

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 770/Mum/2019
(Assessment Years: 2014-15)**

Asset Motors Pvt Ltd., Bungalow No. 3, Plot No. 14, Union Park, Near Maitri Park Chembur, Mumbai.	बनाम/ Vs.	Dy. CIT – 15(1)(1) 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHCA7847F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Prasad Paranjape, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Rajeev Harit, CIT-DR

सुनवाई की तारीख / Date of Hearing	17/12/2020
घोषणा की तारीख /Date of Pronouncement	23/12/2020

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals) -24, Mumbai, passed u/s.143(3) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

“1. The Ld. AO erred in incorrectly appreciating the fact that loans taken to meet day to day circulating needs of the business were neither used for giving capital advance for

purchase of capital asset nor for acquiring any capital asset and the funds were used for funding the day to day circulating needs of the business of the appellant. The Ld. AO erred in drawing an incorrect inference that part of the funds were used for giving capital advance and further erred in disallowing interest on borrowing of Rs. 2,72,220/- in proportion of so called capital advance to total borrowings. The Ld. AO failed to appreciate the facts and worked out adhoc disallowance wrong basis.

2. The A.O further erred in not appreciating the fact that the amount of Rs. 50,64,880/- treated as capital advance in the assessment order actually represented amounts recoverable on account of VAT, Service tax, Income tax refund, TDS and Divine Consultants and no portion of the said amount was advanced towards acquiring of capital asset.

3. The AO erred in taking the figure of Rs. 58, 48,970/- as capital advance while computing the disallowance ignoring the fact that in para 4 of the assessment order the capital advance was shown at Rs. 50,64,880/-

4. It is prayed that the adhoc disallowance of interest incurred by the appellant on borrowing taken and used to fund its business requirements be deleted.

3. The brief facts of the case are that the assessee company is engaged in the business as the authorized dealers and service of Hyundai Motor Cars. The return of income was filed on 28.11.2014 for the A.Y 2014-15 disclosing a total income of Rs.(-) 2,30,36,884/-. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questionnaire were issued. In compliance, the Ld. AR for the assessee appeared

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from time to time and submitted the details and the case was discussed. On perusal of financial statements, the A.O found that the assessee has made capital advances of Rs. 50, 64,880/- as on 31.03.2014. Whereas, the assessee has obtained huge borrowed funds and interest on loan funds are debited to profit and loss account. The A.O has observed that, the assessee has advanced interest free funds to its sister concerns and at the same time paying interest on borrowed funds. Therefore, the A.O is of the opinion that the proportionate interest amount considering the advances and the interest on the borrowed funds has to be disallowed and accordingly made disallowance u/s 36(1)(iii) of the Act of Rs. 2,72,220/- and assessed the total income of Rs.(-) 2,27,64,664/- and passed the order u/s 143(3) of the Act on 28.11.2016. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), whereas the CIT(A) concord with the action of the A.O and dismissed the appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal with the Tribunal.

3. At the time of hearing the Ld. AR submitted that the Ld. CIT(A) has erred in confirming the

disallowance made by the A.O irrespective of the fact that the assessee has surplus funds and the advances referred in the balance sheet pertains to VAT and Service Tax, TDS etc. Further the Ld.AR substantiated his arguments with evidences in the paper book and prayed for allowing the appeal. Contra, the Ld. DR supported the orders of the CIT(A).

4. We have heard the rival submissions and perused the material on record. The sole matrix of the disputed issue is with respect to disallowance of proportionate interest by the A.O considering the capital advances provided by the assessee. The contentions of the Ld.AR are that, the advances does not pertains to sister concerns but the balance with government authorities. The Ld. AR referred to the page 12 of the paper book and explained the assessee's long term capital borrowings. Further, the Ld.AR demonstrated that the capital advances considered by the A.O. are not advances made to sister concerns and referred to note 15 of the financial statements at page 22 of the paper book. We find, out of total amount of Rs.50,64,880/-

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disclosed under short term loans and advances in the note to financial accounts, the amount of Rs 47,11,874/- pertains to VAT, service tax, TDS and income tax refund receivables. Whereas the A.O is of the opinion that these are the advances provided to sister concerns. We considering the submissions of the Ld. AR are of the view that, the advances disclosed in the financial statements are with the statutory authorities and the action of the A.O to disallow proportionate interest considering such advances is not acceptable. Accordingly, we set aside the order of the CIT(A) and direct the Assessing officer to delete the addition and allow the grounds of appeal in favour of the assessee.

5. In the result, the appeal filed by the assessee is allowed .

Order pronounced in the open court on 23.12.2020

Sd/-

(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 23/12/2020

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai

		Date	<u>Initial</u>	
1.	Draft dictated on	18.12.2020		PS
2.	Draft placed before author	21.12.2020		PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			