

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE HON'BLE VICE PRESIDENT, SHRI G.S. PANNU  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**(THROUGH VIDEO CONFERENCE)**

**ITA No.6243/Del./2016  
(ASSESSMENT YEAR : 2011-12)**

M/s. Maple IT Services Pvt. Ltd., vs. ACIT,  
C – 160, Okhla Industrial Area, Phase-I, Central Circle 11,  
New Delhi – 110 020.

**(PAN : AAECM4273E)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri R.S. Ahuja, CA  
REVENUE BY : Ms. Rakhi Vimal, Senior DR

**Date of Hearing : 30.09.2020**

**Date of Order : 07.10.2020**

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, M/s. Maple IT Services Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 30.09.2016 passed by the Commissioner of Income-tax (Appeals)-24, New Delhi qua the assessment year 2011-12 on the grounds inter alia that :-

***“That on the facts and circumstances of the case the learned ITO erred in making an addition and the CIT (A) in confirming the same of Rs.29,23,804/- having interest & finance expenses u/s 36(1)(iii) of the Income Tax Act.”***

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee, M/s. Maple IT Services Pvt. Ltd., has come up before the Tribunal challenging the impugned disallowance of Rs.29,23,804/- i.e. 15% of the interest expenses of Rs.1,94,92,033/- debited to the profit & loss account under section 36(1)(iii) of the Income-tax Act, 1961 (for short ‘the Act’) and made addition thereof to the total income of the assessee for Assessment Year 2011-12 on the ground that assessee has not furnished any detail regarding interest expenses paid during the year to work out if such interest and financial expenses paid were exclusively utilized for the purpose of assessee’s business only and thereby framed assessment at Rs.251,93,905/-.

3. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has partly allowed the same but confirmed the impugned addition of Rs.29,23,804/- made by the AO. Feeling aggrieved by the order passed by the Id. CIT (A), the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. AR for the assessee challenging the impugned addition contended inter alia that assessee has not been granted any opportunity by the AO who has framed the assessment ex-parte and at the same time, Id. CIT (A) has also not made enquiry by calling the remand report from the AO while admitting the additional evidence which has not been examined in right perspective; that assessee company has taken the loan from the sister concern at the low rate of 12.60% and 13.50% whereas charged the interest on the loan given to the sister concern @ 14%; that addition has been made by AO and confirmed by the Id. CIT(A) merely on the basis of guesswork without disputing the audited financials; that turnover of the assessee company during the year under assessment has gone up to Rs.23.41 crores from Rs.9.92 crores in the previous year; that assessee company has explained each and every entry in its account book qua payment of interest on the loan debited to the profit & loss account; and that no such addition has been made in the earlier years i.e. AY 2009-10 &

2010-11 wherein assessment has been framed u/s 143 (3) by making any such disallowance u/s 36(1)(iii) of the Act.

6. However, on the other hand, Id. DR for the Revenue to repel the arguments addressed by the Id. AR for the assessee contended inter alia that sufficient opportunity has been given to the assessee company by the AO as well as Id. CIT (A); that rule of consistency is not applicable to the case at hand as it is to be decided on the basis of its own facts and has also filed written submissions opposing the applicability of rule of consistency and case laws applicable to the proposition at hand, which has been made part of the judicial record.

7. Undisputedly, AO has framed assessment u/s 144 of the Act on account of non-appearance of the assessee company by making ad hoc disallowance of Rs.29,23,804/-, equivalent to 15% of Rs.1,94,92,033/-, of interest expenditure debited to the profit & loss account merely on the basis of guesswork. It is also not in dispute that assessee company has been given adequate opportunity by the Id. CIT (A) to prove its case. It is also not in dispute that assessee company has paid interest to the tune of Rs.1,94,92,033/- and has received the interest to the tune of Rs.1,67,06,953/- having difference of Rs.27,85,080/- during the year under assessment. It

is also not in dispute that financials of the assessee company are audited one and have not been disputed at any stage of the proceedings by the Revenue.

8. In the backdrop of the aforesaid facts and circumstances of the case, when we examine para 4.5.2 of the impugned order passed by the Id. CIT (A), it appears that case of the assessee company has not been examined in entirety. Though Id.CIT (A) has admitted the additional evidence but the same has also not been discussed as to how the same is of no support to the assessee company. Both AO as well as Id. CIT (A) have made ad hoc disallowance on the reason that the bank statement has not been furnished by the assessee company to prove the utilization of the loan on which interest has been paid for the purpose of its business. Even it is difficult to make out the nature of the additional evidence, presumably entertained by CIT (A) for the reason that it is necessary for deciding the issue, from the impugned order. Entire findings returned by CIT (A) confirming the addition are bereft of plausible reasoning.

9. In these circumstances, we are of the considered view that to enhance the cause of justice, the issue is required to be factually examined in entirety by the AO by examining audited financials of

the assessee company and keeping in view the fact that this is a case of loan advanced and availed of by the assessee company to and from its sister concern and during the year under assessment, its turnover has gone up to Rs.23.41 crores from Rs.9.92 crores. AO shall provide opportunity of being heard to the assessee company to prove utilization of the loan in question from its evidence as well as from the bank statements. Consequently, the appeal filed by the assessee is allowed for statistical purposes and the case is remitted back to the AO to decide afresh after providing an opportunity of being heard to the assessee.

**Order pronounced in open court on this 7<sup>th</sup> day of October, 2020.**

**Sd/-  
(G.S. PANNU)  
VICE PRESIDENT**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 7<sup>th</sup> day of October, 2020  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-24, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**