

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 6126/DEL/2018
[A.Y 2015-16]
&
ITA No. 6127/DEL/2018
[A.Y 2016-17]

MDL Energy Pvt Ltd
B-8/14, Vasant Vihar
New Delhi

Vs.

The A. C.I.T
Central Circle - 13,
New Delhi

PAN No: AACCM 7517 K

[Appellant]

[Respondent]

Date of Hearing : 10.06.2019
Date of Pronouncement : 14.06.2019

Assessee by : Shri R.S. Singhvi, Adv
Revenue by : Ms.Pramita M. Biswas, CIT- DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

The above two separate appeals by the assessee are preferred against two separate orders of the Commissioner of Income Tax [Appeals]-26, New Delhi dated 02.08.2018 pertaining to assessment

years 2015-16 and 2016-17 respectively. Since common grievances are involved in both these appeals, they are being disposed of by this common order for the sake of convenience and brevity.

2. The first grievance relates to validity of the assessment framed u/s 153A r.w.s 143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act']. Second grievance relates to disallowance of interest u/s 36(1)(iii) of the Act, though the quantum may differ in both these appeals.

3. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules. Judicial decisions relied upon were carefully perused.

4. As per the noting in the assessment order, we find that a search and seizure operation u/s 132 of the Act was conducted on 23.07.2015. The assessee has challenged the assumption of jurisdiction on the ground that its premises were never searched and, therefore, assessment framed u/s 153A of the Act is bad in law. The challenge of

jurisdiction was dismissed by the Assessing Officer as well as by the CIT(A). We find that on identical set of facts, the assessee was assessed for A.Y 2012-13 and in that year, the assessee has not challenged the jurisdiction of the Assessing Officer u/s 153A of the Act for want of search at its premises.

5. In our considered opinion, once the assessee has accepted the search and seizure operation and consequent assessment orders in earlier years, the assessee cannot challenge the same for the year under consideration. This ground is, accordingly, dismissed.

6. Coming to the second grievance which relates to the disallowance of interest u/s 36(1)(iii) of the Act, the facts on record [facts of A.Y 2015-16 are considered] show that during the course of scrutiny assessment proceedings, the Assessing Officer found that the assessee has debited finance charges of Rs. 55,28,266/- as against preceding year's expenses at Rs. 4,73,243/-. The Assessing Officer was of the opinion that such increase in finance cost, without there being any corresponding increase in business activity, does not confirm to utilisation of loan fund for business and, accordingly, the assessee was

asked to explain the justification of claim of finance charges of Rs. 55,28,266/-.

7. In its reply, the assessee relied upon its submissions for A.Y 2010-11 and further stated that there has been net decrease in investment by Rs. 2.91 cores. It was pointed out that the assessee has liquidated investment of Rs. 3.43 crores whereas the new investment was only Rs. 51.49 lakhs.

8. The Assessing Officer was not satisfied with the reply of the assessee and once again asked the assessee to explain why the substantial portion of the loan has been utilised for use other than business and as such to explain the allowability of finance cost u/s 36(1)(iii) of the Act.

9. In its reply, the assessee once again explained that the increase in the long term loans and advances was met from redemption of bonds on which the assessee earned exchange fluctuation gain. It was stated that long term loans were funded from redemption of bonds. It was further explained that the loan taken from Hero Fincorp Ltd was

applied as business advance. Necessary documentary evidences were furnished.

10. The Assessing Officer was of the opinion that the assessee has not furnished any fund flow statement to justify utilisation of interest bearing loan for the purpose of business. The Assessing Officer finally concluded as under:

"Thus, on the basis of available information on records, utilization of loan fund for business purpose and allowability of interest expenditure is critically examined. It is noted that out of total finance cost, Rs. 2,82,654/- is relatable to car loan which may be allowed being related to business. Further, it is found that total expenses booked in the profit & loss account except finance cost and depreciation comes to Rs. 2,53,46,284/-only, out of which Rs.46,90,779/- remained outstanding as evident from the comparative analysis of balance sheet figures of trade payables and other current liabilities as on 31.03.2014 and as on 31.03.2015. Hence, maximum interest bearing loan fund to the extent of Rs.2,06,55,505/- (Rs.2,53,46,284/- less Rs,46,90,779/-) can only be considered as utilized for the purpose of business which is 25.10% only (Rs,2,06,55,505/Rs.8,22,87,329*100) of total interest bearing fund of Rs. 8,22,87,329/-

In view of the above discussion even if, it is presumed that all the expenses relatable to business has been met out from the interest bearing fund only*_yet interest to the extent of 25.10% can only be termed as related to business which comes to Rs.13,16,648/- (25.10 % of Finance Cost Rs.55,28,266/- less interest on car loan Rs.2,82,654/-). Thus, total allowable interest comes to Rs. 15,99,302/- (Rs. 13,16,648/- plus interest on car loan Rs.2,82,654/-) against total claim of RS. 55,28,266/- and balance claim of finance cost of Rs.39,28,964/- is disallowed and added to the total income of the assessee treating the same as not related to business."

11. The assessee carried the matter before the CIT(A) but without any success.

12. Before us, the ld. AR drew our attention to the fund flow statement furnished before the lower authorities and explained the utilisation of funds. The ld. AR further stated that the assessee is having four subsidiary companies and the assessee holds 100% shares in these subsidiary companies. It is the say of the ld. AR that loans have been utilised for funding 100% subsidiary companies which have been utilised by the subsidiary companies in their respective businesses and,

therefore, interest paid has to be allowed u/s 36(1)(iii) of the Act as per the ration laid down by the Hon'ble Supreme Court in the case of Hero Cycles Ltd. vs. CIT (2015) 379 ITR 347 (SC) and Reliance Industries 410 ITR 466. The ld. counsel for the assessee further stated that the assessee was having sufficient own funds to make investment and, therefore, on this count also, no disallowance can be made.

13. Per contra, the ld. DR strongly supported the findings of the lower authorities. It is the say of the ld. DR that it is not the objective of the appellant company to give loans to subsidiary companies. The ld. DR further contended that funds may have been utilised by subsidiary company in their respective businesses but the assessee has not utilised the borrowed money for the purposes of its businesses. Hence disallowance is justifiable.

14. Sources and application of funds can be understood from the following chart:

Statement showing Sources & Application of Funds

SOURCES	A.Y. 2014-15 (D)	A.Y. 2015-16 (E)	A.Y. 2016-17 (F)	APPLICATION	A.Y. 2014-15 (A)	A.Y. 2015-16 (B)	A.Y. 2016-17 (C)
Share Capital	1,80,65,610.00	1,80,65,610.00	1,80,65,610.00	Non Current Investments	9,53,61,000.00	6,62,04,000.00	3,91,75,000.00
Reserves & Surplus	17,85,45,275.00	18,44,20,719.00	18,44,43,291.00	Loans to 100% Subsidiaries:			
Interest Free Loans	10,50,000.00	1,30,00,000.00	70,00,000.00	- MDL Energy Services P Ltd	3,35,00,000.00	5,74,00,000.00	7,33,00,000.00
Interest Bearing Loans	0.0	8,22,87,000.00	7,65,93,000.00	- En Vanguardia Hospitality P Ltd	0.0	80,50,000.00	2,17,70,000.00
				- MDL Engineering P Ltd	3,32,000.00	1,50,00,000.00	1,02,73,000.00
				Loan to Sigma Logistics P Ltd	59,67,000.00	59,67,000.00	59,67,000.00
				Business Expenses Recoverable	2,24,02,000.00	4,08,88,000.00	4,14,12,000.00
				Security Deposit (Business Advance)	0.0	5,48,00,000.00	5,48,00,000.00
				Rent Security	0.0	60,00,000.00	60,00,000.00
TOTAL	19,76,60,885.00	29,77,73,329.00	28,61,01,901.00	TOTAL	15,75,62,000.00	25,43,09,000.00	25,26,97,000.00

Details of Increment in Sources / Applications of Funds

Particulars of Sources	(E-D)	(F-E)	Particulars of Application	(B-A)	(C-B)
Share Capital			Non Current Investment	(291,57,000.00)	(270,29,000.00)
Reserves & Surplus	58,75,444.00	22,572.00	- MDL Energy Services P Ltd	2,39,00,000.00	1,59,00,000.00
Interest Free Loans	1,19,50,000.00	(60,00,000.00)	- En Vanguardia Hospitality P Ltd	80,50,000.00	1,37,20,000.00
Interest Bearing Loans	8,22,87,000.00	(56,94,000.00)	- MDL Engineering P Ltd	1,46,68,000.00	(47,27,000.00)
			Business Expenses Recoverable	1,84,86,000.00	5,24,000.00
			Security Deposit (Business Advance)	5,48,00,000.00	
			Rent Security	60,00,000.00	
	10,01,12,444.00	(116,71,428.00)			
			TOTAL	9,67,47,000.00	(16,12,000.00)

15. The assessee is having 100% subsidiary companies, namely, MDL Energy Services Pvt Ltd; MDL Engineering Pvt Ltd, MDL Marine Holdings Pte Ltd [Singapore] and Quippo Prakash Marine Holdings Pte Ltd [Singapore].

16. A perusal of the aforementioned chart shows that non-current investments, which were appearing in A.Y 2014-15 at Rs. 9.53 crores came down to Rs. 6.62 crores in A.Y 2015-16 and Rs. 3.91 crores in A.Y 2016-17. This, in addition to interest free funds available with the assessee in the form of share capital and reserves and surplus is sufficient for making interest free funds in subsidiary companies. In our considered opinion, looking after the business exigencies of the subsidiary companies is also a primary responsibility of the holding company.

17. The Hon'ble Supreme Court in the case of Hero Cycles [supra] has held that advance given to a subsidiary company on business expediency establishes the nexus between expenditure and the purpose of business and, therefore, interest paid on borrowed money cannot be disallowed.

18. The Hon'ble Supreme Court in the case of Reliance Industries [supra] has held that where interest free funds were available to the assessee which were sufficient to meet the investments in subsidiary companies, interest u/s 36(1)(iii) cannot be disallowed.

19. Moreover, there is no finding by the Assessing Officer that the subsidiary companies have not utilised the borrowed money for their respective businesses. In fact, in earlier A.Ys, i.e. A.Y 2013-14, assessment was framed u/s 153A r.w.s 143(3) of the Act and no such disallowance was made by the Assessing Officer. Considering the facts in totality and also the past history of the assessee, we set aside the findings of the CIT(A) and direct the Assessing Officer to delete the disallowance of interest u/s 36(1)(iii) of the Act. This ground raised by the assessee in both the appeals is allowed.

20. Before closing, as mentioned elsewhere, we have considered the facts of the A.Y 2015-16, though the quantum may differ, the other appeal is, accordingly, disposed off.

21. In the result, both the appeals filed by the assessee in ITA Nos. 6126/DEL/2018 and 6127/DEL/2016 stand allowed.

The order is pronounced in the open court on 14.06.2019.

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 14th June, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	