

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## TAX APPEAL NO. 900 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH

sd/-

and

HONOURABLE MR.JUSTICE B.N. KARIA

sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

PRINCIPAL COMMISSIONER OF INCOME TAX-1....Appellant(s)

Versus

ADANI GAS LTD....Opponent(s)

Appearance:

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

MR. S.N. SOPARKAR LD. SR. ADV WITH MR B S SOPARKAR, ADVOCATE for the Opponent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE M.R. SHAH

and

HONOURABLE MR.JUSTICE B.N. KARIA

Date : 11/01/2017

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1.0. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by learned Income Tax Appellate Tribunal, Ahmedabad "C" Bench, Ahmedabad dated 18.01.2016 passed in ITA No. 2516/AHD/2011 for AY 2008-09, the Revenue has preferred present Tax Appeal with the following proposed question of law.

*“A. Whether the Appellate Tribunal has erred in law and in facts in deleting the disallowance of Rs. 10,28,028/- being the preliminary expenditure under Section 35 D of the Act ?*

*B. Whether the Appellate Tribunal has erred in facts and circumstances in directing the AO to set off prior period expenditure of Rs. 15,25,746/- without considering the merit of the issue? “*

2.0. Heard Ms. Mauna Bhatt, learned counsel for the Revenue and Shri S.N. Soparkar, learned Senior Advocate for the assessee.

3.0. So far as proposed question no.A is concerned, it is with respect to deletion of disallowance of Rs. 10,28,028/- being preliminary expenditure under Section 35 D of the Act. The learned Tribunal has dealt with the same in para 4 and considering the fact that the very expenditure stand accepted in the preceding assessment year and therefore, thereafter it will not be open for the department in the subsequent year to disallow the preliminary expenditure under Section 35 D of the Act, the learned Tribunal has deleted the disallowance of Rs. 10,28,028/- being preliminary expenditure under Section 35 D of the Income Tax Act. It is not in dispute that in the preceding assessment year, very expenditure stand accepted. The issue is squarely covered against the revenue in light of the decision of the Hon'ble Supreme Court in the case of Shasun Chemicals & Drugs Ltd vs. Commissioner of Income Tax- II, Chennai reported in (2016) 243 Taxman 47/73 taxman.com 293(SC). In the said decision also, the issue was with respect to claim under Section 35 D of the Act and it was found that expenses claimed by the assessee for first two assessments years were allowed by the Assessing Officer, the Assessing Officer in the subsequent assessment year could not have disallowed the same. Under the circumstances, no error has been committed by the learned Tribunal in deleting the disallowance of preliminary expenditure under Section 35 D

of the Act. We are in complete agreement with the view taken by the learned Tribunal. Under the circumstances, question No.1 A is answered against the revenue and in favour of assessee.

4.0. Now, so far as question no.B is concerned, the learned Tribunal has accepted the alternative submission on behalf of the assessee and has directed the Assessing Officer to set off prior period of expenditure of Rs. 15,25,746/-. The relevant discussion by the learned Tribunal are in para 6, which reads as under

*“6. We have heard both the parties. There is no dispute about genuineness of the claim comprising of crane hiring charges, retainership fee, O & M expenditure, property tax, repair and maintenance, rent, printing and stationery, waiver of MGO penalty, bank interest subsidy and property tax; all forming gross sum of Rs. 15,25,764/- in question relating to assessment year 2006-07. Its arguments throughout claim that the relevant previous year is the year of crystallization. There is no evidence of such crystallization forthcoming from the case file. Both the lower authorities hold accordingly that the assessee has failed in proving crystallization of the impugned expenditure. Therefore, we do not find any merit in this crystallization plea based in the course of arguments before us. The second substantive ground fails.*

*At this stage, the assessee raises an alternative argument that it is entitled to set off prior period income Rs. 7,55,575/- against the above stated prior period expenditure. The relevant grounds pleaded are third and fourth before us. Its case is that when the department had taxed its prior period income, it is entitled for set off of the same. We find that the Hon'ble Delhi High Court in the case of CIT vs. Exxon Mobil Lubricant Pvt Ltd (2010) 8 Taxmann. Com 249 (Delhi) holds that if an assessee has shown prior period income and the Assessing Officer has not excluded it while working out current year taxable income, there is no reason to disallow only one part of the prior period adjustment i.e. the prior period expenditure. The Revenue fails in rebutting this proposition. We accordingly accept this alternative contention and direct the Assessing Officer to set off assessee's prior period*

*expenditure and income as per law. He shall pass an consequential order accordingly. The assessee's third and fourth substantive grounds are accepted for statistical purposes.”*

5.0. The aforesaid issue is also as such concluded by the decision of the Division Bench of this Court in the case of Associate Company of the very assessee i.e. in the case of Principal Commissioner of Income Tax-1 vs. Adani Enterprises Ltd in Tax Appeal No. 566 of 2016. Even the said issue is also directly covered by the decision of the Delhi High Court in the case of CIT vs. Exxon Mobil Lubricant Pvt Ltd reorted in 328 ITR 17. No error has been committed by the learned Tribunal in accepting the alternative plea and directing the AO to set off prior period of expenditure of Rs. 15,25,746/-. The learned Tribunal has directed the Assessing Officer to set off assessee's prior period of expenditure and income as per the law. Therefore, necessary consequence shall follow. Under the circumstances, we see no reason to interfere with the impugned judgment and order passed by the learned Tribunal. Question B is also held against the revenue and in favour of assessee. No substantial question of law arise in the present appeal. Hence, present appeal deserves to be dismissed and is accordingly dismissed.

sd/-

(M.R. SHAH, J.)

sd/-

(B.N. KARIA, J.)

Kaushik