

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 1249 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI

and

HONOURABLE MR.JUSTICE G.R.UDHWANI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

COMMISIONER OF INCOME TAX I....Appellant(s)

Versus

ALEMBIC LIMITED....Opponent(s)

Appearance:

MR KM PARIKH, SENIOR STANDING COUNSEL for the Appellant(s) No. 1
 MR B S SOPARKAR, ADVOCATE for the Opponent(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
 and

HONOURABLE MR.JUSTICE G.R.UDHWANI**Date : 20/07/2016****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE KS JHAVERI)**

By way of this appeal under section 260A of the Income-tax Act, 1961, the appellant-revenue has challenged the order of the Income-tax Appellate Tribunal (hereinafter referred to as "the Tribunal") whereby the Tribunal has partly allowed the appeal of the revenue.

2. While admitting the appeal, this court has framed the following substantial questions of law:

- "(i) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in upholding the decision of CIT(A) that deduction u/s. 80-IA(4) is allowable to the assessee for generation of power for captive consumption?
- (ii) Whether the Tribunal was right in law in allowing the assessee's claim of deduction of rs. 1954 crores u/s 80-IA(4) of the I.T. Act, 1961, when the assessee had adopted rate of power generation at Rs. 4.73 per unit, rate on which the GEB supplied power to its consumers, ignoring the rate of Rs. 2.36 per unit, the rate on which power generating company supplied its power to GEB?
- (iii) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that adjustment made on account of

disallowance u/s 14A of the Act in computation of book profit u/s 115JB of the Act is not as per law without appreciating that the amount disallowable under section 14A is covered under clause (f) of Explanation to section 115JB(2) and, thus, said amount has to be added back while computing amount of book profits?

(iv) Whether that ITAT was justified in law in not following the decision of its own division bench on this issue in the case of Gujarat State Fertilizers and Chemicals Ltd., in ITA No. 3864/Ahd/2008 dated 13.7.2012, which was also confirmed by the Hon'ble Gujarat High Court vide order dated 25.6.2013 in Tax Appeal No. 126 of 2013?"

3. The facts of the case are the assessee filed its original return of income on 30.10.2007 which was revised on 3.2.2009. Thereafter, the Assessing Officer completed assessment under section 143(3) of the Income-tax Act, 1961, on 24.4.2009. While making assessment, the Assessing Officer made certain disallowances. Being aggrieved, the assessee preferred appeal before the Commissioner of Income-tax (Appeals) who allowed the appeal filed by the assessee. Against the order of the Commissioner (Appeals), the revenue preferred appeal before the Tribunal. The Tribunal passed the order as aforesaid.

4. Learned counsel for the revenue Mr. Parikh has contended that the Tribunal has committed serious error in allowing the claim of the assessee. He has further contended that the decision of the Tribunal in allowing the claim of the

assessee being without considering the material on record is bad in law and requires to be interfered with.

5. Learned counsel for the assessee Mr. Soparkar has supported the order of the Tribunal and contended that the Tribunal has rightly allowed the claim of the assessee and therefore, no interference is call for with the order of the Tribunal.

6. We have heard learned counsel for the parties. We have perused the order of the Tribunal. So far as issue Nos. (i) and (ii) are concerned, for the detailed reasons given in Tax Appeal No. 471 of 2009 in ground (C) and (D) where after considering the decisions of the Madras High Court in the case of **Tamilnadu Petro Products Ltd. v. Assistant Commissioner of Income-tax** reported in 338 ITR 643 and **Commissioner of Income-tax v. Cethar Ltd.**, reported in 228 Taxman 139 (Madras) (Mag.) and other decisions cited by learned counsel for the assessee, we have held the issues in favour of the assessee, the issues in the present appeal require to be answered in favour of the assessee and against the revenue. In that view of the matter, we answer the issue Nos. (i) and (ii) in favour of the assessee and against the revenue.

7. So far as issue Nos. (iii) and (iv) are concerned, the learned counsel for the assessee has relied on the decision of this court in the case of **Commissioner of Income-tax-I v. Gujarat State Fertilizers & Chemicals Ltd.**, reported in (2013) 358 ITR 323 (Gujarat) where this court has held in paragraph Nos. 6 to 6.5 this court has observed as under:

"6. So far as the fourth question is concerned, it pertains to addition of Rs.1,14,43,040/- under Section 115JB of the Act being the expenditure estimated on earning of dividend income under Section 14A of the Act.

6.1 The Assessing Officer on referring to the said provision of Section 115JB(2) of the Act added the said amount considering that any amount of expenditure relatable to the income exempted under Section 10 of the Act shall need to be added in the profit shown in the 'Profit and Loss Account'.

6.2 When the matter travelled to the CIT (Appeals), since it deleted the addition of Rs.1,14,43,040/- while deciding the question No.1, it consequently deleted such addition under Section 115JB of the Act on the ground that this would not serve any purpose.

6.3 The Tribunal decided the said issue as follows :

"94. We have considered the rival submissions and we find that similar issue was raised by Revenue as per ground No.3 above in respect of regular assessment of income and while deciding that ground, we have already upheld that disallowance of Rs.5 lakh in respect of administrative expenses will meet the ends of justice and no disallowance is called for in respect of interest expenditure. Hence, for the purpose of computing book profit u/s 115 JB of the Act also, we hold accordingly and confirm the

addition of Rs.5 lakh. This ground of Revenue's appeal is partly allowed."

6.4 As rightly held by both, the CIT (Appeals) and the Tribunal, this issue has a direct correlation with the first question. It was argued by the Revenue that while computing the book profit under Section 115JB of the Act, the disallowance of interest expenditure on exempt income was wrongly negated by both the authorities on the ground that it was not the liability for expenses, but a liability relating to assets.

6.5 We find no fault in the approach adopted by both the authorities. The addition under Section 115JB of the Act of a sum of Rs.1,14,43,040/- when was made as an expenditure estimated on earning of dividend income under Section 14A of the Act, without reiterating the rationale of confirming deletion of such amount as has been elaborately done at the time of deciding question No.1, this deletion requires to be confirmed."

8. Taking into consideration the evidence on record and considering the decision of this court in the case of Commissioner of Income-tax-I vs. Gujarat State Fertilizers & Chemicals Ltd. (supra), we are of the opinion that issue Nos. (iii) and (iv) required to be answered in favour of the assessee and against the revenue. In that view of the matter, we answer questions (iii) and (iv) referred to us in favour of the assessee and against the revenue. The appeal of revenue is dismissed.

(K.S.JHAVERI, J.)

(G.R.UDHWANI, J.)

(pkn)



**THE HIGH COURT
OF GUJARAT**

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