

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Sh. N. K. Saini, AM and Sh. Kuldip Singh, JM

ITA No. 6716/Del/2014 : Asstt. Year : 2011-12

Dy. Commissioner of Income Tax, Circle-21(1), New Delhi	Vs	M/s Rathi Super Steel Ltd., S-210, Aditya Plaza, 2 nd Floor, Community Centre, Karkardooma, Delhi-110092
(APPELLANT)		(RESPONDENT)
PAN No. AAACR0182M		

**Assessee by : Sh. Ved Jain, Adv. &
Sh. Ashish Goel, CA
Revenue by : Sh. Atiq Ahamad, Sr. DR**

Date of Hearing : 18.09.2017	Date of Pronouncement : 25.09.2017
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ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 01.09.2014 of Id. CIT(A)-XVIII, New Delhi.

2. The only grievance of the department in this appeal relates to the disallowance of Rs.35,54,828/- made by the AO.

3. Facts of the case in brief are that the assessee was engaged in the business of manufacturing of steel/iron products, TMT/Tor Steel, rounds, wire rods, ingots etc. The assessee filed the return of income on 26.09.2011 declaring an income of Rs.9,31,81,030/- and deemed total income u/s 115JB of the Income Tax Act, 1961 (hereinafter referred to

as the Act) at Rs.12,65,66,384/-. Later on, the case was selected for scrutiny. The AO during the course of assessment proceedings noticed that the assessee had debited Rs.35,54,828/- as interest on loans taken from the following related parties:

<i>"1) M/s Primus Capital P. Ltd.</i>	<i>Rs.1805123/-</i>
<i>2) M/s Gaurav Credit Ltd.</i>	<i>Rs.1118953/-</i>
<i>3) M/s Rubion Marketing Ltd.</i>	<i><u>Rs.630752/-</u></i>
<i>Total</i>	<i><u>Rs.35,54,828/-"</u></i>

The AO further observed that the above entities had also given share application money to the assessee, they were closely related to the assessee, and that the loan account of the above parties in the books of the assessee revealed that the loan funds received, had been transferred to share application account during the year. He, therefore, asked the assessee to show cause as to why the funds treated as loan should not be treated as share application money and interest debited against the same disallowed. In response, the assessee submitted that the loan amount could not be treated unilaterally as share application funds. However, the AO did not find merit in the submission of the assessee by observing that the treatment of funds received by the assessee as loans was not justified because in the respective ledger accounts, it was clearly mentioned that the funds were transferred to share application accounts and since those parties were closely related concerns, the assessee could have taken whatever approvals were needed for appropriate treatment of

the funds received by it. He, therefore, made the additions of Rs.35,54,828/-.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted as under:

“The Assessing Officer disallowed interest paid amounting to Rs.35,54,828/- to the following companies unilaterally treating the said interest as payment of interest on share application money as against on loan amount.

<i>M/s Primus Capital Pvt. Ltd</i>	<i>Rs.18,05,123/-</i>
<i>M/s Gaurav Credits Pvt. Ltd</i>	<i>Rs.11,13,953/-</i>
<i>M/s Rubion Marketing Ltd</i>	<i><u>Rs. 6,30,752/-</u></i>
<i>Total</i>	<i>Rs.35,54,828/-</i>

Your honour has raised a query whether the interest to the aforesaid NBFC Companies were also paid in the earlier asst. year or not. It is submitted that the appellant has paid following amounts of interest to the aforesaid 3 companies in the immediate preceding asst. year i.e., 2010-11;

<i>M/s Primus Capital Pvt. Ltd.</i>	<i>Rs.67,62,000/-</i>
<i>M/s Gaurav Credits Pvt. Ltd.</i>	<i>Rs.67,43,318/-</i>
<i>M/s Rubion Marketing Ltd.</i>	<i><u>Rs.39,63,608/-</u></i>
<i>Total</i>	<i>Rs.1,74,68,926/-</i>

The assessee paid interest in the earlier asst. year also. The said payment of interest on loan was duly allowed in the earlier asst. years by the learned Assessing Officer in the earlier asst. years. However, in the asst. year under consideration the Assessing Officer suo-moto treated the loan amount as share application money and disallowed the interest payment which is factually incorrect. The appellant

did not pay any interest on amount paid by the aforesaid companies towards share application money. The present disallowance is wholly misappreciation of the correct facts as also against the provision of the Act.

It is further submitted that the appellant can pay interest on share application money till the shares are allotted to the subscriber of the shares under the provision of the companies Act. Even it is mandatory to pay interest under present provision of the companies Act, incase the shares are not allotted within the prescribed period of time. Moreover, there is no bar under the provision of the Income Tax Act on payment of interest on share application money so long as shares are not allotted to the subscribers of the shares. In this view disallowance of interest made by the learned Assessing Officer is wholly incorrect as also misappreciation of the facts correctly.

It is, therefore, very earnestly prayed that disallowance of interest of Rs.35,54,828/- may kindly be directed to be deleted.”

5. The Id. CIT(A) after considering the submissions of the assessee deleted the addition by observing as under:]

“(8) Ground no. 3 ad 3.1 pertains to interest paid amounting to Rs. 3554828/-. In this regard, either submission dated 1/8/2014 learned Authorized Representative of the appellant has submitted that similar payment was duly allowed in the earlier years by the Assessing Officer for example in Assessment Year 2010-11 an amount of Rs. 17468926/- has been paid which has been allowed by Assessing Officer in the scrutiny assessment. So, there is no new facts emerging in this year. The action of Assessing Officer

is totally uncalled for. I have gone through details and I find that Assessing Officer has changed his stand from the earlier year and without any justifiable reason Assessing Officer has made disallowance of interest. Therefore, Ground no. 3 & 3.1 of the appeal deserves to be allowed.”

6. Now the department is in appeal. The ld. DR strongly supported the order of the AO and reiterated the observations made in the assessment order dated 28.01.2014.

7. In his rival submissions, the ld. Counsel for the assessee reiterated the submission made before the authorities below and further submitted that the loans amount were the opening balances and continuing from earlier year on which the interest paid was allowed in earlier year while framing the assessment u/s 143(3) of the Act and that in the year under consideration also the amount was shown as loan in the books of accounts, therefore, the subsequent allotment of shares against loan cannot be a reason to disallow the interest.

8. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the assessee had received loans from three parties, the said loan amount was carried forward from earlier year and shown as opening balance in the loan account of the parties, in the earlier year the interest paid on the said loan has been accepted and

allowed by the AO in the scrutiny assessment u/s 143(3) of the Act. Therefore, the subsequent allotment against the loan amount cannot be a reason to disallow the interest paid by the assessee because the loans were accepted as genuine in the preceding year and it was not the case of the AO that an excessive interest was paid on the said loans received from the related parties. In the present case, this contention of the assessee that though some amount were used by those companies for subscribing preference share capital in the assessee's company on which the assessee did not pay any interest was not rebutted. We, therefore, by considering the totality of the facts of the present case, do not see any valid ground to interfere with the findings of the ld. CIT(A).

9. In the result, the appeal of the department is dismissed.
(Order Pronounced in the Court on 25/09/2017)

Sd/-
(Kuldip Singh)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 25/09/2017

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR