



आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4561/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2011-12)

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आयकर अपील सं./ I.T.A. No.6615/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

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आयकर अपील सं./ I.T.A. No.6616/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

DCIT-1 (2)(2), 5 th Floor, Aaykar Bhavan M.K. Road, Mumbai-400 020.	बनाम/ Vs.	M/s. Neosym Industry Ltd. Industry House, 1 st Floor Backbay Reclamation Churchgate, Mumbai-400 020.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AACT-3782-D		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	S/ Shri Nitesh Joshi & P.P. Bhandari-Ld. ARs
Revenue by	:	Ms. Kavita P. Kaushik-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	26/11/2019
घोषणा की तारीख / Date of Pronouncement	:	10/12/2019

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeals by revenue for Assessment Years [in short referred to as ‘AY’] 2011-12 to 2013-14 contest separate orders of first appellate authority. Since common issues are involved, all the



appeals were heard together and are now being disposed of by way of this common order for the sake of convenience and brevity.

1.2 First, we take up appeal for AY 2011-12 wherein the sole ground raised by revenue read as under: -

Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the additions of Rs.1,26,00,000/- without any evidence or fund flow statement to substantiate any nexus between the sources of funds and their application so as to reveal the source of capital WIP.

2.1 Brief facts are that the assessee being resident corporate assessee stated to be engaged in the business of manufacturing of non-ferrous sheets, strips, foils, alloys and S.G. iron castings etc., was assessed for year under consideration u/s. 143(3) on 26/03/2014 wherein the assessee was saddled with interest disallowance u/s.36(1)(iii) for Rs.126 Lacs which forms the subject matter of present appeal before us.

2.2 During assessment proceedings, upon perusal of financial statements, it transpired that the assessee had reflected Capital work-in-progress [CWIP] for Rs.764 Lacs. At the same time, the assessee had debited interest expenditure of Rs.687 Lacs in its Profit & Loss Account claiming the same to be revenue in nature. The said fact led Ld. AO to work out interest disallowance u/s 36(1)(iii). The assessee defended the same by submitting that CWIP was not funded out of borrowed funds. However, in the absence of funds flow statement, the said plea was rejected and it was opined that the assessee could not establish nexus between source of funds and their application.

2.3 Consequently, Ld. AO computed interest disallowance u/s. 36(1)(iii) for Rs.126 Lacs which was nothing but proportionate interest divided in the ratio of CWIP and borrowed funds.



3.1 Before Ld. CIT(A), the assessee submitted that it incurred capital expenditure at its existing facilities towards purchase of machinery, computer software and other utilities. Since the assets were not put to use, the expenditure incurred on these heads was carried in accounts under the head CWIP which had closing balance of Rs.764.26 Lacs, the break-up of which was also provided. As against this, the assessee had sufficient own funds of Rs.127.17 Crores in the shape of Share Capital and free reserves as against capital expenditure of Rs.7.64 Crores. The break-up of the borrowings as well as finance cost was also provided which have already been extracted at para 2.3.1 of the impugned order. The substantial finance cost of Rs.569.07 Lacs was stated to be incurred on account of working capital bank borrowings. It was pleaded that bank borrowings were meant to fund working capital requirements and could not be used for any other purpose. It was also pointed out that no borrowings were availed by the assessee to acquire fixed assets. The attention was drawn to the fact that cash flow statement already formed part of the financial statements. In the above background, it was pleaded that interest disallowance as made by Ld. AO was not justified. Reliance was placed on the decision of Hon'ble Bombay High Court rendered in **HDFC Bank Ltd. V/s DCIT** for the submissions that a presumption was to be drawn in assessee's favor that the investments were out of free funds available with the assessee.

3.2 The Ld. CIT(A), after appreciating the provisions of Section 36(1)(iii), opined that the proviso to that section would apply only in case of extension of existing business, which was not the case here since the expenditure on utilities, computer software, staff quarters, machineries



could not be construed as extension of existing business. Further, the assessee's own funds were substantially higher than closing CWIP. The loans from bank were for working capital facility only and borrowed for specific purpose. Therefore, keeping in view all these factors, the disallowance u/s 36(1)(iii) would not be sustainable and accordingly, Ld. AO was directed to delete the said disallowance. Aggrieved, the revenue is under further appeal before us.

4. We have carefully heard the rival submissions, perused relevant material on record including documents placed in the paper-book. Upon due consideration of factual matrix as enumerated by us in the preceding paragraphs, the undisputed position that emerges is the fact that there was no extension of existing business by the assessee which would attract disallowance as envisaged by proviso to Section 36(1)(iii). As rightly observed by learned first appellate authority, the said expenditure was incurred towards advance for machinery & civil work, SAP implementation work, advance for staff quarters, expenditure on water pipe line etc., the nature of which would not lead to a conclusion that there was an extension of existing business.

5. Another undisputed fact is that the assessee had sufficient own interest free funds in the shape of Share Capital and Free Reserves which far exceeded the CWIP expenditure incurred by the assessee. In such a case, until nexus of borrowed funds vis-à-vis capital expenditure is established by Ld. AO, a presumption would be drawn in assessee's favor that the stated CWIP was funded out of its own interest free funds. For the said proposition, reliance could be placed on the decision of Hon'ble Bombay High Court in **CIT V/s Reliance Industries Ltd. (86**



Taxmann.com 24) confirming the said presumption in assessee's favor.

The revenue's appeal, on the stated issue, has already been dismissed by Hon'ble Supreme Court which is reported at 102 taxmann.com 52.

6. Another factor to be noted is that the bank borrowing was to fund the working capital facilities only and the same were borrowed for specific purpose. Nothing on record would indicate that these borrowings were diverted by the assessee to meet capital expenditure.

7. Keeping in view all the above stated factors, we do not find any infirmity in the impugned order in deleting the interest disallowance as made by Ld. AO. Therefore, by confirming the impugned order, we dismiss the appeal.

ITA No.6615/Mum/2017, AY 2012-13

8.1 Facts are slightly different in this year since the assessee has obtained specific term loans to install a new state of art facility to manufacture engine blocks and heads at its casting factory at Pune. Accordingly, it has already capitalized interest of Rs.631.28 Lacs as per the applicable accounting standards. However, Ld. AO computed additional interest disallowance of Rs.521.27 Lacs and added the same to the income of the assessee. The said disallowance has been computed in the ratio of CWIP to borrowed funds, as done in AY 2011-12.

8.2 Upon further appeal, learned first appellate authority noted that own funds were higher than CWIP. Further cash generated from operations of Rs.11.07 Crores and term loan of Rs.84.88 Crores was sufficient to meet CWIP of Rs.85.82 Crores. Since, term loan interest



was already capitalized, no further disallowance would be warranted. Aggrieved, the revenue is under further appeal before us.

8.3 Upon due consideration of factual matrix for this year, we find that the assessee has already capitalized interest on fresh term loans taken specifically for the purpose of meeting incremental capital expenditure and therefore, no further disallowance would be warranted on this account. This being the case, our other observations & reasoning as given for AY 2011-12, would apply *qua* balance disallowance. Undisputedly, own funds far exceeded the capital expenditure and a presumption would lie in assessee's favor that the expenditure was funded out of own interest free funds. Therefore, concurring with stand of Ld. CIT(A), we dismiss the appeal.

ITA No.6616/Mum/2017, AY 2013-14

9.1 Facts in this year are similar to AY 2012-13. The assessee capitalized interest of Rs.55 Lacs, but Ld. AO computed additional interest disallowance of Rs.202.65 Lacs on similar lines. The Ld. CIT(A) deleted the same, on more or less similar reasonings. Aggrieved, the revenue is under further appeal before us.

9.2 Facts being *pari-materia* the same as in AY 2012-13, our observations, findings as well as adjudication shall, *mutatis mutandis*, apply to this year also. Resultantly, the appeal stands dismissed.

Conclusion

10. All the appeals stand dismissed.

Order pronounced in the open court on 10th December, 2019

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**



मुंबई Mumbai; दिनांक Dated : 10/12/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.