

**IN THE INCOME TAX APPELLATE TRIBUNAL "E", BENCH
MUMBAI**

BEFORE SHRI M.BALAGANESH, AM

**&
SHRI RAM LAL NEGI, JM**

**ITA No.6387/Mum/2018
(Assessment Year : 2015-16)**

DCIT- 2(3)(1) Room No.552, 5 th Floor, Aayakar Bhavan M.K.Road, Mumbai	Vs.	M/s. Tata Motors Financial Solutions Ltd., 106, A/B, Makers Chambers III Jamanalal Bajaj Road Nariman Point Mumbai – 400 021
PAN/GIR No. AAAR7043R		
(Appellant)	..	(Respondent)

**ITA No.6495/Mum/2018
(Assessment Year : 2015-16)**

&

**CO No.216/Mum/2019
(Arising out of ITA No.6387/Mum/2018)
(Assessment Year : 2015-16)**

M/s. Tata Motors Financial Solutions Ltd., 106, A/B, Makers Chambers III Jamanalal Bajaj Road Nariman Point Mumbai – 400 021	Vs.	DCIT- 2(3)(1) Room No.552, 5 th Floor, Aayakar Bhavan M.K.Road, Mumbai
PAN/GIR No. AAAR7043R		
(Appellant)	..	(Respondent)

Revenue by	Shri R. Manjunatha Swamy
Assessee by	Shri R.R. Vora / Shri Nikhil Tiwari

Date of Hearing	21/11/2019
Date of Pronouncement	06/12/2019

आदेश / ORDER

PER BENCH:

These cross appeals in ITA No.6387/Mum/2018 & 6495/Mum/2018 and Cross Objection No.216/Mum/2019 for A.Y.2015-16 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-6, Mumbai in appeal Nos.CIT(A)-6/IT-136/2017-18 dated 24/08/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/12/2017 by the Id. Asst. Commissioner of Income Tax, Circle 2(1)(2), Mumbai (hereinafter referred to as Id. AO).

ITA No.6495/Mum/2018 – Assessee Appeal

2. The only issue be decided in this assessee's appeal is as to whether the Id. CIT(A) was justified in upholding the disallowance of interest of Rs.7,66,86,750/- u/s.36(1)(iii) of the Act by applying the proviso thereon, in the facts and circumstances of the case.

3. We have heard rival submissions and perused the materials available on record. We find that during the year under appeal, assessee company was acquired by Tata Motors Finance Ltd ('TMFL') with effect from 19 January 2015 by subscribing entire share capital at Rs. 49,74,000 thereby becoming wholly owned subsidiary of TMFL. Then assessee had changed its name to Tata Motors Finance Solutions Pvt Ltd (earlier known as Rajasthan Leasing Pvt Ltd) with effect from 18 March 2015 and made

a fresh issue of equity shares of Rs. 1500 crores to its holding company as under:-

Date of Receipts	Date of Allotment	Amount (Rs. In crores)
12 March 2015	13 March 2015	10
23 March 2015	23 March 2015	1190
31 March 2015	31 March 2015	300
Total		1500

3.1. Post the acquisition of the company by Tata Motors Finance Ltd, the assessee was converted into a Public Ltd company from Private Limited and therefore the name of assessee was changed to Tata Motors Finance Solutions Ltd with effect from 14 June 2015.

3.2. In the meanwhile, the assessee under a slump sale agreement dated 24 March 2015, purchased from its holding company (Tata Motors Finance Ltd), a 'Loan Portfolio' (corresponding to Manufacture Guaranteed Business and Used vehicle finance business) along with corresponding assets and liabilities for Rs. 6350 crores. The consideration for the slump sale was paid as under:

Date of Payment	Amount (Rs. In crores)
24 March 2015	2660
26 March 2015	1690
30 March 2015	1900
31 March 2015	100
Total	6350

3.3. As per the terms of the slump sale agreement, the slump sale was to be completed on 31 March 2015 at effective time of 11.59 pm. The aforesaid acquisition of loan portfolio under slump sale was financed by proceeds from issue of equity shares and proceeds from raising of loans as well.

3.4. During the year under consideration, the assessee had incurred interest expenditure amounting to Rs. 7,66,86,750 towards various borrowings used for financing the purchase of loan portfolio under slump sale and the details of interest are as under:

Particulars	Date of Borrowing	Amount (Rs. In cr)	Net Amt Reed (Rs. In Cr)	Interest (Rs. In Cr)
Issue of Unsecured Non-Convertible Debentures	23 March 2015	1,500	1,500	4.75
Issue of Unsecured Non-Convertible Debentures	25 March 2015	500	500	
Issue of Commercial Papers	26 March 2015	1,250	1195.71	1.78
Term Loan from State Bank of	30 March 2015	2,000	2,000	1.14
Total		5,250	5,195.71	7.67

3.5. Apart from the above borrowings, as mentioned above, assessee had also issued equity shares amounting to Rs. 1500 crores.

3.6. Thereby, the net assets acquired vide the slump sale agreement together with its respective sources are as under:-

Particulars	Amt (Rs. In crores)	Remarks
A. Net Assets - Other than Fixed Assets/Capital Assets (In the nature of stock in trade)		
Finance Receivable (net of NPA provisioning)	4337.04	Rs. 4,850 crores paid out of borrowings Balance Rs. 916.48 crores paid out of equity funds
Trade Receivables	1338.16	
Other claims receivable	180.00	
Less: Trade Payables, Other provisions liabilities,	(88.72)	
Total of A	5766.48	
<u>B. Fixed Assets</u>		
Goodwill	582.25	Paid Rs. 583.52 out of equity funds
Fixed Assets	1.27	
Total of B	583.52	
Total Assets acquired (A+B)	6350.00	

3.7. We find that the Id. AO had disallowed the interest of payment of Rs.7,66,86,750/- on the following grounds:-

- *Interest expenditure has been incurred for acquiring a capital asset which was not put to use and accordingly, is not allowable as a deductible expenditure under proviso to section 36(l)(iii) of the Act;*
- *Asset acquired is in the nature of capital asset and not stock-in-trade;*
- *The asset acquired is loan portfolio from which assessee earns interest income i.e. assessee earns income from application of assets and not from sale of asset. Therefore, loan portfolio is not an asset eligible for sale and hence it is not stock in trade of the Assessee."*

3.8. While making the above disallowance, on alternate contention of assessee, that only interest proportionate to loan of Rs. 4850 crores to be disallowed as balance Rs. 400 [i.e. 343.94 crores (net of discounting chares on commercial papers)] crores is lying in bank account as

unutilized, the Id. AO held that there is no business income (very miniscule) and expenditure corresponding to the funds borrowed for routine business operations of the assessee cannot be used for such minuscule business operations during the year and that the funds are not utilized for the purpose of business. Therefore, the Id. AO has not agreed to alternate contention of assessee, and disallowed the entire interest expenditure.

3.9. We find that the Id. CIT(A) had sustained the disallowance by observing that as the assessee is an NBFC and that the acquisition of a 'Loan Portfolio' on slump sale is not in its regular business, as trading of 'Loan Portfolio' is not in the nature of business in which an NBFC indulges into. Accordingly, the ground on allowability of the interest was dismissed. Further the Id. CIT(A) has also upheld the other points raised by the Id. AO while making the aforesaid disallowance. However, the Id. CIT(A) gave relief on alternate ground to capitalize the interest cost to corresponding asset and allow depreciation on the same.

3.10. We find that the aforesaid primary facts are not in dispute before us. We find that the borrowed funds have been utilized by the assessee for the purpose of purchase of assets during the year. Hence, it could be safely concluded that the borrowed funds were used for the purpose of business on which fact there is no dispute. The short point that arises for our consideration is whether since the acquisition process has been completed only at 11:59 pm on 31/03/2015, can it be said that the assets were not put to use and hence, the proviso to Section 36(1)(iii) of the Act would come into operation thereby make the assessee ineligible for claim of deduction of interest. It is pertinent to note that in the instant case, the funds have been borrowed for purpose of business which was mainly

to acquire stock in trade, which is evident from the list of assets acquired by the assessee as tabulated above. Out of Rs.6350/- Crores of total assets acquired, net assets of Rs.5766.48 Crores acquired by the assessee were admittedly in the nature of stock in trade as they pertain to finance receivables, trade receivables and other claims receivables. Hence, there is no question of those assets being put to use by the assessee post acquisition as they are liquid in nature and the only job of the assessee is to recover the dues from the respective parties to whom monies were advanced earlier. Looking the entire issue from this background, it could be safely concluded that the assets acquired by the assessee were only stock in trade and not any plant and machinery warranting installation of the same and correspondingly putting use of the same would require some time. From the list of assets taken over by the assessee as tabulated above, we find that even the fixed assets taken over by the assessee company comprised predominantly of Goodwill to the tune of Rs.582.25 Crores and very miniscule operation of fixed assets of Rs.1.27 Crores were taken over by the assessee which admittedly was paid out of equity funds and the borrowed funds were not utilized at all for the same. This fact is not controverted by the revenue before us. Hence, it could be safely concluded that the borrowed funds were used for acquiring only stock in trade by the assessee and hence, the same were meant only for the purpose of business of the assessee. Accordingly, the proviso to Section 36(1)(iii) of the Act would not come into operation at all. Once, the borrowing has been made for the purpose of business, interest paid thereon would become eligible for deduction u/s.36(1)(iii) of the Act.

3.12. We also find that one of the crucial points observed by the Id. AO that the capital asset purchased by the assessee had not been put to use as on 31/03/2015 is evident from the fact that assessee had not claimed

any depreciation on its Goodwill for the A.Y.2015-16. In this regard, we find that merely because the assessee company had not claimed any depreciation on Goodwill during the year under consideration, it would not make any difference or alternatively it would not change the character of the assets taken over by the assessee company which are purely in the form of liquid assets such as finance receivables, trade receivables and claims receivables thereby forming part of stock in trade of the assessee. Hence, the arguments of the Id. DR in this regard is dismissed.

3.13. We find that the basis on which the disallowance has been made by the Id AO and confirmed by the Id CIT(A) have already been addressed by us in detail hereinabove. We find that the reliance placed by the Id. AR on the following decisions to support its case are very well founded:-

- a) Bombay Steam Navigation Co. vs. CIT reported in 56 ITR 0052
- b) CIT vs. Srishti Secutiries (P) Ltd. reported in 321 ITR 498 (Bom HC)
- c) CIT vs. Aditya Popcorn Pvt. Ltd. in ITA No.82/2014 dated 10/10/2017 (Rajasthan High Court)
- d) Kolkata Tribunal in the case of Magma Fincorp Ltd. vs. DCIT reported in 165 ITD 375.

The operative portions of respective judgments are not reiterated herein for the sake of brevity.

3.14. In view of our aforesaid observations and in the facts and circumstances of the case and respectfully following the aforesaid judicial precedents, we direct the Id. AO to grant deduction of interest paid on borrowed capital in the sum of Rs.7,66,85,750/- u/s.36(1)(iii) of the Act in

the A.Y.2015-16. Accordingly, the ground raised by the assessee is allowed.

3.15. In the result, appeal of the assessee is allowed.

ITA No.6387/Mum/2018 – Revenue Appeal

4. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the disallowance of expenses of Rs.15,35,00,000 being the cost of arranger fees, credit rating fees and loan processing fees to obtain loan funds in the facts and circumstances of the case.

4.1. We have heard rival submissions and perused the materials available on record. We find that during the year under consideration, the assessee had incurred expenditure amounting to Rs. 15,35,00,000 for the purpose of raising loan funds/ issue of Non-Convertible Debentures ('NCD) and details of the same are as under:-

Purpose & Party Name	Nature of Expenditure	Amount (Rs.)
<u>NCD:</u> CITI group Global Markets Pvt Ltd	Arranger Fees for placement of unsecured NCDs of Rs 2,000 crores	4,00,00,000
<u>Secured Loans</u> SBI Capital Markets Ltd	Arranger Fees for placement of Secured Loans of Rs. 2,000 crores	2,00,00,000
<u>Commercial Papers</u> CITI group Global Markets Pvt Ltd	Arranger Fees for placement of Commercial papers	1,25,00,000
<u>Cash Credit</u> SBI Capital Markets Ltd	Arranger Fees for Cash Credit of Rs. 500 crores	50,00,000
<u>Loan Processing Fees</u> State Bank of India	Upfront Loan Processing Fees	7,00,00,000

Credit Rating Fees	Credit Rating Service Fees	60,00,000
CRISIL		
	Total	15,35,00,000

4.2. The Id. AO observed that all the aforesaid payments were made in connection with loan obtained by the assessee and since the loans were utilised for purchase of assets under slump sale agreement, the aforesaid payments made would also go to expand the capital base of the assessee and thereby it partakes the character of capital expenditure. The Id. AO observed that the direct nexus between the expenses incurred and purchase of assets have been duly established but since the loans were utilised for purchase of assets under slump sale, the expenses of Rs.15.35 Crores also would go to increase the capital cost of the assets. With these observations, he disallowed the expenses u/s.37(1) of the Act.

4.3. We find that the Id. CIT(A) had deleted the disallowance by observing as under:-

7.3 I have carefully considered the facts of the case, discussion of the AO in the assessment order, oral contentions and written submission of the appellant and material available on record. It is the fact of the case that the appellant has incurred an expenditure totalling to Rs. 15,35,00,000/- for the purpose of raising funds by way of debentures, commercial papers and for which the assessee has paid Arrange fees, Loan Processing fees as also the Credit Rating fees. The AO has disallowed the same u/s.37(1) of the Act observing that the same is capital in nature and the corresponding fund being used for acquisition of capital assets. The appellant, on the other hand, has placed reliance on the decision of Hon'ble Supreme Court in the case of India Cements (60 ITR 52) as also in the case of Madras Industrial Investment Corporation Ltd. v. CIT (225 ITR 802)(SC). It is the fact and not disputed by the AO that what has been raised is a loan and therefore, it is the liability of the assessee. Such liability acquired by way of loans, debentures, commercial papers cannot be considered to be an asset by any stretch of imagination despite the fact that the proceeds of such loan may have been used for acquisition of assets by the assessee. By acquiring such loans, the assessee has not expanded its capital base in

any way and accordingly, the decision relied upon by the AO in the case of Brooke Bond India Ltd. is not found to be applicable. Respectfully following the ratios of the decision of Hon'ble Supreme Court in the cases of India Cements (supra) and Madras Industrial Investment Corporation Ltd. v. CIT (supra) as also the other decisions in this regard, the expenses incurred by the assessee for raising loans and which has not resulted into increase in the capital base of the assessee, cannot be termed as capital expenditure irrespective of the usage of proceeds of such loans. Accordingly, the action of the Assessing Officer in disallowing such expenditure as capital in nature u/s.37(1) of the Act is not found to be justifiable. Further, the CBDT Circular No.56 dated 09.03.1971, has clarified that the expenses incurred for obtaining loan funds which are allowable in the light of the decision of Hon'ble Supreme Court in the case of India Cements, the provisions of section 35D of the Act will not apply on the same. In view of the facts and circumstances of the case and discussion hereinabove, the action of the AO is not found to be justifiable and the disallowance so made by the AO is therefore, directed to be deleted. Grounds No.3,4 and 5 are accordingly, allowed.

4.4. We find that there is no dispute that the entire payments were made by the assessee company in connection with raising loan funds for the purpose of business. As rightly observed by the assessee, the allowability of the expenses incurred for raising loan funds would not depend on the utilisation of the loan funds for the purpose of procured assets. What is to be seen is whether the loans have been borrowed for the purpose of business by the assessee. In the instant case, there is absolutely no dispute that the loans have been borrowed by the assessee for the purpose of its business. The expenses payments of Rs.15.35 Crores are only payments made to various parties who had assisted in procuring those loans and loan processing fees paid to banks. Hence, this is linked with the liabilities i.e. loans borrowed by the assessee. We also find that the Id. CIT(A) has also placed reliance on the CBDT Circular No.56 dated 09/03/1971. Accordingly, the said expenses are squarely allowable as deduction, which relief has been rightly granted by the Id.

CIT(A) on which we do not find any infirmity warranting interference. Accordingly, the grounds raised by the revenue are dismissed.

Cross Objection No.216/Mum/2019 - Assessee Cross Objection

5. We find that the grounds raised by the assessee in its cross objections is only with regard to claim of depreciation and this ground is raised without prejudice to revenue appeal filed before us. Since, we have already dismissed the revenue appeal hereinabove, the adjudication of ground in Cross Objection of the assessee becomes infructuous.

6. In the result, appeal of the assessee is allowed, appeal of the revenue is dismissed and Cross Objection of the assessee is dismissed.

Order pronounced in the open court on this 06/12/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 06/12/2019
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai