

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 6841/Del/2015
Assessment Year: 2012-13

Kobe Suspension Co. Ltd. Plot No. 15, Section 6, Faridabad PAN AABCK4643H	Vs.	Deputy Comissioner of Income Tax, (Circle-1) Faridabad
(Appellant)		(Respondent)

ITA No. 6842/Del/2015
Assessment Year: 2012-13

Elmec Tools and Devices Pvt. Ltd. Plot No. 257, Sector-24 Faridabad PAN AABCE6573H	Vs.	ACIT Circle-II Faridabad
(Appellant)		(Respondent)

Assessee by:	Shri Rajneesh Behari Mathur, CA
Department by :	Shri R.C. Panday, Sr. DR
Date of Hearing	22/08/2017
Date of pronouncement	21/11/2017

ORDER

PER SUDHANSHU SRIVASTAVA, J.M

Both the appeals have been filed by the respective assesseees against orders passed by the Ld. CIT (A) Faridabad. The assessment year in question is 2012-13. As identical issues were involved in both the appeals, they were heard together and are being disposed off through this common order.

2. The brief facts of the case in Kobe Suspension Co. P. Ltd. (ITA No. 6841/Del/2015) are that during the course of assessment proceedings, the AO observed that the assessee had made major addition of Rs. 85,24,859/- in the plant and machinery during the year and the payments of the same were made before the date of installation on different dates. The AO asked the assessee to show cause as to why proportionate interest paid on the loan used for addition in fixed assets should not be disallowed. It was the assessee's submission before the AO that it had adequate funds in form of capital reserve, unsecured loans from directors, secured loan against machinery and advances from customers out of which it has purchased plant and machinery and, therefore, no interest needed to be disallowed. However, the AO proceeded to disallow interest of Rs. 2,03,215/- u/s 36(i)(iii) of the Income Tax Act, 1961 on the ground that it pertained to notional interest

on the interest bearing funds utilised for the purchase of fixed assets during the year.

2.1 Similarly, in the case of M/s. Elmec Tools & Devices Pvt. Ltd. (ITA No. 6842/Del/2015), during the course of assessment proceedings, the AO noticed that the assessee company had purchased an industrial plot at Faridabad on 30.3.2012 for a consideration of Rs. 1,59,10,000/-. The AO observed that the assessee company had secured / unsecured loans on which it had incurred financial charges of Rs. 66,88,128/- and, accordingly, the assessee was asked to show cause as to why proportionate amount of interest not be disallowed u/s 36 (i)(iii) of the Income Tax Act, 1961 as interest bearing funds were utilised for acquisition of assets which was not put to use on 31st March, 2012. Thereafter, after considering the reply of assessee, the AO proceeded to an amount of Rs. 36,493/- to the income of the assessee as being disallowed u/s 36(i)(iii) of the Act.

2.2 The assessees carried the matter to the Ld. CIT (A) in both the cases and challenged the disallowance of notional interest. However, in both the cases, the Ld. CIT (A) dismissed the assessees' contentions. Now, both the assessees have approached the ITAT and have challenged the confirmation of disallowance by the Ld. CIT (A).

3. The Ld. AR submitted that as far as disallowance of interest of Rs. 2,03,215/- in the case of Kobe Suspension Co. P. Ltd. was concerned, the assessee had not taken any fresh term loan for the purchase of assets and the term loan taken in earlier years was substantially reduced in the year under consideration. It was submitted that the total amount paid for purchase of fixed assets was Rs. 85,24,859/- whereas the interest free funds available as per the assessment order were Rs. 2,73,29,423/-. It was also submitted that there was an overall reduction in the liabilities of the company as compared to the previous year and, therefore, it could not be said that the assessee had utilised borrowed funds for the purchase of fixed assets during the year under consideration.

3.1 Similarly, on the issue of disallowance of interest of Rs. 36,493/- in the case of M/s. Elmec Tools & Devices Pvt. Ltd., the Ld. AR submitted that in this case also the assessee had not taken any fresh term loan for the purchase of any fixed assets and further on the day the amount of Rs. 30,00,000/- was paid for advance for purchase of land, after the debit of Rs. 30,00,000/-, there was still credit balance of Rs. 2,57,944/- in the Citibank account of the assessee and, therefore, the

contention of the AO that borrowed funds had been utilised was not correct.

3.2 The Ld. AR also submitted that ground No. 2 in ITA No. 6842/DEL/2015 was not being pressed out to smallness of amount.

4. The Ld. Sr. DR, in response, submitted that the additions had been confirmed by the Ld. CIT (A) after due consideration of the facts and circumstances of the cases and further no details, as per the observations of the Ld. CIT (A), were filed by the assesseees in support of their claim in both the cases and, therefore, the additions had been rightly upheld.

5. We have heard the rival submissions and have also perused the material on record. It is seen that the only point of dispute is as to whether the assesseees had sufficient funds available with them and, therefore, whether the purchase of plant and machinery / land were financed from borrowed funds. A perusal of the impugned order shows that the Ld. CIT (A) has passed the impugned orders entirely based on the observations recorded by the AO in this regard. It is evident that the Ld. CIT (A) has not carried out any fresh and proper examination of the facts while dismissing the assesseees' appeals. The findings recorded by

the Ld. CIT (A) are at best cryptic and it is apparent that the various issues and evidences were not properly examined by the Ld. First appellate authority. Before us, the assessee has not produced any evidences in support of their contention and Ld. Sr. DR also has only relied on the orders of the lower authorities. Therefore, looking into the facts and circumstances of the cases, we are of the considered opinion that in the interest of justice, both the appeals should be restored to the file of the Ld. CIT (A) for fresh adjudication by passing speaking orders after giving due opportunity to the assessees to present their case. We also direct the assessees in both the appeals to substantiate their contentions regarding non utilisation of borrowed funds with proper evidences. We also direct that it will be in the fitness of things if the Ld. CIT (A) obtains remand report from the AO in both the cases before proceeding with the adjudication. We further direct that should the assessees not avail the opportunity before Ld. CIT(A) and not file the requisite evidences, the Ld. CIT(A) will be at liberty to proceed with the adjudication even in the absence of the evidences which the assessees are expected to file.

6. In the final result, ITA No. 6841/DEL/2015 is allowed for statistical purposes whereas ITA No. 6842/DEL/2015 is partly allowed for statistical purposes.

Order pronounced in the open court on 21st November
2017.

sd/-

(R.K.PANDA)
ACCOUNTANT MEMBER

sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 21st November, 2017

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi