

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3652/MUM/2017
Assessment Year: 2012-13**

P.G. Glass P. Ltd.
111, DamjiShamji
Industrial Complex L.B.S.
Marg, Kurla (West)
Mumbai-400070.

PAN No. AAACP9192K
Appellant

ACIT-14(2)-2,
AayakarBhavan, M.K.
Road, Mumbai-400020.
Vs.

Respondent

Assessee by : Mr. Sameer Dalal, AR
Revenue by : Mr. Abi Rama Kartikiyen, DR

Date of Hearing : 19/02/2019
Date of pronouncement : 25/02/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2012-13. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-22, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

1. The CIT(A) erred in confirming the disallowance made by the Assessing Officer of the part interest expenditure incurred by the Appellant amounting to Rs.9,19,457/-, by holding that, the same ought to have been capitalized to Capital Work in Progress.

1.2 While doing so, the CIT(A) failed to appreciate that :

(a) no term loan was taken during the year for financing the Capital Work in Progress;

(b) the Capital Work in Progress for which term loan was procured in the financial year 2010-11 was transferred to fixed assets along with the interest paid thereon for the period in that year itself.

3. Briefly stated, the facts are that the assessee had Capital Work-In-Progress (CWIP) to the tune of Rs.81,09,893/- in its balance sheet as at 31.03.2012. On comparing the financials of the FY 2011-12 with that of FY 2010-11, the Assessing Officer (AO) observed that there was no such CWIP standing in the balance sheet as at 31.03.2011. In response to a query raised by the AO to explain if any term loan was procured to finance its capital asset and also if any interest was capitalized to such capital asset under progress, the assessee filed sanction letters issued by bank for its various term loans and also explained that no interest was capitalized to CWIP. The AO noted that in the sanction letter of term loan 06/923, it is clearly mentioned that out of Rs.3.02 crore of term loan, Rs.0.57 crore is for civil construction, i.e. 19% of the loan is for CWIP. Referring to Accounting Standard-16 on borrowed cost, the AO held that interest of Rs.9,19,457/- (being 19% of the interest of Rs.48,38,250/- paid on such term loan), should be capitalized to capital WIP. Thus the AO made an addition of Rs.9,19,457/- to the total income of the assessee.

4. In appeal, *vide* order dated 27.02.2017, CIT(A) held as under:

“5.3 I have considered the facts of the case and the appellant’s submissions. The appellant has sought to argue that part of the interest on term loan cannot be capitalized to the capital work in progress as no new Term Loans have been obtained during the year which is not tenable. The

Assessing Officer has categorically mentioned in the order that as per sanction letter of Term Loan 06/923 it was clearly mentioned that out of 3.02 crores of term loan, 0.57 crore was for civil construction, i.e. 19% of the loan was for CWIP purpose. This has not been controverted by the appellant. It is immaterial whether the term loan was sanctioned during the relevant previous year or in an earlier year. There is no dispute that the expenses on CWIP were incurred during the relevant previous year. The interest attributable on borrowings for such expenses incurred is required to be capitalized. The Assessing Officer was correct in holding that the proportionate interest attributable to the amount sanctioned for civil construction out of the total interest payable on the said term loan was to be capitalized. The disallowance of proportionate interest of Rs.91,9,457/- is, therefore, sustained. The appellant's ground of appeal is dismissed."

5. Before us, the Ld. counsel of the assessee submits that in fact no fresh term loans were taken during the FY 2011-12 to finance the CWIP. In support of it, reference is made to the schedule of long term borrowings from the audited balance sheet as at 31.03.2012; the statement showing opening balance as on 01.04.2011 (Rs.203,13,503/-) and closing balance as on 31.03.2012 (Rs.188,742,807/-). It is stated that in fact there is a repayment during the year. For ready reference, the term loan wise details of each term loan was filed. The Ld. counsel states that the above details were filed before the AO as well as the CIT(A). In view of the above facts, it is argued by him that the addition of Rs.9,37,235/- made by the AO be deleted.

On the other hand, the Ld. DR supports the order passed by the CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. As per '*Accounting Standard-16 : Borrowed Costs*',

borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset (should be capitalized as part of the cost of that asset). Other borrowing costs should be recognized as an expense (i.e. charged off to P&L account) in the period in which they are incurred. In the instant case, we find that no fresh term loans were taken by the assessee during the FY 2011-12 relevant to the AY 2012-13 to finance the CWIP. It is evident from the schedule of long term borrowings of the audited balance sheet as on 31.03.2012. The statement shows opening balance as on 01.04.2011 (Rs.203,13,503/-) and closing balance as on 31.03.2012 (Rs.188,742,807/-). It is seen that there is a repayment during the year.

The above facts lead us to a finding that the addition made by the AO was based on presumption and therefore, we delete the addition of Rs.9,19,457/-.

7. In the result, the appeal is allowed.

Order pronounced in the open Court on 25/02/2019.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 25/02/2019.

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai