

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.219/Ahd/2023
(Assessment Year: 2019-20)

Adani Power Ltd., (Formerly known as Adani Power Rajasthan Ltd.), Adani Corporate House, Shantigram, Nr. Vaishno Devi Circle, S. G. Highway, Khodiyar B.O., Khodiyar, Ahmedabad-382421	Vs.	Assessing Officer, CPC, Bangalore (present jurisdiction Deputy Commissioner of Income Tax, Circle-1(1)(1), Ahmedabad
[PAN No.AAGCA9379P]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Biren Shah A.R.
Respondent by:	Shri M. Anand Kumar, Sr. D.R.

Date of Hearing	12.09.2023
Date of Pronouncement	19.09.2023

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi in DIN & Order No. ITBA/NFAC/S/250/2022-23/1049504333(1) vide order dated 07.02.2023 passed for Assessment Year 2019-20.

2. The assessee has taken the following grounds of appeal:-

“1. In law and in the facts and circumstance of the appellant’s case, the learned CIT(A) erred in confirming adjustment u/s 43B amounting to Rs.1,75,59,741/- when no such adjustment is required to be made.

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2. *In law and in the facts and circumstances of the appellant’s case, the learned CIT(A) erred in confirming disallowance u/s 43B amounting to Rs. 1,75,59,741/- on mistaken belief and without appreciating the arguments and details submitted by the appellant.*

3. *In law and in the facts and circumstances of the appellant’s case, the learned CIT(A) ought to have appreciated that claim in current year was made on payment basis and amount was already disallowed in earlier year.*

4. *The appellant craves leave to add, alter or amend and/pr withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.”*

3. The brief facts of the assessee’s case are that the assessee filed its return of income declaring total income of Rs. 71.64 crores. The Department issued notice under Section 143(1) of the Act, in which certain adjustments were made. In appeal, Ld. CIT(Appeals) deleted all adjustments except adjustment made under Section 43B of the Act amounting to Rs. 1,75,59,741/-. The Ld. CIT(Appeals), made the following observations, while confirming the disallowance:

“6.4 Clause 26 of the Tax Audit Report is reproduced as under:-

26(i)* *In respect of any sum referred to in clause (a), (b), (c), (d), (e), (f) or (g) of section 43B, the liability for which:-*

26 (i)A *Pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was:-*

26(i)(A)(a) *Paid during the previous year*

S.No.	Section	Nature of liability	Amount
1	Sec 43B(a)- Tax,Duty,Cess,Fee etc	RAJASTHAN ELECTRICITY REGULATOR	20000
2	Sec 43(b)(g)- Indian railways for use of railway assets	Bonus	17559741

6.5 Section 43B(g) mentions about any sum payable by the assessee to the Indian Railways for the use of railways assets. Section 43B(b) mentions about any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees. The appellant in its response before the AO has filed following clarification:

“The assessee company has actually paid or reversed the bonus payable to the employees of Rs.1,75,59,741/-. The said bonus has been disallowed in earlier year and claimed a deduction in current on payment basis as per section 43B of the I.T.Act. However, tax auditor inadvertently reported the same in 43B(g) instead of 43D(c) in clause 26(i)(A)(a) of the Tax Audit Report. In view of the same, we humbly submit that we have rightly claimed bonus paid in return of income.”

6.6 *The claim of the assessee was examined. It is found that the appellant has not filed any revised tax audit report rectifying the mistake. The Auditor has not certified that Bonus liability of earlier year has been paid during the current year. Hence, the AO is justified in not allowing bonus payment claimed to have been paid out of liability created in earlier year. **Further, there was no pre-existing liability payable to the Indian Railway or the use of railway assets, it is found that AO has correctly disallowed Rs.1,75,59,41/- claimed u/s.43B(g) and the disallowance is upheld. The relevant grounds of appeal are dismissed.”***

4. Before us, the counsel for the assessee submitted that the assessee has claimed Rs. 1,75,59,741/- under Section 43B of the Act as the same has been paid during the year under consideration and has been disallowed by the assessee in preceding previous years.

5. Before us, the assessee submitted that in the return of income, the assessee has claimed deduction of preceding years amounting to Rs. 1,75,59,741/- pertaining to bonus under Section 43B of the Act, as the same was actually paid during the previous year under consideration. Further, such claim is duly certified by the tax auditor in the Tax Audit Report. Further, screenshot of relevant part of Tax Audit Report was also produced before us for reference, wherein the aforesaid amount of Rs. 1,75,59,741/- has been

certified by the tax auditors. Further, the Counsel for the assessee submitted that the assessee has also claimed the same amount by filing the return of income. Accordingly, it was submitted before us that there is no inconsistency in amount reported in the tax audit report and the amount claimed by the assessee in its return of income. Accordingly, it was submitted that the reason provided by the Assessing Officer-CPC while making disallowances is incorrect and the assessee is entitled to deduction of Rs. 1,75,59,741/- under Section 43B of the Act.

6. In response, the Ld. DR relied on the observations made by Ld. CIT(Appeals) in the appellate order.

7. We have heard the rival contentions and perused the material on record. On going to the facts placed before us, we observe that the tax auditor in their Tax Audit Report has specifically pointed out that sum of Rs. 1,75,59,741/- pertains to claim of bonus under Section 43B of the Act, and that the said liability pre-existed on the first day of the previous year and that the same was actually paid by the assessee during the previous year under consideration. Accordingly, it is seen that the tax auditor himself has certified that amount of Rs. 1,75,59,741/- under Section 43B of the Act as pre-existing liability which was paid by the assessee in the previous year (refer Clause 26(i)(A)(a) of the Tax Audit Report) and the assessee has also claimed the above amount while filing the return of income. Further, it has also had not been disputed that the aforesaid amount has been allowed by the Department in any of the earlier previous years. While filing the return of income, we observe that the assessee has given correct disclosure in the tax return. Further, the assessee also produced before us Clause 26(i)(B)(b) of the Tax Audit Report for Assessment Year 2018-19 i.e. the immediately preceding assessment year, wherein it has

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been mentioned by the tax auditor that the amount of bonus amounting to Rs. 1,75,59,741/- has not been paid before the due date and hence disallowed under Section 43B of the Act. Further, it is observed that the aforesaid amount of Rs. 1,75,59,741/- was disallowed in the return of income filed by the assessee for Assessment Year 2018-19 and hence was not claimed by the assessee in the immediately previous assessment year. Accordingly, looking into the facts of the instant case, this ground of the assessee's appeal is allowed.

8. In the result, the assessee's appeal is allowed.

This Order pronounced in Open Court on	19/09/2023
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 19/09/2023

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रहित/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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad