

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(B)', KOLKATA
[Before Shri P.M. Jagtap, Vice President (KZ) & Shri A. T. Varkey, JM]

[Through Virtual Court]

I.T.A. No. 2368/Kol/2019

M/s. International Constructions Ltd.....Appellant
Golden Enclave, Corporate Block, Tower B-1,
5th Floor, HAL Old Airport Road, Bangalore,
Karnataka - 560017.
[PAN: AADCI 5686 F]

Vs

ITO, Ward - 15(3), Kolkata.....Respondent
BMTC Building, 80 Ft. Road, 6th Block,
Koramanagala, Bangalore,
Karnataka - 560 095.

Appearances by:

Shri S.K. Tulsyan, Advocate appearing on behalf of the Assessee.

Shri Supriya Pal, Addl. CIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : July 14, 2020

Date of pronouncing the order : July 17, 2020

ORDER

PER P.M. JAGTAP, VICE-PRESIDENT (KZ)

This appeal filed by the assessee is directed against the order of Ld. CIT(Appeals) - 5, Kolkata dated 20.08.2019 and the solitary issue involved therein relates to the disallowance of Rs. 49,05,630/- made by the AO and confirmed by the Ld. CIT(A) on account of interest expenditure.

2. The assessee in the present case is a non-banking finance company which filed its return of income for the year under consideration on 30.09.2013 declaring total income at Nil. In the Profit & Loss Account filed along with the said return, a sum of Rs. 2,65,87,704/- was debited by the assessee on account of interest expenditure. During the course of assessment proceedings, it was

noticed by the AO that the said interest was paid by the assessee on Short Term Borrowings which stood at Rs. 28,14,87,977/- as at 31.03.2013. He also noticed that the said Short Term Borrowings were utilised by the assessee for payment of share application money to the extent of Rs. 4,72,10,000/- as at 31.03.2013. Since the said utilisation, according to the AO, was not for the purpose of assessee's business, he required the assessee to explain as to why interest expenditure on Short Term Borrowings to the extent attributable to payment of share application money should not be disallowed u/s 36(1)(iii) of the Income Tax Act, 1961. In reply, details were furnished by the assessee to show that share application money was being paid right from the F.Y. 2005-06 as a part of its normal business activity and therefore, it was not a case of utilisation of borrowed funds for non-business purpose warranting any disallowance on account of interest expenditure. Not satisfied with this explanation of the assessee, the Assessing Officer made a disallowance of Rs. 49,05,630/- being the interest attributable to the Short Term Borrowings to the extent utilised for payment of share application money.

3. The disallowance of Rs. 49,05,630/- made by the AO out of interest expenditure was challenged by the assessee in the appeal filed before the Ld. CIT(A) and the following submission was made on behalf of the assessee company in support of its claim that the said disallowance made by the AO was not sustainable:

"The assessee during the year had claimed finance cost of Rs. 2,65,87,704/-. The short term borrowing outstanding in the books of assessee as on 31.03.2013 was Rs. 28,14,87,977/-. The total owned funds

of the assessee as on 31.03.2013 was Rs.4,98,84,904/- and the assessee had made share application of Rs. 4,72,10,000/-.

The Ld. AO after examining the balance sheet of the assessee alleged that the borrowed capital had been utilised in making the share application of Rs.4,72,10,000/- as the assessee had own funds of Rs.4,98,84,904/- only and thus the interest expenditure had not been incurred for business purpose. Thus, the Ld. AO made the disallowance of interest amounting to Rs.49,05,630/- u/s 36(1)(iii) of the Act.

In connection to above, it is submitted that the assessee is a NBFC company registered with Reserve Bank of India and engaged in the business of investing and financing activities. Copy of NBFC registration certificate is enclosed at page 12-16 of Paper Book. Since, the investment and financing activities is also one of the main business of the assessee company, the share application given by the assessee is one of the investing activity undertaken by the assessee.

From the financial statement of the assessee, the following figures are depicted:

A. Owned fund

a. Share Capital	Rs. 3,63,39,600/-	
b. Reserve & Surplus	<u>Rs. 1,35,45,304/-</u>	Rs.4,98,84,904/-

B. Current Liabilities

a. Short Term borrowings		<u>Rs.28,14,87,977/-</u>
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Total fund with the assessee:		Rs. 33,13,72,881/-
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Investing and financing activities as NBFC

A. Non Current Investment		Rs.19,59,75,719/-
B. Long Term Loans & Advances		Rs.2,02,88,133/-
C. Short Term Loans and Advances		Rs.17,27,74,705/-
(including share application money of Rs.4,72,10,000/-)		<u>Rs. 38,90,38,557/-</u>

From the above, it is evident that the assessee had utilised its whole of the owned fund and borrowed fund in making investments and loan funding activities. NBFC Companies which are involved in investing and financing activities mainly generate fund either by borrowing or by raising capital and again using the said fund in investing and financing activities in generating the revenue. This is how the business of an NBFC Company

operates. The same is being done by the assessee and therefore the borrowed funds are utilised for business activities only.

Further it is also evident from the Note 16 - Revenue from Operation of the Profit and Loss statement at page 41 of Paper Book that the assessee had shown the interest income, dividend income and profit on sale of such investment as a part of revenue from operating activities. This is also evident from the copy of computation of ITR enclosed at page 60-90 of Paper Book.

This very clearly shows that the share application given by the assessee is a part of its business activity being undertaken as a NBFC. The short term borrowings had been utilized for the purpose of business and therefore the interest paid on such borrowed fund were wholly and exclusively for the purpose of business only.”

In support of the submission as made above before the Ld. CIT(A), reliance was placed on behalf of the assessee company on the decision of Hon'ble Supreme Court in the case of S.A. Builders Ltd. vs CIT(A) 288 ITR 1 as well as the decision of Hon'ble Delhi High Court in the case of Punjab Stainless Steel Inds. Vs. CIT 324 ITR 396.

4. The Ld. CIT(A) did not find merit in the submissions made on behalf of the assessee company on the issue under consideration and proceeded to confirm the disallowance made by the AO out of interest expenditure for the following reasons given in his impugned order:

“I have considered the submission of the appellant and perused the relevant assessment records. The company had claimed interest amounting to Rs. 49,05,630/- as expenditure u/s 36(1)(iii) of the Act. The AO in the assessment order had disallowed the claim on the grounds that the interest relates to loan utilised for share application and has no nexus with the business of the appellant. There is merit in the findings of the AO. The investment in shares is a capital investment with the objective of earning anticipated capital gains and dividend. The AO in the assessment order had established that the loan was utilised for share application as the appellant's did not have sufficient fund 'own funds' for the purpose. Therefore, the interest claim amounting to Rs. 49,05,630/- under no

circumstances, can be allowed as business expenditure as it relates to investment in shares. The addition of Rs. 49,05,630/- is confirmed. This ground of appeal fails and is therefore not allowed."

Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

5. The learned counsel for the assessee submitted that the assessee is a non-banking finance company and buying and selling of shares as well as making investment in shares was part of its main business activity. He invited our attention to the balance sheet of the assessee company as placed at page no. 29 of the Paper Book as well as relevant schedule of short term loans and advances given at page no. 42 of the Paper Book to show that the share application money was included in the short term loans and advances and the same were reflected as current assets of the assessee company in its balance sheet. He also invited our attention to the submissions made before the Ld. CIT(A) as extracted on page no. 4 of the impugned order of the Ld. CIT(A) to show that the assessee, being a non-banking finance company registered with Reserve Bank of India, was engaged in the business of investing and financing activities. He contended that the assessee company was regularly investing in share application money as part of its ordinary course of business and the details of such investments made right F.Y. 2005-06 were duly furnished before the AO during the course of assessment proceedings. Relying on the decision of Hon'ble Andhra Pradesh High Court in the case of CIT vs Peninsular Investment Ltd. 213 Taxman 327, he contended that when the business of the assessee was to invest in shares, interest paid by the assessee on loan utilised for making investment in shares was

allowable as deduction u/s 36(1)(iii). He also relied on the decision of Calcutta High Court in the case of CIT vs J.K. Industries (P) Ltd. 125 ITR 218 wherein it was held that where capital had been borrowed for the purpose of business, it was immaterial as to how the borrowed money had been applied and the interest payment would be deductible u/s 36(1)(iii). He further relied on the decision of Hon'ble Madras High Court in the case of CIT Shriram Investments (Firm) Moogambika Complex 229 Taxman 179 wherein it was held that where borrowed capital was invested in shares and debentures for the purpose of business, interest paid thereon would be allowable u/s 36(1)(iii).

6. The ld. DR, on the other hand, relied on the orders of the authorities below in support of the revenue's case on the issue under consideration. He contended that investment made by the assessee in share application money was in the nature of capital investment and, therefore, interest paid on the borrowed funds to the extent utilised for making payment of share application money was not allowable u/s 36(1)(iii) as rightly held by the Ld. CIT(A).

7. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the assessee is a non-banking finance company which is duly registered with the Reserve Bank of India and it is mainly engaged in the business of investing and financing. The share application money was claimed to be paid by the assessee as one of its investing activity and this claim of the assessee was duly supported by the relevant details furnished during the course of assessment proceedings before the AO showing

that the investment in share application money was regularly made by the assessee right from the F.Y. 2005-06. The nature of business activities undertaken by the assessee as a non-banking finance company was duly explained by the assessee during the course of appellate proceedings before the Ld. CIT(A) pointing out that the revenue was generated by the assessee company mainly from its investing and financing activities and the payment of share application money was part of its investing activities. The Ld. CIT(A) however still confirmed the disallowance made by the AO out of interest expenditure mainly on the ground that the investment in shares was a capital investment.

8. As held by the Hon'ble Calcutta High Court in the case of J.K. Industries (supra) relied upon by the learned counsel for the assessee, once the capital had been borrowed for the purpose of business, it was immaterial as to how the borrowed money had been applied and interest payment would be deductible u/s 36(1)(iii). In the case of Peninsular Investment Ltd. (supra), the business of the assessee was to invest in the shares and keeping in view the same, it was held by the Hon'ble Madhya Pradesh High Court that interest paid by the assessee on loan borrowed for the purpose of making investment in shares was allowable as deduction u/s 36(1)(iii) of the Act. To the similar effect is the decision of the Hon'ble Madras High Court in the case of Shriram Investments (Firm) Moogambika Complex (supra) cited by the learned counsel for the assessee wherein it was held that where borrowed capital was invested in shares and debentures for the purpose of business, interest paid thereon would be allowable u/s 36(1)(iii).

9. If the legal position emanating from the judicial pronouncements discussed above is applied to the facts of the present case, we find that the share application money was paid by the assessee company in the ordinary course of its business of making investment in shares and, therefore, interest expenditure incurred on the borrowed fund utilised for making the payment of share application money is deductible u/s 36(1)(iii) as claimed by the assessee. We accordingly delete the disallowance made by the AO and confirmed the Ld. CIT(A) out of interest expenditure and allow this appeal of the assessee.

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

Order Pronounced in the Open Court on 17th July, 2020.

Sd/-
(A.T. Varkey)
JUDICIAL MEMBER

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Dated: 17/07/2020

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. International Constructions Ltd., Golden Enclave, Corporate Block, Tower B-1, 5th Floor, HAL Old Airport Road, Bangalore – 560017.
2. ITO, Ward – 15(3), Kolkata, BMTC Building, 80 Ft. Road, 6th Block, Koramanagala, Bangalore – 560095.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata