

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 1525/H/2018 Assessment Year: 2012-13		
Dy. Commissioner of Income-tax, Circle - 1(2), Hyderabad.	Vs.	Candid Industries Ltd. (formerly known as M/s Futuretech Industries Ltd., Hyderabad. PAN - AAACE 4493 Q
(Appellant)		(Respondent)
Revenue by:		Shri Sunil Kumar Pandey
Assessee by:		Shri P. Murali Mohan Rao
Date of hearing:		28/01/2021
Date of pronouncement:		05/02/2021

ORDER

PER BENCH:

This revenue's appeal for AY 2012-13 is directed against the CIT(A) - 1, Hyderabad's order dated 04/05/2018 passed in case No. 0183/CIT(A)-1/Hyd/2015-16/2018-19 involving proceedings u/s 143(3) of the Income-tax Act, 1961 ; in short "the Act".

Heard both the parties. Case file perused.

2. Revenue has raised the following substantive grievances in the instant appeal:-

"(i) The order of the Ld. CIT(A) is erroneous on facts as well as in law..

(ii) The Ld. CIT(A) erred in deleting the disallowance of financial charges of RsA,68,65,571/-.

(iii) The Ld. CIT(A) ought to have considered that said financial charges were incurred for arranging finance to associate enterprises through accommodation bills for purchases and sales to group concerns and subsequently by discounting the same and not for business purposes of the assessee.

(iv) Any other ground that may be urged at the time of hearing."

3. After giving our thoughtful consideration against and in support of the disallowance, we notice that the same is no more res-integra since this tribunal's coordinate bench order dated 04/02/2021 in ITA No. 1205/Hyd/2017 has already declined assessee's grievances as under:

"5. We have given our thoughtful consideration to the Revenue's sole substantive grievance that since the assessee is providing mere accommodation bills and subsequently discounting the same thereby lending its name to the group concerns, the impugned financial charges of Rs.5,05,73,510/- had been rightly disallowed in the Assessing Officer's assessment order dt.14-03-2014. Case file suggests that the instant issue of the

assessee being treated as mere name lender for its group concern is no more res integra. This tribunal's co-ordinate bench's decision dt.31-01-2017 in ITA Nos.1459 & 1460/Hyd/2014 pertaining to AYs.2006-07 & 2007-08 has dealt with the same as under:

"2. As stated, the only issue for consideration is the disallowance of 50% of financial charges claimed by assessee. In AY.2006-07, assessee claimed financial charges by way of LC discounting to an extent of Rs. 83,89,594/- under the head 'financial charges'. On the reason that assessee was diverting the funds obtained from this to advance as loans to sister concerns without interest, AO disallowed 50% of the charges as not pertaining to assessee's business. Similarly, in AY. 2007-08, assessee has claimed an amount of Rs. 88,55,691/- towards 'financial charges'; out of which for the same reasons, 50% of the amount was disallowed. Even though assessee submitted that the entire funds obtained from the banks by way of LC discounting was used for paying creditors and no part of the amount was diverted towards advances to other concerns, Ld. CIT(A) did not accept as similar disallowance was considered by the CIT u/s. 263 in AY. 2008-09 and further he relied on the orders for AY. 2008-09. His order in AY. 2006-07 is as under:

"5. I have carefully considered the submissions of the appellant, remand report of the AO and comments of Addl.CIT and the assessment order. The appellant's submissions that since identical issue was dealt in the A.Y.2008-09 and the amount of expenditure incurred towards the financial charges was allowed as business expenditure cannot be accepted since the assessment proceedings for each year are independent. The asst. order or the decision taken with respect to AY 2006-07 or AY 2007-08 should not have any impact or relation with the asst. order for the A.Y. 2008-09. Though the AO had not submitted detailed report regarding financial charges for AY. 2006-07, 2007-08 and 2008-09 as per the request of the CIT(Appeals)-II, Hyderabad, vide her letter dated 19-6-2012 mentioned in para 303 of this order, the report of the AO dated 15-6-2014 is exhaustive and very much relevant and adequate on the issue of financial charges. Hence, I fully agree with the AO regarding the disallowance of 50% of the amount of financial charges debited i.e. Rs. 41,94,797, being interest related to the borrowed funds utilized for the purpose other than business and also agree with the report of the AO dated 15-6-2012. The case-law cited by the appellant are also different from the facts of the appellant and hence, the appellant submission cannot be accepted. Therefore, I confirm the addition".

2.1. Similar order was passed in AY. 2007-08 also. Hence, the present appeals.

3. For the sake of record, the grounds raised by assessee are extracted as under:

“1. The learned CIT(A) erred in both facts and law while passing the order for the A.Y 2006-07.

2. The learned CIT(A) erred in confirming the disallowance towards interest Rs.41,94,797/- made by Asst. Commissioner of Income Tax, Circle 1(3), Hyderabad basing on suspicion and surmises which is not correct.

3. The learned CIT (A) erred in not appreciating the fact that the financial charges on discounting LC's was incurred for the business purpose only.

4. The learned CIT (A) erred in not considering the explanations and submissions made by the appellant company.

5. The learned CIT (A) erred in not considering the fact that the net proceeds of the discounted LCs were utilized for payment to the creditor parties only.

6. The learned CIT (A) ought to have appreciated the fact that special audit u/s 142(2A) was conducted in the case of assessee for the year under consideration and no adverse finding was made by the special auditor. Hence, no addition can be made to the income of the appellant.

7. The learned CIT (A) ought to have appreciated the orders of Hyderabad ITAT in the case of Bartronics India Limited vs. ACIT 1(3) wherein it is held that no addition can be made to the income of the assessee if no adverse finding is made in the special audit conducted u/s 142(2A) of the Act.

8. The Assessee may add, alter, and substitute any other grounds to the Grounds of Appeal at any time before or at the time of hearing of Appeal”.

3.1. Ld. Counsel referring to the Paper Books filed, submitted that assessee was contending that LC discounting charges are paid to the banks and was part of the business expenditure and no part of the amount was diverted as advance to sister concerns, the fact of which was not contradicted by the Revenue. It was further submitted that AO in the post search assessments u/s. 153A has allowed similar claims in AYs. 2004-05 & 2005-06. It was submitted that the claim in AY. 2005-06 was to an extent of Rs. 1,30,69,614/- and the same amount was allowed in the post search scrutiny assessments. Further, it is also submitted that in AY. 2008-09, AO has allowed the amount and even though 263 proceedings were initiated in that year also, the Ld. CIT did not take up any issue on disallowance of financial charges. Ld. Counsel referred to

the orders in the AY. 2008-09, wherein AO after detailed examination of the claim has disallowed only an amount of Rs. 3,07,808/- pertaining to discounting charges paid to M/s. DPJ Viniyog Pvt. Ltd., on the reason that assessee could not furnish any explanation. It was further submitted the Ld.CIT initiated proceedings u/s. 263 on the reason that 'MBB transactions' stated in the details pertain to third party and AO was wrong in allowing the expenditure. The ITAT vide its order dt. 26-03-2014 in ITA No. 1099/Hyd/2013 has considered that M/s. MBB transactions are not third party transactions but multi-branch bank transactions and on that basis, proceedings are held to be bad in law, thereby it was submitted that there was no disallowance of financial charges in either earlier years or in later years and disallowance of 50% of financial charges on adhoc basis for the impugned years is not correct.

4. It was further submitted that the Co-ordinate Bench in the case of M/s. Bartronics India Ltd., in ITA No. 2188/Hyd/2011 dt. 31-05-2012 held that when there is a special audit in the particular year and special auditor has not reported any disallowance, AO is not correct in disallowing the amount ignoring the special audit report. It was submitted that there was a special audit in AY. 2007-08 and so the disallowance in that year not recommended by the special auditor is also bad in law. It was fairly submitted that there is no special audit in AY. 2006-07 and the grounds pertaining to that, particularly Ground Nos. 6 & 7 does not apply.

5. Ld.DR, however, submitted that there is no resjudicata involved and each year has to be considered on its own. Since the AO and CIT(A) examined and confirmed the disallowance at 50%, the same is to be upheld.

6. We have considered the rival contentions and perused the documents placed on record. As far as the facts are concerned, it was submitted that financial charges arose only on discounting of LC's, which was incurred for the purpose of business. Even though AO has noted that assessee is diverting funds for interest free advances to sister concerns, no such nexus was established nor details of funds utilised for non-business purposes were placed on record by the AO. He has adhocly disallowed 50% of the amount without establishing that funds are diverted for non-business purposes. As seen from the contentions of assessee, it is the submission that these financial charges have arisen only because of discounting of the bills and funds are utilised for payment to the creditors. This contention of assessee was neither

examined by the AO nor by the CIT(A), even though assessee is insisting on this. As seen from the orders in earlier years and also in AY. 2008-09 and 2009-10, the financial charges are allowed as such in scrutiny proceedings, that too in post search proceedings in AYs. 2004-05 and 2005-06. This means that the financial charges are utilised for the purpose of business only. We are prima-facie satisfied that the financial charges cannot be disallowed. However, AO has not given any finding whether the funds are really diverted to sister concerns, out of the funds availed due to discounting of bills. Therefore, for the limited purpose of verification, the issue is restored to the file of the AO. In case assessee has not diverted any of the funds so obtained for advancing interest free to its sister concerns, no amount of financial charges should be disallowed. AO is directed to examine this aspect and if funds are not diverted as stated by assessee, allow the full claim of financial charges. Accordingly, the grounds on this issue are considered allowed for statistical purposes”.

6. *Learned departmental representative fails to dispute that the Assessing Officer’s consequential computation dt.29-12-2017 in said AY.2007-08 has duly accepted the assessee’s identical financial charges claim. There is no distinction on facts forthcoming in the case file. We thus follow the judicial consistency in these facts and circumstances and uphold the CIT(A)’s order deleting financial charges disallowance.*

4. We adopt judicial consistency and affirm CIT(A)’s order in the impugned AY as well.

5. This revenue’s appeal is dismissed in above terms.

Pronounced in the open court on 5th February, 2021.

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Hyderabad, Dated: 5th February, 2021

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copy to :

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<i>2</i>	<i>M/s Candid Industries Ltd., Plot No. 1B/2, Survey No. 308, SVCIE, IDA, Jeedimetla, Hyderabad - 500 055.</i>
<i>3</i>	<i>CIT(A) - 1, Hyderabad.</i>
<i>4</i>	<i>Pr. CIT - 1, Hyderabad</i>
<i>5</i>	<i>ITAT, DR, Hyderabad.</i>
<i>6</i>	<i>Guard File.</i>