

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' C '**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

I.T. A. No.984/Bang/2017
(Assessment Year : 2006-07)

Asst. Commissioner of Income Tax,
Circle-1, Bellary. Appellant.

Vs.

M/s. Tungabhadra Steel Products Ltd.,
Tungabhadra Dam, Hospet-583 225
Karnataka. Respondent.

Appellant By : Shri R.N. Prabat,CIT-III (D.R)
Respondent By : None.

Date of Hearing : 12.09.2017.
Date of Pronouncement : 27.10.2017.

ORDER

Per Shri Vijay Pal Rao, J.M. :

This appeal by the revenue is directed against the order dt.28.02.2017 of Commissioner of Income Tax (Appeals) for the Assessment Year 2006-07.

2. None has appeared on behalf of the assessee despite the service of notice through RPAD. We propose to hear and dispose of this appeal exparte.

3. The revenue has raised the following grounds :

1. The order of the learned Commissioner of Income Tax (Appeals) is opposed to law and fact of the case.
2. In the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), has erred in allowing assessee's appeal in respect of interest of Rs.12,71,90,551/- on loans borrowed from Govt. of India even though the assessee has not actually paid the interest and debited the profit & loss account making a provision.
3. In the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), has erred in holding that disallowance made by the Assessing Officer on account of interest of Rs. 12,71,90,551/- on loans borrowed from Govt. of India is not covered under the provisions of section 43B of the Act ignoring the fact that the interest expenditure is allowed only on actual payment basis.
4. In the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), has erred in allowing assessee's appeal in respect of interest of Rs.12,71,90,551/- on loans borrowed from Govt. of India even though the interest on loans borrowed from Govt. of India is nothing but statutory dues which is to be allowed only on actual payment basis.
5. In the facts & circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in directing the Assessing Officer to allow the claim of the assessee company on account of interest of Rs. 12,71,90,551/- on loan obtained from Govt. of India ignoring the fact that the assessee company itself has worked out such liability on provisional basis.
6. In the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), has erred in holding that disallowance made by the Assessing Officer on account of interest liability of Rs. 12,71,90,551/- to Govt. of India is not accordance with the law ignoring the fact that the assessee company has been declared as sick company since 04.08.2005 and has filed application under BIFR and thus, there is no intention of the assessee company to pay interest to Govt. of India as debited to the profit and loss account.
7. In the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), has erred in directing the Assessing Officer to allow the claim of the assessee company on account of interest of Rs. 12,71,90,551/- due on loan obtained from Govt. of India ignoring the fact that the assessee company has not paid any interest to the Govt. of India since long time.
8. In the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), has erred in holding that the provisions of section 194 J is not applicable to the amount of Rs.6,00,000/- paid to holding company M/s. Bharat Yantra Nigam Ltd. made towards management charges on the ground that the said transactions are in the nature of reimbursement of expenses.
9. In the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), has erred in not affording opportunity to the Assessing Officer to verify payment of Rs.6,00,000/- made towards management charges and paid is in the nature of reimbursement of expenses during the course of appellate proceeding in contrary to Rule 46 A (3) in view of the fact that the same amounts to be additional evidence furnished by the assessee.
10. The appellant craves leave to add, amend or alter any of the grounds of appeal either before or at the time of hearing?

4. Ground No.1 is general in nature and does not require any specific adjudication.

5. Ground Nos.2 to 7 are regarding addition made on account of interest on loan borrowed from Government of India under Section 43B which was deleted by the CIT (Appeals).

6. We have heard the learned Departmental Representative and considered the relevant material on record. The assessee company has not paid interest towards the Govt. of India loan of Rs.12,71,90,551 but has debited the same on provisional basis. The Assessing Officer disallowed the interest on the ground that the assessee had no intention to pay interest liability to Govt. of India and further when the interest was not actually paid then as per the provisions of Section 43B, the same is not allowable. On appeal, the CIT (Appeals) has deleted the addition made by the Assessing Officer in para 4.1.1 as under :

4.1.1 It is seen from the above that the main reason why the interest had been disallowed is because the AO feels that the assessee company had no intention of paying the interest liability to Government of India and hence needed to be disallowed. The fact that such interest is payable to Government of India on loan advanced is not disputed and the assessee had also filed a letter issued by the Pay & Accounts Office, Department of Heavy Industry, Public Enterprises confirming the Government of India Loan and the interest thereon. The AO's contention that the debit of interest liability to the P & L account is on provisional basis is not correct as the interest liability on a loan cannot be made on a provisional basis as it is an actual liability and an expenditure allowable under the Income Tax Act. Further, the said interest does not fall under the provisions of Sec.43B, so as to be allowed on payment basis, as interest payable to Government of India is not covered under the items prescribed for disallowance u/s.43B. Hence, the interest payable on

Government of India loan is allowable under the provisions of the Income Tax Act on accrual/due basis.

In addition to the interest debited for the relevant previous year, the AO had also disallowed the interest debited in the earlier years, shown as outstanding as on March 31st. The disallowance of interest debited in the earlier years' is not proper and is against the provisions of the Income Tax Act, 1961 and hence the same is deleted.

Thus it is clear that the assessee has not written off the liability but it is showing in the books of accounts as liability payable to Govt. of India. Further the interest does not fall under the provisions of Section 43B and therefore we do not find any error or illegality in the impugned order of the CIT (Appeals) qua this issue.

7. Ground No.8 is regarding disallowance of management charges under Section 40(a)(ia) for want of TDS.

8. The Assessing Officer disallowed the amount of Rs.6 lakhs debited towards management charges and paid to holding company **M/s. Bharat Yatra Nigam Limited** as no tax was deducted on the same. On appeal, the CIT (Appeals) deleted the addition on the ground that this payment is in the nature of reimbursement of expenses incurred by the holding company on behalf of the assessee and as such TDS is not applicable.

9. The learned Departmental Representative has submitted that merely because the payment is routed through the holding company will not relieve the assessee from the liability of deducting tax at source. He has further submitted that Section 194J are applicable in the amount paid for management fees.

10. Having considered the contention of the learned Departmental Representative and carefully considered the relevant material on record, we find that there is no dispute on the point that the assessee has debited an amount of Rs.6 lakhs towards management charges paid to M/s. Bharat Yatra Nigam Limited. Even if the said payment was on account of reimbursement of expenses incurred by the holding company the provisions of Section 194J cannot be circumvent by modus operandi of payment routing through the holding company. Once the nature of payment is clearly attracting the provisions of Section 194J the modes of payment will not change the obligation of the assessee to deduct the tax at source. If this modus operandi is allowed then in each and every case the provisions of Section 194 as well as Section 40(a)(ia) can be circumvent by making the payment through an intermediary and not directly to the party. Hence we set aside the order of the CIT (Appeals) qua this issue and restore the order of the Assessing Officer.

11. In the result, the appeal of the revenue is partly allowed.

Order pronounced in the open court on 27th Oct.,2017.

(JASON P BOAZ)

Accountant Member

(VIJAY PAL RAO)

Judicial Member

Bangalore,
Dt.27.10.2017.

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