

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'A', KOLKATA
[Before Shri P.M. Jagtap, AM & Shri S.S. Viswanethra Ravi, JM]**

**I.T.A. No. 1426/Kol/2016
Assessment Year 2007-08**

M/s. E.R. Textiles Ltd.....Appellant
1-433, Gariahat Road,
B1-4A, 4th Floor, Jodhpur Park,
Kolkata – 700 068.
[PAN: AABCE 6569 N]

DCIT, Circle 10 Kolkata.....Respondent
Kolkata.

**I.T.A. No. 1393/Kol/2016
Assessment Year 2007-08**

DCIT, Circle 10 Kolkata.....Appellant
Kolkata.

M/s. E.R. Textiles Ltd.....Respondent
1-433, Gariahat Road,
B1-4A, 4th Floor, Jodhpur Park,
Kolkata – 700 068.
[PAN: AABCE 6569 N]

Appearances by:

Shri A.K. Tibrewal, FCA & Shri Amit Agarwal, Advocate appearing on behalf of the Assessee.

Shri P.K. Srihari, CIT, DR & Shri Sallong Yaden, Addl. CIT Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : August 01, 2018

Date of pronouncing the order : September 28, 2018

ORDER

SHRI P.M. JAGTAP, AM

These two appeals, one filed by the assessee being ITA No. 1426/K/2016 and the other filed by the revenue being ITA No. 1393/K/2016, are cross appeals which are directed against the order of Ld. CIT (A) – 4, Kolkata dated 04.04.2016.

2. Ground No. 1 and 2 of the revenue's appeal and Ground No. 3 and 4 of the assessee's appeal involve a common issue relating to

disallowance of interest made by the AO which is partly sustained by the Ld. CIT(A).

3. The assessee in the present case is a company which is engaged in the business of manufacture of textiles, handloom and powerlooms. The return of income for the year under consideration was filed by it on 22.10.2007 declaring a total income at Nil. In the profit and loss account filed along with the said return, interest expenditure of Rs. 6,23,41,759/- was debited by the assessee. During the course of assessment proceedings, it was noticed by the AO that the said interest expenditure to the extent of Rs. 5,63,15,413/- was attributable to the loan amount utilised for acquisition/construction of assets. He, therefore, made a disallowance to that extent out of interest u/s 36(1)(iii) of the Act. In the computation of total income interest expenditure incurred to the extent of Rs. 4,73,10,960/- on IDBI loan was disallowed by the assessee company u/s 43B of the Act as the said interest had remained unpaid. Keeping in view that out of the total interest expenditure of Rs. 6,23,41,759/- claimed by the assessee, disallowance of Rs. 5,63,50,413/- was made u/s 36(1)(iii), the disallowance u/s 43B was restricted by the AO to the extent of Rs. 59,91,346/- (Rs. 6,23,41,759/- - Rs. 5,63,50,413/-).

4. The disallowance made by the AO on account of interest u/s 36(1)(iii) and 43B was challenged by the assessee in the appeal filed before the Ld. CIT(a) and keeping in view that the disallowance on account of interest was made by the assessee company in the computation of income to the extent of Rs. 4,73,10,960/- u/s 43B, the disallowance of Rs. 5,63,50,413/- made by the AO on account of

interest u/s 36(1)(iii) was restricted by the Ld. CIT(A) to Rs. 90,39,453/- (Rs. 5,63,50,413/- - Rs. 4,73,10,960/-). As regards the disallowance of Rs. 59,91,346/- made by the AO on account of interest u/s 43B, the Ld. CIT(A) confirmed the same on the ground that interest to that extent payable to IDBI had remained unpaid. Aggrieved by the order of the Ld. CIT(A), the revenue and assessee both have raised this issue in their respective appeals filed before the Tribunal in the form of the following grounds:

Grounds raised in the appeal of the assessee:

1. *The Ld. CIT(A) had erred in confirming the disallowance of balance amount of interest of Rs. 90,39,453/- (Rs. 5,63,50,413/- minus Rs. 4,73,10,960/-) as there are other source like equity which go into building fixed assets.*

2. *The confirmation of disallowance of interest of Rs. 59,91,346/- u/s 43B by Ld. CIT(A) is totally unwarranted as the amount has already paid by the assessee."*

Grounds raised in the appeal of the revenue:

1. *On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the disallowance of interest of Rs. 4,73,10,960/- made in terms of section 36(1)(iii) of the IT Act, 1961.*

2. *That the Ld. CIT(A) has erred in law as well as on the fact by treating the disallowance u/s 36(1)(iii) of the IT Act, 1961 at par with the disallowance made u/s 43B of the IT Act, 1961."*

5. We have heard the arguments of both the sides and also perused the relevant material available on record. As rightly contended by the Ld. DR, the interest expenditure to the extent of Rs. 5,63,50,413/- having been disallowed by the AO u/s 36(1)(iii) and no fault in the said disallowance having been found by the Ld. CIT(A), there was no question of applicability of section 43B which deals with

the expenditure otherwise allowable under the Act and the Ld. CIT(A) was not justified in restricting disallowance made by the AO on account of interest u/s 36(1)(iii) on the ground that disallowance on account of interest to the extent of Rs. 4,73,10,960/- was disallowed by the assessee company itself u/s 43B in the computation of total income. Even the learned counsel for the assessee is unable to dispute this position. We accordingly reverse the impugned order of the Ld. CIT(A) restricting the disallowance of Rs. 5,63,50,413/- made by the AO on account of interest u/s 36(1)(iii) to Rs. 90,39,459/- and allow Ground No. 1 and 2 of the revenue's appeal.

6. As regards the issue involved in Ground No. 3 of the assessee's appeal relating to the disallowance of interest made by the AO u/s 36(1)(iii) and sustained by the Ld. CIT(A) to the extent of Rs. 90,39,453/-, the learned counsel for the assessee has contended that acquisition/construction of fixed asset was not entirely financed by the assessee company from the borrowed funds and the assessee company had its own funds which were also utilised for the acquisition/construction of new assets. He has urged that this matter may be sent back to the AO for verification of the assessee's claim. Since the learned DR has not raised any objection in this regard, we restore this issue to the file of the AO for verifying the claim of the assessee of having utilised its own funds for the acquisition/construction of fixed assets and to allow appropriate relief to the assessee on such verification. Ground No. 3 of the assessee's appeal is accordingly treated as allowed for statistical purpose.

7. As regards the issue involved in Ground No. 4 of the assessee's appeal relating to the disallowance of Rs. 59,91,346/- made by the AO u/s 43B and confirmed by the Ld. CIT(A), the learned counsel for the assessee has submitted that the amount of such interest was actually paid by the assessee company during the year under consideration and therefore, the disallowance made u/s 43B was totally unwarranted. He has urged that this matter may also be sent back to the Assessing Officer for verifying the claim of the assessee. Since the learned DR has not raised any objection in this regard, we restore this issue to the file of the AO for verifying the claim of the assessee of having paid the amount in question during the year under consideration and to allow appropriate relief on such verification. Ground No. 4 of the assessee's appeal is accordingly treated as allowed.

8. As regards the issue raised in Ground No. 2 of assessee's appeal relating to the disallowance of Rs. 2,35,344/- made by the AO on account of belated payment of employees contribution to provident fund, it is observed that the Ld. CIT(A) vide his impugned order has directed the AO to verify the claim of the assessee of having disallowed this amount in the computation of total income and to delete the disallowance if the claim of the assessee is found to be correct. Keeping in view this direction given by the Ld. CIT(A), we are of the view that the assessee cannot be said to have any grievance on this issue calling for any interference. Ground No. 2 of the assessee's appeal is accordingly dismissed. Ground No. 1 and 5 raised by the assessee company in its appeal are general in nature which do not call for any specific adjudication.

9. As regards the issue involved in Ground No. 2 of the revenue's appeal relating to the deletion by the Ld. CIT(A) of the addition of Rs. 19,19,162/- made by the AO by including the central excise duty in the valuation of closing stock of finished goods, the learned representatives of both the sides have agreed with this issue is squarely covered in favour of the assessee by the decision of Hon'ble Gujarat High Court in the case of ACIT vs Narmada Chematur Petrochemicals Ltd. 194 Taxman 103 wherein it was held that the liability of excise duty arises only when the finished goods are removed from the factory premises and therefore, the amount of excise duty which is neither paid nor payable on finished goods lying in the closing stock cannot be added to the value of closing stock of finished goods by applying section 145A of the Act. Respectfully following the said decision of Hon'ble Gujarat High Court, we uphold the impugned order of the Ld. CIT(A) giving relief to the assessee on this issue and dismiss Ground No. 2 of the revenue's appeal.

10. In the result, the appeal of the revenue is partly allowed while the appeal of the assessee is treated as partly allowed for statistical purposes.

Order Pronounced in the Open Court on 28th September, 2018.

Sd/-
(S.S. Viswanethra Ravi)
(JUDICIAL MEMBER)

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 28/09/2018
Biswajit, Sr. P.S.

Copy of order forwarded to:

1. M/s. E.R. Textiles Ltd., 1-433, Gariahat Rd., B1-4A (4th Fl),
Jodhpur Park, Kolkata – 700 068.
2. DCIT, CIR – 10, Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata