

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ A ” BENCH: BANGALORE

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1447/Bang/2018  
(Assessment Year: 2013-14)

M/s. Hangyo Ice Creams (P) Ltd.  
No.38, II Floor, Eureka Junction,  
T B Road, Hubballi-580 029  
PAN AAHCS 6664E

....Appellant

Vs.

Asst. Commissioner of Income Tax,  
Circle 3(1), Hubballi.

.....Respondent.

Assessee By:	Shri Pranav Krishna, Advocate.
Revenue By:	Shri Sunil Kumar Agarwal, Addl. CIT (D.R)

Date of Hearing :	28.11.2019
Date of Pronouncement :	08.01.2020

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, JM :**

The assessee has filed an appeal against the order of Commissioner of Income Tax, Hubli passed under Section 143(3) and 250 of the Income Tax Act, 1961 ('the Act').

2. At the time of hearing, the learned Authorised Representative has prayed for admission of additional ground of appeal which is as under :

[1]. The learned authorities below were not justified in disallowing a sum of Rs. 33,232/- being the delayed payment of employees contribution to Provident Fund by invoking the provisions of section 2[24][x] r.w.s. 36[1][va] of the Act on the facts and circumstances of the case. The authorities below after noticing that the said payments towards Provident Fund amounting to Rs. 33,232/- have been paid before the due date for filing the return of income by the appellant and consequently no disallowance could have been made by the learned assessing officer, on the facts and circumstances of the case.

3. The learned Authorised Representative submitted the reasons for filing the additional grounds of appeal for which revenue has no serious objections. Hence the additional grounds of appeal of assessee are admitted and the assessee has raised following the grounds of appeal as under :

1. The order of the learned Commissioner of Income-tax (Appeals) - Hubballi passed under Section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.
2. The Appellant denies itself liable to be assessed over and above the business loss reported by the appellant of Rs. 20,68,678/-, on the facts and circumstances of the case.
3. The learned Commissioner of Income-tax [Appeals] erred in upholding the disallowance of additional depreciation on computer amounting to Rs. 61,427/- made by the learned assessing officer, on the facts and circumstances of the case.

4. The learned Commissioner of Income-tax [Appeals] is not justified in restricting the disallowance under section 14A read with Rule 8D amounting to Rs. 2,04,708/- from Rs. 5,38,069/- instead of deleting the entire disallowance made by the learned Assessing Officer, on the facts and circumstances of the case.
5. The learned Commissioner of Income-tax [Appeals] erred in upholding the disallowance of interest paid to Tata Capital Ltd of Rs. 80,017/- made by the learned assessing officer invoking the provisions of section 40 [a][ia] of the Act, on the facts and circumstances of the case.
6. The learned Commissioner of Income-tax [Appeals] failed to appreciate that the payment made to Tata Capital Ltd would have been offered to tax by the recipient in its return of income and consequently no disallowance could have been made under section 40[a][ia] of the Act, on the facts and circumstances of the case.
7. The learned Commissioner of Income-tax [Appeals] erred in upholding the disallowance of interest of Rs. 5,17,058/- on the alleged ground of diversion of funds made by the learned assessing officer who invoked the provisions of section 40A[2][a] of the Act on the facts and circumstances of the case.
8. The learned Commissioner of Income-tax [Appeals] failed to appreciate that the Appellant has sufficient own interest free funds and that the funds advanced to the sister concerns are not from borrowed funds on the facts and circumstances of the case.
9. The learned Commissioner of Income-tax [Appeals] failed to appreciate that the loans advanced to the sister concerns are all for the purpose of business exigencies, on the facts and circumstances of the case.
10. The Appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.
11. For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.

4. The Brief facts of the case are that the assessee is engaged in manufacture and sale of ice creams and milk products and filed the Return of Income on 29.09.2013 with loss of Rs.20,68,678. The case was selected for scrutiny under CASS and Notice under Section 143(2) and 142(1) of the Act were issued. In compliance, the learned Authorised Representative appeared from time to time and furnished the details. The Assessing Officer found that the assessee's has claimed additional depreciation on computers, whereas as per the provisions of Section 32 of the Act, the additional depreciation is allowed only on block of plant and machinery and disallowed the claim. Similarly, the Assessing Officer made disallowance of delayed payment of PF and also made disallowance under section 14A r.w. Rule 8D(2). Whereas the Assessing Officer has found that the assessee has made investment, in shares and received dividend of Rs.2,04,708. The Assessing Officer has not accepted the claim of non-incurring of expenditure for earning tax free income and calculated the disallowance under Section 14A r.w. Rule 8D(2) of Rs.5,38,069 including administrative expenses of Rs.38,857. Similarly, the assessee has made interest payment to Tata Capital of Rs.80,016 without deduction of tax at source. Hence the Assessing Officer applying the provisions of Section 40(a)(ia) of the Act made disallowance. The assessee has provided interest free loans to sister concerns and since the interest paid on money borrowed is 12% p.a.. The Assessing Officer observed that there is no business

connection on advancing of interest free loans and disallowed Rs.5,17,058 under Section 36(1)(iii) of the Act and assessed the total loss of Rs.8,38,875 and passed order under Section 143(3) dt.25.2.2016. Aggrieved by the order, the assessee has filed an appeal with the CIT(Appeals) whereas the CIT(Appeals) considering the submissions of the assessee and findings of the A.O. and the grounds of appeal of assessee, confirmed the addition of disputed issues and partly allowed the appeal. Aggrieved by the order, the assessee has filed an appeal with the Tribunal.

5. At the time of hearing, the learned Authorised Representative submitted that the Ground Nos.1 and 2 are general in nature and Ground No.3 is in respect of claim of additional depreciation and submitted that the assessee did not produce evidences and emphasised that the additional depreciation on computers fall under the category of plant and machinery. Similarly, for disallowance under Rule 14A, the learned Authorised Representative referred to the observations of the CIT(Appeals) at para 6.2, where the CIT(Appeals) has restricted the disallowance of expenditure to the extent of dividend income and whereas the assessee has sufficient surplus funds including shareholders funds and the assessee's investments are comparatively lower and relied on decisions of High Court.

6. On the disputed issue of disallowance of interest under Section 40(a)(ia) of the Act, the assessee has paid interest to the Tata Capital Ltd but the tax has not been deducted at source. The learned Authorised Representative submitted that

the interest payments are offered in the hands of Tata Capital Ltd. for income tax purpose and hence cannot be added to the assessee's income. Whereas in respect of disallowance of interest of Rs.5,17,058, the contentions of the learned Authorised Representative that the assessee has surplus funds and therefore out of own funds, the advances have been provided to sister concerns and no disallowance of interest is warranted. Further in respect of additional ground of appeal, ;the learned Authorised Representative submitted that the delayed payment of employees contribution to the Provident Fund, the payments have been made within the time allowed under Section 139(1) of the Act and prayed for allowing the appeal. Contra, the Id. DR supported the orders of CIT(Appeals).

7. We heard the rival contentions and perused the material on record. Prima facie, the assessee has challenged the disallowances made by the Assessing Officer for irregularities and non-production of evidences. First we shall take up the additional ground of appeal in respect of delayed payments of employees contribution to Provident Fund. We found that the assessee has made deposits within the financial year but the fact remains that this ground of appeal was not raised before the CIT (Appeals). Accordingly, we restore this ground of appeal to the file of CIT (Appeals) to adjudicate on merits and allow allow additional ground of appeal for statistical purposes. Whereas in respect of claim of additional depreciation, the learned Authorised Representative submitted that the

assessee has evidences and proof that the computer is an essential part of plant and machinery installed at the factory premises. We found the assessee has not produced any evidence in the appellate proceedings. Hence we consider it proper to remit the disputed issue to the file of CIT (Appeals) for adjudication considering the evidences filed by the assessee. On next issue of disallowance under Section 14A r.w. Rule 8D(2) of restricting the disallowance of expenditure to the extent of dividend income, the learned Authorised Representative contention, are the assessee has own funds and referred to the Paper Book at page 59 where the shareholders funds as on 31.3.2013 are Rs.5,78,67,588 whereas the investment made by the assessee are Rs.77,90,900. The learned Authorised Representative emphasized that the investments are less than the shareholders funds and such investments are routed through own funds hence there cannot be any disallowance of expenditure as borrowed funds are not utilized for this purpose and relied on the decision of the co-ordinate Bench of Tribunal in the case of DCIT Vs. Subramanya Constructions & Development Co. Ltd. (2015) 58 Taxman.com 219 where it was observed that the assessee has surplus funds to make major part of investment in the interest free securities and there is negligible increase in the investment during the year and addition cannot be made under Rule 8D(2) (ii) and (iii) and further learned Authorised Representative relied on the decision of jurisdictional High Court in the case of CIT Vs. Microlabs Limited (2017) 79

taxman.com 365. We found the assessee has surplus funds and relied on the decision of CIT Vs. Microlabs Limited (supra) where the Hon'ble High Court has observed at paras 41 & 42 which is read as under :

“41. The hon'ble Bombay High Court in CIT v. Reliance Utilities and Power Ltd. [2009] 313 ITR 340 (Bom) has held that where the interest-free funds far exceed the value of investments, it should be considered that investments have been made out of interest-free funds and no disallowance under section 14A towards any interest expenditure can be made. This view was again confirmed by the hon'ble Bombay High Court in CIT v. HDFC Bank Ltd., I.T.A. No. 330 of 2012, judgment dated July 23, 2014 - [2014] 366 UR 505 (Bom) wherein it was held that when investments are made out of common pool of funds and non-interest bearing funds were more than the investments in tax-free securities, no disallowance of interest expenditure under section 14A can be made.

42. In the light of the above said decisions, we are of the view that disallowance of interest expenses in the present case of Rs. 49,42,473 made under rule 8D(2)(ii) of the Income-tax Rules should be deleted. We order accordingly.”

Accordingly, we following the judicial decisions, restrict the addition to the extent of Rs.38,857.

8. On the issue of disallowance under Section 40(a)(ia) of the Act with respect to interest paid to Tata Capital Ltd., the learned Authorised Representative submitted that the recipient has offered income in their assessment, therefore, there is no requirement to make addition. When a query was raised to the learned Authorised Representative regarding obtaining of Certificate from Auditor in Form 26A that the recipient has offered the income in their Assessment. The learned Authorised Representative submitted that the information is available with the assessee and prayed for an opportunity to substantiate before lower authorities. Accordingly to meet the ends of justice, we restore this issue to the file of CIT(Appeals) to

consider the submissions of the assessee duly support with evidence of Form 26A and adjudicate on merits.

9. On the last disputed issue, in respect of disallowance of interest on advances provided to the sister concern. The learned Authorised Representative submitted that the assessee has adequate funds and out of surplus funds, the advances are provided to the sister concerns due to business connection. But the Assessing Officer has disallowed interest @ 12% p.a. The contention of the learned Authorised Representative that the advances provided to the sister concern are comparatively lower than the assessee's own funds and such advances are out of non-interest bearing funds and also there exists business connection with activities of sister concerns. We found from the financial statements the assessee has sufficient own funds in comparison to the advances provided to the sister concerns, further out of surplus funds of Rs.5,78,67,588 as on 31.03.2013, the advances to sister concerns are to the extent of Rs.39.91 lakhs and investments of Rs.77.74 lakhs and both aggregating to Rs.117.65 lakhs which is comparatively lower than surplus funds as on 31.3.2013. Hence the presumption would arise that the advances to sister concern and investments are out of interest free funds/surplus funds. We support our view relying on the decision of Hon'ble Bombay High Court in the decision of CIT Vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom), where it was held as under :

" Held, dismissing the appeal, that if there were funds available both interest free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest free funds generated or available with the company, if the interest free funds were sufficient to meet the investments. In this case this presumption was established considering the finding of fact both by the Commissioner (Appeals) and the Tribunal. The interest was deductible."

We respectfully follow the ratio of judicial decision and the presumption that advances to sister concerns are out of interest free funds and accordingly direct the Assessing Officer to delete the interest disallowance of Rs.5,19,058.

10. In the result, the assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 8th Jan., 2020.

Sd/-

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 08 .01.2020.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore