

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA*

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.1241/Kol/2015
Assessment Year :2003-04

DCIT, Circle-11(2), P-7, Chowringhee Square, Kolkata-69	V/s.	M/s Westing House Sexby Farmer Ltd., 17, Convent Road, Kolkata-14 [PAN No.AAACW 2436 P]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Saurabh Kumar, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Subhadip Day, FCA
सुनवाई की तारीख/Date of Hearing	13-09-2017
घोषणा की तारीख/Date of Pronouncement	22-09-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-21, Kolkata dated 25.05.2015. Assessment was framed by ACIT, Circle-2, Kolkata u/s 147/143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 26.12.2007 for assessment year 2003-04.

Shri Saurabh Kumar, Ld. Departmental Representative represented on behalf of Revenue and Shri Subhadip Dey, Ld. Authorized Representative appeared on behalf of assessee.

2. Solitary issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition made by Assessing Officer for ₹1,93,34,365/- u/s. 36(1)(iii) of the Act.

3. Briefly stated facts are that assessee is a limited company and engaged in manufacturing business of signaling system and civil construction work.

During the course of assessment proceedings, AO observed that assessee has been claiming the interest on loan taken from Government of West Bengal on year-to-year basis. However, till date no payment has been made for the amount of loan as well as interest to the Govt. of W.Bengal. It was also observed that Govt. of W. Bengal has provided moratorium period for making the payment of principal amount as well as interest amount. However, assessee during the year has claimed interest expense of ₹1,93,34,365/- which was shown "outstanding liability" in the balance-sheet. The AO also found that the amount of interest as well as loan was converted by assessee as equity share capital to the Govt. of W. Bengal. In view of above, AO opined that amount of interest claimed by assessee and shown liability is only tentative and uncertain liability. Accordingly, he made the disallowance of interest expense and added to the total income of assessee.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that it has taken loan from Govt. of W. Bengal for its business activity, but, the amount of loan as well as interest was not paid by assessee due to financial crunch. But it is undisputed fact that loan was never waived off by the Govt. of W. Bengal. In fact the amount of accumulated liability payable to the Govt. of W. Bengal was converted into equity shares after mutual consent with the Govt. of W. Bengal. Accordingly, the adjustment was made in the books of account. The assessee further submitted that on the identical issue for the AY 2004-05 relief was granted by Ld. CIT u/s. 264 of the Act in the own case of assessee. Ld. CIT(A) after considering the submission of assessee deleted the addition made by AO by observing as under:-

"6. I have considered the submission of the appellant and perused the assessment order. I have also gone through the loan sanction order issued by the government of West Bengal. On perusal of loan sanction order dated 09.11.2002, it is observed that the loan was sanctioned by the Governor, West Bengal being payment of Non-plan loan to the assessee i.e. Westinghouse Saxby Farmer Lt. which was released by the Public Enterprises Department, Government of West Bengal. As per the term and conditions, the loan would carry interest @ 14.50% p.a. subject to 2.50% p.a. rebate for timely repayment of loan and payment of interest. Further, the loan sanctioned and interest thereon would have a moratorium of 5 years and would be repayable in 15 years in 10 equal installments from the sixth anniversary date of drawl of loan.

That, the interest on the period of moratorium might be sub-divided in 10 equal installments and added up with every installments. Thus, it is apparent from the sanctioned letter that though there was moratorium period for repayment of loan and payment of interest but there was fixed rate of interest which accrued year after year. The loan sanctioned by the Government was not interest free. Since, the appellant company could not repay the loan and paid the interest accrued, therefore, in the later years the amount of loan and interest accrued was converted into equity shares and the shares were allotted to the Government of West Bengal. On careful consideration of the facts, I am of the opinion that the liability to pay the interest on loan was not tentative liability or unascertained liability as viewed by the AO in the assessment order to make the disallowance. The loan was bearing a fixed rate of interest subject to some rebate on timely repayment of loan and payment of interest. Since, the appellant has maintained its books of account on the basis of mercantile system of accounting and, hence, it has to provide for the interest accrued on the Govt. Loan at the rate provided in the sanctioned order. Thus, it would not be correct to say that the liability of interest on loan was an unascertained liability or the tentative liability. Since, the app is following the mercantile system of accounting, therefore, it had rightly claimed the deduction on account of interest on loan. Further, I am of the opinion that in this case the provisions of section 43B are also not applicable because the loan has not been taken from any financial institution. The loan was directly taken from the Government of West Bengal which was sanctioned by the Governor of the West Bengal. It is also observed that the similar disallowance in the immediately succeeding year i.e. AY 2004-05. In that year, against the order of the AO, the appellant company had filed an application u/s. 264 of the Act before the CIT, Kolkata-I, Kolkata contesting the disallowance of interest on Govt. loan. The CIT, Kolkata-I, Kolkata passed an order u/s. 264 of the Act for the A.Y 2004-05 on 29.08.2008 wherein after considering the facts of the case, he directed the AO to allow the deduction of interest on loan. In view of above, I am of the opinion that the AO was not justified in making the disallowance of interest of Rs.1,93,34,365/-. He is directed to delete the disallowance. The ground no. 6 is allowed."

The Revenue, being aggrieved, is in appeal before us.

5. Before us both parties relied on the order of Authorities Below as favourable to them.

6. We have heard the rival contentions of both the parties and perused the material available on record. In the instant case, AO made the addition of interest expense claimed by assessee on the ground that amount of interest is tentative and unascertainable. As such no amount loan & interest is payable to the Govt. of W.Bengal. Therefore, AO treated the interest amount and added to the total income of assessee. However, Ld. CIT(A) observed that the amount of interest was very much payable to the Govt. of W.Bengal though the same was not repaid due to financial crunch. However, subsequently the Govt. of W.Bengal was allotted equity shares against the amount of loan as well as interest. Now the issue before us arises whether the interest claim by

the assessee represents its income in the aforesaid facts and circumstances. At the outset, it was observed that the AO himself has admitted the fact that the accumulated amount of loan was converted to equity shares. Therefore, in our considered view there remains no ambiguity in holding that the amount of interest is not tentative and unascertainable. The assessee has duly settled the amount of its liability arisen on account of interest by way of allotment of shares to the Govt. of W.Bengal. Thus, it cannot be concluded that the liability of interest is tentative and unascertainable. In view of above, we find no infirmity in the order of Ld. CIT(A). We hold accordingly. Hence, this ground of Revenue is dismissed.

7. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open court 22/10/2017

Sd/-

(न्यायिक सदस्य)

(N.V.Vasudevan)

(Judicial Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 22/09/2017 कोलकाता ।

Sd/-

(लेखा सदस्य)

(Waseem Ahmed)

(Accountant Member)

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-DCIT Circle-11(2), P-7, Chowringhee Square, Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Westing House Sexby Farmer Ltd., 17, Convent Rd. Kol-14
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO

आयकर अपीलीय अधिकरण,

कोलकाता ।