

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.569/Lkw/2018
Assessment Year:2014-15

M/s Mercury Industries Ltd., C-9, Panki Industrial Area, Site 1 Kanpur. PAN:AABCM 9950 B (Appellant)	Vs.	Dy.C.I.T.-4, Kanpur. (Respondent)
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Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri C. K. Singh, D.R.
Date of hearing	28/02/2019
Date of pronouncement	08/03/2019

ORDER

PER T. S. KAPOOR, A.M.

This is an appeal filed by the assessee against the order of learned CIT(A)-I, Kanpur dated 15/06/2018 pertaining to assessment year 2014-2015. In this appeal the assessee has raised the following grounds of appeal:

- "1. Because the CIT(A) has erred on facts and in law in upholding the disallowance of Rs.2,23,594/- being interest paid to M/s. Kotak Mahindra Premium Ltd. by applying the provisions of section 40(a)(ia) of the Act, which provisions are not applicable, the disallowance is contrary to the provisions of law be deleted.*
- 2. Because on a proper interpretation of section 40(a)(ia) of the Act, it would be found that the payee to whom the interest had been paid, if is assessed to tax and has*

declared the income in its return, the disallowance need not be made, the CIT(A) has erred in overlooking the judicial pronouncements in this relation, the order passed by the CIT(A) upholding the disallowance be quashed and the addition made by the Assessing Officer be deleted.

3. *Because the CIT(A) has erred in upholding the disallowance of Rs.3,73,394/- by applying the provisions of section 36(1)(iii) holding that the capital has been borrowed for the purpose of extension and existing the business whereas, the facts are that the capital has been borrowed for the purpose of expansion of the business, the proviso to section 36(1)(iii) is not applicable, the order passed by the CIT(A) be quashed, the addition be deleted.*
4. *Because the CIT(A) has failed to appreciate that if funds have been borrowed for the purpose of business and has been utilized for the purpose of business irrespective of capital or revenue account, the same is allowable as an allowable business expenditure, the order passed by the CIT(A) is bad in law, the addition of Rs.3,73,394/- be deleted."*

2. Vide ground No. 1 & 2 the assessee has challenged the action of learned CIT(A) in upholding the disallowance of Rs.2,23,594/- made by the Assessing Officer being interest paid to M/s. Kotak Mahindra Premium Ltd. by applying the provisions of section 40(a)(ia) of the Act. The facts related to this issue, in brief, are that the Assessing Officer, in the assessment order, noted that the assessee has debited a sum of Rs.2,15,09250/- under the head bank charges and out of which interest amounting to Rs.2,23,594/- has been paid to Kotak Mahindra Premium Ltd. towards interest on car loan. The assessee was required to furnish the details of payments of interest on car loan and deduction of tax thereupon. The assessee filed written submission and furnished required details wherefrom it was found that assessee has not deducted tax on payment of interest on car loans.

Therefore, an amount of Rs.2,23,594/- was disallowed and added to the total income of the assessee by invoking the provisions of section 40(a)(ia) of the Act. Aggrieved with the action of Assessing Officer, the assessee carried the matter in appeal before learned CIT(A) who confirmed the addition made by the Assessing Officer observing that the assessee had taken a loan from M/s Kotak Mahindra Premium Ltd. and has paid interest during the year and at the same time assessee had not deducted tax at source. The learned CIT(A) held that the claim of the assessee that interest paid to M/s Kotak Mahindra Premium Ltd. is bound to have been declared as interest received in their books of account and that they must have paid tax thereon, is based upon assumptions only as no evidence in this regard was placed on record by the assessee. He held that in order to take benefit of the decision of the Hon'ble Apex Court in the case of Hindustan Coca Cola Beverage Pvt. Ltd. vs. CIT (supra), the onus was on the assessee to prove before the Assessing Officer that the recipient has duly declared the amount as income and has computed due taxes on the same.

3. At the time of hearing before us, the Id. A.R. of the assessee reiterated the submissions made before learned CIT(A) and placed reliance upon the decision of the Hon'ble Lucknow Bench of the Tribunal in assessee's own case in I.T.A. No.54/Lkw/2017 for assessment year 2013-14 and I.T.A. No.717/Lkw/2016 for assessment year 2012-13. Learned A. R. submitted that under similar facts and circumstances in assessment year 2013-14, the Hon'ble Tribunal had set aside the issue back to the office of the Assessing Officer for readjudication. It was submitted that since the present issue in this appeal is similar therefore, the same can also be set aside to the office of the Assessing Officer.

4. The Id. D.R., on the other hand, relied upon the orders of the authorities below.

5. We have heard the rival parties and have gone through the material placed on record. We find that in assessment year 2013-13 in I.T.A. No.54/Lkw/2017, vide order dated 19/01/2018, the Hon'ble Tribunal had set aside the issue to the office of the Assessing Officer by holding as under:

"6. We have perused the case record, heard the rival contentions and we find that the facts on record are that an amount of Rs.2,93,672/- has been paid to Kotak Mahindra Premium Ltd. towards interest on car loan and TDS which was supposed to be deducted on such interest was not deducted by the assessee. However, assessee has claimed that even if they have not deducted tax but if the recipient, to whom interest has been paid, has recorded the same as income in their books of account and has paid taxes thereon, then the assessee will not face the hardship of the taxable provisions. However, no documentary evidence has been placed before us to show and demonstrate that the recipient i.e. M/s Kotak Mahindra Premium Ltd. has recorded such receipts as its income and has paid taxes thereon. We, however, in the interest of justice, following the order of the Agra Bench of the Tribunal in the case of Rajeev Kumar Agarwal vs. ACIT, Mathura (supra), hold that once it is proved that the recipient has paid taxes on the interest received from the assessee, the assessee shall be deemed to have deducted and paid taxes of such sum on the date of furnishing the return of income. In the light of this proposition, we are of the view that no disallowance under section 40(a)(ia) of the Act can be made if it is established that the recipient has recorded the same as income in their books of account and has paid taxes thereon and for its verification the matter has to be restored back to the file of the Assessing Officer. We accordingly set aside the order of the Id. CIT(A) on this issue and restore the matter to the file of the Assessing Officer for making necessary verification and the Assessing Officer shall adjudicate the issue afresh considering the observations as recorded hereinabove and after according reasonable opportunity of hearing to the assessee. Accordingly, ground No.1 taken by the assessee is allowed for statistical purposes.

5.1 In view of the above facts and circumstances of the case and respectfully following the above findings of the Tribunal, we allow this ground of appeal of the assessee for statistical purposes.

6. Vide ground No. 3 & 4, the assessee has challenged the action of learned CIT(A) in upholding the disallowance of Rs.3,73,394/- made by the Assessing Officer by applying the Explanation to section 36(1)(iii) of the Act.

7. The facts related to this issue, in brief, are that the Assessing Officer, found that the assessee had made payment of interest on loan taken for construction of building. The assessee was required to submit details of interest paid and to justify whether this amount has been capitalized or not. The assessee filed written submission along with computation of interest. The submission filed by the assessee was examined by the Assessing Officer and it was found that interest paid, upto the date on which building was first put on use, comes to Rs.3,73,394/- and this amount has not been added in the actual cost of building. Therefore, keeping in view the provisions of section 36(i)(iii) of the Act, an amount of Rs.3,73,394/- was disallowed and added to the total income of the assessee. Aggrieved with the action of Assessing Officer, the assessee carried the matter in appeal before learned CIT(A) who confirmed the order of the Assessing Officer on this issue also. Aggrieved, the assessee is in appeal before us.

8. At the time of hearing before us, the Id. A.R. of the assessee reiterated the submissions made before learned CIT(A) and placed reliance upon the decision of the Hon'ble Lucknow Bench of the Tribunal in assessee's own case in I.T.A. No.54/Lkw/2017 for assessment year 2013-14 and I.T.A. No.717/Lkw/2016 for assessment year 2012-13. Learned A. R. submitted that under similar facts and circumstances in assessment year 2013-14, the Hon'ble Tribunal had set aside the issue back to the office of the Assessing Officer for readjudication. It was submitted that since the

present issue in this appeal is similar therefore, the same can also be set aside to the office of the Assessing Officer.

9. The Id. D.R., on the other hand, relied upon the orders of the authorities below.

10. We have heard the rival parties and have gone through the material placed on record. We find that in assessment year 2013-13 in I.T.A. No.54/Lkw/2017, vide order dated 19/01/2018, the Hon'ble Tribunal had set aside the issue to the office of the Assessing Officer by holding as under:

"7. With regard to ground No.2, which relates to disallowance of a sum of Rs.3,54,786/- by applying the Explanation to section 36(i)(iii) of the Act and holding that the capital has been borrowed for the purpose of expansion of existing business, the facts are that the Assessing Officer, from the perusal of the books of account, found that the assessee has made payment of interest on loan taken for construction of building. The assessee was required to submit details of interest paid and to justify whether this amount has been capitalized or not. The assessee filed written submission along with computation of interest. The submission filed by the assessee was examined by the Assessing Officer and it was found that interest paid, upto the date on which building was first put on use, comes to Rs.3,54,486/- and this amount has not been added in the actual cost of building. Therefore, keeping in view the provisions of section 36(i)(iii) of the Act, an amount of Rs.3,54,486/- was disallowed and added to the total income of the assessee.

8. At the first appellate stage, the assessee submitted that addition made by the Assessing Officer with respect to the capital borrowed for the purpose of business on the premise that the said capital has been borrowed for "extension of existing business" whereas the facts are that the capital has been borrowed for the purpose of "expansion of existing business". Since the capital has been borrowed for the purpose of "expansion of existing business" and not for "extension of existing business", there should not be any disallowance. Provisions of section 36(i)(iii) speaks of "for extension of

existing business or professions". The above phrase does not speak of disallowance of interest incurred for the purpose of expansion of business. There is a vast difference between the word "expansion" and "extension". In simple terms, if the assessee puts an additional line of production for new item that would amount to extension of business, but if an assessee is already in business of manufacturing and increases the volume of production, then it would be a case of expansion.

9. *The Id. CIT(A), after considering the submissions of the assessee and the assessment order, held that the Assessing Officer found that the interest upto the date, on which building was first put to use amounting to Rs. 3,54,486/-, has not been added in actual cost of building. Accordingly, this amount has been capitalized by the Assessing Officer. The Id. A.R. of the assessee has not refuted these facts recorded by the Assessing Officer, rather the Id. A.R. of the assessee has tried to bring out a new controversy of difference between the expansion and extension. The Id. CIT(A) observed that this aspect is purely a question of fact which was never examined by the Assessing Officer and no material has been placed before the Id. CIT(A) during the appellate proceedings for adjudication of this issue. In the absence of any material fact available on record, the action of the Assessing Officer on this issue was upheld by the Id. CIT(A) and accordingly he confirmed the order of the Assessing Officer on this issue.*

10. *At the time of hearing before us, the Id. A.R. of the assessee invited our attention to Schedule 'H' placed at page 19 of the paper book, which is the details of the Consolidated Fixed Assets as at 31/3/2013 relevant to the assessment year 2013-14 and submitted that there has been addition in the building which is brought out in this consolidated fixed assets and the same has been placed before the Departmental authorities. Similarly, depreciation aspect was also stated in this chart and it was also furnished before the Departmental authorities. The Id. A.R. of the assessee further relied upon the decision of the Mumbai Bench of the Tribunal in the case of Dewachand Ramsaran Industries Pvt. Ltd. vs. ACIT in ITA No.4587/Mum/2013.*

11. *The Id. D.R., on the other hand, relied upon the orders of the subordinate authorities.*

12. We have perused the case record, heard the rival contentions and we find that the aspect whether it is "extension of business" or "expansion of business" was never examined by the Assessing Officer and no material was even placed before the first appellate authority for adjudication of this issue. The list of Consolidated Fixed Assets as at 31/3/2013 is filed in the paper book and the Id. A.R. of the assessee has placed reliance upon various judicial pronouncements as appearing in the paper book on this issue, especially Dewachand Ramsaran Industries Pvt. Ltd. vs. ACIT (supra). Since the Assessing Officer has not examined the aspect of "extension of business" or "expansion of business", we are of the considered view that in the interest of justice this matter should go to the file of the Assessing Officer to examine the aspect whether it is "extension of business" or "expansion of business" and to decide the issue afresh after affording reasonable opportunity of hearing to the assessee. We accordingly restore this matter to the file of the Assessing Officer to decide the same afresh considering the observations as recorded hereinabove and after according reasonable opportunity of hearing to the assessee. Accordingly, ground No.2 taken by the assessee is also allowed for statistical purposes."

10.1 In view of the above facts and circumstances of the case and respectfully following the above findings of the Tribunal, we set aside the issue back to the Assessing Officer in this year also and therefore, allow this ground of appeal of the assessee for statistical purposes.

11. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 08/03/2019)

Sd/.
(A. D. JAIN)
Vice President

Dated:08/03/2019

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Sd/.
(T. S. KAPOOR)
Accountant Member

Assistant Registrar