

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'सी', मुंबई ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI**

**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI AMARJIT SINGH, JM**

**आयकर अपील सं./ITA No.2240&2241/Mum/2011**

**(निर्धारण वर्ष / Assessment Year :2006-07 to 2007-08)**

Cable Corporation of India Limited, Laxmi Building, 6, Shoorji Vallabhdas Marg, Ballard Estate, Mumbai-400001	Vs.	ACIT-2(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAACC 2936 J</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**AND**

**आयकर अपील सं./ITA No.4465/Mum/2013**

**(निर्धारण वर्ष / Assessment Year : 2008-09)**

DCIT-2(1), Mumbai	Vs.	Cable Corporation of India Limited, Laxmi Building, 6, Shoorji Vallabhdas Marg, Ballard Estate, Mumbai-400001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAACC 2936 J</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Nitesh Joshi

राजस्व की ओर से /Revenue by : Shri T. Roumaun Paite

सुनवाई की तारीख / Date of Hearing : **23/09/2015**

घोषणा की तारीख/Date of Pronouncement **18/11/2015**

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

These are the cross appeals filed by the assessee and revenue against the order of CIT(A), for the assessment years 2006-07 to 2008-09, in the matter of order passed u/s.143(3) of the I.T.Act.

2. Some of the grounds are common in all the three years, therefore, all the appeals were heard together and are now decided by this consolidated order.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in manufacturing of electric cable wires, conductors, etc. During the course of scrutiny assessment the AO made several disallowance part of which was deleted by Id. CIT(A). Against which both assessee and revenue are in appeals before us.

**ITA No.2240/Mum/2011(AY:2006-07)**

4. The first grievance of the assessee relates to disallowance of Rs.19,37,774/- being additional amount paid to Bedmutha Wire Co. Ltd.

5. From the record we found that Bedmutha Wire Co. Ltd. was a trade creditor of the assessee for an amount of Rs.69,02,978. The assessee had paid the said amount to him by cheque which had got dishonoured. Pursuant thereto, the said creditor had filed a Company Petition before the High Court at Bombay under sections 433 and 434 of the Companies Act, 1956. It had also filed a complaint before the Metropolitan Magistrate, 27th Court at Mulund under section 138 read with section 141 of the Negotiable Instruments Act. Since there was delay on the assessee's part in paying the said creditor, it agreed to pay an amount of Rs.88,40,752 towards full and final settlement of the said debt including the principal amount as well as compensation/ damages for the delay in payment. It the claimed deduction of Rs.19,37,774 (Rs.88,40,875-Rs.69,02,978) as bad debt. The AO declined assessee's claim of bad debts. The revenue

authorities has also stated that there was no deduction of tax in respect of the payment made u/s.40(a)(ia). It was also observed that the Explanation below Section 37(1) is also attracted and treated the payment so made as penalty for infraction of law.

6. We have considered rival contentions and found that the compensation/ damages has been paid by the assessee in terms of consent terms filed before the Hon'ble Bombay High Court. Pursuant thereto, the debt became a judgment debt. It is an accepted principle of law that there could be no deduction of tax at source from a judgment debt for which reliance can be placed on All India Reporter Ltd. v/s Ramchandra D. Datar, 41 ITR 446 (SC), Islamic Investment Co. v/s UOI 265 ITR 264. Further, There is also no question of treating the said amount as penalty under the Negotiable Instruments Act as no penalty could be prescribed under the said Act.

7. In view of the above discussion, we direct the AO to allow assessee's claim of Rs.19,37,774/-.

8. The next grievance of the assessee relates to partial disallowance of professional and legal fee paid to Allegro Capital Advisor Pvt. Ltd. (ACA) and AZB & Partners (AZB). Facts in brief are that during the year assessee had borrowed a loan of Rs.53 crore from J.P. Morgan Securities India Pvt. Ltd. In this regard, it had paid professional fees to ACA of Rs.99,81,851 and AZB of Rs.18,12,335 aggregating to Rs.1,17,94,186. AO concluded that borrowed funds to the extent of Rs.37.24 crore had been used either for repayment of earlier liability or acquisition of fixed

assets. In view thereof, he disallowed 70% of the professional fee i.e., Rs.82,55,930 (70% of Rs.1,17,94,186) as capital expenditure. The break up of utilization of Rs.37.24 crore is as under:-

- (i) Redemption of debentures Rs.20.07 crore.
- (ii) Acquisition of fixed assets Rs.13.24 crore.
- (iii) Repayment of loan of Rural Electrification Corporation Ltd. Rs.2.64 crore.
- (iv) Repayment of HDFC loan Rs.1.29 crore.

9. With respect to (i) above, debentures were issued by the assessee in the year 1996. Amount received from issue of debentures was used by it for setting up of its Nasik Factory. The said factory commenced manufacturing operations on 27.3.1997. Denial of deduction for interest by the AO for AY 1997-98 and 1998-99 has been rejected by the Tribunal by its order dated 7.12.2006 and the High Court by its order dated 12.2.2009. Since the Nasik factory is operational from 27.3.1997, expenditure incurred towards raising of funds for repayment of the borrowing utilized for setting up of Nasik factory cannot be regarded as capital expenditure.

10. With respect to (ii) above, we found that assessee has acquired fixed assets of Rs.13,23,917/- out of its own funds and not borrowed funds. Thus, no disallowance is warranted. With respect to Sr. No.(iii) above, CIT(A) had already granted relief to the assessee as the said loan was repaid on 1.4.2005 while the fresh loan was obtained on 13.12.2005. With respect to Sr. No.(iv) above, borrowing from HDFC Ltd. was made in the year 2002. Never in the past the Revenue has denied the assessee's claim for deduction of interest on the said borrowing as being capital in

nature. Since interest on the borrowing has been found to be a deductible expenditure in the past, amount spent during the year for raising of fund for repayment of the said loan cannot be regarded as capital in nature.

Accordingly, we direct the AO to delete the disallowance so made.

11. The AO has also made disallowance u/s.14A amounting to Rs.18,43,329/-. Facts in brief are that exempt income earned during the year was dividend of Rs.5,47,511 and long term capital gains of Rs.1,35,48,389. AO applied rule 8D of the Income- Tax Rules 1962 to make a disallowance under section14A of Rs.18,43,329 comprising of interest on borrowing of Rs.17,11,804 and administrative expense of Rs.1,31,525/-. The CIT(A) noted that in view of the decision of jurisdictional High Court in Godrej and Boyce Manufacturing Co. Ltd. 328 ITR 81, provisions of Rule 8D could not be applied prior to AY 2008-09, he, however, upheld the disallowance as made by AO by applying on rule 8D as a reasonable method. The jurisdictional High Court in Godrej and Boyce Mfg. Co. Ltd. 328 ITR 81, has held that provisions of Rule 8D for the purposes of computation of disallowance under section 14A would apply from AY 2008-09 and would have no application for the year under consideration i.e., AY 2006-07, with respect to interest disallowance made by AO. We also found from the investment schedule in its Annual Accounts which shows that no fresh investment was made during the year. In fact, the said investments have been made several years back. AO has not made any disallowance under section 14A for AY 2002-03 to AY 2004-05. In AY 2005-06 though the AO made a disallowance under

section 14A such disallowance was restricted only to administrative expenses. Since in the past, it has been consistently accepted by the Revenue that investments have been made out of owned funds and not borrowed funds, it is not open to the Revenue to take a different stand for the present year. Accordingly, we restrict the disallowance to the extent of administrative expenses so computed by the AO. We direct accordingly.

**ITA No.2241/Mum/2013 (AY : 2008-09).**

12. The assessee did not press the ground No.1 of this appeal, therefore, the same is dismissed in limine.

13. Next ground relates to disallowance u/s.14A amounting to Rs.12,31,665/-. The facts and circumstances during the assessment year 2007-08 are same as discussed in assessment year 2006-07 in ITA No.2240/Mum/2013, following the same reasoning as given above, we direct the AO to restrict the disallowance to the extent of administrative expenses so paid by the AO.

14. Next grievance relates to spread over of retrenchment compensation paid by assessee by invoking the provisions of Section 35DDA of the Act. This ground was also not pressed by Id. AR, therefore, the same is dismissed in limine.

**ITA No.4465/Mum/2013 (AY : 2008-09)**

15. This is an appeal filed by the revenue against the order of CIT(A) for the A.Y.2008-09.

16. The first grievance of the revenue in its appeal relates to deleting the disallowance of professional and legal fees of Rs.18,67,798/- as non-genuine. Facts in brief are that during the year the assessee had incurred total expenditure towards professional and legal fees of Rs.1,56,33,094. Out of this the AO identified fees to the extent of Rs.37,35,595 as non-genuine without giving any reason and disallowed 50% thereof i.e., Rs.18,67,798. The CIT(A) has held that the said expenditure cannot be regarded as non-genuine because the assessee had filed the relevant details in respect of the said expenditure giving the name of the party rendering the service, nature of service rendered and the amount of fees. According to him, the fact that AO has accepted 50% of the expenditure as genuine, shows that the said expenditure had been incurred by the assessee. He has also observed that the said expenditure is not excessive. The findings given by the CIT(A) have not been controverted by Id. DR by bringing any positive material on record. Accordingly, we upheld the same.

17. Next ground of revenue relates to disallowance of leave encashment of Rs.13,08,071/-. Facts in brief are that in the previous year relevant AY 2007-08 the assessee had made a provision towards leave encashment of Rs.33,20,939. The said amount was suo moto disallowed by the assessee in AY 2007 -08 under section 43B of the Act. Since the assessee has actually paid an amount of Rs.11,25,191 during the year, as per section 43B of the Act the CIT(A) has rightly upheld the assessee's claim for deduction. Out of the provision made for AY 2007-08 an amount

of Rs.1,82,880 has been written back by the assessee in the Profit and loss account for the current year. Since its Profit and loss account for the current year has been credited by the amount of Rs.1,82,880 and provision for leave encashment was disallowed in AY 2007-08 assessee claimed reduction of its profit for the year by Rs.1,82,880/- which has been upheld by the CIT(A). We do not find any infirmity in the findings of the CIT(A) in this regard. Accordingly, we dismiss the appeal of the revenue.

**18. In the result, appeals of the assessee are allowed in part, whereas appeal of revenue is dismissed.**

Order pronounced in the open court on this 18/11 /2015.

**Sd/-  
(AMARJIT SINGH)**

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 18/11/2015

प्र.कु.मि/pkm, नि.स/ PS

**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), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**Sd/-  
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai