

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'B', KOLKATA

(Before Shri A.T. Varkey, J.M. & Dr.A.L.Saini, A.M.)

ITA No. 882/Kol/2018 : Asstt. Year : 2010-11

M/s. Jai Raj Ispat Ltd. PAN: AAACJ6859P (Appellant/Assessee)	Vs	D.C.I.T, Cir-3 (1), Kolkata (Respondent/Department)
--	----	--

Appellant/Assessee by : S/Shri S.L. Kochar &
Anil Kochar, Advocates, Id.ARs
Respondent/Department by : Shri Robin Choudhury, Addl. CIT, Id.DR

Date of Hearing : 25-02-2019	Date of Pronouncement: 30-04-2019
------------------------------	-----------------------------------

ORDER

Per Dr. A.L.Saini, A.M.:

The captioned appeal filed by the Assessee, pertaining to assessment year 2010-11, is directed against the order passed by the Commissioner of Income-tax (Appeals)-1, Kolkata, in Appeal No. 311/CIT(A)-1/Circle-3(1)/2012-13, dated 26-03-2018, which in turn arises out of an order passed by the Assessing Officer u/s. 143(3) of the Income-Tax Act, 1961 (in short, the Act), dated 11-01-2013.

2. Grounds of appeal raised by the assessee are as follows:-

- 1. For that the orders passed by the lower authorities are arbitrary, erroneous. without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.*
- 2. For that the Ld. CIT (A) ought not to have confirmed the disallowance of Rs.3,87,322/- claimed on 'account of depreciation.*
- 3. For that the Ld. CIT CA) ought to have appreciated the facts of the case relating to disallowance of Rs.50,16,609/- made by the A.O. under the Sec.36(1) (iii) of the Act and should have deleted the disallowance.*

4. For that the Ld. CIT CA) should have considered that with regard to the element of interest pertaining to capital work-in-progress the appellant has already made disallowance of Rs.2,93,580/- and that no further disallowance is warranted for.

5. For that the Ld. CIT CA) erred in confirming the disallowance of Rs.1,21,970/- made u/s 14A on alleged grounds.

6. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.

3. At the time of hearing before us, the Id. Counsel for the assessee informed the Bench that the assessee does not want to press ground no. 2, therefore, we dismiss ground no. 2 raised by the assessee.

4. Ground no. 3 raised by the assessee relates to confirmation of disallowance of Rs. 50,16,609/- made by the AO u/s. 36(1)(iii) of the Act.

5. Brief facts qua the issue are that during the assessment proceedings the assessee submitted the details of pre-operative expenses and capital work in progress, which is given below for ready reference as under:-

“8.1 Details of gross interest credited and details of interest debited to profit and loss account as well as taken to capital work in progress are enclosed. Gross interest paid is Rs.6,86,44,042/- out of which an amount of Rs.2,45,90,969/- has been taken to pre-operative Expenses and the balance of Rs.4,40,53,073/- has been debited to Profit and Loss account which pertains to the period of 01/08/2009 to 31/03/2010. The manufacturing activities being in full stream from 01/08/2009 the same has been reckoned as the date of commencement of production at Bellary Unit”.

6. The Id. AO noticed that the capital work in progress is Rs.12,86,89,456/-. The assessee has Total Assets amounting to Rs. 113,00,79,409/-. The interest debited by the assessee in the P & L A/c is Rs. 4,40,53,073. The interest allocable on account of capital work in progress was worked out by AO as follows:-

Interest debited to the P & L A/c x capital work in progress = Rs. 4,40,53,073 x 12,86,89,456

Total Assets

113,00,79,409

Interest allocated for capital work in progress = Rs. 50,16,609/-

Therefore, an amount of Rs.50,16,609/- was disallowed by AO on account of interest allocable for capital work in progress.

6. Aggrieved by the stand so taken by the Assessing Officer, the assessee carried the matter in appeal before the Commissioner of Income-tax (Appeals), Kolkata, who has confirmed the impugned addition.

7. Aggrieved by the order of the Commissioner of Income-tax (Appeals), the Assessee is in appeal before us.

8. The Id. Counsel for the assessee submitted that this matter has been discussed by the AO in Para 8, 8.1 & 8.2 whereby the AO has worked out an amount of Rs.50,16,609/- under the head Interest allocation on account of capital work-in-progress. This issue, as a matter of fact, has to be viewed with reference to the factual matrix of the case of the appellant. This disallowance is found to be wrong as the amount incurred on capital WIP (work-in-progress) is from own funds and not from borrowed funds. Out of total Term Loan of Rs.35.00 crore taken for Bellary Project, Rs.27.88 was disbursed upto 31.07.2009 and the interest on same has already been capitalized. The balance loan amount of Rs.7.12 crore was disbursed between 01.08.2009 to 31.03.2010 and the interest of Rs. 15.11 lakh on this portion is charged to revenue. In worst case the amount which can be disallowed towards interest on capital WIP is to be Rs. 15.11 lakhs only. It is relevant to refer to the following details regarding interest on term loan:-

<u>Date</u>	<u>Disbursement</u>	<u>Rate of Interest</u>	<u>No. of Days</u>	<u>Interest Amount</u>
06.08.2009	23,07,787/-	12.25%	238	1,84,338/-
15.08.2009	10,39,958/-	12.25%	229	79,927/-
27.08.2009	8,05,663/-	12.50%	217	59,873/-
26.09.2009	5,48,246/-	12.50%	187	35,110/-
26.09.2009	15,00,000/-	12.50%	187	96,062/-
26.09.2009	4,87,890/-	12.50%	187	31,245/-
08.10.2009	35,53,124/-	12.50%	175	2,12,944/-
12.10.2009	1,15,00,000/-	12.50%	171	6,73,459/-
24.03.2010	5,05,00,000/-	12.50%	8	1,38,356/-
				15,11,314/-

The aforesaid submissions and the working which has been made out with reference to the accounts duly examined by the AO would indicate the facts so far as the relevant portion of the capital work-in-progress would require consideration for disallowance out of interest. Basically, it is an admitted fact that appellant has its own funds and, therefore, only to the extent to which funds have been utilized relating to capital work-in-progress only to that extent disallowance is called for. The amount so worked out above would show an amount of Rs.15.11 lacs that may be said to be the element of interest on the funds that form part of capital work-in-progress.

9. On the other hand, the ld. DR for the Revenue has reiterated his stand as taken by the ld.AO.

10. We have heard both the parties and perused the material available on record. We note that ld. AO has disallowed the proportionate interest under the proviso to section 36(1)(iii) of the Act, holding that interest paid in respect of capital borrowed fund for acquisition of an asset, for the period beginning from the date on which the capital was borrowed till the date on which such asset was put to use. Therefore, AO disallowed the proportionate interest of Rs.50,16,609/- treating it as related to capital work-in-progress. The ld. CIT(A) confirmed the order of AO; without considering the fact that assessee has its own funds. We note that out of total Term Loan of Rs.35.00 crore taken for Bellary Project, Rs. 27.88 was disbursed up to 31.07.2009 and the interest on same has already been capitalized. The balance loan of Rs. 7.12 crore was disbursed between 01.08.2009 to 31.03.2010 and the interest of Rs.15.11 lakhs on this portion is charged to revenue. In worst case the amount which can be disallowed towards interest on capital WIP (work in progress) is to be Rs.15.11 lakhs only. Therefore, we are of the view that balance loan amount of Rs. 7.12 crore, which was disbursed between 1.8.09 to 31.03.10 and interest on such loan of Rs. 15.11 lakh needs to be verified by AO, whether it falls in revenue zone or capital zone. Assessee treated Rs. 15.11 lakh as revenue expenditure. If this interest of Rs. 15.11 lakh is before put to use an asset, then it may be capitalized. Otherwise, it would be revenue

expenditure. Therefore, AO should examine this factual aspect and to adjudicate the issue in accordance to law. Ground no. 3 raised by the assessee is allowed for statistical purpose.

11. Ground no. 4 relates to disallowance of Rs.2,93,580/- out of interest u/s. 36(1)(iii) of the Act.

12. We have heard both the parties and perused the material available on record. We note that in ground no. 3, we have already sent the issue back to the file of AO to examine whether the interest is to be capitalized or not in respect of balance loan of Rs. 7.12 crores (Rs. 35 crores – Rs. 27.88 crores), which was disbursed between 01.08.2009 to 31.03.2010. Therefore, disallowance of Rs.2,93,580/- amounts to double addition/double taxation. The main grievance of the assessee is that AO held that assessee had utilized borrowed capital invested in SBI Mutual Fund of Rs 5 crores and disallowed proportionate interest for one month u/s. 36(1)(iii) of the Act amounting to Rs. 2,93,500/-. We are of the view that this issue needs to be examined by AO whether investment for one month is not from borrowed fund. AO should verify whether investment of Rs. 5 crores is from own sources. Therefore, we direct the AO to examine this factual aspect and to adjudicate the issue in accordance to law. Hence, ground no. 4 raised by the assessee is allowed for statistical purpose.

13. Ground no. 5 relates to disallowance of Rs. 2,23,676/- u/s. 14A of the Act.

14. At the outset itself, the Id. Counsel pointed out that the assessee did not claim any exempt income. Assessee has offered the exempted income for taxation, therefore, there is no any question arises to disallow exempted income. We are of the view that this factual aspect should be examined by AO to ascertain whether assessee has offered for taxation the entire exempt income or not. If the assessee has offered the entire exempt income, no disallowance is warranted; otherwise AO is directed to compute disallowance as per the provisions of section 14A r.w.rule 8D of the IT Rules, 1962. This ground of assessee's appeal is allowed for statistical purpose.

15. In the result, the appeal filed by the Assessee is allowed for statistical purposes.

Pronounced in the Open Court on 30-04-2019

Sd/-

(A.T. Varkey)
Judicial Member

Sd/-

(Dr. A.L.Saini)
Accountant Member

Dated: 30 -04-2019

*PRADIP (Sr.PS)

Copy of the order forwarded to:

1. The Assessee/Appellant : M/s. Jai Raj Ispat Ltd C/o S.L. Kochar, Advocate
5, Ashutosh Choudhury Avenue, Kolkata-700 019.
2. The Respondent/Department : The DCIT, Circle 3(1), Kolkata, Aaykar
Bhawan, Kolkata-700 069.
3. The CIT-I,
4. The CIT(A)-I,
5. DR, Kolkata Benches, Kolkata

True Copy, By order,

Asst. Registrar

ITAT, Kolkata Benches