

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 410/AHD/2017
निर्धारण वर्ष/Asstt. Year:2005-2006

Gujarat Nippon Enterprises Pvt. Ltd., (Formerly known as Gujarat Nippon Bimetals Pvt. Ltd.) 404, Soham-2, Near Navrang School Six Roads, Navrangpura, Ahmedabad. PAN: AABCG3516H	Vs.	I.T.O., Ward-2(1)(1), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Manish Shah, A.R
Revenue by :	Shri R.R. Makwana, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **29/11/2021**
घोषणा की तारीख /**Date of Pronouncement**: **01/02/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

1. The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-2, Ahmedabad, dated 26/12/2016 arising in the matter of assessment order passed under s. 143(3) r.w.s. 254 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2005-2006.

2. The assessee has raised following grounds of appeal:

1. The C.I.T.(Appeals) erred in law and on facts in confirming the disallowance of Rs.11,10,427/- u/s.36(1)(ii) of the I.T. Act, 1961 without appreciating the facts of the case properly.

The appellant reserves its right to add, amend, alter or modify any of the grounds stated hereinabove either before or at the time of hearing.

3. The only issue raised by the assessee is that the Ld. CIT(A) erred in confirming the order of the AO by sustaining the disallowance of interest expenses of Rs. 11,10,427/- under the provision of section 36(1)(iii) of the Act.

4. Briefly stated facts are that the assessee in the present case is a private limited company and engaged in the business of trading as well as indenting agents and providing consultancy services. The AO during the assessment proceedings found that the assessee on one hand has incurred interest expenses on the borrowed fund and on the other hand it has given loans to certain parties without interest. Thus the AO was of the view that the borrowed funds has been diverted for interest free advances. Accordingly the AO worked out the amount of interest for Rs. 11,10,427/- out of the total interest expenses of Rs. 14,57,943/- attributable to such interest free advances and disallowed the same by adding to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the Ld. CIT(A) who found that the assessee has made the investment by acquiring the shares of different companies out of the borrowed funds. As per the Ld. CIT(A) such investment was capable of generating the dividend income which is free from tax. Accordingly, he was of the view that such amount of interest cannot be allowed as deduction u/s 36(I)(iii) of the Act, rather the disallowance needs to be made under the provision of section 14A of the Act. Thus the Ld. CIT(A), dismissed the appeal filed by the assessee.

6. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

7. The Ld. AR before us filed the paper book running from pages 1 to 91 and contended that the shares were acquired by the assessee in 5 companies to have the controlling interest in these companies. Thus the investment was made for the strategic purpose and therefore there cannot be any disallowance of interest.

7.1 The Ld. AR further submitted that the companies in which the investment was made were amalgamated with the assessee by the Order of the Hon'ble Gujarat High Court which is placed at pages 36 to 54 of the paper book.

8. On the other hand the Ld. DR contended that at the time when assessee has acquired the shares, these companies were not the subsidiary companies to the assessee and there was no information on record that whether the investment was made by the assessee to acquire the controlling interest. The Ld. DR vehemently supported the order of the authorities below.

9. In the re-joinder the Id. AR contended that it was submitted by the assessee during the assessment proceedings that the investment was made for the strategic purpose.

10. We have heard the rival contention of both the parties and perused the materials available on record. Admittedly, the borrowed fund has been invested by the assessee by acquiring the shares of 5 different companies which are capable of generating only dividend income which is exempt from the tax.

10.1 The question that requires to be adjudicated whether the investment was made by the assessee to have controlling interest in the companies. In this regard

we find that the assessee during the assessment proceedings vide letter dated 04/12/2007 before the AO contended as under:

Regarding loans granted by the assessee, the assessee company has given advances to five tooth brush companies as a business strategy to have controlling stake in their business and so that interest has not been charged on the same.

10.2 The above submission of the assessee has actually been translated in reality which is evident from the order of the Hon'ble Gujarat High Court. All the aforesaid companies were amalgamated with the assessee. The relevant extract of the judgment of Hon'ble Gujarat High Court is placed on pages 36 to 54 of the PB.

10.3 We note that the Hon'ble Bombay in the case of PCIT v/s E-City Investment and Holdings Company (P.) Ltd. reported in 117 taxmann.com 123 has held as under:

'2. Respondent-assessee is a private limited company and is engaged in the business of financing. During the scrutiny assessment of the assessee's return for the assessment year 2008-09. Assessing Officer noticed that the assessee had claimed expenditure of interest paid on borrowed funds. The assessee had also funded its sister concern without charging interest. The Assessing Officer therefore disallowed the interest expenditure. The issue eventually reached the Tribunal. The Tribunal by the impugned judgment held in favour of the assessee. The Tribunal referred to and relied upon the decision of the Supreme Court in case of S.A. Builders Ltd. v.CIT [228 ITR 1 \(SC\)](#) and concluded as under: —

"If the aforesaid ratio laid down by Hon'ble Apex Court is analyzed by keeping the same in juxtaposition with the facts of the present appeal, firstly, we find that there is no finding by the Assessing Officer that the funds were not utilized for business purposes and secondly, we note that advancing loan to the sister-concern was for the purposes of "Commercial Expediency", thus, we find merit in the contention of the Id. Counsel for the assessee. So far as, the issue of commercial expediency is concerned, the decision has to be taken by the assessee and the Assessing Officer is not expected to sit in the chair of the assessee and to decide the business interest. The assessee is to watch its business interest well. Once it is established that there was nexus between the expenditure and purpose of the business (which need not necessarily be the business of the assessee itself) the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize his profits."

10.4 We also note that the SLP filed against the above observation of Hon'ble Bombay High court has been dismissed by the Hon'ble Supreme Court in case of PCIT v/s E-City Investment and Holdings Company (P.) Ltd. reported in 117 taxmann.com 124

10.5 We also draw support and guidance from the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Phil Corpn. Ltd. reported in 14 taxmann.com 58 has held as under:

The reasoning of the Tribunal that the overdraft was not operated only for investing in the shares of subsidiary company and the fact that it was also used for investment in the shares of the sister/subsidiary company to have control over that company and, therefore, the element of interest paid on the overdraft was not susceptible of bifurcation and, therefore, the assessee was entitled to the deduction under section 36(1)(iii). [Para 11]

Thus, the Tribunal was right in deleting the addition of Rs. 19,73,333. [Para 12]

10.6 In view of the above, we note that the investments was made by the assessee in the companies in order to have controlling stake which is considered as for the purpose of the business. Therefore, there cannot be any disallowance of interest expenses. The facts of the present case are identical to the facts of the case as discussed above. Accordingly, we set aside the findings of the Ld. CIT(A) and direct the AO to delete the addition made by him. Hence the ground of the appeal of the assessee is allowed.

11. In the result, the appeal filed by the assessee is **allowed**.

Order pronounced in the Court on 01/02/2022 at Ahmedabad.

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

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

**(True Copy)
01/02/2022**