IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 60 OF 2008

The Commissioner of Income Tax, having office at Aayakar Bhavan, Patto Plaza, Panaji, Goa. …. Appellant

Versus

Zuari Industries Ltd., having office at Jaikisan Bhawan, Zuarinagar, Goa 403 726. …. Respondent

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Ms. Amira Razaq, Standing Counsel for the Appellant.

Mr. Madhur Agarwal with Mr. P. Arolkar, Advocates for the Respondent.

Coram:- M.S. SONAK &
C.V. BHADANG, JJ.

RESERVED ON: 22nd November, 2019

PRONOUNCED ON: 2nd January, 2020

(Signed judgment is pronounced by M.S. Sonak, J. as per clause (i) of Rule 1 of Chapter XI of Bombay High Court Appellate Side Rules as C.V. Bhadang, J. is sitting at Mumbai.)

JUDGMENT: (Per C.V. Bhadang, J.)

On 16th June 2008, this Appeal was Admitted on the following substantial questions of law:

(I) Whether on the facts and in the circumstances of the case, the ITAT was justified in holding that interest of Rs.36,98,483/- paid on borrowings,

capitalized in the books of account for setting up of Argon Gas Plant as a revenue expenditure, even before putting the said Plant into operation ?

(II) Whether on the facts and in the circumstances of the case, the ITAT was justified in holding that the amount of Rs.88,63,750/- paid to Texmaco, as deferred revenue expenditure allowing the payment to be amortized for a period of 8 years ?

2. Similar questions arose in a connected Appeal being TXA NO. 51/2008. The parties agree that the decision in TXA No. 51/2008 shall govern the issues in the present Appeal also. In TXA 51/2008, which is disposed by a judgment of even date, we have answered the point no. (I) against the appellant and in favour of the assessee, while point no. (II) has been answered in favour of the appellant and against the assessee. The said decision would govern the present Appeal also.

3. For the reasons mentioned in the judgment in TXA No. 51/2008, we pass the following order:

The Appeal is partly allowed. The impugned order passed by the ITAT to the extent of issue no. (II) above, is hereby set aside. The order passed by the AO on the aforesaid issue, as confirmed by the CIT (Appeals) is hereby restored. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J. **M. S. SONAK, J.**

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