

**INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'D' BENCH, MUMBAI**

**[Coram: Justice P.P Bhatt (President)]  
and Pramod Kumar (Vice President)]**

ITA No. 5617/Mum/2017  
Assessment Year: 2011-12

**Mahindra UGINE Steel Company Ltd.,** ..... **Appellant**  
**(Now Merged with Mahindra Cie Automotive Ltd.,)**  
*Mahindra Towers, P.K Kune Chowk,*  
*Worli, Mumbai 400018*  
*[PAN: AAACM4998G]*

**Vs.**

**Dy. Commissioner of Income Tax Circle 6(3)**  
**Mumbai.** ..... **Respondent**

**Appearances:**

**H D Mahajan** *for the appellant*

**Bharat Andhale** *for the respondent*

Date of concluding the hearing: : December 21, 2021

Date of pronouncement : March 03, 2021

**O R D E R**

**Per Pramod Kumar, VP:**

1. By way of this appeal, the assessee appellant has challenged correctness of learned CIT(A)'s order dated 23<sup>rd</sup> February 2016, in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2011-12.

2. This appeal is time barred by 482 days but the assessee has moved a petition seeking condonation of delay, duly supported by affidavit dated 8<sup>th</sup> March 2019, which states as follows:-

*I, Mr. Hemant Luthra, son of Mr. Hans Raj Luthra, aged 69 years, Director of Mahindra CIE Automotive Limited (successor in the interest of Mahindra UGINE Steel Company Limited) ("the Appellant") in the context of ITA No. 5617/M/2017 being appeal filed in respect of the erstwhile Mahindra UGINE Steel Company Limited (MUSCO), do hereby solemnly affirm:*

1. *I am working as Director with the Appellant, which is a company registered under the Companies Act, 1956 and whose registered office is situated at Mahindra Tower, P.K Kurne Chowk, Worli, Mumbai 400018.*
2. *Mahindra UGINE Steel Company Limited ("MUSCO") a listed public company has merged with Mahindra CIE Automotive Limited w.e.f. 1st October, 2013 as per Hon'ble Bombay High Court order dated 31st October, 2014.*
3. *On 12th March, 2016 MUSCO had received a CIT(A) order for A.Y. 2011-12. The period for filing an appeal before Hon'ble ITAT ended on 10th May, 2016. The appeal has been preferred on 4th September, 2017 with a delay of 482 days.*
4. *The Income Tax Matters of MUSCO were earlier handled by Mr. Sunil Shetty, Head Taxation who was duly appointed by the Company to do so on behalf of the company and who left the Group on 14th May, 2016, without complete discussion and handing over of all matter pending with him relating to the Company's Income tax. This resulted in non appearance before the CIT(A) and omission to file appeal with the Tribunal.*
5. *This inadvertent omission to file the appeal was noticed while reviewing the position of pending matters by Price Waterhouse, Chartered Accountants, LLP in the quarter ended 30th June 2017. This fact was confirmed on further inquiry and thereafter steps were taken to trace all the relevant papers and belated file the appeal*

*I say that whatever is stated herein above is true to the best of my knowledge and I believe the same to be true.*

*Solemnly declared at Mumbai on this 6<sup>th</sup> March 2019.*

*Identified by me,*

*Sd/-  
Mr. Hemant Luthra  
Director*

3. Having heard the rival contentions on the condonation petition, and having duly considered the material on record, we are inclined to condone the delay, as we are satisfied that delay is *prima-facie* bonafide and reasonably explained. Accordingly, we proceed to take up the appeal for adjudication on merits.

4. Grievances raised by appellant are as follows:-

*1. The learned CIT(A) erred in confirming the action of AO of disallowing interest of Rs. 1,74,73,440 u/s 36(1)(iii), rejecting the contention of the Appellant that the company had sufficient generation of internal cash accruals to fund its "Capital Expenditure/Capital Work in Progress" and hence no Interest expenses was*

*attributable to capital asset; and hence entire interest expenses be allowed as business expenses.*

*The disallowance be deleted or, without prejudice suitably reduced*

2. *The learned CIT(A) erred in confirming, without any basis, the action of the AO of further disallowing a sum of Rs 5,00,000, u/s 37(1) being estimated administrative expenses incurred towards the said 'Capital Work in Progress'*

*The disallowance be deleted or, without prejudice suitably reduced*

5. Briefly stated, relevant material facts are as follows. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that as against the work in progress of Rs. 1.47 crores as on 01.04.2010, the work in progress at the end of the year was Rs. 14.16 crores. It was in this background that the Assessing Officer required the assessee to point out related interest expenses for the funds used in the capital work in progress as also relatable administrative expenses. It was explained by the assessee that the assessee had sufficient non interest bearing funds and, accordingly no part of interest could be attributed to capital work in progress. This explanation was rejected by the Assessing Officer on the ground that the assessee had mixed funds and "it was not possible to distinguish their exact use". Noting that average cost of funds, by interest, @12.34%. The Assessing Officer computed related disallowable interest at Rs. 1.71 crores. The Assessing Officer further estimated the actual expenses on account of travelling, conveyance etc at Rs 5,00,000/- and disallowed the same as well. Aggrieved, assessee carried the matter in appeal but without any success. Learned CIT(A) confirmed the actions of the Assessing Officer and observed as follows:-

5. *Decision- I have carefully considered the AO's order. It is clear from the order that Appellant has not bolstered its arguments with any documentary proof whatsoever, It is clear that there was a substantial net increase in the total loan liability across the period under consideration, it is also clear that the appellant's bank balance had always been in the negative. As such only operating funds could have been utilised for additions in the CWIP. The AO's rejection of the appellant's contention that its own operating cash surplus had been utilized is hence factually correct. The appellant also has no counter to offer as to the AO's observation that the funds in question have always been mixed and could not be segregated. Accordingly his disallowance of Rs 1,74,73,440/- by way of interest cost @ 12.34% is upheld. Coming to the administrative costs, once more, the appellant has no documentary proof to demonstrate any monitoring by the staff at the existing plant. In fact, there is no proof even to demonstrate that the new plant was anywhere close to the existing plant. In any case, no explanation is seen to be forthcoming on the issue of travelling, conveyance and involvement of the supervisors at the new plant. Coming to the quantum of the CWIP, in the absence of any details from the appellant's side, the estimate of the AO of Rs. 5,00,000/- is seen to be reasonable and is hence upheld.*

6. *In the result, the total disallowance made by the AO of Rs. 1,79,73,440/- and its capitalization to the CWIP is confirmed.*



*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*