vadinar Ports and Terminals Ltd (VPTL) and Vadinar oil terminal Ltd (VOTL) has received intercorporate deposits (ICD) from Essar oil and Essar ports Ltd in earlier years. The funds out of these ICDs are advanced as ICDs to ESSAR group companies, which are shareholder or subsidiaries of Essar oil.
2. That for many years interest payments against ICD were accrued but not paid and stood in the books as payable.
3. No business rationale has been submitted by the assessee for taking ICDs from a company and advancing it to the shareholders/subsidiaries of that same

company, suggesting that these transactions are not out of usual business transaction.

4. Intercorporate deposits are instruments in which, the initiation is at the instance of the depositor, i.e., the giver who has surplus funds, as against in the case of a loan where the transaction is initiated at the instance of the borrower who is in need of the money. Further in the case of an ICD, the amount is repayable on demand whereas a loan is repayable on the conclusion of the agreed tenure. The assessee has booked interest cost to forward ICDs to group concern. This is against the very nature of an ICD. The ICD should be out of surplus funds with the company.
5. That during the previous assessment proceedings the assessee has failed to prove that borrowed money had not been utilised for non-business purposes. This is fact on record reference is drawn to previous assessment orders of the assessee.
6. That additions were made by the AO on account of interest claimed under section 36 (1) (iii) of the act.

4.5.4 Without prejudice to the facts mentioned above, this is not a case where the debts were

written off due to inability in recovering the debts , but write off has happened as a result of assignment of such debts to the assessee's group company IBROX aviation and trading private limited (IATPL) in a single accounting year the assessee has assigned the debts to a group company, (which is not an asset reconstruction company) and has taken a haircut of whopping Rs. 251.30 crores in its books of account. The transaction with IATPL is discussed in paragraph 3.7 in detail. Further as discussed in the preceding paragraph in the case of an ICD, the amount is repayable on demand whereas the loan is repayable on the conclusion of the agreed tenure. Had the assessee had doubts about a particular ICD being recovered back, it would have recalled the ICD in that year itself.

4.5.5 it is thus clear from the facts mentioned above that the assessee in previous year had advanced ICDs to its group concerns from the ICDs from group entities and loans taken from financial institutions. That such advances made to group concerns have been written off during the year not on account of failure to recover the debts, but on account of reassignment of such deposits to a group concern. Against the reassignment of net deposits worth Rs. 250 crores, the assessee has

received a sum of Rs. 4.8 crores. As a result, the assessee has booked a loss of Rs. 251.30 crores. It is thus clear that this is not a case of advance turning bad, but a sham transaction to book fictitious expenses in the books of account.

4.6 Again, vide submissions dated 24/12/2019 the assessee stated that the loss incurred on ICDs and security along with accrued interest is allowable as deduction under section 36 (1) (vii) read with section 36 (2) and under section 28 (i). The submissions of the assessee are not acceptable. The conditions in relation to business loss are clear: -

1. That it should be incidental to the carrying on of the business.
2. Should be on revenue account.
3. Should be a real loss and not a notional fictitious one.
4. Should have actually been incurred and not anticipated as certain to occur in future.
5. Should not be prohibited from being deducted under the provisions of the act.

Hence the loss was not incidental to the business, nor was of a revenue account. It was a future anticipated loss. Clearly the loss claimed on ICD is not allowable under section 28 (i) of the act.

4.7 Agreement with Ibrox aviation and trading

private limited: -As discussed above the assessee has booked loss on account of assignment of debts to its group concern IATPL. IATPL is an Essar Group company and is not an asset reconstruction company. In fact, IATPL is a shareholder of ESSAR oil. Essar oil has advanced ICDs to VPTL and VOTL. The agreement to assign certain assets and liabilities of the assessee company to IATPL was executed on 31st of March 2017. In the agreement Essar ports and shipping Ltd, Mauritius has acted as the guarantor.

4.7.2 As per the agreement with VOTL the seller of identified assets and liabilities would sell its assets and liabilities to IATPL for a consideration of Rs. 4.8 crores. The identified assets total to Rs. 955.4 crores. The assets where ICDs advanced by the assessee to five entities that are either subsidiaries or shareholders of Essar oil. The identified liabilities were Rs. 699 crores of ICD the assessee owed to Essar oil Ltd. Thus, net assets of Rs. 256.4 crores were assigned to IATPL. Against such assignment IATPL paid a sum of Rs. 4.8 crores to the assessee. The differential amount of Rs. 251.3 crores were booked by the assessee as loss in its books of account.

4.7.3 Clearly the entire transaction is an intragroup arrangement, which has led to assessee claiming a loss of Rs. 251.6 crores. The loss is a national one and not actual loss. The assessee has brought nothing on record to show that efforts were made to recover the ICD before assigning the same to a group concern at a steep haircut.

4.8 In the light of the facts brought out in the preceding paragraphs, the loss claimed by the assessee of Rs. 251.30 crores on account of company's inability to collect ICD and interest thereon, the amount specified is disallowed.

Penalty proceedings under section 270A of the income tax act are initiated separately for misreporting and underreporting of income.

(Addition: Rs. 2,513,000,000) "

16. Thus the Id. AO held that it is a sham transaction and loss is fictitious, it is not allowable as bad debt and not allowable as business loss.
17. Assessee challenged this addition before the learned CIT – A. In para number 5.1 to 5.7 the learned CIT has discussed the proceedings before the learned assessing officer. In paragraph number 5.8 onwards the findings of the learned CIT – A are rendered as under: –

“5.8 At the appellate stage, the appellant has contended that loss arising on transfer of ICDs is allowable as a deduction. However, if the assessee had doubts about a particular ICD being recovered back it would have recalled the ICD in that year itself instead of bearing loss arising on transfer. Here the loss was not incidental to the business, nor was of revenue account. As pointed out by the AO, the assessee has booked a loss on account of assignment of debts to its group concern IATPL. IATPL is Essar group company and is not an asset reconstruction company. In fact, IATPL is a shareholder of Essar oil. Essar oil had advanced ICDs to VPTL and VOTL and the agreement to assign certain assets and liability of the assessee company to IATPL was executed on 31st of March 2017. Appellant’s contention that the loss on account of company’s inability to collect the amount specified of Rs. 251.30 crores cannot be entertained since, it has not proven or made any efforts to collect the said amount. The appellant has failed to prove that how it was unable to collect the amount also brought nothing on record to show that efforts were made to recover the ICD before assigning the same to a group concern.

5.9 in this respect, the appellant has relied upon some case law. However, they are not relevant in the case of appellant. In the case of CIT versus Investa industrial Corporation Ltd (1979) 119 ITR 380 (Bom) the financial position of the company being managed by the assessee deteriorated and the company went under liquidation, the assessee wrote off the principal and interest outstanding from the company in its books of accounts and claimed the same as a bad debt or business loss. Wherein the honourable High Court held that as a result of the managed company having gone into liquidation, the advances became irrecoverable, the loss would have to be regarded as a trading loss and the same would have to be allowed as a deduction while computing the income of the assessee. However, in case of appellant the fact is different, it has not gone into liquidation and that the advances became irrecoverable.

5.10 The next claim made by the appellant that as per the provisions of section 36 (2) of the act, the amount of bad debt which is written off as irrecoverable in the accounts of the assessee shall be allowed as a deduction in computing business income. The basic requirement to allow bad debt is that the amount claimed as bad debt

should have offered in earlier year as revenue. However, the year in which the revenue pertaining to its data was not offered with evidence and the appellant has failed to justify the claim of bad debts under section 36 (1) (VI) of the act. In absence of any critical evidence before me, I am unable to accept the contention of the appellant and held that the loss is a notional one and not actual loss.

5.11 Besides, claim is made by the appellant that it has been consistently treating the interest income arising from ICD is and the receivables given to its various group companies as profits and gains arising from business or profession in its return of income. This fact has not been denied by AO anywhere in his order. The argument made by the appellant cannot absolve it from its liability. The AO had placed on record the entire gamut of finding and there is no further requirement for elaboration. **In view of the overall facts discussed as above addition made of Rs. 2,513,000,000 on account of loss on transfer of ICD is apparent. This ground of appeal is dismissed."**

18. Thus Id. CIT (A) confirmed the disallowance on all three aspects. Therefore, assessee is in appeal before

us. Assessee has filed a paper book containing 628 pages initially and further paper book containing 629 pages to 914 pages were submitted on 19 June 2023 as additional evidence. Assessee has also submitted in response to query raised by the bench a paper book containing five different documents to substantiate its claim in response to the date of hearing held on 14 February 2024.

19. The learned authorised representative first took us to page number 230 of the paper book to show that as per annexure A details of assets and liabilities assigned under agreement with Ibrox aviation and trading private limited are mentioned as five different intercorporate deposits amounting to Rs. 738.25 crores, security deposit amounting to Rs. 3 crores along with other receivable or advances of Rs. 2.18 crores over and above outstanding interest due of Rs. 211.94 crores making the total assets assigned to the Ibrox aviation and trading private limited of Rs. 955.38 crores. Assessee has also a liability in the name of Essar oil Ltd of ICD of Rs. 699.29 crores which is also assigned to that company. Thus, it was explained that the total assets of Rs. 955.38 crores and a liability of Rs. 699.29 crores have been assigned having a net asset value of Rs. 256.09 crores for Rs. 4.79 crores and therefore a loss of Rs. 251.30 crores were incurred by the assessee on its transaction. Thus, it was stated that the claim of the assessee is either to allow the same as bad debtor to allow it as business loss.

20. He submitted that assessee has already received the interest out of the outstanding sum amounting to Rs. 75.84 crores which has been offered by the assessee as income during the year or in earlier years and therefore even if the part of the income has been offered for taxation in the earlier years, it satisfies the condition laid down under section 36 (2) of the act. It is not the condition that the whole of the amount which has been written off should have been shown as income in the earlier years. Therefore, his argument was that when the income has been shown of interest on such intercorporate deposits, even if part and not full, and then write off debt of intercorporate deposit as well as outstanding accrued interest as a bad debts is eligible.
21. For this proposition he relied upon the decision of honourable Bombay High Court in case of CIT versus Pudumjee pulp and paper Mills Ltd 63 taxmann.com 283 (2015) wherein one part of the debt was offered to tax it was held that it will satisfy the claim of deduction of that under section 36 (1) (i) of the act. The learned authorised representative specifically referred to the question raised before the honourable High Court in paragraph number 2, the facts that part of the bad debt was offered for income tax and then paragraph number 12 where the honourable High Court allowed the bad debts. He further referred to the decision of honourable Bombay High Court in case of CIT versus Shreyas S

Morakhia (2012) 342 ITR 285 wherein in case of a share broker unrealised value of shares from the clients were held to be deductible under section 36 (1) (vii) if brokerage is taken to the profit and loss account. He further referred to the question before the honourable High Court in paragraph number [1] and thereafter reference of special bench in paragraph number [3] and argument of the assessee in paragraph number [4]. He thereafter referred to paragraph number 14 wherein it has been held that where the assessee is a stockbroker on behalf of its client is as much a part of that of shares transacted as is the brokerage which is charged by the assessee on the transaction. Therefore, his argument was that assessee satisfies the conditions laid down under the act for write-off of the bad debt. Accordingly, the assessee should be granted the same as a deduction as bad debt. He further referred to the decision of the honourable Bombay High Court in PCIT versus Mahindra engineering and chemical products Ltd (2021) 439 ITR 399 (Bom) dated 27 October 2021 wherein the facts clearly shows that when the interest income is brought to tax as business income in the earlier assessment years, advances made in the course of the business when return of their should be allowed as a deduction under section 36 (1) (vii) and section 36 (2) (I) of the act. The learned authorised representative specifically referred to paragraph number three of the

order wherein based on the earlier decisions referred the honourable High Court in paragraph number 10, 11 and 12 has decided the issue.

22. The learned authorised representative also submitted that interest on intercorporate deposits assigned wherein it was submitted that total interest of Rs. 211.95 crores are assigned and for assessment year 2014 – 15 Rs. 42.74 crores have been offered for income tax, a sum of Rs. 38.81 crores have been offered for tax in assessment year 2015 – 16, a sum of Rs. 98.68 crores have been offered for assessment year 16-17 and a sum of Rs. 17.91 crores have been offered for income tax. Thus, assessee fulfils the condition u/s 36(2) of the Act. Therefore, he submits that the write-off of the intercorporate deposit is eligible for deduction as a bad debt.

23. On 14 February 2024 after hearing the bench made a following order sheet entry: –

‘Assessee has filed appeal mainly on the issue of disallowance of Rs. 251.30 crores and other additions. For this loss assessee has sold its and certain advances of Rs. 955 crores and liabilities of Rs. 6,99 crores to a related party for a consideration of only Rs. 4.8 crore and claimed deduction of Rs 251 crores. The assessment order clearly states that there is no business rational of above transaction. On reading of annual report also

we found that there is a scheme of arrangement and change in holding company, in the auditor's report there is a qualification and management reply thereto. As per note number 56 of annual report, it is evident that the above transactions are offshoot of larger understanding between Essar oil Ltd entering into share purchase agreement. Therefore, rationale of sale of assets worth Rs. 955 crores included in the above when it is realising interest, sold by the assessee along with liability of Rs. 6,99 crores for Rs. 4.8 crores only need to be examined. The AR is directed to explain the same `.

24. In response to the above order sheet enquiry from the bench, the assessee submitted a letter dated 20/05/2024. Learned authorised representative invited our attention to press note placed at page number 948 – 947 of Business Today wherein it was stated that Essar Rosneft complete deal worth US\$ 12.9 billion. He further submitted that various news reports placed at page number 915 to 1026 are publicly available documents which explain the rationale of the above deal. He further submitted that on attention to page number 231 is again that assessee has transferred both the assets and liabilities. The intercorporate deposits were an asset having the grave doubt about recovery of the amount. Assessee was hopeful if there is a change in shareholding

there would be improvement in the chances of recovery. He referred to 5 intercorporate deposits which were doubtful of recovery part of the transfer he also referred to liability payable of Rs. 699 crores also part of the transferred asset. With reference to the rational, he referred to paper book page number 1027 to 1044 which is a credit rating for bank facilities of Vadinar oil terminal Ltd by care ratings dated 23 May 2018. He referred to page number 1030 wherein detailed rational of Essar oil Ltd was mentioned in that report. He referred to page number 1035 of that care ratings report relating to Vadinar Oil terminal Ltd. He further referred to the financial statement of the assessee for assessment year 2018 – 19 to 2020 – 21 to show that there is a decline in interest cost, there is decrease in borrowing there is increase in gross revenue and corresponding increase in profit before taxes. Thus, he submitted that change in shareholders and transfer of assets and liabilities is for the benefit of assessee company and that is the justification why the assets and liabilities are transferred together. It was further stated that the interest is not realised but accrued to the assessee and is outstanding. It was further submitted that transfer of these assets is based on the valuation report of Grant Thornton issued in April 2017 and therefore the transaction made by the assessee is for the benefit of the assessee.

25. Ld.AR categorically submitted that assessee does not have a share purchase agreement and so it is not available and hence not furnished. It stated that such share purchase agreement is between Essar group of company with the buyer. The assessee does not have any access to such agreement and therefore it is not submitted.
26. Though the learned authorised representative did not state in writing in letter dated 28 May 2024 that the assessee does not have a share purchase agreement and therefore it is not available and hence it is not submitted. However, it was an oral argument of the assessee though the bench specifically asked as per the order sheet.
27. The learned authorised representative further referred to the response of the management on the qualification in the audit report wherein it is mentioned that after due consideration, the company sold the portfolio of outstanding receivables amounting to Rs. 2569.42 crore and payable is amounting to Rs. 2298.21 crore from certain related and other entities to Essar steel Jharkhand Ltd and Ibrox aviation and trading private limited, at fair valuation. On the basis of fair valuation of these outstanding receivables and payables, the company has debited to the profit and loss Rs. 177.50 crores as an exceptional item, the company expects to realise the carrying values of the investment and other deals

through the escrow arrangement shortly. Therefore, there was a justification and rational for the above deal.

28. The learned CIT DR vehemently supported the order of the learned lower authorities and stated that that it is a sham transaction as stated by the learned assessing officer confirmed by the learned CIT – A. The assessee has not submitted the relevant document before the lower authorities on this issue. Further the clubbing of the assets and liabilities together does not have any rational. He further stated that the deduction is neither available as bad debt as claimed by the assessee before the learned assessing officer and not also as a business loss. He further submitted that the learned assessing officer has given a detail reason which are not controverted by the assessee.
29. The learned CIT DR further submitted that all the decision cited by the learned authorised representative are taking the claim that the claim of the assessee is under the head bad debt, it is not about that but a sham transaction which has been claimed as a deduction or business loss by the assessee. He submitted that when the gross assets of the value of Rs. 955 crores which are earning good income along with the liability of Essar oil Ltd of Rs. 699.29 crores having the net asset value of Rs. 256.09 crores are sold to a sister concern for only Rs. 4.79 crores itself shows that the transaction is sham.

30. He further submitted that that there is a qualification in the auditor's report wherein there is a qualified opinion is given by the auditor. He further referred to the profit and loss account of the assessee wherein as per note number 40 a sum of Rs. 918.68 crores have been written off. He further referred to note number 40 wherein a sum of Rs. 177.50 crores have been debited to the profit and loss account as specified in note number 56. He also took us to note number 56 wherein there is an offshoot of the transaction of sale of major shareholders of the Essar oil Ltd selling the stake to the third parties and thereafter several agreements entered wherein this sum is mentioned. The assessee has failed to produce despite the bench asking for the same agreement. He further stated that if the assessee is not aware or not in possession of that agreement how it can refer to in the annual accounts of the assessee and then make a reference of the provision of investment. He further referred to note number 16 and not number 21 which are also interlinked. Therefore, his argument was that assessee is hiding behind the original agreement entered by the majority shareholders of Essar oil Ltd with third party. He therefore submitted that the claim of the assessee is neither bona fide, nor allowable under the provisions of the law and is based on hidden facts.
31. We have carefully considered the rival contention and perused the orders of the learned lower authorities. Short

issue involved in this appeal is that when assessee has transferred its certain financial assets along with certain financial liabilities for a consideration to a sister concern, loss arising thereon whether should be considered as bad debt, deductible as a business loss or it is not at all allowable to the assessee.

32. The facts succinctly stated shows that assessee has transferred certain intercorporate deposits with its group companies (Essar Group) and certain intercorporate liabilities in the same group and has incurred a loss. Assessee has transferred following intercorporate deposits/advances/interest accrued thereon.

Serial number	Name of the company	Total amount (in crores)
1	Essar Bulk terminal Ltd	145.60
2	Imperial consultants and securities	306.87
3	Essar Steel India Ltd	305.53
4	Essar sipping Ltd	54.95
5	Essar Bulk Terminal Paradip Limited	142.53
	Total	955.38

33. Assessee has also transferred the liability of following loan: -

Essar Oil Limited Rs. 699.29 crores

34. Thus, the net asset value of the assets transferred is Rs. 256.09 crore. The issue is that it is sold to a sister concern IATPL only for Rs. 4.98 crores. Thus, assessee

has incurred loss of Rs. 251.30 crore. Whether these losses allowable as bad debt, business loss or not.

35. To reach at the conclusion, following important fact noted from the annual report of the assessee company are required to be mentioned. There is a scheme of arrangement and change in holding company as per directors' report at page number 13 of the annual report of the company wherein it is mentioned as under: -

"Scheme of arrangement and change in holding company.

As on March 31, 2016, Essar ports Ltd (EPL) was the holding company of the company. In view of the composite scheme of arrangement amongst the company, Vadinar ports and terminals Ltd, Essar power and minerals Ltd, Yash hotels private limited, Hazira Coke Ltd and Essar ports Ltd (the scheme) as approved by the honourable High Court of Gujarat effective July 1 (2016, Essar power and minerals Ltd (EPML) and Vadinar ports terminals Ltd have merged with your company.

As a result, your company has issued equity shares to all the shareholders of EPML as on the record date fixed for the same. The shares held by EPL in your company have been cancelled as a consequence of the scheme.

In view of the above, upon the implementation of the scheme Essar Ports and shipping Ltd (EPSL),

parties, and in escrow arrangement was to be put in place to apply the sale consideration, to the extent required, towards discharge of amounts due to the company from certain related parties. The majority stake in the company has since been acquired by EOL. However, the closure of sale of the stake in EOL is taking longer than previously envisaged. The company in the interim continued to transact with the related parties and has reassessed its ability to realise the dues from related parties (including investment in a subsidiary company pursuant to acceptance of offer to buy back the shares from the subsidiary). Through the said escrow arrangement, based on which it has debited to the statement of profit and loss Rs. 177.50 crore as an exceptional item. The carrying values of the investment and other dues to be realised through the escrow arrangement aggregate on March 31, 2017, to Rs. 3613.44 crore (comprises investment in equity shares of Enneagon of Rs. 3033.21 crore – refer note 16, and other receivables of Rs. 580.23 crore – refer note 21)”

38. Note number 57 on going concern is also required to be considered which is as under: -
“57 Going Concern

The ability of the company to continue as a going concern is predicated on the successful implementation of SPA together with the escrow arrangement for deployment of the sales consideration towards the liquidation of amounts due to the company from certain related parties and have the required cash flows to meet its financial obligations.'

39. It is interesting to note that assessee has entered into an agreement for transfer of identified assets and liabilities between Vadinar Oil terminal Ltd and Essar Steel Jharkhand Ltd on 31st day of March 2017 wherein details of the third parties are identified assets amounting to Rs. 1614 crores along with the amount of identified liability of Rs 1599 crores having net value of Rs. 15.14 crores were sold for net consideration of 15.1 crores. Therefore, in sale of assets and liabilities to Essar steel Jharkhand Ltd there is no loss or profit.
40. The transaction with Ibrox aviation in trading private limited of Rs. 4.78 crores are described in the related party transaction in note number 58 to the annual accounts wherein it is stated that inter-corporate deposits taken being liability of Rs. 699.29 crores and the assets having a value of Rs. 955.37 crores have been transferred to that company for Rs. 4. 78 crores whose net asset value is Rs. 256.14 crores.
41. On the same date[along with the sale of similar assets to Essar Steel Jharkhand Limited]on 31st day of March 2017

and agreement for transfer of identified assets and liabilities was entered into between the assessee and Ibrox aviation and trading private limited wherein assets to the tune of Rs. 955.4 crores and a liability of Rs. 699 crores were transferred to that company for a consideration of Rs. 4.8 crores having a net asset value of Rs. 256.40 crores.

42. The liability in both the cases were pertaining to Essar oil Ltd. Rs. 1599 crores were transferred to Essar steel Jharkhand Limited and Rs. 699 crores were transferred to Ibrox aviation and trading private limited.
43. This is also to be noted that that in transaction with Essar steel Jharkhand Ltd no profit or loss was incurred on transfer of the group intercorporate deposits and liability of Essar oil Ltd. However, in case of the assessee in transaction with Ibrox aviation and trading private limited the assessee has incurred loss of Rs. 251.30 crores. Out of these 251.30 crores the assessee has reduced Rs. 73.80 crores being the expected credit loss resulting into net tax charged to exceptional item of Rs. 177.50 crores.
44. It is also interesting that auditors have given a qualified opinion as per audit report dated August 14, 2017. The basis for qualified opinion as per page number 33 of the annual report is as under: -

"Basis for Qualified Opinion

Attention is invited to note number 56 regarding the ability of the company to realise investment in a

subsidiary company and amounts due from certain related parties, which is predicated on successful closure of the sale of shares by the majority shareholders of Essar oil Ltd. , The holding company and application of the sales consideration towards the discharge of the aforesaid amounts, as explained in the note. In view of the delay in achieving closure of the sale transaction and the consequent collection of the amounts as envisaged, and further the reassessment by the company of its ability to realise the entire investment and other dues through the escrow arrangement, we are unable to express an opinion on the recoverability of the carrying values of the investment and the dues aggregating to Rs. 3613.44 crore as of 31 March 2017 or debit to the statement of profit and loss of Rs. 177.50 crore for the year."

45. Thus, there is no qualification with respect to transaction of sale of similar assets and liabilities to Essar Steel Jharkhand Limited, but it is on transaction of Ibrox Aviation and Trading Pvt Ltd Only.
46. Now it is interesting to note that the management in its reply in the director's report to the qualification of the auditor as under: -
- a) Management response to qualification under basis for qualified opinion in the auditor's report on standalone and consolidated financial statements: -

The company had receivable from various group companies and other entities, operating in steel, shipping, and other sectors. Due to the weakening of the sectors and data duration of the financial condition (including restructuring of that is) of these entities, a situation has arise in wherein the value of the receivables from these entities has significantly declined and recovery of their dues is likely to take a substantial amount of time. The company, therefore, we, after considering the report of an independent third-party, its ability to collect the outstanding balances.

Further, as reported in the earlier year, controlling stake being non-public shareholding in the company was to be acquired by Essar oil Ltd (EOL) as a condition precedent to the share purchase agreements (SPA) executed on October 15, 2016 by the majority stakeholders of EOL to sell their shareholding to petrol complex Pte Ltd and Kesani Enterprises Co Ltd. As a result, the company will no longer remain a part of the Essar group and accordingly the company intends to settle all its assets and liabilities and realise the dues from related parties and

other entities as envisaged in the transaction documents exist to pursuant to the SPAs.

After due consideration, the company sold the portfolio of outstanding receivables amounting to Rs. 2569.42 crore and payable amounting to Rs. 2298.21 crore from certain related parties and other entities to SR steels hearken Ltd and Ibrox aviation and trading private limited, at fair valuation. On the basis of fair valuation of these outstanding receivables and payables, the company has debited to profit and loss Rs. 177.50 crores as an exceptional item. The company expects to realise the carrying values of the investment and other dues through the escrow arrangement shortly.”

47. Thus, it is apparent that in the case of transaction with Essar steel Jharkhand Ltd where the outstanding receivable of sixteen parties amounting to Rs. 1614.14 crores were transferred, there is no decrease in fair market value of a single rupee. Whereas on receivables transferred to Ibrox aviation and trading private limited on transfer of receivables of Rs. 955.38 crores the loss of Rs. 251.30 crores were recorded.
48. In both the cases the liability transferred was with respect to Essar Oil Ltd. In case of Essar steel Jharkhand Ltd the liability of EOL of Rs. 1599 crores were

transferred whereas in case of Ibrox aviation and trading private limited the liability of Rs. 699.29 crores were transferred. It is to be noted that Essar oil Ltd is the ultimate holding company of the assessee in view of the change in the structure and management of shareholding of the company.

49. We find that assessee has produced the report of Grant Thornton in April 2017 on recoverable values of receivables from Essar shipping Ltd in terms of the report dated 4 April 2017. On the report on recoverable values of receivable from Essar shipping Ltd and Imperial consultants and securities, it was held that that out of the ICD including interest under the receivable of Essar shipping Ltd of Rs. 55 crores the range of the recovery of the receivable is only 93% to 99.4% and in case of Imperial consultant and securities Ltd on ICD and interest another receivable of Rs. 306.9 crores the range of the receivable is only 44.6% to 59%. Similarly report on recoverable value of Essarsteel India Ltd as per report dated 4 April 2017, on outstanding of Rs. 305 crores, it is stated that the interest of Rs. 80 crores are not recoverable and on the balance sum of Rs. 224 crores the recovery would be in the range of 5% to 14%. Thus, out of the total receivable of Rs. 955.38 crores, the recoverable report of only Rs. 667.35 crores were placed before us, thus for the balance Rs. 328 crores there is no reply about the recoverability report.

50. All the reports of the Grant Thornton are pertaining to the period April 2017 and were dated 4 April 2017 whereasthe agreement with the Ibrox aviation and trading private limited was entered into on 31st day of March 2017. Therefore, the consideration value of Rs. 4.8 crores were decided earlier without having the recoverability report of Grant Thorton Ltd. Therefore, in case of sale of receivable to Essar steel Jharkhand Ltd nor losses incurred but in case of transaction with Ibrox aviation and trading private limited loss of Rs. 251 crores were incurred. Thus,there is no justification of transfer of assets of 955.38 crores and the liability of 699.29 crores having a net asset value of Rs. 256.09 crores to a sister concern for a meagre consideration of Rs. 4.79 crores.
51. Assessee also submitted a resolution passed by the circulation on January 18, 2017, placed at page number 912 of the paper book wherein it is resolved as under: –
- “Resolved that in accordance with the provisions of the companies act, 2013 (act) read with rule frame thereunder, as may be amended from time to time and memorandum and articles of association of the company, and subject to all other applicable laws, the board hereby approves assignment of all the receivables from domestic group companies to move the company had extended into corporate deposits

from time to time and simultaneous assignment of related payables to Essar oil Ltd and the execution of the deed of assignment/assignment agreement proposed to be entered into by the company with the relevant group companies “.

52. We find that in the resolution there is no reference of any loss incurred on transfer of the asset, valuation of intercorporate deposits at fair market value, to who these assets are to be sold, which assets are to be sold to which entity, and whether the draft agreement has been perused by the board before entering into. Further it is apparent that the agreement of transfer of receivable entered by the assessee with Ibrox aviation and terminals private limited produced before us is an unsigned document. Therefore, the production of this board resolution which has not discussed any rationale of selling of intercorporate deposits given at substantial discount, does not help the case of the assessee.

53. Though the directors report refers to (page number 15 of annual report) where there is a reply to the qualification in the auditor’s report it is mentioned that: -

“Further, as reported in the earlier year, controlling stake being non-public shareholding in the company was to be acquired by Essar oil Ltd (EOL) as a condition precedent to the share

purchase agreements (SPA) executed on October 15, 2016 by the majority stakeholders of EOL to sell their shareholding to petrol complex Pte Ltd and Kesani Enterprises Co Ltd. As a result, the company will no longer remain a part of the Essar group and accordingly the company intends to settle all its assets and liabilities and realise the dues from related parties and other entities as envisaged in the transaction documents exist to pursuant to the SPAs.”

54. However, when the bench asked for these documents because that is the offshoot of the transaction by which a sum of Rs. 251 crores have been booked in the profit and loss account as an exceptional item, it was stated that such agreement is not accessible by the assessee and therefore not in a possession of the assessee and hence not produced.
55. We note that when the assessee mentions the same in its directors' report, notes on accounts etc, when the going concern itself hinges on that agreement, how the assessee is not having any access to that document. The nonproduction of such document goes against the assessee because for proving the genuineness of the transaction, onus lies on the assessee. Merely relying on the press notes and newspapers items without looking at the agreement to which assessee is privy as it mentions

its impact on its accounts etc, does not held the case of the assessee.

56. When assessee has not produced such agreement which is called for by the bench, auditors of the company have qualified the report on this issue itself (Write off exceptional item of Rs. 177.5 crores), going concern of the assessee itself depends on such agreement, and fact mentioned above, we do not find any reason to deviate from the orders of the learned lower authorities.
57. Regarding the claim of the assessee that assessee should be allowed the deduction as bad debts written off under section 36 (1) (vii) of the act, we do not find that there is a write-off of any irrecoverable amount in this case. The assessee has incurred loss on sale/ transfer of certain payables and receivables. Therefore, the loss cannot be claimed as bad debt. All the arguments of the assessee that assessee has fulfilled the provisions of section 36 (2) of the act as it has taken into account while computing the profit for earlier years by including the interest income as income are not relevant. Therefore, the learned lower authorities have correctly held that the assessee is not entitled to claim the deduction of bad debt written off in the books of accounts under section 36 (1) (vii) of the act as there is no write off of bad debt.
58. Coming to the alternative claim of the assessee of the above sum as trading loss, the learned assessing officer has categorically held in paragraph number 4.6 of the

assessment order that such loss was not incidental to the business and nor was on account of revenue it was a future anticipated loss and therefore it was disallowed under section 28 (i) of the act. The learned CIT – A has confirmed the finding of the learned AO. we find that the assessee has sold its payable and receivable. On careful reading of the balance sheet of the assessee company, these are shown as loans and advances. Further the amount of loss incurred is also shown as an exceptional item and further in the cash flow statement it is shown from the cash flow from investing activities and not from operating activities. Therefore, it is apparent that it is not the business of the assessee to make investment in intercorporate deposits. Therefore, the loss of Rs. 177.50 crores are not allowable as a business loss.

59. The argument of the assessee is that it has offered the interest income as business income and therefore this investment should also be considered as business activity of the assessee. We do not find any force in this argument for the simple reason that the investments held by the assessee as investment activities. Further the memorandum of Association of the company furnished before us as additional evidence shows that the main object of the assessee company is of shipping and transportation. The serial number 14 under the head object incidental or ancillary to the attainment of the main object where lending is mentioned does not help

the case of the assessee because it is not the business activity of the assessee. It only supports the main object of the assessee. Thus, the loss incurred by the assessee is on capital account and not on revenue account and it is not a business loss which can be granted as deduction to the assessee.

60. Therefore, we do not find any infirmity in the order of the learned assessing officer in denying the deduction of the loss of Rs. 177.5 crores holding that the transaction is sham transaction to book fictitious loss in the books of account, not allowable as deduction as a bad debt and as a business loss which is also confirmed by the learned CIT – A.
61. Accordingly ground number 1 of the appeal of the assessee is dismissed.
62. Ground number 2 of the appeal is with respect to the disallowance of interest expenses claimed of Rs. 1,581,200,000. The fact shows that during the year under consideration the assessee has incurred interest expenses to the tune of Rs. 1009.57 crores and has received Rs. 142 crores as interest income. The assessee has received inter corporate deposit and security deposits from related parties on which interest expenses have been incurred of Rs. 395.04 crores which has been debited as interest cost to related entities of Rs. 253.50 crores are on account of interest payment of intra

corporate deposits taken from Essar oil Ltd and Rs. 141.50 crores on account of security deposit given by Essar Oil Limited. The learned assessing officer noted that the interest income and expenses on intercorporate deposit is considered then the assessee has paid interest on intercorporate deposit of Rs. 253.50 crores and received an interest of Rs. 95.38 crores. These intercorporate deposits are taken from group entities and advances are also given to the group entities. The assessee was questioned by the learned assessing officer which was replied by the assessee on 17/12/2019 stating that the intercorporate deposits have been advanced during the business however no interest has been charged on certain intercorporate deposits during the year. The assessee relied on the decision of the honourable Supreme Court in case of hero cycle stating that there is a commercial expediency for advancing the intercorporate deposits. The learned assessing officer noted that these intercorporate deposits are from and to the group entry entities and no business expediency has been established by the assessee that warrants allowability of claim of excess interest expenditure on such intercorporate deposits more so as a business expenditure. He relied upon the decision of the honourable madras High Court in 38 ITR 413 wherein it is held that it is for the assessee to prove that each of the loans on which he paid the interest was utilised for the

purposes of his business. This decision has been affirmed by the honourable High Court in 52 ITR 165. Therefore, the interest income on intercorporate deposit was considered by the AO under the head income from other sources instead of business income for statistical purposes and further the excess claim of interest amounting to Rs. 158.12 crores [being Rs. 253.30 crores minus Rs. 95.38 crores] were disallowed. Accordingly, the disallowance of Rs. 1,581,200,000 was made by the learned assessing officer.

63. The assessee challenged the same before the learned CIT – A wherein the learned CIT – A has confirmed the addition for the reason that when the assessee has raised the business loans for the business purposes on which interest liability is incurred for payment and on the other hand the funds were advanced to sister concern for non-business purposes on interest free or on average interest basis, then the interest payable by the assessee to the financial institutions cannot be held to be used funds for business purposes and no deduction accordingly can be permitted under section 36 (1) (iii) of the act. The learned CIT – A has also held that the assessee has casually claimed that the said funds are used for the business purpose but has not established by the appellant during the assessment proceedings or before the appellate proceedings. He further held that the contention of the assessee that the interest during the

year is lower due to the waiver of interest from two financially stressed entities is contradicting the fact that intercorporate deposits were granted with a view to earn interest income and margin in the entire process. Before the learned CIT – A, no details were submitted to counter the clear-cut findings of the learned assessing officer that there was absence of necessary evidence to show that the amount borrowed was used for the purpose of the business despite adverse comments by the assessing officer. It was further held that the assessee has not submitted any details in respect of loans availed and loans issued and thus failed to establish the genuineness of the transaction. In absence of any new credible evidence placed before him, he held that the onus of proving that the borrowed money has not been utilised for no business purposes was on the assessee which has not been discharged. On the issue of commercial expediency, it was stated that assessee has failed to show any commercial expediency and therefore the view of the learned assessing officer is correct. Accordingly, he confirmed the disallowance.

64. The learned authorised representative specifically referred to the assessment order where the disallowances made. He referred to page number 277 of the paper book which is a summary of intercorporate deposits for financial year 2016 – 17. He further stated that there are two parties namely Essar steel India Ltd and Essar Ltd

to whom the intercorporate deposit is given but no interest is charged. It was stated that looking to the position of the debtor assessee was not able to charge any interest thereon. He referred to page number 191 – 192 of the paper books wherein as per paragraph number B) the interest on loans and advances to group companies was explained. It was stated that company has given an intercorporate deposit to group concern during the business. The source of this intercorporate deposits was mixed i.e. out of internal accruals and out of the intercorporate deposits received. As may be seen from the financial statement, it has in all cases charged interest on intercorporate deposits granted. However, the interest has also been charged at rates higher than the rates at which the source of funds has been borrowed. During the year, the assessee would not charge any interest on loan given to Essar Steel India Ltd and Essar Dredging Ltd because of their financial and operational challenges and the strong likelihood of not receiving those interest. The management of the company in larger interest of recovery of intercorporate deposits decided not to charge the interest for this year as is evident from the financial statement. Then he relied extensively on the submission made by the assessee at page number 1934 of paper book. The learned authorised representative further referred to the paper book page number 307 (page number 314 – 315).

65. The learned authorised representative vehemently submitted that identical issue arose in case of the assessee for assessment year in ITA number 777/M/2022 four assessment year 2016 – 17 wherein the coordinate bench vide order dated 10/10/2022 has dealt with the same issue and the claim of the assessee was allowed.
66. The learned authorised representative further referred to the miscellaneous application number 332/M/2022 in ITA number 777/M/2022 four assessment year 2016 – 17 decided on 6/2/2023 wherein as per paragraph number two the issue of intercorporate deposits and interest disallowance was raised and he further referred to paragraph number eight of that decision to show that now the issue is squarely decided in favour of the assessee. He submits that though in 2016 – 17 the issue on different context but the interest was granted as deduction. Therefore, the issue is covered in favour of the assessee.
67. The learned authorised representative specifically referred that it is not the case of the learned assessing officer that assessee should have earned interest on ICds of Essar oil Ltd and Essar Dredging limited. In earlier years, those intercorporate deposits were carrying on interest. He referred to the decision of the honourable Supreme Court in 220 ITR 185 wherein paragraph number seven in stating that interest year has been disallowed because of the financial position of the debtor

but the amount was borrowed for the purposes of the business.

68. The learned departmental representative vehemently supported the order of the learned lower authorities.

69. We have carefully considered the rival contention and perused the orders of the lower authorities. The issue is of about the disallowance of the interest expenditure on ICD of Rs. 1,581,200,000. The fact shows that assessee has incurred interest expenditure to the tune of Rs. 1009.57 crores and has received interest of Rs. 142 crores as interest income. On ICD with related parties interest expenditure of Rs. 395.04 crores were paid, and interest received was of Rs. 253.50 crores from Essar oil and Rs. 141.54 crores of security deposit against which assessee has received interest of only Rs. 95.38 crores. It is also a fact admitted that though in the corporate deposits have been advanced in the course of the business however no interest has been charged on certain deposits during the year the reason being advanced by the assessee is of 'commercial expediency'. During the course of appellate proceedings, the learned CIT – A has categorically noted that whether the funds borrowed was used for the business purposes, no details were furnished by the assessee. Page number 277 of the paper book filed by the assessee clearly shows that as on the end of 31 March 2016 total outstanding intercorporate deposits were Rs. 2,57,177 lakhs. The

deposits with Essar steel Ltd at the beginning of the year was Rs. 30,552.62 lakhs and from Essar dredging Ltd of Rs. 123,502.78 lakhs. On both these accounts, assessee has not charged any interest. These ICD is assigned on the last day of the financial year and therefore are not outstanding at the end of the year. The only reason advanced by the assessee is that the financial condition of the debtor was not good and therefore assessee did not charge any interest on these deposits. Except submissions made before the lower authorities, no evidence of commercial expediency was submitted before us. However, the decision of the coordinate bench in ITA number 777/M/2022 for assessment year 2016 – 17 dated 10/10/2022 was placed before us and stated that the decision also deals with the issue para number 2 specifically mentioned and subsequently paragraph number 12 – 13 was mentioned. Subsequently the miscellaneous application number 332 in that ITA dated 6/2/2023 was discussed. The miscellaneous application was only with respect to the restoration of the appeal to the assessing officer on that issue in ITA number which was then decided by the coordinate bench and deleted the interest disallowance. However, the learned authorised representative himself submitted that the whole issue is on different context. It is not the case that assessee has huge non-interest-bearing surplus/own funds then the amount advanced to the sister concern on

which no interest is charged. As on 31/3/2017 the total equity of the assessee is only Rs. 67.08 crores. We have also carefully looked that the page number 192 of the paper book wherein a letter dated 17 December 2019 is placed before the learned assessing officer. On careful perusal of the above letter, it was simply statement of Judicial principles without any substantive factual details filed before the AO or the lower authorities. It is also to be seen that the during this year the interest charged by the assessee is Rs 9472.53 crores whereas the interest repaid is also a negative figure (page number 277 of the paper book). It is also to be seen that the outstanding inter corporate deposit of Essar steel India Ltd was Rs 22, 478 lakhs on which outstanding interest was Rs 80. 74 lakhs and in case of another company the outstanding intercorporate deposit was Rs. 1,19,335 Lacs and the outstanding interest was of Rs. 4207 lakhs. Thus, assessee has not used borrowed funds for the purposes of the business but has advanced the same to the sister concern without charging any interest. In view of this we do not find any infirmity in the order of the learned lower authorities in disallowing interest expenditure of Rs. 158.12 crores under section 36 (1) (iii) of the act. In the result ground number 3-5 of the appeal are dismissed.

70. Ground number 6-7 is with respect to the disallowance of interest expenses incurred for the loan used for investment in Ennegaon Limited, Mauritius.
71. The brief fact of the case shows that during the year the assessee has made investment of Rs. 3033.21 crores in the above company. Note number 56 to the annual account also refers of the above investment. The assessee was asked to produce various details with respect to the above company. The assessee submitted that investment of Rs. 3033.21 crores were made in three trenches on 29/6/2019, 29/9/2016 and 29/12/2016. The allotment of the shares took place on 30/9/2016 and 23/2/2017. This subsidiary company was incorporated into 2015 and did not have any business activities before such investment was made. It was the claim of the assessee that the above investment was meant to carry out trading activity, however, no such activities could be carried out because of the prevalent market conditions. In August 2017, these shares of the subsidiary company were brought back from the assessee. Therefore, in this entire process of less than one year the assessee incurred a loss of Rs. 127.93 crores on the transaction. The AO further noted that over and above the above loss, the assessee has also debited finance cost of Rs. 171.57 crores in its books of account as specific finance cost incurred towards investment in a subsidiary. Before the assessing Officer no documents in

relation to the above proposed plan of acquisition of the subsidiary company for the purpose of trading was produced and further the record suggested that no business happened in that company. Therefore, the learned assessing officer reached at a conclusion that assessee has provided that finance, fund movement shows that once the funds landed in its books, there is nothing brought on record to prove that this investment was in relation to the business. Accordingly, he disallowed the sum of Rs. 171,57,00,000 of the interest expenditure.

72. When the issue was challenged before the learned CIT – A assessee submitted an explanation for commercial expediency along with the relevant judicial precedents for allowability of expenses in the hands of the holding company. Assessee submitted that though the intended activity of trading did not fructify however the subsidiary had paid amount equivalent to the equity investment to a potential supplier of motor spirit during the year. The amounts transferred were unsecured and carried interest of 5% per annum up to the date of delivery of supply. The products were initially scheduled to be delivered by the supplier to the subsidiary in the month of December 2016. The contract delivery date was scheduled for deliveries to take place in September 2017 as per contracts entered. Subsequently the transaction did not materialise and hence the subsidiary decided to buy back

the shares in financial year 2017 – 18. Therefore, it was the claim that the amount of interest paid by the assessee on the investment made in a subsidiary company should be allowed as a deduction as there was a business rational for making investment into the subsidiary company. It was also submitted that the sanction letter from ICICI Bank and axis Bank clearly shows that the facilities were granted for making overseas investment after the due diligence by those bankers and end user certificates were obtained from the auditors. The learned CIT – A categorically noted that subsidiary was not carrying out any business, no documents in relation to the proposed plan has been furnished before the AO, no business actually happened in that company and in the process the company incurred a loss of Rs. 171.57 crores on account of interest and Rs. 127.93 crores on loss on sale of shares. Except citing the judicial precedents, no substantive information on facts were produced before the AO. The assessee failed to provide the financial statements of the subsidiary, fund movement in the books of the subsidiary etc. In view of absence of any details from the side of the assessee, the learned CIT (A) held that there is nothing brought on record to clearly prove that this investment was in relation to the business of the assessee. Accordingly, he confirmed the disallowance.

73. Aggrieved, assessee is in appeal before us, the learned authorised representative submitted that memorandum of Association of the assessee company, board note relating to investment in the subsidiary company, audited financial statement of the subsidiary company are produced as additional evidence at page number 629 to 914 of the paper book. He referred to page number 869 of the paper book to show that item number 10 of the agenda was with respect to the new financing facility of US\$ 450 million and use of proceeds for equity infusion into overseas subsidiaries. He submitted that the subsidiary is a Global Business License – 1 company Incorporated in Mauritius for the purpose of carrying out, trading related business. The joint-venture company will have an equity contributed by the assessee and another company in the ratio of 65:35. He further referred to page number 885 onwards which is the annual account of the subsidiary company for the year ended on 31st of March 2017. The assessee further relied upon the decision of the honourable Supreme Court in case of SA Builders [supra] and submitted that if the advance to the subsidiary is for the reasons of business expediency, no disallowance can be made. The learned authorised representative further referred to page number 287 of the paper book wherein a show cause notice dated 18/12/2019 is issued with respect to the investment made in the subsidiary company. He further referred to

page number 195 of the paper book wherein a letter dated 18 December 2019 was placed and the details of investment in subsidiary company was provided. He further referred to page number 188 of the paper book wherein the letter dated 16 December 2019 was placed and it was submitted that for the purpose of making the above investment the company has obtained financial facilities from Axis bank and ICICI bank.

74. The learned departmental representative submitted that no details were submitted by the assessee before the learned assessing officer. Therefore, the addition has rightly been confirmed by disallowing the interest expenditure. He further submitted that if the additional evidence were admitted, the learned assessing officer must get an opportunity to verify the same. He otherwise supported the orders of the learned lower authorities.
75. We have carefully considered the rival contention and perused the orders of the learned lower authorities. The brief fact of the case shows that assessee has made investment in a subsidiary company of Rs. 3033.21 crores in Ennegaon Limited Mauritius consisting of 450 lakhs equity shares of 1 US dollar each. This fact is evident at note number 16 (investments) in the annual accounts wherein two footnotes are also given. One of the footnotes also referred to another note at note number 56 which has already been referred to by us in the earlier grounds. As no other details were submitted

by the assessee except relying on certain judicial precedents and raising plea of commercial expediency, the disallowance was confirmed by the lower authorities.

76. Now before us the assessee has submitted annual accounts of the subsidiary company as well as the borrowings made from bankers for making such investment. These are the additional evidence along with the note of the Board of Directors filed by the assessee before us which we have admitted. Therefore, if the additional evidence is admitted, it needs to be examined by the learned assessing officer first. In view of this we restore this ground of appeal back to the file of the learned assessing officer with a direction to the assessee to substantiate before the learned assessing officer that the interest expenditure incurred by the assessee on investment made in a subsidiary company is allowable as deduction. Merely relying on the judicial precedent bereft of the facts of the case and unsubstantiated shelter business expediency without factually providing business expediency, will not help the case of the assessee. The Id. AO also needs to examine note no 7 of accounts of subsidiary company and whether the assessee has any interest in that transaction or not. The Ld. AO may also examine the sanction letters of the banks on this issues, mere board notes will not suffice the facts of business expediency. The learned assessing officer may examine the details submitted by the assessee and after enquiry

on facts, decide the issue afresh about the allowability of interest expenditure of Rs. 1,715,700,000. It would be the duty of the assessee and the onus to explain before the learned assessing officer that such interest expenditure is deductible. The learned assessing officer may also grant an opportunity of hearing, if requested, before deciding the issue afresh. In view of this ground number 6 – 7 of the appeal is allowed with above direction.

77. Ground number 8 is with respect to non-granting of the tax deduction at source credit of Rs. 229 lakhs. Both the parties agreed that this is an issue of credit of tax deduction at source to the assessee which may be verified by the learned assessing officer. In view of this, we direct the assessee to substantiate its claim of the above credit before the learned assessing officer who may decide the issue after verification on its own merits. Accordingly ground number 8 of the appeal of the assessee is allowed with above direction.

78. Ground number 9 of the appeal is with respect to the claim of the assessee of absence of an approach and opportunity of personal hearing. Before us, this ground of appeal was never argued and no evidence were placed before us, therefore same is dismissed.

ITA No 778/MUM/2022
Nayara Energy Limited
[On behalf of Vadinar Oil Terminal Limited]
V
ACIT Central Circle -2 (1), Mumbai
A Y 2017-18

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

Order pronounced in the open court on 11.09.2024.

Sd/-

Sd/-

(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 11.09.2024

Dragon

Copy of the Order forwarded to:

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

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