

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 574 of 2016**

=====

PRINCIPAL COMMISSIONER OF INCOME TAX-I....Appellant(s)

Versus

ADANI ENTERPRISES LTD,....Opponent(s)

=====

Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

MR B S SOPARKAR, CAVEATOR for the Opponent(s) No. 1

=====

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 03/08/2016

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Revenue is in appeal against the judgement of the Income Tax Appellant Tribunal raising following questions for our consideration:

“[A] Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in confirming the Id. CIT(A)'s decision to delete the addition of Rs. 3,65,96,000/- made by the AO on account of Transfer Pricing upward adjustment?

[B] Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in confirming the CIT(a)'s decision in restricting the disallowance against Rs. 8,13,62,928/- made by the AO?”

2. Question A pertains to deletion of addition of Rs. 3.65 crores made by the Assessing Officer on account of transfer pricing upward adjustment. The Assessing Officer made such addition on the report of the TPO, who noted that, during the year under consideration the assessee's Associated Enterprise ['AE' for short] i.e. M/s. Adani Global Pvtl Ltd., Singapore had raised a term loan of Rs. 731.92 crores from ICICI Bank Ltd., for which, the assessee had provided guarantee. Such guarantee came in form of pledging shareholding of Mundra Port and SEZ Limited owned by the assessee-company. It was noticed that this guarantee was provided for charging any guarantee fees. The assessee was, therefore, put to notice why arm's length guarantee fees should not be computed in relation to this transaction. In response to the notice, the assessee contended that the assessee-company deed intend to provide a guarantee by pledging its shares. However, before the same could be done, permission of Reserve Bank of India ['RBI' for short] was required to be obtained. RBI did not grant such approval and that therefore, the assessee never gave such guarantee.
3. The TPO, however, discarded such version of the assessee observing that low rate of interest was negotiated on the premise of such guarantee. May be that the RBI may have turned down the request for approval for pledging of shares but “AE and the bank may have proceeded further on the basis of

above pledge of shares.” The other ground pressed by the TPO was that the letter of RBI dated 21.02.2007, on which, the assessee had relied, was regarding pledging of shares in favour of M/s. IDBI Trusteeship Services Limited and not concerning ICICI Bank Limited. This letter may, therefore, have reference to some other transaction.

4. The assessee carried the matter in appeal before the Commissioner. The appellate Commissioner reversed the decision of the Assessing Officer observing that IDBI Trusteeship Ltd is security trustee of ICICI Bank Limited, Singapore and thus, RBI's letter refusing permission for pledge of the shares refers to the same transaction. Since the assessee did not provide guarantee service by pledging the shares, upward adjustment of guarantee commission could not be made.
5. The Revenue carried the matter in appeal before the Tribunal. The Tribunal confirmed the decision of the CIT (Appeals) observing that there is no evidence to the contrary coming forth on record. The assessee not having furnished the guarantee to the AE, there was no international transaction within the meaning of Section 92(C) of the Income Tax Act, the adjustment could not have been made.
6. Having heard learned counsel for the parties, we find that the CIT(Appeals) as well as the Tribunal held from materials on record that the assessee was correct in pointing out that though

at one stage, the assessee had intended to pledge its shares for guarantee in favour of an AE, however, such transaction did not go through since the RBI permission, which was needed, was not granted. The TPO ventured in the realm of conjectures when he recorded that despite this refusal, the assessee may have gone through with the pledging of shares, but there is nothing on the record to suggest that despite refusal from RBI, assessee pledged the shares. The CIT (Appeals) as well as the Tribunal found that the RBI's letter, placed on record, concerns the same transaction. On both counts thus, there was evidence suggesting that the transaction of assessee pledging its shares fell through for want of RBI permission, no question of law arises.

7. Question B pertains to disallowance under Section 14A of the Act for interest for earning tax free income. In this respect, the Tribunal noted that the assessee had sufficient interest free funds for investing into tax free investments. The Tribunal, therefore, accepted assessee's version that interest free funds were not diverted for such investment. The Tribunal placed reliance on decision of this Court in case of **Commissioner of Income Tax vs. Torrent Power Ltd.** reported in **363 ITR 474**. In view of such facts, we do not find any question of law arises.

8. Tax appeal is, therefore, dismissed.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

Jyoti

