

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

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA NO. 1014/MUM/2016

A.Y : 2011-12

Mecords India Limited,
216, Swastik Chambers,
Sion Trombay Road, Chembur,
Mumbai 400 071.
PAN : AAACM3324N (Appellant)

vs. ITO – 10(2)(4),
Mumbai. (Respondent)

Appellant by : Shri Vijay Mehta
Respondent by : Ms. Kavita P. Kaushik

Date of Hearing : 28/01/2020
Date of Pronouncement : 28/01/2020

ORDER

PER MAHAVIR SINGH, VICE PRESIDENT

This appeal is filed by the assessee against order of CIT(A)-22, Mumbai dated 12.01.2016 for assessment year 2011-12 which in turn has arisen from order of Assessing Officer passed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 12.03.2014.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of Assessing Officer in disallowing proportionate

expenses of interest without appreciating the facts of the case. For this, assessee has raised following ground no. 1 :-

“1. On the facts and in the circumstances of the case and in law, the learned C.I.T.(A) erred in confirming the action of the A.O. in disallowing proportionate interest expense amounting to Rs.94,23,665/- and that too without appreciating the facts and circumstances of the case fully and properly.”

3. The brief facts are that the assessee is engaged in the business of manufacture and trading of industrial fabrics, dipped nylon, chafer fabrics and other fabrics. The Assessing Officer, on verification of account of assessee as on 31.03.2011, noted that assessee has shown secured and unsecured loans of Rs.36,43,75,980/- as against the opening balance of secured and unsecured loans of Rs.36,33,41,845/-. The Assessing Officer also noticed from the Profit & Loss Account that assessee has claimed interest expenses/finance cost of Rs.4,39,30,908/-, which includes interest payment made to bank of Rs.2,65,84,371/-, interest to financial institutions of Rs.61,21,000/- and interest to others of Rs.1,12,25,537/-. The Assessing Officer noted from the Schedule of Loans and Advances given by assessee that the closing balance of advance was Rs.8,85,52,923/- as against the opening balance of Rs.5,79,37,770/-. Against these advances, assessee declared interest income of Rs.1,47,657/-. The Assessing Officer brought out the utilisation of interest bearing funds for non-business purpose for giving interest free loans and advances to the following parties :-

<i>Name of party</i>	<i>Balance as on 31/03/2010</i>	<i>Balance as on 31/03/2011</i>	<i>Amt. Received/ given during the year</i>	<i>Disallowance proportionate interest @ 12%</i>
<i>Ajit G Mehta</i>	<i>9,87,589</i>	<i>-</i>	<i>9,87,589</i>	<i>Rs.1,18,510/-</i>
<i>Jitendra G Mehta</i>	<i>2,53,398</i>	<i>-</i>	<i>2,53,398</i>	<i>Rs.30,407/-</i>
<i>Mamta A Mehta</i>	<i>9,79,985</i>	<i>22,29,695</i>	<i>12,49,710</i>	<i>Rs.2,67,563/-</i>
<i>Mecords Leasing Finance Co. Ltd.</i>	<i>1,96,737</i>	<i>1,96,737</i>	<i>-</i>	<i>Rs.23,608/-</i>
<i>Mehta Growell Holding Ltd.</i>	<i>4,22,55,887</i>	<i>6,67,31,790</i>	<i>2,44,75,903</i>	<i>Rs.80,07,814/-</i>
<i>Neeta M Mehta</i>	<i>67,39,895</i>	<i>81,31,360</i>	<i>13,91,465</i>	<i>Rs.9,75,763/-</i>
<i>Total</i>	<i>5,14,13,491</i>	<i>7,72,89,582</i>		<i>Rs.94,23,665/-</i>

4. Assessee produced complete books of account and details of loans given and loans taken from various parties including financial institutions and banks before the Assessing Officer. Assessee was also asked to prove the nexus between the availability of interest free funds and funds given to above parties noted in the chart. After going through the reply of assessee, the Assessing Officer noted that interest bearing funds were diverted towards non-interest bearing advances given by assessee to other parties. He also noted that interest bearing funds utilized for such investments on which interest is paid or payable should have been capitalized. Hence, he disallowed proportionate interest on such interest free advances of Rs.94,23,665/- debited to the Profit & Loss Account. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) confirmed the action of Assessing Officer relying on earlier year's appeal order by observing as under :-

"6.6

In my above appeal order dated 11/01/2016 for A.Y. 2010-11, I had given the finding that advances of Rs.8,19,38,063/- stood given before the receipt of share application money when the appellant had no interest free funds at its disposal. It is seen that the stated advances given are maintained like a running account where some amounts were received back from the

parties also. The closing balance of Rs.7,72,89,582/- advanced to these parties as on 31.03.2011 is subsumed under the amount of Rs.8,19,38,063/- which has been held to be given out of interest bearing funds. In view of these facts, the appellant's alternative submission also fails and the ground of appeal on the issue of proportionate disallowance of interest is dismissed."

Aggrieved, assessee is in appeal before us.

5. At the outset, the learned counsel for the assessee, Shri Vijay Mehta filed copy of Tribunal's order in assessee's own case for assessment year 2010-11, i.e. immediately preceding year being ITA No. 1013/Mum/2016 dated 04.10.2019 wherein exactly identical situation emerged and the Tribunal had considered the same parties and deleted the proportionate disallowance of interest vide para 6, 6.1 to 6.3 as under :-

"6. We have heard the rival submissions and perused the materials available on record. We find that the preliminary argument made by the Id AR is that no disallowance of interest could be made on the funds borrowed in the earlier years and lying in opening balance as on 1.4.2009 when the said borrowings and utilization thereon were accepted as meant for business purposes in earlier years. Reliance in this regard has been rightly placed on the decision of Hon'ble Karnataka High Court in the case of CIT vs Sridev Enterprises reported in 192 ITR 165 (Kar) wherein it was held as under:-

"4. We are in agreement with the view expressed by the Tribunal. The status of the amount standing as outstanding due from Nalanda on the first day of the accounting year is the amount that stood outstanding on the last day of the previous accounting year; therefore, its nature and status cannot be different on the 1st day of the current accounting year, from its nature and status as on the last day of the previous accounting year. Regarding the past years, the assessee claims for deductions were allowed in respect of the sums advanced during those years; this could be, only on the assumption that those advances were not out of borrowed funds of the assessee. This finding during the previous years is the very basis of the deductions permitted during the

past years, whether a specific finding was recorded or not. A departure from that finding in respect of the said amounts advanced during the previous year, would result in a contradictory finding; it will not be equitable to permit the revenue to take a different stand now, in respect of the amounts which were the subject-matter of previous years' assessments; consistency and definiteness of approach by the revenue is necessary, in the matter of recognising the nature of an account maintained by the assessee so that the basis of a concluded assessment would not be ignored without actually reopening the assessment. The principle is similar to the cases where it has been held that a debt which had been treated by the revenue as a good debt in a particular year cannot subsequently be held by it to have become bad prior to that year.

6.1. It is not in dispute that the borrowings were made in earlier years and its utilization thereon in earlier years has been accepted as genuine and meant for business purposes in the earlier years. It is not in dispute that no disallowance of interest has been made in earlier years with regard to the said borrowings and utilization thereon. The Id AR stated that the assessments for the Asst Years 2007-08 to 2009-10 were completed u/s 143(1) of the Act and no proceedings were either initiated by the Id AO u/s 147 of the Act or by the Id CIT u/s 263 of the Act even after passing of the impugned assessment order for any of those years i.e Asst Years 2007-08 to 2009-10 to disturb the returns thereon. Hence the issue had become final for those asst years with regard to the allowability of interest paid on borrowed capital. In this regard, the Id DR vehemently argued that the Asst Year for which the decision of Hon'ble Karnataka High Court was rendered pertain to the periods where the Id AOs' use to apply their mind even while processing the return u/s 143(1) of the Act and a provision for making prima facie adjustments and consequential levy of additional tax u/s 143(1A) of the Act were also present in the statute. The Id DR argued that hence under those circumstances, once a return is accepted u/s 143(1) of the Act , it tantamounts to acceptance of the claim of the assessee by the Id AO after due application of mind. We are not inclined to accept to this argument of the Id DR in as much as the basis of selection of case for scrutiny was and is always vested with the wisdom of the revenue and it was and is never under the control of the assessee. In the instant case, even after framing the assessment for the Asst Year 2010-11 wherein the interest was disallowed in

respect of borrowings made in earlier years, the revenue had not resorted to reopen the earlier years or revise the assessments for the earlier years in the manner known to law. We are equally afraid as to whether the Id DR would advance the same argument in the issue of reopening of assessments for those earlier years where return has been processed u/s 143(1) of the Act after due application of mind by the Id AOs' at that relevant point of time. If it be so, then the entire judicial decisions rendered by the Hon'ble Supreme Court and Hon'ble High Courts in the context of reopening would get completely defeated. Hence we are not inclined to accept the arguments of the Id DR in this regard. We find that the Id AR submitted that the amounts advanced to Neeta M Mehta alone had increased during the year. We find that with regard to amounts advanced to all other parties except Neeta M Mehta, the closing balance had only reduced when compared to the opening balance and hence there cannot be any disallowance of interest on the opening balance of loans advanced to parties as per the ratio laid down by the Hon'ble Karnataka High Court referred to supra.

6.2. We also find that similar decision was rendered by the Hon'ble Gujarat High Court in the case of Virendra R Gandhi vs ACIT in Tax Appeal No. 20 of 2004 with Tax Appeal No. 124 of 2005 dated 27.11.2014.

6.3. With regard to loan given to Neeta M Mehta during the year, we find that during the year, the assessee had advanced only a sum of Rs 15,52,273/- to the said party and we find that assessee is having sufficient own funds during the year in the form of current year profits before depreciation to the tune of Rs 4.24 crores. Hence it could be reasonably presumed that the amounts to Neeta M Mehta were advanced interest free out of own funds available with the assessee in the form of current year profits itself. Hence there cannot be any disallowance of interest u/s 36(1)(iii) of the Act on a proportionate basis even for the same.

6.4. In view of our aforesaid observations, we direct the Id AO to delete the disallowance of interest u/s 36(1)(iii) of the Act in the sum of Rs 95,10,449/- and allow the Ground No.1 raised by the assessee in this regard."

When these facts were confronted to the learned Senior DR, she only relied on the assessment order and made arguments from reading of assessment order and that of the CIT(A).

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the Tribunal in immediately preceding year has considered this issue and even the CIT(A) while confirming the disallowance has relied on order in assessment year 2010-11, i.e. immediately preceding year. We also noted that no disallowance of interest expense has been made in the earlier years with regard to opening balance of said borrowings and utilisation thereof. We also noted that in this year also the position does not change and assessee is having sufficient own funds in the form of current year's profit before depreciation. Even otherwise, assessee also contended that assessee had at its disposal corresponding interest free advances received from various parties mainly comprising of share application money amounting to Rs.18.80 crores in aggregate, which exceeds the above interest free advances made by assessee. Hence, in terms of the above facts of the present case and the precedent in the immediately preceding year, no disallowance is to be made, as made by CIT(A) on the opening balance *qua* their utilisation, in earlier year. Hence, we delete the proportionate disallowance of interest expense and allow the appeal of assessee.

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

Order pronounced in the open court on 28th January, 2020.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai, Date : 28th January, 2020

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "B" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai