

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

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.56/Kol/2016
Assessment Year :2010-11

M/s Eko Diagnostic Pvt. Ltd., 54, Jawaharlal Nehru Road, Central Kolkata, Kolkat-700071 [PAN No.AACE 6366J]	V/s.	DCIT, Circle-3, Aayakar Bhawana, P-7, Chowringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri A.K. Tulsian, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri S. Dasgupta, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	28-05-2018
घोषणा की तारीख/Date of Pronouncement	31-05-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2010-11 arises against Commissioner of Income Tax (Appeals)-5, Kolkata's order dated 16.12.2015, in case No.53/CIT(A)-5/Cir-3/13-14/14-15 affirming Assessing Officer's action *inter alia* disallowing / adding interest on loans u/s 36(1)(iii) & ad hoc disallowance in relation to ambulance service expenditure involving sums of ₹13,06,190/- and ₹3,82,213/-; respectively in proceedings u/s143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. We come to the former issue of u/s 36(1)(iii) interest disallowance of ₹13,06,190/- made in the course of assessment as upheld by the CIT(A) in lower appellate proceedings with the following detailed discussion:-

“2. Ground No.1 Interest on loan of Rs.13,06,190/-

The AO has made the disallowance of interest of Rs.13,06,190/- by resorting to apportionment of gross interest of Rs.1,32,73,512/- on the borrowed funds on the reasoning that the appellant failed to show one to one relation that the borrowed capital was not utilized for capital work-in-progress. The appellant's plea before the AO was that it had not borrowed capital for acquisition of assets or extension of business or the capital borrowed was not deployed in capital work-in-progress. The AO did not agree with the AR's contention and made the addition on proportionate basis. In the appeal the AR has claimed that the secured loans were for specific assets which have been mortgaged to banks and financial institutions whereas the unsecured loans were utilized for the purpose of business. In respect of capital work-in-progress the AR has claimed that there was no nexus between the borrowed fund and the capital work-in-progress.

2.1 From the balance sheet it is seen that the appellant has about Rs.13.8 crores of loans out of Rs.31.46 crores of funds utilized in the business. Though the claim has been made that there is no nexus between the borrowings and the CWIP, no specific details have been furnished as to what constitutes CWIP and how the said CWIP is claimed to have been financed from its own fund. The fixed assets including CWIP exceed Rs.30 crores in book value after adjusting the depreciation. The balance sheet shows heavy deployment of borrowings in capital assets including CWIP. Mere claim of the appellant without visible data cannot be accepted. In the facts and circumstances of the case, I therefore do not agree with the appellant's claim that no nexus exists between the borrowing and the capital work-in-progress. The Assessing Officer's order is reasonable and in accordance with law. This ground (Ground No1) of appeal therefore, is not allowed."

3. We have given our thoughtful consideration to rival contentions against and in favour of impugned interest expenditure disallowance made on account of alleged diversion of interest bearing funds towards cost of work-in-progress. We see no reason to affirm the same in view of the fact that the assessee's interest free funds are of ₹25,26,08,871/- (comprising of share capital, reserve and surplus deferred tax and current liabilities involving the corresponding figures sums of ₹413,22,400/-; ₹110,861,276/-, ₹235,90,644/- and ₹768,34,551/-) as against the relevant capital work-in-progress of ₹272,86,310/-. We quote hon'ble Bombay high court's landmark decision in *CIT vs. Reliance Utilities & Power Ltd* (2009) 313 ITR 340 (Bom) to presume that only the above non-interest bearing funds than borrowed funds have been utilized for the impugned cost of work-in-progress. We make it clear that the above quoted figures of non interest bearing funds have not been disputed at the Revenue's behest very fairly. The impugned disallowance is therefore

deleted on this score alone. The assessee succeeds in its former substantive ground.

4. We advert to latter disallowance of ₹3,82,213/- made by both the lower authorities @ 10% on *ad hoc* basis. The assessee had not supplied relevant documents indicating any agreement or arrangement with the hospital concerned. Suffice to say, this assessee admittedly runs a diagnostic centre. It is therefore supposed to provide for the impugned expenditure which has been accepted in principle. The fact also remains that the assessee has failed to provide all the above stated details. We therefore deem it appropriate that the impugned *ad hoc* disallowance @ 5% than 10% under challenge would be just and proper with a rider that the same shall not be taken as a precedent in any preceding or succeeding assessment year. The assessee gets part relief in the instant latter substantive ground.

5. This assessee's appeal is partly allowed.

Order pronounced in the open court 31/05/2018

Sd/-

(लेखा सदस्य)

(Dr. A.L. Saini)

(Accountant Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 31/05/2018 कोलकाता ।

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

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

1. अपीलार्थी/Appellant-M/s Eko Diagnostic Pvt. Ltd, 54, Jawaharlal Nehru Rd, Kolkata-71
2. प्रत्यर्थी/Respondent-DCIT, Cir-3, Aayakar Bhawan, P-7, Chowringhee Sq., Kolkata-69
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 ।