

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 2403/Ahd/2013
(निर्धारण वर्ष / Assessment Year : 2008-09)

Akshar Proteins Pvt. Ltd. Gandhi Chowk, Deesa, Banaskantha - 385535	बनाम/ Vs.	ACIT Circle, Palanpur
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFC9457P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri S. N. Divatia, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri S. K. Dev, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	06/08/2019
घोषणा की तारीख /Date of Pronouncement	11/09/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-XX, Ahmedabad ('CIT(A)' in short), dated 15.02.2012 arising in the assessment order dated 27.12.2010 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2008-09.

2. As per the captioned appeal, the assessee has challenged the disallowance of interest of Rs.9,04,781/- on borrowed capital under s.36(1)(iii) of the Act.

3. The appeal filed by the assessee was found to be belated by 504 days in preferring the appeal before the Tribunal. The assessee has filed affidavit giving explanation for delay and seeking condonation thereof. The assessee has explained the inadvertent lapse on the part of the tax consultant and thereby the order of the CIT(A) could not be communicated properly. A reading of the consequence of the event is pointed out in the affidavit gives an impression of bonafide lapse. The delay in filing the appeal is thus condoned.

4. The assessee is a closely held company engaged in the business of manufacturing of mustard oil. The return of income was filed for AY 2008-09 at Rs.66,660/-. During the course of assessment proceedings, the AO noticed that assessee has made substantial addition to the fixed assets of Rs.2,72,22,942/- towards factory construction and plant and machinery. It was further noticed by the AO that the assessee has paid interest of Rs.21,68,045/- on the borrowed funds. The AO invoked the provisions of Section 36(1)(iii) of the Act and held that interest incurred Rs.90,47,181/- requires to be capitalized to the fixed assets and is not admissible as revenue deduction.

5. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) however endorsed the order of the AO *ex parte* owing to failure of the assessee to comply with the notice of hearing.

6. Further aggrieved, the assessee preferred appeal before the Tribunal.

7. The learned AR for the assessee referred to the financial statement of the assessee company and contended that the borrowed funds have not been used for the acquisition of the fixed assets directly and therefore the interest expenditure cannot be added to the actual cost of the fixed assets. The learned AR secondly submitted that erstwhile proviso of Section 36(1)(iii) of the Act as applicable at the relevant time requires capitalization of interest incurred on borrowed capital only where the acquisition of assets results in extension of existing business or profession. The learned AR submitted that in the absence of extension to the existing business the interest incurred for utilization of borrowed capital towards fixed assets would not be impediment for deduction under s. 36(1)(iii) of the Act.

8. The learned DR, on the other hand, relied upon the order of the AO.

9. We have considered the rival submissions. We straightway notice few facts from the financial statement for the year ending 31.03.2008. Own capital (share capital + reserves + surplus) of the assessee stands at Rs.42.40 Lakhs as on 31.03.2008 whereas borrowed capital stands at Rs.120.16 Lakhs, the total fixed assets at the end of the year stands at Rs.324.01 lakhs and the addition to the existing plant and machinery (previous year; Rs.24.42 Lakhs) stands at Rs.254.47 Lakhs. This being so, it is obvious and glaring that fresh investment in plant and machinery Rs.254.47 Lakhs to the existing plant and machinery of Rs.24.42 Lakhs tantamounts to substantial expansion of the existing business as contemplated in the erstwhile proviso to Section 36(1)(iii) of the Act prior to its amendment. Thus, in terms of the proviso, it is obligatory on the part of the assessee to capitalize and exclude the interest on borrowed capital from revenue

account as attributable to acquisition of fixed assets till the time, the asset is put to use. It is ostensible that borrowed capital have been utilized for acquisition of fixed assets. The proviso to Section 36(1)(iii) of the Act thus has been rightly invoked by the AO. We see no error in the findings of the AO as endorsed by the CIT(A). We thus decline to interfere.

10. In the result, the appeal of the assessee is dismissed.

This Order pronounced in Open Court on 11/09/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad: Dated 11/09/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।