

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.2199/M/2017
Assessment Year: 2013-14**

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| M/s. Essar House Pvt. Ltd., 11, Keshavrao Khadye Marg, Mahalaxmi, Mumbai - 400 020 PAN : AAACJ2883P | Vs. | DCIT 6(3)(2), Aayakar Bhavan, Mumbai - 400020 |
| (Appellant) | | (Respondent) |

**ITA No.2347/M/2017
Assessment Year: 2013-14**

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| Asstt. Commissioner of Income Tax (Cir)-6(2)(2), R.No.563, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai - 400020 | Vs. | M/s. Essar House Pvt. Ltd., 11, K.K. Marg, Mahalaxmi, Mumbai - 400 034 PAN : AAACJ2883P |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Shri Anuj Kisnadwala, A.R.
Revenue by : Shri R. Manjunatha Swamy, D.R.
Date of Hearing : 12.07.2019
Date of Pronouncement : 03.10.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals, one by the assessee and the other by the Revenue have been preferred against the order dated 02.01.2017 of the Commissioner of Income Tax (Appeals)

[hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

ITA No.2199/M/2017 (Assessee's appeal)

2. The grounds raised by the assessee are as under:

“The CIT(A) has erred in confirming the disallowance of part of interest expenditure amounting to Rs.22,68,42,143 and directed to capitalize the same.

The Appellant craves leave to add any other grounds and/ or amend or withdraw the aforesaid ground during the appeal proceedings.”

3. The only issue raised by the assessee is against the disallowance of interest amounting to Rs.22,68,42,143/- by Ld. CIT(A) on the ground that same is capital in nature as the money was utilised for purchase of inventories, therefore, required to be capitalized during the year.

4. The facts in brief are that total inventories as on 31.03.2012 were Rs.155,12,01,450/- and investments were Rs. 2020,94,88,575/-. The inventories and investments comprised of equity shares, debentures and ship discount bonds, zero coupon bonds which remained unsold at the year end. The assessee also claimed finance cost of Rs.270,43,60,637/- out of which Rs.247,75,18,494/- was claimed as expenses under section 57 of the Act meaning thereby that remaining of Rs.22,68,42,143/- was claimed as business expense against the business receipt of Rs.72 lakhs. The Ld. CIT(A) observed that interest cost was on account of investments and inventories which were lying idle with the assessee. According to Ld. CIT(A), the interest cost of Rs.22,68,42,143/- was directly attributable to acquiring of inventories as well as investments and therefore it has to be capitalized but the assessee has claimed the same

in the profit & loss account and accordingly the Ld. CIT(A) held that the profit & loss account did not give the true profit for the year end consideration. According to Ld. CIT(A), the assessee has incurred huge interest cost which is attributable to receipt of interest on investments in bonds. The assessee received interest of Rs.225.01 crore whereas interest paid for earning such interest income on investments was Rs.247.75 crores. According to Ld. CIT(A) there is no logic in the transactions that interest payment is more than interest receivable and accordingly held the transactions to be colourable device. Accordingly, Ld. CIT(A) confirmed the addition of interest of Rs.22,68,42,143/- and directed the AO to delete the balance addition on account of interest disallowance.

5. The Ld. A.R., at the outset, submitted before the Bench that the issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal In ITA No.7332/M/2016 & ors vide order dated 04.04.2019 wherein a similar disallowance of interest was deleted by the co-ordinate bench of the Tribunal. The Ld. A.R., therefore, prayed that the appeal of the assessee should be allowed by following the decision of the co-ordinate bench.

6. The Ld. D.R., on the other hand, fairly agreed to the contentions of the Ld. A.R. that issue has been decided by the co-ordinate bench of the Tribunal in earlier year, however, relied heavily on the order of AO and grounds of appeal.

7. After hearing both the parties and perusing the material on record including the decision of the co-ordinate bench of the

Tribunal in No.7332/M/2016 & ors (supra), we observe that the identical issue has been decided in favour of the assessee by the co-ordinate bench of the Tribunal by observing and holding as under:

“19. We have heard the rival submissions of both the parties and perused the material on record including the decisions cited by the Ld. A.R. The undisputed facts are that during the year, the assessee has claimed interest to the tune of Rs.311,20,00,841/- which comprised of Rs.296,18,97,878/- claimed under section 57(iii) of the Act and balance of Rs.15,01,02,963/- was claimed as business expenditure. During the year, the assessee borrowed money from Indiabulls Financial Services Ltd. of Rs.145.25 crores which was used for purchase of inventories in the form of debentures and deep discount bonds and thus interest pertaining on the loan relating to acquisition of inventory and stocks was charged to the P&L account as business expenditure. During the year assessee acquired inventories of Rs.153,59,95,449/- and thus total inventory at the year end came to Rs.155,12,01,450/-. The Ld. CIT(A) recorded a finding of fact in the order that the said loan was used for the purpose of acquiring inventories and interest has to be capitalized and thus confirmed the disallowance to the tune of Rs.15,01,02,963/- which in our opinion is incorrect as in the present case the loan was utilised for purchase of inventories. There are merits in the contentions of the assessee that same has to be allowed under section 36(1)(iii) of the Act as revenue in nature. The case of the assessee is supported by the decision of the co-ordinate bench of the Tribunal in the case of ACIT vs. Aditya Propcon (P) Ltd. (supra) which has been confirmed by the Hon’ble Rajasthan High Court vide order dated 10.10.2017. We, therefore, respectfully following the ratio laid down by the Hon’ble High Court set aside the order of Ld. CIT(A) and direct the AO to allow the deduction under section 36(1)(iii) of the Act. Accordingly, appeal of the assessee is allowed.”

8. Since the issue in the present case is identical to one as decided by the co-ordinate bench of the Tribunal in No.7332/M/2016 & ors (supra), we, therefore, respectfully following the same set aside the order of Ld. CIT(A) on this issue and direct the AO to allow the interest. Accordingly the appeal of the assessee is allowed.

ITA No.2347/M/2017 (Revenue’s appeal)

9. The issue raised in ground No.1 is against the deletion of disallowance made under section 14A read with rule 8D of Rs.223,88,95,364/- by Ld. CIT(A).

10. The facts in brief are that during the year the assessee has no exempt income and the AO was of the view that the disallowance under section 14A read with rule 8D has to be invoked as the provisions of section 14A are to be mandatorily followed in making the disallowance in the manner as provided in rule 8D. The Ld. CIT(A) recorded the fact in the appellate order that during the year the assessee has no income. The Ld. CIT(A) deleted the disallowance by following the decision of the Hon'ble Punjab & Haryana High Court in the case of Lakhani Marketing Inc. 49 taxmann.com 257 and the decision of Hon'ble Allahabad High Court in the case of Shivam Motors Pvt. Ltd. 55 taxmann.com 263.

11. After hearing rival parties and perusing the material on record carefully we observe that during the year the assessee has not derived any exempt income from the share and securities and the said fact is not disputed by the Ld. D.R. We further observe that the said fact is coming out of the assessment order and also the order of Ld. CIT(A) that assessee has no exempt income during the year. Under these facts, we are of the view that in absence of exempt income, the provisions of section 14A read with rule 8D can not be invoked. The case of the assessee is squarely covered by the decision of the Hon'ble Bombay High Court, Nagpur Bench in the case of Pr. CIT vs. Ballarpur Industries Ltd. in ITA No.15 of 2016 dated 13.10.2016. We, therefore, do not find any infirmity in the order of Ld. CIT(A) and accordingly the ground No.1 raised by the Revenue is dismissed.

12. The issue raised in ground Nos.2 to 5 is against the deletion of disallowance of interest on sales tax liability of Rs.225,06,76,351/- which has been disallowed by the AO on the ground that interest on sales tax liability has not been explained by the assessee as to how the same has been incurred and paid to the sister concern.

13. The facts in brief are that during the year the assessee has claimed deduction of interest expenditure of Rs.247.75 Cr on sales tax liability under section 57(iii) of the Act undertaken from Essar Oil Ltd. against the interest income of Rs.225.01 crores received on zero coupon bonds of Imperial Consultants and Securities Pvt. Ltd. in the computation of income. The AO, after noticing the same during the assessment proceedings, issued show cause notice to the assessee as to why the interest expenditure should not be disallowed as claimed under section 57(iii) of the Act as the same was not incurred wholly and exclusively in connection with the interest income. The assessee submitted before the AO that there is a direct nexus between the interest income and interest expenditure and hence the same is allowable under section 57(iii) of the Act. The assessee submitted that the expenditure was incurred on sales tax liability undertaken from Essar Oil Ltd and the assessee derived income by way of interest on bonds of Imperial Consultants and Securities Pvt. Ltd. According to the AO the transactions between the two group concerns were entered in order to avoid the taxes and therefore it was colourable device and disallowed the interest expenditure which was partly allowed by the CIT by sustaining the addition to the tune of Rs.22,68,42,143/-.

14. The Ld. A.R., at the outset, submitted before the Bench that the identical issue therein in A.Y. 2012-13 was decided in favour of the assessee in ITA No.6980/M/2016 vide order dated 04.04.2019. The Ld. A.R. therefore requested before the Bench that since the facts in the instant year are same as in the assessment year 2012-13 and therefore by following the co-ordinate bench of the Tribunal, ground Nos.2 to 5 raised by the Revenue may kindly be dismissed.

15. The Ld. D.R., on the other hand, fairly agreed with the contentions of the Ld. A.R. that issue is decided by the co-ordinate bench of the Tribunal in the earlier year, however, strongly relied on the order of lower authorities and grounds of appeal.

16. After hearing both the parties and perusing the decision of the co-ordinate bench of the Tribunal in ITA No.6980/M/2016 vide order dated 04.04.2019, we observe that the identical issue has been decided by the co-ordinate bench of the Tribunal in favour of the assessee and the relevant paras whereof are reproduced as under:

“13. We have heard the rival submissions of both the parties and perused the material on record. According to the assessee, Essar Oil Ltd. was entitled to collect the sales tax/VAT and defer the same up to 14.08.2020 and thereafter the said deferred sales tax liability was to be paid in six annual installments. Essar Oil Ltd. decided to assign the sales tax liability to another entity at the present value which was worked out at Rs.1805.52 crores. The sales tax liability was assigned in favour of the assessee and the assessee received Rs. 1,805.52 Cr from Essar Oil Ltd. from time to time. The said money received by the assessee was invested in zero coupon bonds of Imperial Consultants and Securities Pvt. Ltd. In the meantime the Hon'ble Supreme Court delivered a judgment in a case filed by the Sales Tax Department, Government of Gujarat wherein the Hon'ble Supreme Court held that Essar Oil Ltd. was not entitled to sales tax incentive scheme following which the Essar Oil Ltd. was asked to make the payment to the government exchequer. As per the agreement between Essar Oil Ltd. and the assessee the money was to be

paid along with interest, thus assessee had to pay interest of Rs.296.19 crores to Essar Oil Ltd. The assessee enashed the bonds and received interest income on the said zero coupon bonds of Rs.296.90 crores. The assessee credited the income by way of interest on zero coupon bonds in the P&L account while interest paid was charged in the P&L Account. While making the computation of income, the assessee offered the said income under the head of other sources by claiming interest paid to Essar Oil Ltd. of Rs.296.19 crores under section 57(iii) of the Act. After the examining the facts, we are of the considered opinion that there is a direct nexus between the money received by the assessee from Essar Oil Ltd. upon the assignment of sales tax liability and therefore there is a nexus between the interest received from the zero coupon bonds and interest liability which the assessee was liable to pay as per the agreement on the said assigned amount accordingly the same is allowable under section 57(iii) of the Act. We have carefully perused the decision passed in the case of CIT vs. Gopinathan (supra) and observed that the facts in the case are distinguishable from the facts of the present case. In the said case the assessee had surplus funds which were invested in fixed deposits and the assessee earned interest on such fixed deposits. Therefore, Hon'ble Supreme Court held that interest paid on money borrowed from the bank against the security the fixed deposits is not allowable under section 57(iii) of the Act. Since the income earned by the assessee by way of interest from zero coupon bonds had a corresponding liability attached to it. The assessee has not gained anything from the said transaction and thus it is incorrect to say that interest has to be taxed without allowing deduction under section 57(iii). In our opinion, the said transaction is not a sham transaction in view of the fact that the assignment of liability on account of sales tax and VAT has taken place at present value has taken place on a date which was prior to the decision of the Hon'ble Supreme Court. It was clearly a commercial transaction entered into between two entities though related and therefore not colourable transactions to circumvent tax liability. Accordingly, we hold that Ld. CIT(A) has passed a very reasoned and speaking order which does not require any interference at our end.

14. In the result, the appeal of the Revenue is dismissed.”

17. Since the facts are identical in the present case before us vis-à-vis the facts in ITA No.6980/M/2016 as referred to above, we, therefore, respectfully following the decision of the co-ordinate bench of the Tribunal, dismiss the ground Nos.2 to 5 of the Revenue by upholding the order of Ld. CIT(A) on this issue.

18. Ground Nos.6 & 7 are general in nature and do not require any adjudication.

19. Accordingly, the appeal of the Revenue is dismissed.

20. In the result, the appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 03.10.2019.

**Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 03.10.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

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By Order

Dy/Asstt. Registrar, ITAT, Mumbai.