

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO. 792 of 2009****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Approved for Reporting	Yes	No

**SUPER INDUSTRIES
Versus
INCOME TAX OFFICER****Appearance:
MR MANISH J SHAH(1320) for the Appellant(s) No. 1
AADITYA D BHATT(8580) for the Opponent(s) No. 1****CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 15/07/2026
ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr. Manish Shah for the appellant and learned advocate Mr. Vijay Davda for learned Senior Standing Counsel Mr. Aaditya Bhatt for the respondent.

2. This Tax Appeal is admitted by order dated 30.08.2010 for consideration of following substantial questions of law:

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in upholding the direction to the Assessing Officer to charge interest @ 12% on the amount outstanding from M/s Vani Industries & M/s. Super Investments & Finance Ltd."

3. Brief facts of the case are that the original assessment was framed vide order dated 31.03.2003 under section 143(3) of the Income Tax Act, 1961 [for short 'the Act'] and the Assessing Officer made addition of Rs. 12,82,601/- by rejecting the books of accounts and made addition by disallowing interest paid to two parties -

M/s. Vani Industries and M/s. Super Investment & Finance Ltd. as well as on the ground that the trading results declared by the assessee was low compared to earlier years.

4. The CIT(A) confirmed the order passed by the Assessing Officer. Thereafter, the assessee filed an appeal before the Income Tax Appellate Tribunal. By its order dated 25.08.2006 in ITA No. 113/Ahd/2004 the Tribunal set aside the issue relating to the disallowance of interest to the file of CIT(A) which reads as under:

"5. As regards ground No.2, being disallowance for interest of Rs. 10,86,121/-, we find that it consists of two parts; i.e. (1) Rs.8,22,690/- as the outstanding and (2) the sale

price of Rs.2,63,431/-on account of certain loans and advances given by the assessee.

6. The Assessing Officer noticed that the assessee has charged at the rate of 18% interest to M/s. Pioneer Industries and @ 12% to Vani Industries and when the assessee was asked to explain why the interest was charged on advances in this year and why proportionate interest should not be disallowed, the assessee submitted that the financial position of these two parties was not so good and, therefore, the interest was not charged. In this connection, he referred to the decisions in following cases:-

(1) In the case of CIT vs. Confinance Ltd., (89 ITR 292) (Bom.)

(2) In the case of Balraj Virmani vs. CIT (97 ITR-69) (Allahabad).

(3) In the case of CIT vs. Mercantile Bank, (237 ITR-676) (Bom.).

7. From the above, it reveals that the above addition made by the Assessing Officer by applying the rate of 18% the same was upheld by the CIT(Appeals).

8. The assessee was following the mercantile system of accounting and, therefore, the tax was to be on accrual basis. As regards claim of the assessee that the financial position on these two parties (above mentioned) was not good, and, therefore, the assessee did not charge the interest is

not considered by the CIT(Appeals). We, therefore, set aside the order of the CIT(Appeals) and remit the matter back to his file to consider the assessability of the income in the light of financial position of these two companies, details of which are to be brought on record by the assessee. It may also be stated that in the case of Pioneer Industries, the interest was @12% in the last year and, therefore, the addition @ 18% would not be justified. This aspect should also be taken into consideration by the CIT(Appeals) in the fresh proceedings."

5. After remand, the assessee submitted before the CIT(A) that the balance due from M/s. Vani Industries has become bad

debt and the assessee had written off the outstanding amount in the name of M/s. Vani Industries in the Financial Year 2004-05. With regard to M/s. Super Investment & Finance Ltd., it was submitted that due to poor financial condition, the company was wound up vide application dated 22.03.2004 as per the Notification issued by the Registrar of Companies. It was therefore, submitted that when the principal amount itself was doubtful of recovery, no interest was required to be charged from the said concern and therefore, it was contended that the addition made on account of notional interest should be deleted.

6. The CIT(A), after considering the submissions made by the assessee only

reduced the interest to 12% by observing as under:

"3. I have carefully considered the issue, and I have also gone through the case laws relied upon by the assessee. The issue was set aside to decide the assessability of income in the light of financial position of these companies. It has been stated by the assessee that sales tax registration of M/s. Vani Industries was cancelled, and it has stopped manufacturing and trading activity. It has been stated by the assessee that this amount was finally written off as bad debt in the assessment year 2005-06. In respect of the other concern it has been stated that this company was wound up in view of poor financial condition vide

application dated 22.3.2004. The above clearly shows that so far as Super Investment & Finance Ltd. is concerned, application of winding up was filed in the year 2004 i.e. relevant to A.Y. 2004-05 and even in respect of Vani Industries, bad debt was written off in A.Y. 2005-06. All these actions were taken by the assessee much after the assessment in this case has been completed. It is also seen that no attempt whatsoever were taken by the assessee so far as recovery of any amount from these persons is concerned and the reasons are close relation with both these concerns. So far as Super Industries & Finance Ltd., is concerned, it is clearly a related company because family members are directors of that company. It is also noticed that financial

position of these companies started deteriorating at a later period and there was no reason why interest was not charged. It appears that this was not charged purely because of close connection between the two concerns. It is also to be pointed out that even the concern M/s. Vani Industries is a related concern and family members of the partner of the assessee were running that unit. Therefore, non charging of interest had no business relation but actually interest was not charged because of close personal relation between directors and partners of these concerns. In view of these facts, I find that the A.O. was justified in making disallowance of interest. However, so far as charging of interest from Vani Industries is concerned, as per the

directions of the I.T.A.T., since interest was charged at the rate of 12% in the earlier year, in this year also the A.O. is directed to restrict the disallowance of interest at the rate of 12% in the earlier year, in this year also the A.O. is directed to restrict the disallowance of interest at the rate of 12%. In case of the other concern, the A.O. has rightly disallowed interest at the rate of 18%. The A.O. will work out the disallowance in terms of this order."

7. The Tribunal, however, dismissed the appeal filed the assessee by observing as under:

"6. We have heard the rival submissions and perused the orders of the lower authorities and the material available on record. We find that in the

original assessment framed on 31-3-2003 the A.O. made disallowance of interest of Rs.10,86,121/- @ 18% on the amount outstanding from M/s. Vani Industries and Super Investment & Finance Ltd. This was confirmed by the CIT(A). The Tribunal in further appeal by the assessee restored the matter back to the file of the CIT(A) to consider the assessability of income in the light of financial position of the two concerns details of which were to be brought on record by the assessee. We find that in appeal before the CIT(A) the assessee only submitted that the financial condition of these two concerns was poor and, therefore, the concern Super Investment & Finance Ltd. was winded up vide application dated 22-3-2004 to the Registrar of Companies,

Ahmedabad and the balance outstanding of M/s. Vani Industries was written off in the assessment year 2005-06 as bad debts. The learned A.R. of the assessee had not filed the balance sheet and other connected documents of these concerns to show that the financial position of these concerns had become bad and, therefore, the income by way of interest was not accounted for by the assessee as its Income during the year under consideration. Even before us the said documents and evidences have not been filed in support of the contention of the learned AR of the assessee that the financial position of the said concerns had become bad and that the principal amount outstanding was doubtful of recovery and, therefore, the income was not accounted for.

Thus, it is seen that the assessee failed to comply with the directions of the Tribunal in its order dated 25-8-2006 in ITA No.113/Ahd/2004 for which the matter was set aside to the file of the CIT(A). In the above facts and circumstances of the case, in our considered opinion the CIT(A) was fully justified in directing the A.O. to charge interest @ 12% on the amount outstanding from M/s. Vani Industries and Super Investment & Finance Ltd. during the year under appeal. Hence, we confirm the order of the CIT(A) and dismiss the grounds of appeal of the assessee.

7 In the result, the appeal of the assessee is dismissed."

8. Learned advocate Mr. Manish Shah for the appellant-assessee submitted that the assessee had furnished all the details of the ledger accounts of both the firms i.e. M/s. Vani Industries and M/s. Super Investment & Finance Ltd. Referring to the ledger accounts, it was pointed out that since last previous two years, no interest was paid by M/s. Vani Industries. M/s. Super Investment and Finance Ltd stopped its business and was subsequently ordered to be wound up. It was also pointed out that the submissions made before the CIT(A) along with documents were not considered at all by the Tribunal and it has recorded incorrect facts regarding non-submission and compliance with the order by the assessee.

9. On the other hand, learned advocate Mr. Vishal Davda for learned Senior Standing Counsel Mr. Aaditya Bhatt submitted that there are concurrent findings of fact arrived at by the Tribunal for sustaining the addition of notional interest @ 12% not charged by the assessee as no interest was charged by the assessee though the assessee follows the mercantile system of accounting. It was submitted that in that view of the matter, no interference may be called for in the impugned order of the Tribunal.

10. Having heard learned advocates for the parties and considering the facts and evidence on record, it appears that it is not in dispute that no interest was received by the assessee from both the entities i.e. M/s. Vani Industries and

M/s. Super Investment & Finance Ltd since last two previous years and therefore, the assessee was justified in not charging interest in the account of the parties on mercantile basis. The findings arrived at by the CIT(A) and the Tribunal are contrary to the evidence placed on record by the assessee. It is also pertinent to note that the Tribunal in the impugned order has observed that before the Tribunal, documents and evidence were not filed in support of the contention made on behalf of the assessee that the financial position of both the concern had become bad, however, on perusal of documents in the paper-book which was filed before the Tribunal, placed on record of this appeal, it appears that Sales Tax Registration of M/s. Vani Industries was cancelled in the

Year 1997 and even the Application was made for cancellation of the excise registration to demonstrate that M/s. Vani Industries was not having any business. However, both the CIT(A) and the Tribunal have ignored such documents and evidence placed on record. In the case of M/s. Super Investment & Finance Ltd also, the CIT(A) and the Tribunal have ignored that the assessee had not charged any interest for last two previous years in the account of M/s. Super Investments & Finance Ltd. Ultimately, it is not in dispute that no amount was recovered by the assessee from both the concern. One of the grounds for making additions is that both the concerns were run by the family members of the partner of the assessee firm, but merely because the family members of the partners

of the assessee were running the said two entities could not be only factor to be considered for not charging interest.

11. In view of the foregoing reasons, we are of the opinion that the CIT(A) and the Tribunal, both have committed an error in sustaining the addition of notional interest though the same was not on the ground that the assessee had deliberately not charged the same and both have ignored the facts and evidence on record resulting into a perverse order passed by the Tribunal.

12. We, therefore, answer the question in favour of the assessee and against the Revenue and the addition made on account of notional interest @ 12% on outstanding amount from M/s. Vani Industries and

M/s. Super Investment & Finance Ltd is ordered to be deleted. The Appeal is accordingly allowed. No order as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI, J)

JYOTI V. JANI

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: JYOTIBEN VINODKUMAR JANI(HC00213), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 22/07/2026 11:43:18