

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai**

**Before Shri B.R. Baskaran, Accountant Member
and Shri Amarjit Singh, Judicial Member**

ITA No. 968/Mum/2017
(Assessment Year: 2011-12)

M/s. Godavari Biorefineries Ltd.
45-47, Somaiya Bhavan
M.G. Road, Fort
Mumbai 400001

DCIT, Circle -2(1)
5th Floor, Aayakar Bhavan
Vs. M.K. Road, Mumbai 400020

PAN – AANCG2543C

Appellant

Respondent

Appellant by: Shri Vipul Joshi
Respondent by: Shri Suman Kumar

Date of Hearing: 21.06.2018
Date of Pronouncement: 21.06.2018

ORDER

Per B.R. Baskaran, AM

This appeal filed by the assessee is directed against the order of the CIT(A)-3, Mumbai dated 25.11.201 and it pertains to A.Y. 2011-12.

2. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the disallowance of ₹201.11 lakhs relating to interest payment made to various banks and financial institutions.

3. The learned A.R. submitted that the assessee is in the business of manufacture of sugar, chemical distillery and generation of electricity. He submitted that the assessee had incurred interest liability in the earlier years in respect of loans taken from various banks and financial institutions. During those years the interest liability was not claimed as deduction, as the provisions of Section 43B of the Income Tax Act (hereinafter "the Act") barred the claim on accrual basis and allowed the claim on payment basis except when the payment is made before the due date prescribed for filing return of income. During the year under

consideration the assessee paid a sum of 201.11 lakhs towards interest liability of earlier years and the same was claimed as deduction as per provisions of Section 43B of the Act on payment basis. The AO, however, disallowed the claim on the ground that these were pertaining to earlier years and not related to the year under consideration. With regard to the claim of deduction under Section 43B of the Act, the AO has observed that the assessee has not shown that these expenses were claimed in the earlier years and disallowed under Section 43B of the Act. The learned CIT(A) confirmed the same. The Ld A.R submitted that the interest expenditure was not allowed as deduction in the earlier years and hence the same should be allowed on payment basis as per the provisions of sec. 43B of the Act.

4. We heard Ld D.R and perused the record. Admittedly, interest payable to banks and financial institutions is covered by the provisions of Section 43B of the Act. It is the contention of the assessee that it did not claim the interest liability in the earlier years as deduction and hence the same is claimed during the year under consideration under Section 43B of the Act on payment basis. The provisions of sec. 43B of the Act prohibits deduction claim on accrual basis, but allows deduction on payment basis except when the payment is made before the due date prescribed for filing return of income u/s 139(1) of the Act. To this extent, the provisions of Section 43B of the Act override the method of accounting followed by the assessee. Since the interest liability was paid during the year under consideration, the assessee has claimed the amount paid by it as deduction in terms of sec. 43B of the Act.

5. We notice that the AO has disallowed the claim of the assessee on two grounds viz., (a) the claim does not relate to the year under consideration as the assessee is following mercantile system of accounting and (b) the assessee has not made any specific disallowance under Section 43B of the Act in the earlier years. With regard to the method of accounting, we have held earlier that the provisions of sec. 43B of the Act override the method of accounting in respect of certain items of

expenditure prescribed in that section and the interest liability to banks and financial institutions is covered by sec. 43B of the Act. Hence the first reasoning given by AO would fail.

6. With regard to the second reasoning, in our view, what is required to be seen is whether any deduction of impugned amount towards interest liability was allowed in the earlier years or not. If no deduction was allowed on accrual basis, in our view, the assessee would be entitled to claim deduction of interest liability on payment basis under Section 43B of the Act. In our view, there is no merit in the second reasoning given by the AO. This is for the reason that the net effect of claiming deduction on interest liability on accrual basis and then disallowing the same under Section 43B of the Act would be “NIL deduction”, i.e., the assessee would not have been allowed deduction towards interest liability in the earlier years. Hence we are of the view that the second reasoning given by AO would also fail.

7. Accordingly we set aside the order passed by the learned CIT(A) on this issue and restore the same to the file of the AO, since the AO has not examined as to whether the amount claimed by the assessee on payment basis during the year under consideration was, in fact, allowed as deduction in the respective years or not. Accordingly the AO is directed to allow the claim of the assessee under Section 43B of the Act on payment basis, after satisfying himself that the said liability was not allowed to the assessee as deduction in the earlier years.

8. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 21st June, 2018.

Sd/-
(Amarjit Singh)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai, Dated: 21st June, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -3, Mumbai*
4. *The Pr. CIT - 2, Mumbai*
5. *The DR, "G" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.