

आयकर अपीलीय अधिकरण, हैदराबाद न्यायपीठ 'बी', हैदराबाद

**INCOME TAX APPELLATE TRIBUNAL
Hyderabad Benches, 'B', Hyderabad**

सुश्री सुषमा चावला, उपाध्यक्ष एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, VP & MR. ANIL CHATURVEDI, AM

[THROUGH VIDEO CONFERENCING]

आयकर अपील सं. / ITA No.678/HYD/2017

निर्धारण वर्ष/Assessment Year-2006-07

M/s Sagar Cements Ltd.,
S-2-472/B, Road No.1,
Banjara Hill, Hyderabad-500034.
PAN-AACCS8680H

.....अपीलार्थी/Appellant

Vs.

The DCIT,
Circle-3(1), 7th Floor,
Signature Towers,
Kondapur, Hyderabad

.....प्रत्यर्थी/Respondent

अपीलार्थी की ओर से / Appellant by	:	Shri A.V.Raghuram, Adv.
प्रत्यर्थी की ओर से / Respondent by	:	Shri Sunku Srinivasu, DR

सुनवाई की तारीख/Date of Hearing	:	16-06-2020
घोषणाकीतारीख/Date of Pronouncement	:	31-07-2020

आदेश/ORDER

PER MS. SUSHMA CHOWLA, VICE PRESIDENT

The present appeal filed by assessee is against order of CIT(A)-10, Hyderabad dated 11.11.2016 relating to assessment year 2006-07 against the order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised following grounds of appeal:-

1. *“The order of the learned CIT(A) confirming the order of the AO is not only erroneous both on facts and in law in so far as it is prejudicial to the assessee but is also without application of mind to the facts submitted.*
2. *The learned CIT(A) erred in confirming the addition of Rs.15,50,466 as Sales tax advance payment in spite of detailed submissions with evidences that this is not claimed in the P & L ale and hence cannot be added.*
3. *The learned CIT(A) erred in confirming the addition of Rs.49,50,000/- as disallowance of interest in spite of evidence and submissions that the amounts advanced to subsidiary is for business purpose of getting continuous power and in spite of the decision of the Supreme Court.*
4. *Without prejudice to the above, the learned CIT erred in confirming the addition of Rs.49,50,000 without considering the submissions that it is not claiming the interest in the P&L sale and is debited to the power charges account.*
5. *The learned CIT(A) erred in confirming the addition of Rs.35,12,122 made by estimating notional interest on advances to subsidiary M/s. Sagar Power Ltd., without appreciating the fact that it is for business purpose of getting continuous power and further that the AO has earlier disallowed from interest claim and again making addition of notional interest.*
6. *The learned CIT(A) erred in confirming the addition of Rs.1,22,71,842 interest income received from subsidiary in spite of the fact that the paid similar amount to the bank on the loan availed and given to subsidiary an that the assessee has not claimed such interest as deduction in P & L a/c merely on the basis of TDS certificates without considering the facts emanating from ledger copies filed and financial*
7. *Without prejudice to the above, the learned CIT(A) ought to have given direction to allow the interest that is paid to the bank of similar amount as deduction as the same has not been debited to the P & L ale having set off against interest received from the subsidiary.”*

3. The first ground of appeal raised by the assessee is general in nature and does not require any adjudication; hence dismissed.

4. Ground of appeal No.2 raised by the assessee is against the addition of Rs.15,50,466/- being amount of sales tax advance paid.

5. Ground of appeal Nos. 3 & 4 raised by the assessee is on account of disallowance of interest amounting to Rs.49,50,000/- being interest payable on loan advanced to subsidiary M/s. Sagar Power Ltd.

6. Further, the assessee is aggrieved and has raised Ground of appeal No.5 on addition of Rs.35,12,122/- being the interest on loan taken over by the assessee on behalf of the subsidiary company M/s. Sagar Power Ltd.

7. Briefly in the facts of the case the assessee for the year under consideration filed the return of income declaring total income at NIL after set off of brought forward losses. The case of the assessee was picked up for scrutiny. The Assessing Officer noted that the assessee had paid sum of Rs.15,50,466/- against demand of Rs.31,00,933/- raised by the Commercial Tax department. The said amount was paid on the directions of the Court. The said amount was shown as "advance for others". The Assessing Officer disallowed the said sum of Rs.15,50,466/- holding it to be contingent liability. The CIT(A) upheld the said addition, against which the assessee is in appeal before us.

8. The Ld.AR for the assessee pointed out that the said amount was only shown as advance under the head "Current Assets, Loans and Advances" in Schedule (H) of the Annual Report. He stressed that the amount was not debited to the P&L A/c and hence no addition can be made on this account. He also pointed out that even if it was contingent liability then as the

amount has been paid, the statutory dues are to be allowed on payment basis in view of the provision of section 43B of the Act.

9. The Ld. DR for the Revenue placed reliance on the order of the CIT(A).

10. We have heard the rival contentions and perused the record. The issue raised vide Ground of appeal No.2 is against the addition made on account of the demand paid by the assessee pursuant to the directions of the Court. The said amount was not debited to the P&L A/c and was only claimed as "advance for others" under main head "Current Assets, Loans and Advance" of the Annual Report. The question which arises is where such amount, which is not claimed as an expenditure by the assessee while preparing P&L A/c, then can any addition be made on such an entry. We find no merit in the orders of the authorities below as the amount has only been shown as an advance and not claimed as an expenditure.

11. Now, coming to the second stand of the Assessing Officer even if the said amount was contingent liability, but in view of the provision of section 43B of the Act, such amount are duly allowable as expenditure in the year of payment. However, the same is not the case of the assessee and accordingly, we direct the Assessing Officer to delete the addition of Rs.15,50,466/-. Thus, Ground of appeal No.2 raised by the assessee is allowed.

12. Now, coming to the Ground of appeal Nos. 3 & 4 raised by the assessee.

13. Briefly in the facts of the case relating to the issue the Assessing Officer noted that during the year under consideration the assessee had claimed interest of Rs.49,50,000/- against loans raised. The Assessing Officer on verification further noted that the said loan was not availed for business purposes of the assessee and was availed for transferring of funds to the subsidiary. The Assessing Officer was of the view that the loan received by the assessee company was not utilized exclusively for business purposes and hence, the interest paid to the tune of Rs.49,50,000/- was not allowable as an expenditure. The CIT(A) upheld the order of the Assessing Officer and against which the assessee is in appeal before us.

14. The Ld.AR for the assessee pointed out that the said loan was taken up by its subsidiary M/s. Sagar Power Ltd. However, ICICI bank from whom the loan was taken, forced the assessee to take over the liability. The balance due to ICICI bank was shown in the balance sheet. The interest disallowance was made on the aforesaid loan. The Ld.AR for the assessee in the first instance pointed out that the same was a business transaction and no disallowance of interest needs to be made in view of the ratio laid down by the Hon'ble Supreme Court in S.A. Builders Ltd. vs CIT(A) & Anr. [2007] 288 ITR 1 (SC). He further pointed out that the transaction between the assessee and its subsidiary was total business transaction wherein the wholly owned company was generating power, only for assessee's benefit and it was being supplied to the assessee @ 0.25 paisa less than the rates of State Board. Hence, the assessee stood to gain benefit directly. The assessee was a

cement manufacturing company. Further, he drew our attention to pages 22 to 25 of the Paperbook and pointed out that no interest was paid on this loan by the assessee and the interest was charged to the subsidiary company at first instance itself.

15. In respect of Ground of appeal No.5 raised by the assessee, it was pointed out that further disallowance was also been made on account of notional interest on the aforesaid loan to the subsidiary. He pointed out that the Assessing Officer treated the loan of ICICI bank as advance to the subsidiary and made the said addition in the hands of the assessee.

16. The Ld.DR for the Revenue pointed out that there is no evidence of business connection between the assessee company and its subsidiary and there was over-lapping and hence disallowance in the hands of the assessee company.

17. We have heard the rival contentions and perused the record. The first aspect of the issue is the interest disallowed on the premise that the loan raised by the assessee company from ICICI bank has been utilized for transferring the funds to the subsidiary and hence, not for business purposes. In the facts and circumstances of the case, the loan was raised by M/s. Sagar Power Ltd. which is the subsidiary of the assessee company. The said loan was disbursed by ICICI bank and it forced the assessee to take over the aforesaid liability of the subsidiary. Consequently, entries were passed in the books of accounts and outstanding of the loan was shown in the

balance sheet. The case of the Revenue authorities is that where the loan raised by the bank has been utilized for advancing to the subsidiary, then the interest due on such loan is to be disallowed in the hands of the assessee. The case of the assessee on the other hand is firstly that the said transaction between the assessee and its subsidiary is wholly business transaction. M/s. Sagar Power Ltd. was involved in generation of power and the said activity was undertaken by the subsidiary for the sole benefit of the assessee company. The total power generated was supplied to the assessee @ 0.25 paisa less than State Electricity Board charged. Consequently, the loan could be said to be a business transaction under which the benefit flowed to the assessee. The assessee was engaged in the manufacturing of cement and such power supply by the subsidiary advanced the business of the assessee. We are of the view that following the dictate of the Hon'ble Supreme Court in S.A. Builders Ltd. (supra), there is no merit in disallowance of interest on such advancement of loan to the subsidiary.

18. However, in the present set of facts, there is another aspect of the issue also. The perusal of the details filed at pages 22 to 25 of the Paperbook reflects the entries passed by the assessee in its books of accounts. The details furnished at page 25 of the Paperbook reflects that in the account of interest on unsecured loans with "ICICI Bank", the assessee is debiting the interest quarter-wise which is due to ICICI Bank and simultaneously crediting the said account being interest on loan given to M/s. Sagar Power Ltd. Entry to entry amount is debited & credited to the account. In other

words, the assessee is not charging any interest due on the loan disbursed to the ICICI bank to the subsidiary company. The said interest is shown as recoverable from M/s. Sagar Power Ltd. & in the final analysis, no amount has been claimed as a deduction. In these facts and circumstances, there is no merit in making the aforesaid addition in the hands of the assessee on account of interest attributable to the loan raised from ICICI Bank for the so called benefit of the subsidiary. Similarly, the loan which has been shown as due to ICICI Bank is in turn being treated as advance to the subsidiary. On such advancement of loan to the subsidiary, there is no merit in making any disallowance on account of notional interest. We find no merit in the orders of the authorities below; consequently, Ground of appeal Nos. 3 to 5 are allowed in favour of the assessee.

19. The last issue raised by the assessee vide Ground of appeal No.6 is on account of difference in gross receipt of interest. The Assessing Officer had added a sum of Rs.1,20,47,243/- on this account. He had compared the actual interest received as per the TDS receipt and actual interest admitted, and arrived at a conclusion that there was difference in interest admitted. The submissions of the assessee in this regard was that the interest received from M/s. Sagar Power Ltd. was paid to ICICI Bank and such payment was an expenditure, was not accepted. The assessee is in appeal agising the findings of the Assessing Officer which has been upheld by the CIT(A).

20. We have already adjudicated the issue relating to the availment of loan from ICICI bank and its advancement to subsidiary M/s. Sagar Power Ltd. in

the paras above. The assessee on the other hand has not claimed the expenditure of interest due to ICICI bank and has also not shown the interest received from M/s. Sagar Power Ltd., as it had set off the interest account i.e. interest receipt from subsidiary with the interest due to ICICI bank. In these facts and circumstances, we find there is no merit in the exercise carried out by the Assessing Officer. In case the interest income is added in the hands of the assessee then, the interest expenditure which is equivalent to the interest income earned should be debited and NIL income is to be assessed in the hands of the assessee. Thus, Ground of appeal No.6 raised by the assessee is allowed.

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

Order pronounced in the open court on 31st July, 2020.

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Dated: 31st July, 2020

Amit Kumar

Copy of the Order forwarded to :

1. M/s Sagar Cements Ltd.,S-2-472/B, Road No.1, Banjara Hill, Hyderabad-500034.
2. The DCIT, Circle-3(1), Hyderabad.
3. The DRP-1, Bengaluru.
4. The Director of Income Tax (IT & TP), Hyderabad.
5. The Add.CIT (Transfer Pricing), Hyderabad.
6. D.R. ITAT, Hyderabad.
7. Guard File.

//True Copy//

Sd/-

**(SUSHMA CHOWLA)
VICE PRESIDENT**

/ BY ORDER,

(Dy./Asst. Registrar)
ITAT, Hyderabad