

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

**Before Shri R.C. Sharma, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA No. 3101/Mum/2016
(Assessment Year: 2011-12)

M/s. Stationery Point India Ltd. E.S. Crystal Lawn, 1st Floor Near Mega Mart Showroom Kandivali (E), Mumbai 400101	Vs.	Deputy Commissioner of Income Tax - 9(3) Mumbai
PAN – AAFCS3137G		

Appellant

Respondent

Appellant by: Shri Haresh P. Shah
Respondent by: Shri V. Justin

Date of Hearing: 27.07.2018
Date of Pronouncement: 03.10.2018

ORDER

Per Sandeep Gosain, JM

This appeal filed by assessee is directed against the order passed by the CIT(A)-21, Mumbai, dated 27.02.2016 and it relates to A.Y. 2011-12.

2. The brief facts of the case are that the assessee company is engaged in the business of manufacturing of flexible packaging for consumer products, wire products like staple pins, U-clips, etc. The return of income was filed by the assessee on 30th September, 2011 showing total income at `4,55,12,480/-. The assessment order under Section 143(3) of the Act dated 30th March, 2014 was passed thereby assessing the income of the assessee at `6,06,85,950/- thereby making additions/disallowances under different heads. Aggrieved by the order of the AO, the assessee preferred appeal before the CIT(A) and the CIT(A), after considering the case of both the parties partly allowed the appeal. Aggrieved by the order of the CIT(A) assessee preferred the present appeal before us on the grounds mentioned below: -

(I) DISALLOWANCE OUT OF INTEREST AS ATTRIBUTABLE TO WIP RS. 64,88,000/-

- (1) *On the facts and circumstances and in law, the learned CIT(A) - 21, Mumbai [referred as "CIT(A)"] erred in confirming the disallowance of ad-hoc amount of interest of Rs. 64,88,000/- on account of the alleged addition to work-in-progress without appreciating, with reference to the Balance Sheet for the year under consideration, that there was no addition to the work-in-progress as such.*
- (2) *On the facts & circumstances and in law it is prayed that the alleged addition may be deleted.*

(II) DISALLOWANCE OF INTEREST OF RS.29,13,627/- U/S. 14A-

- (1) *On the facts & circumstances & in law the learned CIT(A) erred in confirming the disallowance of Rs.29,13,627/- out of interest under the provisions of section 14A rwr 8D(2)(ii) of the Act without appreciating that no borrowed funds were utilized as the own capital was much more that the investment.*
- (2) *On the facts & circumstances and in law it is prayed that the alleged addition may be deleted.*

(III) ADDITION OF RS.11,40,000/- AS UNEXPLAINED CASH CREDIT

- (1) *On the facts and circumstances & in law the learned CIT(A) erred in confirming addition of Rs.11,40,000/- as unexplained cash credit u/s. 6n8 of the Act [being total of Share Application Rs.7,40,000/- and loan of Rs.4,00,000/-].*
- (2) *On the facts & circumstances and in law it is prayed that the alleged addition may be deleted.*

3. By Ground No. 1 assessee is challenging the action of the CIT(A) in confirming the disallowance of interest of `64,88,000/- on account of alleged addition of work-in-progress without appreciating, with reference to the Balance Sheet for the year under consideration, that there was no addition to the work-in-progress as such.

4. We have heard the counsels for both the parties and perused the material on record as well as the orders of the Authorities below. Before deciding the merits of the case it is necessary to evaluate the order of the CIT(A), which leads to this ground. The learned CIT(A) dealt with this issue

in para 5 of his order and the operative portion of the order contained in para 5.5 reads as under: -

*“5.5. I have considered the facts and the assessment order and the submissions carefully. A perusal on the balance sheet shows that CWIP was shown at Rs 14.45 crores last year and is Nil in the current Year, which implies it has been added to the fixed assets during the year. The addition to fixed assets shown (this year is Rs 21 crores. At the end of the year, the term loans of Rs 15.64 crores, working capital loans of Rs 39.28 crores has been shown. Unsecured loans are shown at Rs 12.73 crores. The notes to accounts clearly state that all expenses incurred including interest is reflected in the CWIP. However, the appellant did not address the conclusion of the assessing officer that the interest computation in respect of CWIP and the addition to CWIP and the dates on which it was added to fixed assets was not furnished. This was not submitted in the appellate proceedings too. It is seen that the increase in gross fixed assets is Rs 21 crores in this year which includes CWIP of Rs 14.45 crores appearing as closing balance last year. The investments have gone up by Rs 2.35 crores and net current assets by Rs 26 crores. These have been financed by increase in loans of Rs 15 crores and increase of share capital and reserves by another Rs 15 crores during the year. When specific details are called, the appellant cannot simultaneously choose not to furnish details and also claim presumption that fixed assets are financed from own resources. The term loans raised are for financing fixed assets. The method of accounting followed is to capitalize such interest. Such working is not shown. In this scenario, the separate working made by assessing officer is upheld. The **ground of appeal II in this regard is dismissed.**”*

5. After having gone through the orders passed by the Revenue Authorities and after hearing the parties at length, we find that the learned A.R. submitted before us that in A.Y. 2006-07 the AO had made similar disallowance pertaining to the work-in-progress, which was ultimately deleted by the CIT(A). The learned counsel for the assessee also reiterated the same arguments as was raised before the learned CIT(A), which contained in para 5.1 of the order passed by the CIT(A). We have perused the order passed by CIT(A) in assessee's own case for A.Y. 2006-07 wherein similar additions made by the AO were deleted. The operative portion of the order is extracted below: -

“8. The appellant had claimed interest expenses of Rs. 66,04,100 on borrowed funds. The AO observed that the appellant's balance sheet as on 31.3.2005 revealed capital WIP and advance for capital goods

of Rs. 2,88,18,302 whereas the amount under this head as on 31.3.2006 was Rs.44,566. He asked the appellant to explain whether any interest bearing fund was used in the said capital WIP. The appellant stated that no such amount was utilized and filed breakup of the capital WIP as on 31.3.2005 to support its contention. The break up has already been tabulated in an earlier paragraph above. Being not satisfied the AO worked out the interest bearing funds in order to determine the quantum of interest paid on them which could be attributed to the funds utilized in the capital work in progress and disallowed as capital expenditure. He observed that the appellant's balance sheet as on 31.3.2005 showed own funds of Rs.4.63 crores and borrowed funds of Rs.4.73 crores. He also observed that amount invested in fixed assets stood at Rs.3.10 crores. He further observed that the appellant had capitalized interest of Rs.24,52,724 in the additions made to the fixed assets. He presumed that the borrowed funds exceeded own funds during the current year. He assumed that interest payable on such borrowed fund for two third part of the year was required to be capitalized in the work in progress. He estimated such interest at Rs. 28,81,830 by taking 2/3rd of 15% of the opening capital WIP of Rs. 2,88,18,302. However, in view of interest of Rs.24,52,724 having been already capitalized, the AO disallowed the excess over that which came to Rs. 4,29,106.”

6. From the record we find that the CIT(A), for the year under consideration, had dismissed this ground by holding that the assessee had not addressed the conclusion of the AO that the interest computation in respect of CWIP and the addition to CWIP and the dates on which it was added to fixed assets was not furnished. It was also mentioned by the learned CIT(A) that when specific details were called from the assessee, the assessee has failed to furnish these details. Therefore in the absence of said details it cannot be presumed that fixed assets are financed from own resources. The learned counsel for the assessee had also not submitted any documents in this respect before the CIT(A). We have also noticed that before reaching to any conclusion the CIT(A) has not considered the order passed by his predecessor in assessee's own case for A.Y. 2006-07 although this fact was categorically mentioned by the assessee before the CIT(A). Be that as it may, in the interest of justice we restore back the issue to the file of the AO to provide one more opportunity to the assessee to submit the documents and also to consider the order passed by the CIT(A) in assessee's own case for A.Y. 2006-07 and decide this issue again.

Needless to mentioned here that the assessee may be provided reasonable opportunity of being heard before deciding the issue.

7. Ground No. 2 raised by the assessee relates to challenging the order of the CIT(A) in confirming the disallowance of `29,13,627/- out of interest under the provisions of Section 14A read with Rule 8DE(2)9ii) of the I.T. Rules without appreciating that no borrowed funds were utilised as own capital was much more than the investment.

8. We have heard the counsels of both parties and perused the material available on record as well as the orders of Authorities below. Before deciding the merits of the case it is necessary to evaluate the order passed by the CIT(A) leading to this ground. The learned CIT(A) has dealt with this ground in para 6 of his order. The operative portion of the order contains in para 6.4 of his order.

9. The learned counsel for the assessee before us reiterated the same arguments as was raised by him before the CIT(A). It was also submitted that during the year the dividend income was earned and therefore there was no actual exempt income. Apart from that it was also submitted that similar additions were deleted by the CIT(A) in assessee's own case for A.Y. 2007-08 and the ITAT had also decided this ground in favour of the assessee. We have also perused the order of the ITAT in assessee's own case in ITA No. 1550/Mum/2011 for A.Y. 2007-08 wherein identical question was raised and decided by the Tribunal as under: -

"2. Rival contentions have been heard and record perused. We had also gone through the orders of the authorities below and found that assessee's contention with regard to Rs.5,65,690/- u/s.40(a)(ia) was explained through documents placed at page 290 to 295 and 326 to 328 of the paper book submitted before the CIT(A). We found that the CIT(A) has declined assessee's claim merely by mentioning that the AR did not press them in the course of appellate proceedings. We have gone through the documents placed on record and found that the matter deserves to be restored to the file of CIT(A) for deciding on merit after considering the documents mentioned hereinabove, which was placed before him during the course appellate proceedings.

3. *With regard to disallowance u/s.14A read with rule 8D amounting to Rs.68,807/-, the ld. AR drew our attention to the balance sheet wherein assessee was having share capital and reserve as well as interest free funds more than the amount advanced free of interest. Ld. AR relied on the decision of Hon'ble Bombay High Court in the case of Reliance Utilities, 313 ITR 240, wherein it was held that if the assessee had sufficient interest free funds, then presumption can be made that investment in shares/securities were made out of such interest free funds. We found that the CIT(A) has just declined assessee's claim by stating that this ground was not pressed. In the interest of justice, we restore this ground back to the file of CIT(A) for deciding afresh after verifying the availability of interest free funds with the assessee to cover up such investment.*

4. *In the result, appeal of the assessee is allowed in part for statistical purposes."*

10. Since the present issue is covered by the aforementioned decision of the Tribunal, respectfully following the same we restore this issue back to the file of the AO for deciding the issue afresh in the light of the decision of the Tribunal.

11. Third ground raised by the assessee relates to challenging the order of the CIT(A) in confirming the addition of `11,40,000/- as unexplained cash credit under Section 68 of the Act.

12. We have heard the counsels of both parties and perused the material available on record as well as the orders of Authorities below. Before deciding the merits of the case it is necessary to evaluate the order passed by the CIT(A) leading to this ground. The learned CIT(A) has dealt with this ground in para 7 of his order. The operative portion of the order contains in para 7.7 of his order.

13. After having gone through the facts of the present case and hearing the parties at length we find that the learned A.R. has reiterated the same arguments as were raised by him before the learned CIT(A). It was also pointed out that similar addition made in A.Y. 2006-07 in assessee's own case was deleted by the learned CIT(A) after following the judgement of Hon'ble Apex Court in the case of CIT vs. Lovely Exports Ltd. 216 CTR 195 (SC). It was also submitted that the ITAT in assessee's own case in ITA No.

1162/Mum/2010 dated 18.04.2012 had deleted similar addition. However, the learned CIT(A), while deciding this ground, has not discussed the order of the ITAT in assessee's own case for A.Y. 2006-07 wherein identical ground has already been decided.

14. Whereas, on the contrary, the learned CIT(A) has independently dealt with the said ground and by relying upon the judgements in the case of N.R. Portfolio (P) Ltd. (2014) 222 Taxman 157 (Del) and Sophia Finance Ltd. (1994) 205 ITR 98 (Del) had dismissed the said ground by holding that only because the amounts in the present case was received through banking channels that did not discharge the onus which cast upon the assessee as submission of PAN card and payment through banking channel only proves the identity of the person but not the creditworthiness or genuineness of the transaction. Be that as it may, considering the interest of justice we restore the matter to the file of the AO with a direction to the AO to consider the order of the ITAT in assessee's own case for A.Y. 2006-07 and also to provide an opportunity to the assessee to submit any other documents in order to prove the creditworthiness and genuineness of the transaction.

15. Before parting we would like to make it clear that our decision to restore the matter back to the file of the AO was in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the AO in accordance with law. With these directions, this ground of appeal is allowed for statistical purposes.

16. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 3rd October, 2018.

Sd/-
(R.C. Sharma)
Accountant Member

Sd/-
(Sandeep Gosain)
Judicial Member

Mumbai, Dated: 3rd October, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -21, Mumbai*
4. *Pr. CIT-13, Mumbai*
5. *The DR, "H" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.