

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA
[Virtual Court Hearing]**

**Before Shri P.M. Jagtap, Vice-President
& Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 2372/KOL/2019
Assessment Year: 2013-2014**

***Assistant Commissioner of Income Tax,.....Appellant
Circle-6(2), Kolkata,
P-7, Chowringhee Square, 6th Floor,
Aayakar Bhawan, Kolkata-700069***

-Vs.-

***M/s. The Calcutta Tramways Company (1978) Limited,.....Respondent
12, R.N. Mukherjee Road, Kolkata-700001
[PAN: AABCT7674D]***

Appearances by:

*Shri Supriya Pal, Addl. CIT, Sr. D.R., for the Appellant
None, for the Respondent*

Date of concluding the hearing : July 14, 2020

Date of pronouncing the order : July 17, 2020

O R D E R

Per Shri P.M. Jagtap, Vice-President:-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-7, Kolkata dated 28.06.2019 on the following ground:-

“Whether on the facts and in the circumstances of the case, the Id. CIT(Appeals) has erred in holding that the interest on the borrowed funds of Rs.537.34 lakhs cannot be termed as an unascertained liability, ignoring the fact that the assessee-company has itself stated in the financial statement that interest payable has been estimated @ 6.25% in absence of any specific stipulation for payment of interest”.

2. At the outset, it is noted that there is a delay of 53 days on the part of the Revenue in filing this appeal before the Tribunal. In this regard, the Revenue has moved an application seeking condonation of the said delay and keeping in view the reasons given therein, we are satisfied that there was a sufficient cause for the delay of 53 days on the part of the Revenue in filing this appeal before the Tribunal. The said delay is accordingly condoned and the appeal of the Revenue is being disposed of on merit.

3. The assessee in the present case is a Company, which is fully owned by the Government of West Bengal. It is engaged in providing public transportation services. The return of income for the year under consideration was filed by it on 26.09.2013 declaring a loss of Rs.28,83,24,735/-. In the Profit & Loss Account filed along with the said return, a sum of Rs.537.34 lakhs was debited by the assessee on account of provision made for interest on loans availed from Government of West Bengal at the rate of 6.25% per annum. The said provision was treated by the Assessing Officer as an unascertained liability following the similar stand taken in the assessments completed for the earlier years and the same was disallowed by him in the assessment completed under section 143(3) vide an order dated 13.01.2016.

4. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the disallowance made by the Assessing Officer on account of provision made for interest. During the course of appellate proceedings before the Id. CIT(Appeals), it was pointed out on behalf of the assessee-company that a similar issue was involved in assessee's own case for A.Y. 2007-08 and the Tribunal vide its order dated 18.10.2017 passed in ITA No. 590/KOL/2014 had directed the Assessing Officer to take into account the sanction letter/confirmation letter of the

Government of West Bengal in respect of the rate of interest which is to be charged on such loan and adjudicate the issue as per the provisions of the Income Tax Act. It was submitted on behalf of the assessee-company before the Id. CIT(Appeals) that the appeal effect to the ITAT's order for A.Y. 2007-08 was already given by the Assessing Officer and the claim of the assessee for deduction on account of provision made for interest was allowed by him. It was also brought to the notice of the Id. CIT(Appeals) by the assessee that a similar direction was given by the Tribunal to the Assessing Officer on identical issue involved in assessee's own case for A.Y. 2008-09. It was submitted that the Assessing Officer himself had allowed the deduction claimed by the assessee on account of similar provision made for interest in A.Y. 2012-13 and the order passed by the Id. Principal CIT under section 263 treating the assessment order of the Assessing Officer allowing deduction on account of provision for interest as erroneous as well as prejudicial to the interest of the Revenue was set aside by the Tribunal vide its order dated 18.07.2018 passed in ITA No. 1261/KOL/2017 read with the order passed in M.A. by holding that the provision for interest not being in the nature of unascertained liability, jurisdiction involved under section 263 of the Act by the Id. Principal CIT was unfounded. Keeping in view this submission made on behalf of the assessee-company, the Id. CIT(Appeals) accepted the contention of the assessee that the issue under consideration was squarely covered in favour of the assessee by the decision of the Tribunal in assessee's own case for A.Ys. 2007-08, 2008-09 and 2012-13 and following the same, he directed the Assessing Officer to allow the claim of the assessee for deduction on account of provision made for interest on loan borrowed from the Government of West Bengal.

Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

5. At the time of hearing fixed in this case before the Tribunal, none has appeared on behalf of the respondent-assessee. The Id. D.R., however,

has fairly and frankly submitted that the solitary issue involved in this appeal of the Revenue relating to the disallowance on account of the provision for interest on loan borrowed by the assessee from the Government of West Bengal is squarely covered in favour of the assessee by the decision of the Tribunal rendered in assessee's own case for A.Ys. 2007-08, 2008-09 and 2012-13 as discussed and relied upon by the Id. CIT(Appeals) in his impugned order. We, therefore, respectfully follow the said decisions of the Tribunal rendered in assessee's own case for earlier years on similar issue and uphold the impugned order of the Id. CIT(Appeals) directing the Assessing Officer to allow the claim of the assessee for deduction on account of provision made for interest on loan borrowed from the Government of West Bengal.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on July 17, 2020.

**Sd/-
(A.T. Varkey)
Judicial Member**

**Sd/-
(P.M. Jagtap)
Vice-President)**

Kolkata, the 17th day of July, 2020

- Copies to :*
- (1) ***Assistant Commissioner of Income Tax,
Circle-6(2), Kolkata,
P-7, Chowringhee Square, 6th Floor,
Aayakar Bhawan, Kolkata-700069***
 - (2) ***The Principal Officer,
M/s. The Calcutta Tramways Company (1978) Limited,
12, R.N. Mukherjee Road, Kolkata-700001***
 - (3) *Commissioner of Income Tax (Appeals)-7, Kolkata;*
 - (4) *Commissioner of Income Tax- , Kolkata*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.