

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : I-1 : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.1109/Del/2015
Assessment Year: 2010-11

Hella India Lighting Ltd.,
B-13, Badarpur Extension,
New Delhi.

Vs DCIT,
Circle-11(1),
New Delhi.

PAN: AAACJ0101G

(Appellant)

(Respondent)

Assessee by	:	Dr. Rakesh Gupta, Advocate & Shri Somil Aggarwal, Advocate
Revenue by	:	Shri Sanjay I Bara, CIT, DR
Date of Hearing	:	16.05.2019
Date of Pronouncement	:	29.07.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 23rd December, 2014 passed by the DCIT, Circle 11(1), New Delhi u/s 143(3) read with section 144C of the IT Act, 1961 for assessment year 2010-11.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing of automobile components including head lamps, tail lamps, horns switches, bulbs, sundry lamps, wiper arms and wiper blades. It filed its

return of income on 5th October, 2010 declaring a loss of Rs.1,46,71,148/-. Since the assessee has undertaken international transactions with its AE, the Assessing Officer referred the matter to the TPO for determination of the ALP of the international transactions. The TPO, during the TP assessment proceedings, observed that the assessee has entered into the following international transactions with its AE:-

S.No	Nature of international transaction	Amount (INR)	Segment	Most appropriate method
1	Export of finished goods	56,601,655	Contract manufacturing function	Transactional Net Margin Method ("TNMM")
2	Purchase of raw materials for manufacturing	13,070,917		
3	Purchase of capital assets	135,900		
4	Payment of networking charges	2,090,737		
5	Purchase of finished goods for distribution	10,111,803	Distribution function	TNMM
6	Interest on foreign currency loan	1,013,423	-	Comparable Uncontrolled Price Method ("CUP")
7	Recovery of sales promotion expenses	394,579	-	Cost to Cost
8	Issue of preference share capital	60,363,000	-	Benchmarking not required
9	Reimbursement of expenses	22,44,668	-	Cost- to- Cost
10	Guarantee charges	1,267,311	-	Cost- to- Cost

3. After considering various objections filed by the assessee during the course of TP assessment proceedings, the TPO made an upward adjustment of Rs.62,82,128/- which consisted of two adjustments i.e., (a) on account of transactions related to contract manufacturing functions – Rs.49,46,985/-; and (b) on account of interest receivable from debtors – Rs.13,35,143/-. The assessee approached the DRP who

gave part relief to the assessee out of the adjustment on account of transactions related to contract manufacturing functions wherein they restricted the same to Rs.22,07,465/- as against Rs.49,46,985/- made by the Assessing Officer/TPO. So far as the adjustment on account of receivables from debtors is concerned, the DRP upheld the same. There were certain other additions made by the Assessing Officer in the draft assessment order such as disallowance on account of non-deduction of TDS on guarantee charges and networking charges, addition on account of advances written off and capitalization of interest expenses which are upheld by the DRP. The Assessing Officer, in the final assessment order, accordingly determined the total income of the assessee at Rs.34,50,020/-.

4. Aggrieved with such order of the A.O./TPO/DRP, the assessee is in appeal before the Tribunal by raising the following grounds:-

“1. That the appellant denies its liability to be assessed at total loss of Rs.34,50,020/- whereas assessee company has declared loss of Rs.1,46,71,148/- for the year under consideration.

2. That having regard to the facts and circumstances of the case, Ld. DRP has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and in making reference to Ld. TPO for determining Arm's length price.

3. That having regard to the facts and circumstances of the case, Ld. DRP has erred in law and on facts in confirming the action of Ld. AO in making an aggregate addition of Rs.35,42,608/- on account of Arm's length Price on account of transactions related of contract manufacturing and on account of interest on receivables.

4. That in any case and in any view of the matter, action of Ld. DRP in confirming the action of Ld. AO in making an aggregate addition of Rs.35,42,608/- on account of Arm's length Price on account of transactions related of contract manufacturing and on account of interest on receivables is bad

in law and against the facts and circumstances of the case and the same has been made in violation of principles of natural justice and without giving adequate opportunity of hearing.

5. That having regard to the facts and circumstances of the case, Ld. DRP has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.33,58,048/- being networking charges and guarantee charges and that too u/s 40a(ia) by recording incorrect facts and findings.

6. That in any case and in any view of the matter, action of Ld. DRP in confirming the action of Ld. AO in making disallowance of Rs.33,58,048/- being networking charges and guarantee charges is bad in law and against the facts and circumstances of the case and the same has been made in violation of principles of natural justice and without giving adequate opportunity of hearing.

7. That having regard to the facts and circumstances of the case, Ld. DRP has erred in law and on facts in confirming the action of Ld. AO in disallowing a sum of Rs.7,26,566/- on account of advances written off.

8. That in any case and in any view of the matter, action of Ld. DRP in confirming the action of Ld. AO in making disallowance a sum of Rs.7,26,566/- on account of advances written off is bad in law and against the facts and circumstances of the case and the same has been made in violation of principles of natural justice and without giving adequate opportunity of hearing.

9. That having regard to the facts and circumstances of the case, Ld. DRP has erred in law and on facts in confirming the action of Ld. AO in disallowing a sum of Rs.35,93,908/- on account of capitalization of interest expenses.

10. That in any case and in any view of the matter, action of Ld. DRP in confirming the action of Ld. AO in making disallowance a sum of Rs.35,93,908/- on account of capitalization of interest expenses is bad in law and against the facts and circumstances of the case and the same has been made in violation of principles of natural justice and without giving adequate opportunity of hearing.

11. That the transfer pricing order dated 20-01-2014 passed u/s 92CA(3) is bad in law, contrary to facts, illegal and is not sustainable on various legal and factual grounds.

12. That the draft order dated 28-02-2014 is also illegal and is not sustainable on various legal and factual grounds.

13. That the order passed by Hon'ble Dispute Resolution System u/s 144C(5) dated 12-11-2014 is also illegal and the same is not sustainable on various legal and factual grounds and the directions issued therein are also contrary to law and facts.

14. That the order passed u/s 143(3)/144C dated 23-12-2014 is illegal, contrary to law and facts, barred by limitation and the same is not sustainable on various legal and factual grounds and the additions made therein are also bad in law and against the facts and circumstances of the case.

That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

5. Grounds of appeal No.1 and 2 being general in nature are dismissed.
6. Grounds of appeal No.3 and 4 relates to the order of the DRP in confirming the upward adjustment of Rs.35,42,608/- on account of ALP of transactions related to contract manufacturing and on account of interest receivable. So far as the upward adjustment of Rs.13,35,143/- on account of receivables is concerned, the Id. counsel for the assessee, referring to the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Kusum Healthcare Pvt. Ltd.*, 398 ITR 66, submitted that the Hon'ble High Court in the said decision has held that where the assessee has already factored the impact of receivables of working capital and thereby on its pricing/profitability vis-à-vis that of its comparables, any further adjustment only on the basis of outstanding receivables will distract the picture and re-characterize the transaction. Referring to the submissions made before the Assessing Officer/TPO during the course of hearing, the Id. counsel for the assessee drew the attention of the Bench to paper book pages 582 to 584 and submitted that the assessee during the course of proceedings before the TPO had submitted bill-wise realization of export proceeds due from AE with an analysis of the delayed period which was not major. He submitted that the assessee generally grants 60 days credit limit to the AE whereas the credit limit granted to non-

AEs was for a period of 90 days. Referring to various pages of the paper book, he drew the attention of the Bench to the number of days which varies from 122 to 180 days in case of non-AE vendors for collection of receivables. Even in certain cases the receivables due from non-AE was outstanding for more than 180 days. He submitted that the assessee company enjoyed good margin on sales made to AE in comparison with sales made to non-AE. Further, there was no risk of any bad debts or non-recovery or short recovery in respect of debts receivables from AE whereas the transaction with non-AEs are always subject to the risk of dispute. Therefore, it is not correct for the A.O./TPO/DRP to impose the notional interest cost. He submitted that the coordinate Benches of the Tribunal, following the decision of the Hon'ble Delhi High Court in the case of Kusum Healthcare Pvt. Ltd. are deleting the adjustments on account of receivables from debtors. He accordingly submitted that the adjustment on account of receivables should be deleted.

6.1 So far as the addition of Rs.22,07,465/- sustained by the DRP out of the additions of Rs.49,46,985/- being adjustment on account of transactions related to contract manufacturing functions are concerned, the ld. counsel for the assessee, referring to page 182 of the paper book, drew the attention of the Bench to the segmental profit and loss given by the assessee. While explaining the reasons for incurring loss from non-AE is concerned, he submitted that the selling rate to non-AEs remained static for years together whereas the profit margin from the AEs is good. Referring to page 368 of the paper book, the ld. counsel drew the attention of the Bench to the reply given to the TPO wherein the detailed analysis of cost allocated

between AEs and non-AEs, supply as well as manufacturing and distribution operation was given. Page 371 of the paper book is the sample invoice dated 2nd February, 2005 raised against Ashok Leyland Ltd., Chennai whereas the price charged was Rs.156 for a unit of tail light 24 V. Referring to paper book 574 and 575, he drew the attention of the Bench to the reply given before the TPO, a part of which reads as under:-

“3. Assessee Company sell under the manufacturing segment to:

(i) OEM within India i.e. Tata Motors, Ashok Leyland etc

(ii) Export sale to Associated Enterprises. In case of export sale to AE Company manufactured specified parts like (Lamp, Switches and Plug Socket) which relate to Mercedes, BMW, and Nissan which are the premium class products. It is pertinent to mention that Company had not received any pricing increase since last three or four years from the OEM customers i.e. Tata Motors, Ashok Leyland etc in respect of good sold to them whereas cost of Raw Material as well as other manufacturing cost had been gone up considerably. In order substantiate the said facts we are enclosing herewith an analysis of the selling price of major products to OEM in India for the year 2006-07 to 2009-10 as Annexure 1 along with the sample copies of the invoices/ purchase orders which duly established that selling price of the products sold to OEM in India under manufacturing segment was static or the same and there were no any increase in the selling price. The same information was duly submitted before the Ld. TPO also.”

7. He submitted that the assessee has no objection if the matter is restored to the file of the A.O./TPO with a direction to verify the factual aspect and take appropriate decision.

8. The ld. DR, on the other hand, strongly supported the order of the A.O./TPO/DRP. So far as the adjustment on account of receivables is concerned, he submitted that the ld. DRP while sustaining the adjustment made by the A.O./TPO has correctly adjudicated the issue and has sustained the upward adjustment. So far as the issue relating to manufacturing segment is concerned, he submitted that he has no

objection if the matter is restored to the file of A.O./TPO for fresh adjudication in the light of the various invoices filed by the assessee in the paper book.

9. We have considered the rival arguments made by both the sides, perused the orders of the A.O./TPO/DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions cited by both the sides. We find the Assessing Officer in the instant case, made an upward adjustment of Rs.62,82,128/- on account of transactions related to contract manufacturing functions and on account of notional interest on amounts receivable. So far as the upward adjustment on account of transactions related to contract manufacturing functions is concerned, the DRP restricted the same to Rs.22,07,465/- whereas the DRP upheld the upward adjustment of Rs.13,35,143/- on account of interest on receivables. So far as the adjustment on account of contract manufacturing segment is concerned, it is the submission of the Id. counsel for the assessee that this matter should be restored to the file of the A.O./TPO for fresh adjudication for which the Id. DR has no objection. We, therefore, deem it proper to restore the issue relating to adjustment on account of manufacturing segment for fresh adjudication by the A.O./TPO who shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. So far as the adjustment on account of receivables is concerned, we find from various pages of the paper book filed by the assessee that there is considerable delay even from the non-AEs which some times is more than the delay from the AEs. We, therefore, find merit in the argument of the Id. counsel for the assessee that when the assessee is not charging any

interest on receivables from the non-AEs it is not justified to make adjustment on account of notional interest on receivables from the AEs. We find the Hon'ble Delhi High Court in the case of *Kusum Healthcare Pvt. Ltd. (supra)* while dealing with an identical issue has observed as under:-

“10. The Court is unable to agree with the above submissions. The inclusion in the Explanation to Section 92B of the Act of the expression „receivables“ does not mean that de hors the context every item of ‘receivables’ appearing in the accounts of an entity, which may have dealings with foreign AEs would automatically be characterised as an international transaction. There may be a delay in collection of monies for supplies made, even beyond the agreed limit, due to a variety of factors which will have to be investigated on a case to case basis. Importantly, the impact this would have on the working capital of the Assessee will have to be studied. In other words, there has to be a proper inquiry by the TPO by analysing the statistics over a period of time to discern a pattern which would indicate that vis-à-vis the receivables for the supplies made to an AE, the arrangement reflects an international transaction intended to benefit the AE in some way.

11. The Court finds that the entire focus of the AO was on just one AY and the figure of receivables in relation to that AY can hardly reflect a pattern that would justify a TPO concluding that the figure of receivables beyond 180 days constitutes an international transaction by itself. With the Assessee having already factored in the impact of the receivables on the working capital and thereby on its pricing/profitability vis-à-vis that of its comparables, any further adjustment only on the basis of the outstanding receivables would have distorted the picture and re-characterised the transaction. This was clearly impermissible in law as explained by this Court in *CIT v. EKL Appliances Ltd. (2012) 345 ITR 241 (Delhi)*.

12. Consequently, the Court is unable to find any error in the impugned order of the ITAT giving rise to any substantial question of law for determination. The appeal is, accordingly, dismissed.”

10. The various other decisions relied on by the Id. counsel to the proposition that no adjustment is required on account of receivables from AEs when the assessee is not charging any interest on receivables from non-AEs also support his case. In view of the above, we direct the Assessing Officer to delete the addition on account of notional

interest on receivables. Grounds No.3 and 4 by the assessee are accordingly allowed for statistical purposes.

11. In grounds 5 and 6, the assessee has challenged the order of the DRP in sustaining the addition of Rs.33,58,048/- made by the Assessing Officer on account of disallowance u/s 40(a)(ia) of the Act.

12. Facts of the case, in brief, are that the Assessing Officer, during the course of assessment proceedings, observed that the assessee company has debited an amount of Rs.12,37,311/- towards guarantee charges and Rs.20,90,737/- towards networking charges to foreign companies without deducting TDS on them. He, therefore, asked the assessee to explain as to why these expenses should not be disallowed. It was submitted by the assessee that deduction of TDS on networking charges of Rs.20,90,737/- under section 195 is not applicable since they are making reimbursement of cost incurred by the foreign company for use of networking. There is no element of profit. Referring to the decision of the AAR, New Delhi in the case of DANFOSS Industries Ltd., 138 Taxman 280, it was argued that to apply section 195, the amount in question should be income of payee and not a mere reimbursement of cost incurred by the payee. It was accordingly argued that no TDS is required on account of reimbursement of networking charges. So far as the guarantee charges of Rs.12,67,311/- is concerned, it was submitted that the assessee has paid guarantee charges to Hella, Germany which has been charged to Hella India Lighting on cost to cost basis without any mark up. Hence, TDS u/s 195 is not applicable. The decision

in the case of *Danfoss Industries Pvt. Ltd. (supra)* was relied upon. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and held that the assessee was required to deduct tax from the payments made to the foreign companies. Even otherwise also he held that the provisions of section 9(1)(vii) would apply to the assessee and, therefore, the networking charges and guarantee charges paid to non-residents is income deemed to accrue or arise in India within the meaning of section 9 of the Income-tax Act and the assessee is liable to deduct TDS on the expenditure of networking charges and guarantee charges paid to non-residents. The ld. DRP upheld the action of the Assessing Officer.

13. The ld. counsel for the assessee strongly challenged the order of the DRP/A.O. in disallowing guarantee charges and networking charges u/s 40(a)(ia) for non-deduction of tax. He submitted that the guarantee charges will constitute business income of the AE and since the AE has no PE in India and it is merely a reimbursement, therefore, the assessee is not required to deduct any TDS. Referring to page 729 of the paper book, the ld. counsel for the assessee drew the attention of the Bench to the date-wise reimbursement of such expenses of Rs.20,90,737/-. So far as the networking charges is concerned, the ld. counsel for the assessee, referring to page 729 of the paper book, drew the attention of the Bench to the monthly charges of reimbursement of networking charges of Rs.20,90,737/-. Referring to page 738 to 746 of the paper book, he drew the attention of the Bench to the various clauses of the agreement and submitted that since both the amounts are on account of

reimbursement, therefore, the provisions of section 40(a)(ia) are not applicable and the assessee is not required to deduct any tax from such payment. In his alternate argument, the ld. counsel for the assessee submitted that the payment of royalty charges and networking charges is not income chargeable to tax in India at least when the return was filed. Referring to the decision of the Hon'ble Supreme Court in the case of *Ishikawajima Harima Heavy Industries Ltd. vs. DIT*, 288 ITR 408, he submitted that the Hon'ble Supreme Court in the said decision has held that the fees for services to a non-resident is not taxable in India merely because non-resident has permanent establishment in India. It has been held that if services are utilized in India and they are rendered in India then only the provisions of section 9(1)(vii) are attracted. Referring to the decision of the Agra Bench in the case of *DCIT vs. Virola International reported in 147 ITD 519*, he submitted that the Tribunal in the said decision has held that retrospective amendment in law does change the tax liability in respect of an income with retrospective effect, but, it cannot change the tax withholding liability with retrospective effect. In the said decision, it has further been held that the amendment to section 9(1)(vii), Explanation 2 is applicable from 08.05.2010 and onwards and not prior to that. He accordingly submitted that the assessee does not have any tax withholding liabilities from the foreign remittance and, therefore, no disallowance can be made u/s 40(a)(ia). He further submitted that the guarantee charges and networking charges paid to the foreign companies is also not chargeable to tax as FTS since the AE does not have any PE in India. For the above proposition, he relied on the decision of the Hon'ble Supreme Court in the case of *DIT*

(International Taxation) vs. A.P. Moller Maersk AS reported in 392 ITR 186. The ld. DR, on the other hand, strongly relied on the order of the A.O./TPO/DRP.

14. We have considered the rival arguments made by both the sides and perused the orders of the A.O./TPO/DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer, in the instant case, made addition of Rs.33,58,048/- on account of networking charges of Rs.20,90,737/- and guarantee charges of Rs.12,67,311/- paid to foreign companies without deducting TDS thereon which was upheld by the DRP. It is the submission of the ld. counsel for the assessee that there is no element of profit on account of payment of networking charges since it is merely a reimbursement of expenses. From the various pages of the paper book, we find the ld. counsel for the assessee has demonstrated before us that the networking charges of Rs.20,90,737/- is merely a reimbursement of expenses and, therefore, we find merit in his argument that there is no element of profit and, therefore, deduction of tax at source is not required. Similarly, in the case of guarantee charges of Rs.12,67,311/- we find the assessee during the course of hearing before the Assessing Officer had given the following explanation:-

“Guarantee charges Rs.12,67,311

Hell Germany has given corporate Guarantee to DEUTSCHE Bank in support of overdraft limit of Hella India Lighting with the bank. During F. Y. 2009-2010. Hell India has paid guarantee charges to Hella Germany of Rs. 12,67,311 which has been charged to Hella India Lighting on cost to cost basis without any mark up. Hence TDS u/s 195 is not applicable. In support of it we are enclosing herewith opinion of Chordiya and Co. In addition to legal opinion it was decided

by AAR New Delhi in case of DANFOSS Industries Private Limited. 138 Taxman 280 that to apply section 195 amount in question should be income of payee and not a mere reimbursement of cost incurred by payee. Therefore TDS is not required to be deducted on reimbursement of guarantee charges of Rs.12,67,311 hence such expenditure should be allowed as business expenditure.”

15. Since this is also a reimbursement without any element of profit, we agree with the contention of the Id. counsel that no tax is required to be deducted from such payment to the foreign company. In view of the above discussion, since both the payments made to foreign companies are reimbursement of expenses, we hold that the assessee is not liable to deduct tax from the remittances so made. Grounds No.5 and 6 are accordingly allowed.

16. In grounds No.7 and 8, the assessee has challenged the order of the DRP in confirming the action of the Assessing Officer and disallowing a sum of Rs.7,26,566/- on account of advances written off.

17. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings noted that the assessee company has written off advances of Rs.7,26,566/- in the P&L Account. On being questioned by the Assessing Officer, it was explained that such advances have been given for new capital project of Faridabad unit. The company was constructing a new manufacturing plant at Faridabad. In the light of the global economic shut down and its impact on the expected future demand, the management has decided to cease the construction of the plant at Faridabad. Since the supply of the material was not required and the supplier has not refunded the

advance given to them, the company wrote off such advances u/s 37(1) as business expenditure. Various decisions were also brought to the notice of the Assessing Officer. However, the Assessing Officer did not agree with the plea of the assessee. He observed that the assessee company has made these advances to the suppliers during F.Y. 2008-09 and prior amounting to Rs.7,26,566/-, therefore, these are capital expenses which the assessee has treated now as revenue expenditure which is contrary to the provisions of the Act. He, therefore, made the addition of Rs.7,26,566/- to the total income of the assessee. The Id. DRP upheld the action of the Assessing Officer on the ground that the assessee failed to demonstrate that whether or not the Faridabad unit is for the new business or otherwise.

18. Aggrieved with such order of the DRP, the assessee is in appeal before the Tribunal.

19. The Id. counsel for the assessee, referring to the decision of the Hon'ble Delhi High Court in the case of *Indo Rama Synthetics vs. CIT, 333 ITR 18*, submitted that the Hon'ble High Court in the said decision held that the project related expenses are revenue in nature when an amount is spent for expansion of business and such expansion was abandoned, the amount spent shall be allowed as revenue expenditure.

20. The Id. DR, on the other hand, relied on the order of the A.O./TPO/DR.

21. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the Assessing Officer made addition of

Rs.7,26,566/- being the amount written off as advances in the P & L Account on the ground that these are capital in nature. We find the DRP upheld the action of the Assessing Officer. It is the submission of the Id. counsel for the assessee that since such advances were given for new capital project of Faridabad unit and the project was abandoned due to the global economic shut down and its impact on the expected future demand and since the suppliers did not refund the amount, therefore, such advances were written off and claimed as business expenditure u/s 37(1) of the IT Act. We find the Hon'ble Delhi High Court in the case of Indo Rama Synthetics (supra) has held that where the assessee has incurred certain expenditure for expansion of business which was subsequently abandoned, the amount so spent was allowable as revenue expenditure. It has further been held in the said decision that since the project was abandoned no new asset came to be created and it was accordingly held that the expenditure was deductible. Respectfully following the decision of the Hon'ble Delhi High Court cited, *supra*, we hold that the amount in question has to be allowed as a revenue expenditure. The grounds raised by the assessee on this issue are accordingly allowed.

22. Grounds of appeal No.9 and 10 by the assessee relate to the order of the DRP in confirming the action of the Assessing Officer in disallowing the amount of Rs.35,93,908/- on account of capitalization of interest expenses.

23. Facts of the case, in brief, are that the Assessing Officer, during the course of assessment proceedings noted that the assessee company has debited an amount of Rs.1,84,76,547/- in the P&L Account under the head 'Interest.' From the details filed by the assessee company, he noted that there are capital work-in-progress amounting to Rs.14,17,89,689/- in the depreciation chart of the fixed assets. He, therefore, asked the assessee to furnish the details of capital work-in-progress. From the details so furnished by the assessee, he noted that the total capital work-in-progress as on 01.04.2009 was at Rs.16,23,02,696/- and after certain additions, sales capitalization during the year, the same was reduced to Rs.13,97,29,807/-. He further noted that out of the amount of Rs.2,99,49,229/- capitalized during the year under consideration, an amount of Rs.2,86,04,165/- were capitalized for new project account, Rs.11,05,500/- of work-in-progress civil plant, Rs.62,364/- for WIP electrical and Rs.1,77,200/- as advances paid for jeep. He observed from the details so filed by the assessee that no capitalization of the interest expenses was made. After considering the various submissions made by the assessee from time to time and invoking the provisions of section 36(1)(iii) and Explanation 8 to section 43(1), the Assessing Officer made addition of Rs.35,93,908/- being interest @ 12% of the interest expenses of closing work-in-progress of Rs.2,99,49,229/-. The DRP upheld the action of the Assessing Officer.

24. Aggrieved with such order of the A.O./TPO/DRP, the assessee is in appeal before the Tribunal.

25. The ld. counsel for the assessee strongly challenged the order of the A.O./TPO/DRP in disallowing the amount. Referring to the decision of the Hon'ble Delhi High Court in the case of CIT vs. DD Industries Ltd., he submitted that when the assessee is possessed of mixed funds which include its own funds in sufficient quantity, the presumption that its own funds were utilized for the advances is to be drawn. Referring to various pages of the paper book and the P & L Account, copy of which is placed at page 317 of the paper book, the ld. counsel for the assessee submitted that the nature of interest is on account of cash credit and overdraft. Further, the entire amount in the bank account contains the common kitty where the sale proceeds are also deposited. Relying on various other decisions, he submitted that the disallowance of interest u/s 36(1)(iii) is not justified. He also relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Givo Ltd. and various other decisions filed in the case law compilation. He also relied on the following decisions:-

- i) 192 ITR 165 (Kar.);
- ii) 295 CTR 448 (P&H);
- iii) 134 ITR 219 (Cal); and
- iv) 135 ITR 698.

26. The ld. DR, on the other hand, strongly relied on the order of the A.O./TPO/DRP.

27. We have considered the rival arguments made by both the sides and perused the orders of the A.O. and DRP. We find the Assessing Officer, in the instant case, invoking the provisions of section 36(1)(iii) and Explanation 8 to section 43(1), made an addition of Rs.35,93,908/- on the ground that the assessee company was required to capitalize the actual interest expenses incurred for additions made in the closing work-in-progress. The DRP upheld the action of the Assessing Officer. It is the submission of the Id. counsel for the assessee that the assessee had sufficient funds of its own for meeting the capital work-in-progress and further, the nature of interest relates to the interest of cash credit and overdraft account and no part of the same has been utilized for financing the capital work-in-progress. He also relied on various decisions. In our opinion, this matter requires fresh adjudication before the Assessing Officer in the light of the various decisions relied on by the Id. counsel and also to find out as to whether the assessee has, in fact, sufficient funds of its own and that no part of the amount from the CC or OD account has been utilized for the purpose of meeting the cost of such capital work-in-progress. We, therefore, restore this issue to the file of the Assessing Officer with a direction to adjudicate the issue afresh and in accordance with the law, after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds on this issue are accordingly allowed for statistical purposes.

28. Grounds No.11 to 14 being general in nature are dismissed.
29. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 29.07.2019.

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated:29th July, 2019

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi