

IN THE INCOME-TAX APPELLATE TRIBUNAL "H" BENCH MUMBAI  
BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 5190/Mum/2018 (Assessment Year 2014-15)

Kokuyo Camlin Limited 48/2, Hilton House, Central Road, MIDC, Andheri (E), Mumbai-400093. <b>PAN: AAACC1647E</b>	Vs.	ACIT -10(1)(2) Aayakar Bhawan, M. K. Road, Mumbai-400020.
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Appellant

Respondent

Appellant by : Shri Rajesh S. Athavale with  
Ms. Ruchira Parekh (AR)  
Respondent by : Shri Manoj Kumar Singh (DR)  
Date of Hearing : 29.08.2019  
Date of Pronouncement : 04.10.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the order of Id. CIT(A)-17, Mumbai dated 06.07.2018 which in turn arises from the assessment order dated 31.08.2016 passed under section 143(3) for Assessment Year 2014-15. The assessee has raised the following grounds of appeal:

The appellant objects to the order dated 6 July 2018 passed by the Commissioner of Income-tax (Appeals)-17 ['CIT(A)'] for the aforesaid assessment year on the following grounds:

1. The learned CIT(A) erred in confirming the action of the Learned Assessing Officer ('AO') by disallowing the write off of advances given to Camlin Alphakids Limited ('CAL'), a wholly owned subsidiary amounting to INR 3,05,32,140 claimed as business deduction.

2. The Learned CIT(A) erred in upholding the observation of the AO that granting of advances to the wholly owned subsidiary has not directly sprung from the business of the appellant.

3. The Learned CIT(A) erred in confirming the addition of interest income amounting to INR 2,56,442/- received from Kotak Mahindra Bank ('the Bank') to the income of the appellant.

4. The Learned CIT(A) has failed to appreciate that the appellant has consistently followed the policy of recognizing the interest income on the basis of the TDS certificates and not on the basis of form 26AS and on the basis of such policy, the aforesaid interest has been accounted and offered for tax in the subsequent AY i.e AY 2015-16.

2. Facts in brief of the case are that the assessee is a company engaged in the business of manufacturing and trading of stationary and art material products, filed its return of income for Assessment Year 2014-15 on 30.11.2013 declaring loss of Rs. 11.27 crore (Approx). The assessee declared book profit was declared at (-) Rs. 10.77 crore. The case was selected for scrutiny. The Assessing Officer while passing the assessment order disallowed write off of Rs. 3.05 crore and addition of Rs. 2,56,445/- on account of interest income. On appeal before the Id. CIT(A), both the additions/disallowance were confirmed. Thus, further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before this Tribunal.

3. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the revenue and perused the material available on record. Ground No.1 & 2 relates to disallowance of write off of advances made to subsidiary. The Id. AR

of the assessee submits that assessee is one of the pioneer companies in stationary business in India. Initially the assessee-company started its business as a proprietorship firm namely Dandekar & Co. in 1946; Camlin Pvt. Ltd. acquired the business of Dandekar & Co. as on ongoing concern in 1998, the company listed in Bombay Stock Exchange. In 2009, the assessee has set up wholly owned subsidiary namely Camlin Alphakids Limited (CAL), which is in the business of pre-schooling activities. The incorporation of CAL in pre-schooling activities was expected to work as a forward integration of the assessee's business. Therefore, the assessee-company made a support to its subsidiary in initial year. The advances given to CAL to find its working capital requirement, when seeking external financial aid was difficult for CAL. In 2011 Kokuyo S & T Company, a major Japanese Stationary Corporation acquired majority step in the assessee and the name of assessee as on today came into existence. In A.Y. 2014-15, the assessee invested a total of Rs. 535.32 lakhs by way of equity capital, Rs. 230.00 lakhs by way of preference capital had given advance of Rs. 305.32 lakhs. In A.Y. 2004-05 after five year of incorporation of CAL, the assessee did not foresee any turn out of this business in near future and therefore, decided to disengage from business of CAL and wrote off of advances of Rs. 305.32 lakhs given to CAL.

4. The Id. AR of the assessee further submits that the assessee is also engaged in the business of manufacturing and trading of stationary product in school going children. The incorporation of pre-schooling activities was expected to work as a forward integration for the assessee's business. The cash advanced to CAL on account of commercial expediency for meeting working capital requirement. The decision to write off of the advances and disengage itself from the activities of CAL was taken by new management of the assessee as the new management/Board of Directors was of the view that making continuous loss year after year, there was no hope that the subsidiary can be revived which is evident from the financial position of the subsidiary.
5. The Id. AR of the assessee submits that the case law of Hon'ble Bombay High Court relied by Assessing Officer in Salem Magnesite Pvt. Ltd vs. CIT [(2009) 180 Taxman 545 (Bom)] is distinguishable on the fact. In the said case the money advanced to subsidiary was realized for purchase of capital asset, write off of capital asset, write off of those amount by holding companies are not allowed as revenue deduction. However, in the case of assessee, the advances were made to meet the working capital. Further, the case law relied upon by CIT(A) in DCM Ltd. 9123 TTJ 145 (Del.) is also not applicable on the facts of the present case as in the said case, the loan was given by the assessee to

subsidiary company to acquire the share of Joint Venture Partner. Thus, loan was given to enhance the capital base. However, in the present case, the assessee has given advance to its subsidiary to finance its working capital needs and this transaction is of revenue nature. Further, the decision of Bombay Tribunal in Grindwell Norton Ltd. (91 ITD 412 (Bom)) is also not applicable on the facts of the present case. In the said case, the loan was given to subsidiary company to earn interest income. However, in the present case, the assessee has given interest free advances. Further, the order of Hyderabad Tribunal in VST Industries (ITA No. 691/Hyd/2005) is also not applicable. In the said case, the advances are not in the course of business of the assessee, however, in the present case, the assessee has established that advances were provided for furtherance of business of the assessee.

6. In support of his submission, the Id. AR of the assessee relied upon the following case law:

1. S.A. Builders Ltd. Vs. CIT (158 Taxman 74(SC)).
2. CIT vs. Amalgamation (P.) Ltd. [1997] 92 Taxman 132(SC).
3. CIT vs. Spencers and Co. Ltd. (2014) 47 taxmann.com 55 (Madras).
4. CIT vs. Abdul Razak & Co. (136 ITR 825).
5. CIT vs. Gillanders Arbuthnot & Co. Ltd. (138 ITR 763 Kol).
6. Jackie Shroff vs. ACIT (2019) 101 taxmann.com 455 (Mum. Trib.).
7. ACIT vs. OSN Infrastructure & Projects Pvt. Ltd. (ITA No. 345/Del/2015).
8. Pepsico India Holdings Pvt. Vs. DCIT (ITA No. 147/Del/2010).
9. ACIT vs. Best & Crompton Engineering Ltd. [2013] 36 taxmann.com 555.
10. M/s Summit Investments Ltd. vs. JCIT (ITA No. 338/Kol/1999).

7. On the other hand, the Id. DR for the revenue supported the order of lower authorities. The alleged advances cannot be allowed either under section 28, 29 & under section 37(1). The assessee has not given any evidence to prove that the advances are write off of by the assessee as no such evidence is placed on record. The assessee has not filed any resolution of Board of Director of assessee-company or any other evidence evidencing the decision to write off by the new management. The subsidiary company has a separate and different business which is not directly sprung out from the business of assessee.
8. We have considered the rival submission of both the parties and gone through the orders of authorities below. We have also deliberated on various case law relied by lower authorities and by Id. AR of the assessee. During the assessment, the Assessing Officer on perusal of Profit & Loss A/c noted that assessee has written off of loans advances to its subsidiary of Rs. 305.32 lakhs. The assessee was issue show-cause notice and to explain the gist of its claim on write off. The assessee filed its reply dated 28.01.2016. The Assessing Officer has recorded that content of reply in paragraph-4.2 of his order. In the reply, the assessee in sum and substance stated that considering growth in the industry, the assessee expected with is subsidiary will reap the benefit of start of near future. However, during the Financial Year 2012-13 & 2013-14, the assessee's performance was not encouraging and the assessee incurred

losses and it became difficult to continue funding the CAL and it was also relied that losses in CAL were deteriorating the assessee's financial position. Looking on the financial position of CAL and assessee, the assessee did not foresee any turn out of business near future. Therefore, the Board of Directors decided to disengage from the activity of advancing and write off of the advances of Rs. 305.32 lakhs. It was further stated that the assessee given advance to CAL for its business and therefore, the write off of such advance is incidental to the business and should be allowed as business loss of commercial expediency either under section 28 & 29. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer concluded that the assessee has stated in its reply that the advances given to subsidiary to start new business. The business of subsidiary is different from the business of assessee. It was further concluded that advances were given to subsidiary to find its working capital required when external financial aid was difficult for subsidiary. The Assessing Officer further concluded that as per the version of assessee that Board of Director decided to disengage from the activities of subsidiary and decided to write off of as the assessee company is wanted to improve the EPS and shareholder value and to disengage itself from loss making subsidiary. Thus, the action of claiming allowable deduction as business expenditure either under section 28, 29 & 37(1) is not justified. The business of subsidiary

still going. The assessee company just to reduce the tax liability had claimed the write off of advances to subsidiary as revenue expenditure. The Assessing Officer also concluded that write off of the loan to subsidiary, running in loss the assessee company has transferred the loan of subsidiary company to itself, whereas the subsidiary separately assessed the tax and disallowed the deduction of Rs. 305. 21 lakhs.

9. Before the 1<sup>st</sup> CIT(A), the assessee made similar submission as made before us and before the Assessing Officer. The 1<sup>st</sup> CIT(A) after considering the submission of assessee concluded that write off of advances to subsidiary company which has different business altogether has not directly sprung out from the business of assessee-company and as such cannot be allowed under section 28, 29 & 37(1). The 1<sup>st</sup> CIT(A) also concluded that the decision of Hon'ble Bombay High Court in Salem Magnesite Pvt. Ltd (supra) is applicable on the facts of the case. It was further concluded that in both the cases advances were given to wholly subsidiary company. The business of assessee was mining and advance was given to subsidiary for constructing a Jetty, the Hon'ble High Court held that the construction of Jetty is not business of assessee/lender Company. Thus, on the said principle, the nature of business of the assessee and subsidiary is different. In both the cases advances and loans were given to create a capital base subsidiary

company. The loss in Salem Magnesite Pvt. Ltd. (supra) was treated as capital loss and in case of appellant/assessee; the loss is also capital loss.

10. Before us, the Id. AR of the assessee vehemently argued that the new management has decided to write off of the advances and disengage itself from the activities of the assessee. However, no documentary evidence in the form of any communication or resolution of Board of Director is placed on record. The Id. AR of the assessee though filed a number of decisions in support of his submission; however, the Id. AR of the assessee mainly relied upon the decision of Mumbai Tribunal in Jackie Shroff (supra) and Delhi Tribunal in ACIT vs. OSN Infrastructure & Projects Pvt. Ltd. (supra).

11. In our view, both the decision are distinguishable on the facts of the present case in Jackie Shroff (supra) case the money was advanced for business expediency, however in the case in hand the assessee funded the capital working requirement of CAL. Further, in ACIT vs. OSN Infrastructure & Projects Pvt. Ltd. (supra), the said assessee was engaged in the business of development of infrastructure, construction and real estate trading, advance/ money to various parties to buy land, the said parties failed to buy land and pay money, however in the case in hand the assessee funded the capital working requirement. Thus, the advance was made for business expediency. Thus, both the case is based on peculiar facts of those cases and is not applicable on the present case.

Therefore, in view of the aforesaid discussion, we do not find any illegality or infirmity in the order passed by lower authorities, which we affirmed.

12. In the result, Ground No.1 & 2 of the appeal is dismissed.

13. Ground No. 3 & 4 relates to addition of interest income of Rs. 2,56,442/-. The ld. AR of the assessee submits that the assessee offered the said interest income in subsequent A.Y. i.e. A.Y. 2015-16. The ld. AR of the assessee submits that interest reflected in Form 26-AS of A.Y. 2014-15 was received by assessee in subsequent years relevant to A.Y. 2015-16. Therefore, the said income was considered in the next A.Y. The assessee has not evaded the tax. Since the TDS certificate was received subsequently, therefore, the income was offered in subsequent A.Y. In the past, the assessee recognized the interest income as per TDS certificate and not as per Form 26-AS.

14. In alternative submission, the ld. AR of the assessee submits that there is no loss to the revenue whether the income is considered by the assessee in the year of reflection in Form 26-AS or receipt of TDS as the tax rate remained uniform over the said period in the books of account. Thus, the entire exercise of revenue is natural. The ld. AR of the assessee further submits that time limit for initial re-assessment proceeding for A.Y. 2015-16 has lapsed. Therefore, the ld. AR prayed to give direction

to the Assessing Officer and made the addition in the income for the year under consideration itself.

15. On the other hand, the Id. DR for the revenue supported the order of authorities below.

16. We have considered the submission of both the parties and perused the record. During the assessment, the assessee was asked to reconcile the entries in Form 26-AS. The assessee filed its reply dated 22.07.2016 wherein the assessee stated that accept the amount of Rs. 2,56,442/- as the TDS was received in subsequent F.Y. i.e. F.Y. 2014-15, the assessee offered the same on the basis of accrual basis due to non-availability of exact figure. The Assessing Officer on the basis of details of Form 26-AS made the addition of Rs. 2,56,442/-. The Id. CIT(A) upheld the action of Assessing Officer holding that the non-receipt of TDS does not holding any ground and confirmed the action of Assessing Officer.

17. Considering the facts and circumstances of the case, we direct the Assessing Officer to verify the fact, if the interest of Rs. 2,56,442/- is offered in the subsequent year then the same be deleted from the year under consideration. However, if any difference is found in offering the interest income, the same be taxed in the year under consideration and corresponding set of remaining amount offered in subsequent year be given to the assessee. Hence, Ground No. 3 & 4 are allowed for statistical purpose.

18.In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 04/10/2019.

**Sd/-**  
**R.C. SHARMA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 04.10.2019

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**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
- 4.The concerned CIT
5. DR "H" Bench, ITAT, Mumbai
6. Guard File

**BY ORDER,**

**Dy./Asst. Registrar**  
**ITAT, Mumbai**