

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

**BEFORE SHRI SHAILENDRA KUMAR YADAV, JM AND SHRI RAJESH KUMAR, AM**

आयकर अपील सं./I.T.A. No.6214/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2010-11)

M/s. B.P.Chemicals, 3, 1st Floor, Vihal Chambers, 65, Kazi Sayed St., Mumbai 400003	<b>बनाम/</b> Vs.	The Joint Commissioner of Income Tax-13(2), Mumbai.
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स्थायी लेखा सं./ PAN : AAAFB 0982G

अपीलार्थी ओर से /Appellant	Shri Haresh P Shah
प्रत्यर्थी की ओर से/ Respondent	Shri Randhir Gupta

सुनवाई की तारीख / **Date of Hearing** : **3.8.2016**

घोषणा की तारीख / **Date of Pronouncement** : **22.8.2016**

**आदेश / ORDER**

**PER RAJESH KUMAR, A. M:**

This is an appeal filed by the assessee and is directed against the order of the Ld.CIT(A)-24, Mumbai dated 29.7.2013 pertaining to A.Y.2010-11.

2. The only issue raised in the ground No.1 is against the confirmation of disallowance of Rs.33,36,543/- by the Id. CIT(A) by following the earlier decision of Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2004-05 out of interest as made by the AO under the

provisions of section 40A(2)(b) of the Income Tax Act, 1961(hereinafter referred to as the Act).

3. At the time of hearing, the Id.AR submitted that the present case of the assessee is covered by the decision of Co-ordinate Bench of the Tribunal in assessee's own case in ITA No.466/Mum/2013 (AY-2009-10) vide order dated 18.5.2016. The Id. AR further submitted that the decision of the Id.CIT(A) based on assessment year 2004-05 confirming the disallowance has also been discussed by the Co-ordinate Bench of the Tribunal in its decision for the assessment year 2009-10 and therefore the issue is directly covered in favour of the assessee and accordingly the disallowance be deleted. On the contrary, the Id.DR reiterated the submissions as made before the Id.CIT(A) and heavily relied on the decisions of authorities below.

4. We have carefully considered the submissions of the parties, perused the material placed before us including the orders of authorities below. We find that the decision referred by the Id.AR in the case of ITA No.466/Mum/2013 (supra) in assessee's own case was passed by the co-ordinate Bench of the Tribunal after considering the decision for the assessment year 2004-05 which was the basis for dismissing the appeal of the assessee and thus, the facts of the case in hand and relied upon by

the assessee are identical. For the sake of convenience and clarity we reproduce below the operation part of the decision as under :

*"4. The CIT(A) relying on ITAT decision in assessee's own case for assessment year 2004-05 confirmed the action of the Assessing Officer by observing in Para 3.3.4 as under:-*

*" 3.3.4 The issue relating to genuineness of the payment of interest is not relevant while deciding the amount of deduction allowable to the assessee u/s 40A(2) of the LT. Act, 1961. The disallowance has not been made for the reason that the expenditure is not genuine. The disallowance has been made by virtue of the provisions of sec. 40A(2) whereby any expenditure which is excessive or unreasonable is required to be disallowed. The assessee has not shown as to how the interest @ 18% paid to persons specified u/s 40A(2)(b) was not excessive and unreasonable in light of the opinion of the Assessing Officer that the interest at the rate of 12% was reasonable and the findings of the Hon'ble Tribunal in the case of the assessee itself for the A.Y. 2004-05 on the same set of facts. Charging of interest at a given rate from trade debtors cannot be taken to be the market rate for the purposes of loans since these are not comparables. The assessee has not been able to demonstrate as to how the interest rate of 18% was the market rate".*

*Aggrieved, now assessee is in second appeal before the Tribunal.*

*5. We have heard the rival contentions and gone through the facts and circumstances of the case. Before us, Ld. Counsel for the assessee clearly stated that the interest payment is neither doubted by the lower authorities or ITAT in assessment year 2004-05. The only issue, according to Ld. Counsel for the assessee is that interest payment is excessive i.e.18% and Tribunal has restricted the same at 12%. However, Ld. Counsel for the assessee stated that in assessment year 2004-05 assessee's appeal is pending before the Hon'ble Bombay High Court, wherein the substantial question of law on this issues has been admitted by Hon'ble High Court. He also argued that the Tribunal has not considered the decision of Hon'ble Bombay High Court in the case of CIT vs. Indo Saudi Services (Travel) Pvt. Ltd. 310 ITR 306(Bom), wherein CBDT Circular No.6-P*

*dated 06/07/1968 was considered, wherein the Board has taken categorical view that no disallowance is to be made in respect of interest payment to sister concern where there is no attempt to evade tax. Ld. Counsel for the assessee drew our attention to assessee's Paper Book page-22, wherein comparative chart of interest paid to family members and others and also details of interest paid to various persons during the relevant assessment years are filed. According to Ld. Counsel those persons have included the interest paid by assessee as income in their respective return of income and paid taxes accordingly. The details are enclosed at pages 22 to 24 of assessee's Paper Book. According to the Ld. Counsel for the assessee, the interest payment was genuine and incurred wholly and exclusively for the purpose of business and the lower authorities have not elaborated that how this expenditure of interest is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made.*

*6. On the other hand, Ld. Sr.DR argued that this issue is covered by the Tribunal's order in assessee's own case for assessment year 2004- 05 and which has been followed in assessment year 2005-06, 2006-07, 2007-08 and 2008-09. According to him, the disallowance made by the Assessing Officer and confirmed by CIT(Appeals) is perfectly as per the provisions of the Act.*

*7. We have gone through the details of interest paid to the family members and noticed that these parties have included the receipts of interest in their respective return of income. The details are filed at pages 23-24 of the assessee's paper book. We find that most of the payees are taxed in highest tax bracket and there is no attempt made by the assessee to evade tax by excessive payment to related parties. We find that the assessee has been paying such interest to some of the parties' right from the beginning and in the past no such disallowance was made by the Department i.e. the Assessing Officer while framing assessment under section 143(3) of the Act himself has allowed interest at 21% to the assessee for the assessment year 2001-02 and 2002-03, we are of the view that payment of interest to all the parties is purely out of business necessity and decision to pay interest @18% per annum is guarded by commercial consideration and in the interties of its business necessities and exigencies. Ld. Counsel for the assessee before us demonstrated that the prevailing rate of interest of commercial transaction is 18% or more and for this purpose he produced some bills issued to the assessee by various*

*suppliers for this year, in which it is clearly mentioned that in case of late payment interest @18% to 26% to be charged. Similarly, he has also explained that the assessee itself has stipulated the charging of interest @24% from its customers for late payment. Before us Ld. Counsel for the assessee also explained that the interest rate charged by banks @ 12% to 15% on C.C limits or bank loans, which includes some other hidden charges and it is also fact that bank while sanctioning loan put quite onerous liabilities like submission of stock statements, project report by Chartered Accountant, timely payment of instalments and also satisfactory securities of equal amount or more of loan. According to Ld. Counsel for the assessee this loan taken from bank is for fixed period and payment is made by the end of the period with constant monitoring and checks. Whereas, the loan from the family members and relatives can be obtained and returned without any hustles so there is premium on the same and this a normal market practice. We find that the assessee has tried to explain his case from all angles and moreover the decision relied upon by Ld. Counsel for the assessee of Hon'ble Bombay High Court in the case of Indo Saudi Services (Travel) Pvt. Ltd.(supra), wherein it is held as under:-*

*"5. In view of the aforesaid admitted facts we are of the view that the Tribunal was correct in coming to the conclusion that the Commissioner Of Income Tax(Appeals) was wrong in disallowing half percent commission to the sister concern of the assessee during the assessment years 1991-92 and 1992-93. The learned advocate appearing for the appellant is also not in a position to point out how the assessee evaded payment of tax by the alleged payment of higher commission to its sister concern was also paying tax at a higher rate and copies of the payment orders of the sister concern were taken on record by the tribunal".*

*Similar view is taken by Hon'ble Gujarat High Court in the case of CIT vs. Gujarat Gas Financial Services Ltd. (2015) Taxman 532 (Guj). In view of the above facts and circumstances, we are of the view that since the assessee as well as the relatives, to whom assessee has paid interest are being taxed higher rates, the entire exercise undertaken by the Assessing Officer is neutral exercise as far as the payment of tax is concerned and there is no question of evading of payment of tax by any of the parties. Further, Hon'ble Bombay High Court has clearly laid down that CBDT in its circular No.6-P dated*

*06/07/1968 debars the Assessing Officer from not allowing such payment made to relatives and sister concerns, where there is no attempt to evade the tax. Respectfully following the decision of the Hon'ble Bombay High Court (supra) and going by the facts of the case, we allow the claim of the assessee."*

5. In view of the above decision of the Tribunal in assessee's own case, we set aside the order of the Id.CIT(A) and direct the AO to delete the addition.

6. Grounds of appeal No.2 and 3 are in academic nature, therefore, dismissed as infructuous.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 22.08.2016.

Sd

sd

(SHAIENDRA KUMAR YADAV)

(RAJESH KUMAR)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई MUMBAI; दिनांक DATED :22 .8.2016

Sr.PS:SRL:

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

True copy

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**