

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

सुश्री सुचित्राकम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखासदस्य के समक्ष।

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

आयकर अपील सं./ITA Nos.813/Ahd/2024 & 846/Ahd/2024
निर्धारण वर्ष /Assessment Years : 2006-07 & 2007-08 respectively

Deendayal Port Authority A.O. Building, Tagore Road Post Box No.50 Gandhidham - 370 201 (Gujarat)	<u>बनाम/ v/s.</u>	The DCIT, Circle-2, Exemption Ahmedabad
स्थायी लेखा सं./PAN: AAALK 0046 N		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Tushar Hemani, Sr. Advocate & Shri Parimalsinh B. Parmar, AR	
Revenue by :	Shri V. Nandakumar, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 11/12/2024
घोषणा की तारीख /Date of Pronouncement: 30/12/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

Both these appeals have been filed by the assessee are directed against the separate orders dated 23/02/2024 & 28/02/2024 for the Assessment Years (AYs) 2006-07 and 2007-08 respectively passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) [hereinafter referred to as "CIT(A)"] under section 250 of the

Income Tax Act, 1961 [hereinafter referred to as “the Act”]. Since the issues involved in both appeals are similar and arise from a common set of facts, they are being adjudicated upon by this consolidated order for the sake of convenience and brevity.

Facts in Brief:

2. The assessee, Deendayal Port Authority (formerly Kandla Port Trust), is a statutory authority constituted under the Major Port Trust Act, 1963 and is engaged in the business of port operations.

2.1. The income of the assessee has been held to be exempt under Sections 11 and 12 of the Income Tax Act, 1961, pursuant to orders passed by the Hon'ble ITAT in ITA Nos. 675/Rjt/2014 and 680/Rjt/2014 dated 08.06.2018. The said exemption was also confirmed by the CIT(A) in earlier years, and the Assessing Officer (AO) implemented the exemption in subsequent rectification orders.

3. Despite the settled position, the Assessing Officer (AO) made the following additions/disallowances for the relevant years:

AY 2006-07:

- Disallowance of Rs.3,78,49,201/- towards prior period expenses.
- Addition of Rs.3,98,31,857/- as excess losses disallowed.

AY 2007-08:

- Disallowance of Rs.2,35,00,000/- under Section 36(1)(iv) towards contributions to Pension/Superannuation Fund.
- Disallowance of Rs.8,97,00,000/- under Section 36(1)(v) of the Act towards contributions to Gratuity Fund.
- Addition of Rs.9,66,66,667/- towards upfront premium income.

4. The CIT(A), while partly allowing the appeal of the assessee, dismissed the grounds related to the above additions by treating them as academic, holding that the assessee's income was already exempt under Sections 11 and 12 of the Act.

5. The assessee is aggrieved by the findings of the AO and the CIT(A) and has raised multiple grounds challenging these additions and procedural lapses in the appellate orders. Following are the grounds of appeals:

ITA No. 813/Ahd/2024 - A.Y. 2006-07

1. *The learned CIT(A) has erred both in law and on the facts by dismissing the ground No- 2 & 3 of Appeal related to allowing Prior Period Expenses of Rs. 3,78,49,201 in spite of quoting following facts in his order:*

"It is seen that the order u/s 143(3) r.w. 147 has been passed on 14/03/2014, subsequently Hon'ble ITAT vide order dated 08.06.2018 confirmed the stand of Ld. CIT(A) that the appellant is eligible for exemption u/s 11 to 13 and in the order giving effect to ITAT order dated 07/05/2019, the entire income of the assessee trust is eligible for exemption u/s 11 & 12. In other words, the entire income of the appellant trust is exempt, subject to the provisions of section 11 & 12. It is seen that the issue of prior period expenditure or income thus has become academic and would not affect the outcome of exemption u/s 11.

2. *The learned CIT(A) has erred both in law and on the facts by directing to AO to verify/determine the exact losses and issue a speaking order and after giving due*

opportunity of hearing to the assessee, determine the exact loss to be set off in spite of decision of Hon'ble ITAT to assess the income of Appellant u/s 11-13 of the Act at Rs. NIL from AY 2004-05 to 2008-09.

3. *The Ld. CIT(A) has not provided link of Virtual Hearing as requested from your appellant from time to time which has been confirmed by Income Tax Department vide DIN / Letter No: [SEP]ITBA/NFAC/S/17/2023-24/1058958521(1) dated 21.12.2023.*
4. *The learned CIT(A) has erred in law and on the facts of the case in confirming action of the Id. AO in levying interest u/s. 234A/B/C of the Act.*
5. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

ITA No. 846/Ahd/2024 - A.Y. 2007-08

1. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO regarding addition made amounting to Rs. 2,35,00,000/- into Pension / superannuation fund u/s 36(i)(iv) of the Act and Rs. 8,97,00,000/- to Gratuity Fund u/s 36(i)(v) in spite of decision of Hon'ble ITAT to assess the income of Appellant u/s 11-13 of the Act at Rs. NIL from AY 2004-05 to 2008-09.*
2. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of making addition of Rs. 9,66,66,667/- in respect of upfront premium being the income of Appellant is exempted u/s 11-13 of the Act.*
3. *The Ld. CIT(A) has not provided link of Virtual Hearing as requested from your appellant from time to time which has been confirmed by Income Tax Department vide DIN / Letter No: ITBA/NFAC/S/17/2023-24/1058958521(1) dated 21.12.2023.*
4. *The learned CIT(A) has erred in law and on the facts of the case in confirming action of the Id. AO in levying interest u/s. 234A/B/C of the Act.*
5. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the id. AO in initiating penalty u/s. 271(1)(c) of the Act.*
6. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

6. The learned AR vehemently argued that the additions/disallowances made by the AO and confirmed by the CIT(A) were contrary to law and facts, particularly in light of the fact that the co-ordinate bench in assessee's own case (being Kandla Port Trust) for earlier years in ITA No. 677/RJT/2014 dated 08-06-2018 had categorically held that the assessee's income is exempt under Sections 11 and 12. As the entire income is exempt, the disallowance of prior period expenses amounting to Rs.3,78,49,200/- for the A.Y. 2006-07 is not correct.

6.1. On merits regarding Contributions to Pension and Gratuity Funds for AY 2007-08 it was submitted that the contributions were based on actuarial valuations by LIC, which are binding and conclusive. The AR also cited judicial precedents, including **CIT v. Glaxo Smithkline Pharmaceuticals [ITA 2232 of 2011 (Bom.)]**, to substantiate the claim. Regarding the upfront Premium for AY 2007-08 the AR argued that the lease premium should be spread over the lease term of 30 years and not taxed entirely in the year of receipt. Reliance was placed on **CIT v. Unique Mercantile Services Pvt. Ltd. (Gujarat HC) reported at (2015) 56 taxmann.com 429**. The AR pointed out that the CIT(A) failed to provide a link for virtual hearings, thereby violating the principles of natural justice. The AR submitted that since the assessee's income is exempt, the levy of interest under Sections 234A, 234B, and 234C of the Act, as well as the initiation of penalty under Section 271(1)(c) of the Act, was unsustainable.

7. The learned DR fairly conceded that the issue of exemption under Sections 11 and 12 of the Act is covered by the decisions of the Hon'ble ITAT in the assessee's own case for earlier years.

8. We have carefully considered the rival submissions, perused the materials on record, and examined the orders passed by the authorities below. The issues raised in these appeals primarily pertain to the disallowance of prior period expenses, contributions to pension and gratuity funds, and the treatment of upfront lease premium. Additionally, procedural grievances regarding virtual hearings and the consequential levy of interest and penalty have also been raised. In light of the factual matrix, settled judicial precedents, and the Departmental Representative's fair concession regarding the exemption under Sections 11 and 12 of the Act, we proceed to adjudicate the issues.

8.1. In case of A.Y. 2006-07, the AO disallowed Rs.3,78,49,201/- on account of prior period expenses. The CIT(A) upheld the disallowance, stating that the assessee had failed to justify the crystallization of such expenses.

8.2. The Co-ordinate Bench, in earlier orders (ITA Nos. 675/Rjt/2014 and 680/Rjt/2014 dated 08.06.2018), has consistently held that the assessee's income is exempt under Sections 11 and 12 of the Act. The AO, vide order dated 07.05.2019, gave effect to this decision and assessed the income at NIL. Since the entire income is exempt, the disallowance of prior period expenses becomes infructuous. Accordingly, the disallowance of Rs.3,78,49,201/- is deleted.

8.3. In case of A.Y. 2007-08, the AO disallowed contributions to the Pension/Superannuation Fund (Rs.2,35,00,000/-) and Gratuity Fund (Rs.8,97,00,000/-), treating them as excessive. The assessee has submitted

actuarial valuation reports from LIC justifying the contributions. Legal precedents, including **CIT v. Glaxo Smithkline Pharmaceuticals (supra)**, support that contributions backed by actuarial valuations cannot be disallowed. Moreover, as the entire income of the assessee is exempt under Sections 11 and 12 of the Act, the disallowance is not tenable. Accordingly, the disallowances are deleted.

8.4. In the A.Y. 2007-08, the AO added the upfront lease premium of Rs.9,66,66,667/- to the taxable income. The CIT(A) upheld this addition. The lease premium pertains to a 30-year lease and should be spread over the lease period. Reliance is placed on the decision in the case of **CIT v. Unique Mercantile Services Pvt. Ltd. (2015) 56 taxmann.com 429 (Gujarat)**. As the entire income of the assessee is exempt under Sections 11 and 12 of the Act, the addition is unwarranted. Accordingly, the addition is deleted.

8.5. The failure to provide a link for virtual hearings constitutes a procedural lapse and violates principles of natural justice. However, as the issues have been decided on merit, this defect does not impact the outcome. The levy of interest is consequential in nature and arises only when taxable income is determined. Since the income of the assessee is exempt, the levy of interest is not sustainable and is deleted. As the additions have been deleted, the initiation of penalty proceedings is unsustainable and is quashed.

8.6. After considering the facts, submissions of the parties, and the applicable legal principles, it is evident that the additions and disallowances made by the AO and confirmed by the CIT(A) are not sustainable, particularly in view of the settled position regarding the assessee's

entitlement to exemption under Sections 11 and 12 of the Act. Consequently, all additions, disallowances, and consequential levies are deleted, and the grounds of appeals in AYs 2006-07 & 2007-08 filed by the assessee are allowed.

9. In the result, both the appeals of the assessee are allowed.

Order pronounced in the Open Court on 30th December, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

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

अहमदाबाद/Ahmedabad, दिनांक/Dated 30/12/2024

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

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आदेशानुसार/ BY ORDER,

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