

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 3666/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2015-16)

Modison Metals Ltd 33, Nariman Bhavan, 227, Nariman Point, Mumbai- 400021.	बनाम/ Vs.	DCIT, Circle-3(2)(1) R. No. 608, 6 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACA3768N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Satish Mody
Revenue by:	Shri Bharat Andhale

सुनवाई की तारीख / Date of Hearing: 12/01/2021

घोषणा की तारीख /Date of Pronouncement: 01/04/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 29.03.2019 passed by the Commissioner of Income Tax (Appeals) -8, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2015-16.

2. The assessee has raised the following grounds: -

- “1. On the facts and in the circumstances of the case and in law the CIT(A) erred in confirming the order of the AO in disallowing the interest of Rs.13,08,070/- without appreciating the facts of the case.
2. On the facts and circumstances of the case and in law the CIT(A) has erred in confirming the order of AO in



ITA No. 3666/M/2019

A.Y. 2015-16

disallowing Rent Expenses of Rs.4,92,000/- without appreciating the facts of the case.

3. *The appellant craves leave to add/alter/modify any/all grounds of appeal.”*

3. The brief facts of the case are that the assessee filed its return of income declaring total income to the tune of Rs.6,26,68,830/- for the A.Y.2015-16 and book profit in sum of Rs.6,69,07,163/- u/s 115JB of the Income tax Act, 1961. Thereafter, the assessee filed the revised return of income on 29.03.2016. The case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. From the profit & loss account, it was observed that the assessee has paid the interest and finance cost of Rs.2,77,75,332/- (Excluding vehicle interest cost). The assessee gave the advance of Rs.1,01,38,081/- for purchase of Flats/Office premises for investment purpose. The show-cause notice was issued as to why the proportionate interest u/s 36(1)(iii) should not be disallowed as there is no such business connection from the borrowed fund and the advance made. The assessee replied to the notice. The assessee submission was considered but the AO was not satisfied, therefore, proportionate interest in sum of Rs.13,08,070/- was disallowed u/s 36(1)(iii) and added to the income of the assessee. From the profit & loss account, the AO also noticed that the assessee has paid the rent cost of Rs.9,12,610/- which includes of rent paid amounting to Rs.3,00,000/- for the properties at Vapi, Rs.1,20,000/- for Lonavla and Rs.72,000/- for Flat at Vapi. The properties were not used for business purposes. Notice was given and after the reply of the assessee, the claim to the extent of 4,92,000/- was declined and the said amount was added to the income of the assessee. After disallowance of depreciation claim to the



ITA No. 3666/M/2019

A.Y. 2015-16

extent of 11,14,168/-, the total income of the assessee was assessed to the tune of Rs.6,55,83,068/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who partly allowed the claim of the assessee but the assessee was not satisfied on the grounds mentioned above, therefore, the assessee has filed the present appeal before us.

ISSUE NO.1

4. Under this issue the assessee has challenged the disallowance of interest of Rs.13,08,070/-. At the very outset, the Ld. Representative of the assessee has argued that the issue has duly been covered by the decision of the Hon'ble ITAT in the assessee's own case in ITA. No.3999/Mum/2018 for the A.Y.2014-15 dated 10.07.2020, therefore, the interest is liable to be allowed in the in interest of justice. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. Before going further, we deem it necessary to advert the finding of the Hon'ble ITAT in the assessee's own case (supra). The relevant finding is hereby reproduced as under.:-

"6. We have heard the rival submissions and perused the material on record. The undisputed facts are that the assessee has sufficient interest-free funds available with it as it is a listed company and has huge funds available with it. Even during the year, assessee has earned profit of Rs. 18,40,85,924/-. Therefore, we are not in a position to concur with the conclusions drawn either by the ld. CIT(A) or the Assessing Officer on this issue. The tax authorities cannot be allowed to sit on the chair of a businessman and decide what is right or wrong for the business. In this case, we note that the assessee's own funds are far more than the advance paid for booking of bungalow as is clear from the facts given hereinabove. Therefore both the authorities below have grossly erred while deciding the issue. The case of assessee is squarely covered by the decision of Hon'ble Supreme Court in the case of CIT vs Reliance Industries Ltd. (2019) 410 ITR 466 (SC) wherein the Hon'ble Supreme Court has confirmed the order of Hon'ble Bombay High Court upholding the order of Tribunal wherein it has been held that where interest-free funds available with assessee were sufficient to meet the investments, it



ITA No. 3666/M/2019

A.Y. 2015-16

could be presumed that the investment was made from interest-free funds available with the assessee. We, therefore, respectfully following the same, set-aside the order of ld. CIT(A) and direct the Assessing Officer to delete the disallowance.”

5. In this year also the situation is not different. The assessee made advance payment of Rs.1,01,38,081/- for purchase of flats/office premises for investment purposes. During the year under consideration, out of free reserve and surplus at the start of year i.e. as on 01.04.2014 which were Rs.92,23,29,567/- (Rs.92,59,58,257/- Reserve & Surplus Less Rs.36,28,690/- Revaluation Reserve). The profit was to the tune of Rs.11,22,99,267/- after tax in sum of Rs.4,60,29,360/- plus Depreciation Rs.6,62,69,907/-. The finding of the case decided by the **Hon’ble Bombay High Court titled as CIT Vs. Reliance Utilities & Power Ltd 313 ITR 340** is duly applicable to the facts of the present case in which it is specifically held that if there are funds available both interest free and overdraft and/or loans taken then a presumption would arise that investments would be out of the interest free fund generated or available with the company, if the interest free funds are sufficient to meet the investment. Since the issue is squarely covered by the decision of the Hon’ble ITAT in the assessee’s own case (supra), therefore, we set aside the finding of the CIT(A) on this issue and allowed the claim of the assessee.

ISSUE NO.2

6. Under this issue the assessee has challenged the confirmation of disallowance of rent expenses of Rs.4,92,000/-. The Ld. Representative of the assessee has argued that the assessee has taken the premises at Vapi, & Lonavla for the purpose of business and in this regard, the copy of agreement are on the file but the CIT(A) has wrongly held that the said



ITA No. 3666/M/2019

A.Y. 2015-16

premises was not for the purpose of business, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the other hand, the Ld. Representative of the Department has strongly relied upon the order passed by the CIT(A) in question. The assessee has taken the property at Vapi on rent from Mrs. Chandramani Devi Modi in sum of Rs.25,000/- per month. The property was taken for keeping old records. The assessee filed the rent agreement for the period w.e.f. 1.10.2014 to 30.09.2014 and 1.10.2014 to 30.09.2017 lies at page no. 6 to 12 and 13 to 19 on the file. The rent agreement speaks about this fact that the property was taken for the business purposes. Rent has also been mentioned in the agreement. The assessee also book the property on Lonavla on rent in sum of Rs.10,000/- per month which was for the residence of employees. The TDS was deducted from every property. Nothing is on record to which it can be assumed that the property was not used for the business purposes. At least, it is necessary on the part of the AO to collect same material to which it can be assumed that the property was not taken on rent for the business purposes. The copy of agreement with regard to the residential property at Vapi dated 01.10.2011 to 30.09.2014 and dated 01.10.2014 to 30.09.2017 are on the file which lies at page no. 27 to 30 and 31 to 34 of the paper book. The copy of receipt of rent paid for the period of on 01.04.2012 to 31.03.2016 lies at page no. 35 of the paper book. No cogent and convincing reason on the record to decline the claim of the assessee. Taking into account all the facts and circumstances, we are of the view that the finding of the CIT(A) is not justifiable, hence, we set aside the finding of the CIT(A) on this issue and allowed the claim of the assessee.



ITA No. 3666/M/2019
A.Y. 2015-16

7. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 01/04/2021

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 01/04/2021

Vijay Pal Singh/Sr. P.S.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai