

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA
[Virtual Court Hearing]**

**Before Shri P.M. Jagtap, Vice-President
&
Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 1303/KOL/2018
Assessment Year: 2012-2013**

***Araganya Tradeco Pvt. Limited,..... Appellant
C/o. Subash Agarwal & Associates,
Siddha Gibson,
1, Gibson Lane, 2nd Floor, Suite-213,
Kolkata-700069
[PAN:AAFCA0321C]***

-Vs.-

***Deputy Commissioner of Income Tax,..... Respondent
Circle-9(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Subash Agarwal, Advocate, appeared on behalf of the assessee
Shri Tajinder Pal Singh, CIT(D.R), appeared on behalf of the Revenue*

Date of concluding the hearing : June 22, 2021
Date of pronouncing the order : June 25, 2021

O R D E R

Per Shri P.M. Jagtap, Vice-President:-

This appeal filed by the assessee is directed against the order of ld. Commissioner of Income Tax (Appeals)-3, Kolkata dated 07.03.2018.

2. The issue raised in Ground No. 1 relates to the disallowance of Rs.4,06,16,220/- made by the Assessing Officer on account of

disallowance of interest expenses by treating the same as prior period expenses which is sustained by the Id. CIT(Appeals) by holding that the said interest expenses are not allowable as deduction even under section 36(1)(iii) of the Income Tax Act, 1961.

3. The assessee in the present case is a Company, which is engaged in the business of financial activities. The return of income for the year under consideration was filed by it on 28.09.2012 declaring total income at 'NIL'. In the Profit & Loss Account filed along with the said return, a sum of Rs.7,32,36,558/- was debited by the assessee on account of interest paid on the funds borrowed from M/s. ISG Traders Limited. As noted by the Assessing Officer during the course of assessment proceedings, the said interest to the extent of Rs.4,06,16,220/- was related to the period from 01.04.2010 to 31.03.2011. He, therefore, required the assessee-company to explain as to why the interest expenditure to that extent should not be treated as prior period expenses and should not be disallowed as was not related to the year under consideration. In reply, the following submission was filed by the assessee in writing:-

"From the past assessment records you would note that we had obtained interest bearing loan from M/s. ISG Traders Ltd. At the time of taking the loan, the contracted rate of interest was 15% In view of the continuous losses incurred we were facing considerable financial constraints and we were not only defaulting in repaying the principal loan amount but we were also unable to pay interest at the contracted rate. Considering the estimated cash flow position of F.Y. 2010-11 we were envisaging a negative operating profit front our operations, Any liability to pay interest would have caused added financial burden on our finances. 117 the circumstances, before the close of the F. Y 2010-11 a representation was made by us to ISG Traders Ltd requesting the lender company to waive interest on the loan for the F. Y. 2010-11. On receipt of our request, we were informed by the creditor that our request for waiver of loan was under active consideration of its

senior management. Upon receipt of such intimation, while drawing up our annual accounts for the FY 2010-11, no provision for interest payable to ISG Traders Ltd was made in our books for the F. Y.2010-11. Since the management of ISG Traders Ltd was actively considering our request for waiver of interest, ISG Traders Ltd also did not actually charge any interest on the loan provided for the F.Y. 2010-11 and accordingly no demand for interest was raised against us by the said Lender till 31st March 2011. Since no demand for interest was raised by ISG Traders Ltd till 31st March 2011 in drawing lip its annual accounts: ISG Traders also did not account for any interest income in its books for the financial year ending on 31st March 2011. However, after the close for the Accounting Year 2010-11, the Board of Directors of ISG Traders Lid deliberated on our request for waiver. Their deliberations were made in the context of their own profitability & it was found that financial position of the lender itself was not sound enough to grant waiver of interest. The decision of the management of ISG Traders Ltd. with regard to charging of interest was communicated to us vide its letter dated 12th September, 2011. Along with the said letter ISG Traders Ltd. also served on us a Debit Note for interest payable for the F. Y. 201 0-11. Your goodself will thus note that ISG Traders Ltd formally raised the demand for interest of Rs.4.06 Crores only during F.Y. 2011-12 which pertained to the period 01.04.2010 to 31.03.2011. Your goodself will appreciate that till the management of ISG Traders Ltd had not taken any decision with regard to our request/or waiver of interest and till ISG Traders Lid did not raise demand for interest, we could not have accounted for the interest liability in our books. Particularly during the F.Y.2010-11, we were informed by the management of ISG Traders Ltd that our request for interest waiver was under their active consideration. The decision about the non-waiver of interest effective from 01.04.2011 was taken and communicated to us only in the month of September 2011 and simultaneously the said lender also raised demand for interest payable for the F. Y 2010-11 by serving debit note in the month of September 2011. Your goodself will thus note that our liability to pay interest on loan granted by ISG Traders Ltd. accrued & crystallized only during the F.Y.2011-12 when we finally received the demand for interest from ISG Traders Ltd. For your kind perusal & record, we enclose herewith

copy of the Debit Note raised by ISG Traders from which it will be evident that the demand for interest for the FY 2010-11 was raised on us by the said lender for the first time only in the month of September 2011. This fact proves beyond doubt that our liability to pay interest accrued & got crystallized only in the 1170th of September 2011 and not before. It is only on the receipt of the said Debit Note in the F. Y.2011-12 we could recognize the liability to pay interest in our financial books for the FY. 2011-12 and accordingly claim deduction therefor in A. Y 2012- 13. Merely because the interest expenditure pertained to accounting period 2010-11;for that reason alone interest expenditure cannot be termed to be "expenditure for prior period". The documentary evidences would prove beyond doubt that our liability to pay interest not only crystallized but it in fact accrued only in the month of September 2011when the lender company for the first time raised demand therefor by issuing a debit note. Till the debit note was not formally raised by the lender company we could not have accounted liability for interest in our books. Any liability for interest till then inchoate and indeterminate. We, therefore, submit that the entire expenditure of Rs.4,06,16,220/- was allowable as business expenditure in AY 2012-13, since the liability in respect of such expenditure accrued in the FY 2011-12. Our claim in this regard is supported by the decision of the ITAT, Kolkata in the case of Off-shore India Ltd. in ITA No. 2165/KOL/2007 (copy enclosed)".

4. The above submission made on behalf of the assessee-company was not found acceptable by the Assessing Officer. According to him, there was no dispute on account of rate of interest or the liability on account of interest and the said liability having been crystallized in the earlier year relevant to assessment year 2011-12 on the basis of agreed rates and terms, the assessee-company following the mercantile system of accounting was entitled to claim deduction for the interest in AY 2011-12 itself and not in the year under consideration. He also noted that the loan creditor had finally not waived the interest of the assessee-company and had offered the corresponding interest income related to the period from 01.04.2020 to 31.03.2011 amounting to Rs.4,06,16,220/- as its income in

the return of income filed for AY 2011-12 itself. He accordingly treated the interest expenses claimed by the assessee to that extent as prior period expenses and disallowed the same.

5. The disallowance of Rs.4,06,16,220/- made by the Assessing Officer on account of interest expenses treating the same as prior period expenses was challenged by the assessee in the appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings, the Id. CIT(Appeals) noted that the allowability of the said interest expenses had not been examined by the Assessing Officer under the relevant provisions of section 36(1)(iii) of the Income Tax Act, 1961. He accordingly proceeded to examine the same under section 36(1)(iii) and confirmed the disallowance made by the Assessing Officer on account of interest expenses under section 36(1)(iii) for the following reasons given in his impugned order:-

"On perusal of section 36(1)(iii), it is observed that the deduction is with respect to the interest paid for capital borrowed for purpose of business and profession. The sine qua non for allowability of interest expenses u/s 36(1)(iii) is that the capital borrowed must be utilized for the purpose of business. In this regard the contention of the appellant is examined whether the advances given to NRC Ltd. for the purposes of business or not. The advances to NRC Ltd. have been given as follows:-

M/s. Araganya Tradeco Pvt. Ltd.

<i>Financial year</i>	<i>Amount (Rs.)</i>
<i>2008-09</i>	<i>6,75,00,000</i>
<i>2009-10</i>	<i>9,15,31,882</i>
<i>2010-11</i>	<i>3,45,00,000</i>
<i>2011-12</i>	<i>50,50,000</i>
	<i>19,85,81,882</i>

It has been submitted that these advances were given for purchase of chemical and therefore no interest was charged. The veracity of this explanation is, therefore, examined hereinafter. In this context it is observed that during the period i.e. F. Y. 2008-09 to F. Y. 2011-12 the appellant has advanced total amount of Rs.19.85 Crores to NRC Ltd. It is

further noted that it is an admitted fact that NRC Ltd. was declared as a sick company by the Board for Industrial and Financial Reconstruction (BIFR) in F.Y. 2008-09 itself. It is also an admitted fact that during this period only one purchase of Viscose Filament Yarn was made vide Bill dated 09/09/2009 for an amount of Rs.378035/-. No other purchase of material or chemical has been made from NRC Ltd by the appellant company. The only other transaction between NRC Ltd. and the Appellant company is that of purchase of DEPB licences vide Bill dated 03/03/2010 for an amount of Rs.8168118/-. Further the borrowings from ISG Traders have been directly utilized in giving interest free advances to NRC Ltd. therefore the nexus of the borrowed funds for giving interest free "advances to NRC Ltd. is clearly established. Moreover as observed earlier NRC Ltd. is a sick company with which only one single purchase transaction of Viscose Filament Yarn was done by the appellant company. It is observed that in F.Y. 2008-09 a sum of Rs.6.75 crores was given and no purchase made. In next F.Y. purchase of Filament Yarn - of Rs. 378035/- and DEPB worth Rs.81,68,118/- was made. Therefore, there was no commercial expediency for advancing a further amount of Rs.9.15 crores. The advances clearly do not have a direct nexus with regard to business, as claimed by the appellant. On proper appreciation of these facts it is observed that the borrowed funds from ISG Traders Ltd. have been utilized for advancing interest free loans to NRC Ltd. There was no regular purchase transaction from NRC Ltd therefore the contention of the appellant that the advances were given for purchase of chemicals is not acceptable. It is a mere garb to close the transaction of interest free advances as a business transaction. In this case the direct nexus of diversion of funds has been established. No interest has been paid on the borrowed funds of the appellant utilized by NRC Ltd. The explanation that the advances were given for commercial consideration is not found to be correct. The sum and substance is that the borrowed funds were given to NRC Ltd., a sick company, to prop up the finances of that company. Accordingly the claim of interest payment of Rs.4061622/- is not allowable u/s 36(1)(iii). Therefore, the addition on this issue made by the Assessing Officer is hereby confirmed".

6. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As submitted on

behalf of the assessee-company before the authorities below as well as before us, the liability on account of interest expenses payable to M/s. ISG Traders Limited for the period 01.04.2010 to 31.03.2011 was in dispute at the relevant time, inasmuch as, waiver of the said liability was sought by the assessee-company on the basis of its adverse financial position. As per the submission made on behalf of the assessee-company, the said dispute was finally settled in the year under consideration and a debit note was issued by M/s. ISG Traders Limited on 12.09.2011 (copy placed at page no. 20 of the paper book) claiming the interest of Rs.4,06,16,220/- from the assessee-company for the period 01.04.2010 to 31.03.2011. The ld. Counsel for the assessee has contended that the said liability on account of interest related to the period from 01.04.2010 to 31.03.2011 thus was crystallized during the year under consideration and the same was allowable as deduction as rightly claimed by the assessee-company. In support of this contention, he has relied on the decision of this Tribunal rendered in the case of DCIT -vs.- M/s. Off-shore India Limited (ITA No. 1585 & 1609/KOL/2008 rendered vide its order dated 29.05.2009), wherein the similar claim of the assessee on account of interest related to the prior period was allowed by the Tribunal vide paragraph no. 6 as under:-

"6. Heard the parties, perused the records and considered the cases laws cited by the Ld. Authorised Representative of the assessee. We find that the revenue has not disputed the allowability of the expenses incurred by the assessee. During the earlier year, the assessee neither provided nor claimed these expenses as it was negotiating with the loan credit to reduce the interest liability. This fact was not disputed by the revenue authorities at any stage. This act is also borne out from the records like audit report. P& L Account etc. We find that the Hon'ble Bombay High Court had held that where a liability arising out of a contractual obligation is disputed, the assessee is entitled, in the assessment year relevant' to the previous year in which the dispute is finally adjudicated upon or settled, to claim a deduction in that behalf. In view of the above, we are of the considered opinion that the disallowance of Rs.63,00,000/- made by the Assessing Officer and confirmed by the ld. CIT(A) is

hereby deleted. Therefore, the appeal of the assessee is allowed”.

7. As the issue involved in the present case as well as all the material facts relevant thereto are similar to the case of M/s. Off-shore India Limited and even the Id. D.R. has not been able to dispute this position, we respectfully follow the decision of the Coordinate Bench of this Tribunal in the said case and hold that the liability on account of interest payable to M/s. ISG Traders Limited for the period from 01.04.2010 to 31.03.2011 having been crystallized during the year under consideration, the Assessing Officer was not justified in disallowing the same by treating the same as prior period expenses.

8. As regards the action of the Id. CIT(Appeals) in confirming the disallowance made by the Assessing Officer on account of interest expenses under section 36(1)(iii) of the Act on the ground that the funds borrowed by the assessee from M/s. ISG Traders Limited were utilized for giving interest-free advance to M/s. NRC Limited, which was not for the purpose of its business, the Id. Counsel for the assessee has made an attempt to contend that M/s. NRC Limited was the regular supplier of raw material of the assessee-company and, therefore, the interest-free advance given to them was for the purpose of its business.

9. As noted by the Id. CIT(Appeals) in this regard, only one purchase made by the assessee-company from the said party was on 09.09.2009 and that too for a small amount of Rs.3,78,035/-. The interest-free advance to the said party, however, was given by the assessee-company in the financial year 2008-09 to 2011-12 and that too to the tune of Rs.19,85,81,882/-. The said advance thus had nothing to do with the small amount of purchase made by the assessee from M/s. NRC Limited and there being no other reason advanced on behalf of the assessee-company to prove that the said advance was given for the purpose of its

business, we find no merit in the contention of the Id. Counsel for the assessee that the interest-free advance given by the assessee-company to M/s. NRC Limited was for the purpose of its business. We, however, find merit in the alternative contention raised by the Id. Counsel for the assessee that only part amount of fund borrowed from M/s. ISG Traders Limited having been advanced to M/s. NRC Limited interest-free, the Id. CIT(Appeals) was not justified in disallowing the entire interest expenses of Rs.4,06,16,220/- under section 36(1)(iii) and the said disallowance should be restricted to be interest expenses attributable to the interest-free advance given by the assessee-company to M/s. NRC Limited during period 01.04.2010 to 31.03.2011. We accordingly direct the Assessing officer to compute the interest expenses attributable to the interest-free advance given by the assessee to M/s. NRC Limited and restrict the disallowance to that extent. Ground No. 1 of the assessee's appeal is accordingly partly allowed.

10. The issue raised in Ground No. 2 relates to the disallowance of Rs.2,38,29,825/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of interest expenses under section 36(1)(iii) of the Income Tax Act, 1961.

11. After considering the rival submissions and perusing the relevant material available on record, it is observed that this issue raised in Ground No. 2 is similar to the one involved in Ground No. 1, inasmuch as, the funds borrowed by the assessee-company from M/s. ISG Traders Limited having been utilized during the year under consideration to give interest-free advances to M/s. NRC Limited, which was not for the purpose of the assessee's business, the Assessing Officer disallowed the expenses claimed by the assessee on account of interest paid on loan taken from M/s. ISG Traders Limited to the extent it was attributable to the interest-free advance given by the assessee-company to M/s. NRC

Limited. On appeal, the Id. CIT(Appeals) confirmed the said disallowance made by the Assessing Officer. As already held by us while deciding Ground No. 1 raised in this appeal, the interest-free advance given by the assessee-company to M/s. NRC Limited was not for the purpose of its business and, therefore, the interest paid by the assessee on the loan borrowed from M/s. ISG Traders Limited to the extent it was attributable to the interest-free advance given to M/s. NRC Limited, was not allowable as deduction under section 36(1)(iii) of the Act. Following the said conclusion drawn while deciding the issue involved in Ground No. 1, we uphold the impugned order of the Id. CIT(Appeals) confirming the disallowance made by the Assessing Officer on account of interest expenses to the extent the same was attributable to the interest-free advance given by the assessee-company to M/s. NRC Limited. Ground No. 2 of the assessee's appeal is accordingly dismissed.

12. During the course of appellate proceedings before the Id. CIT(Appeals), the assessee has filed an application seeking admission of the following additional ground:-

"For that the Id. CIT(A) erred in not adjudicating the ground raised by the assessee challenging the action of the AO in not allowing the set off of the brought forward business loss of earlier year".

13. As submitted by the assessee-company in the application filed seeking admission of the above additional ground, a rectification petition under section 154 has already been filed by the assessee before the Assessing Officer on the issue raised in the additional ground, which is still pending. The Id. Counsel for the assessee has also pointed out that the issue being raised in the additional ground was duly raised in Ground No. 8 taken in the appeal filed before the Id. CIT(Appeals), but the same has not been decided by the Id. CIT(Appeals) vide his impugned order. He has sought limited relief from the Tribunal by way of a direction to the Assessing Officer to consider and decide the issue raised in the additional

ground. Keeping in view this submission made by the Id. Counsel for the assessee and having regard to all the facts of the case, we admit the additional ground raised by the assessee. Even the Id. D.R. has not raised any objection in this regard. The Assessing Officer is accordingly directed to consider and decide the issue raised by the assessee in the additional ground after verifying the relevant records.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on June 25, 2021.

**Sd/-
(A.T. Varkey)
Judicial Member**

**Sd/-
(P.M. Jagtap)
Vice-President)**

Kolkata, the 25th day of June, 2021

- Copies to :*
- (1) ***Araganya Tradeco Pvt. Limited,
C/o. Subash Agarwal & Associates,
Siddha Gibson, 1, Gibson Lane, 2nd Floor, Suite-213,
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Circle-9(1), Kolkata, Aayakar Bhawan,
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 - (3) *Commissioner of Income Tax (Appeals)-3. Kolkata;*
 - (4) *Commissioner of Income Tax- ,*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Senior Private Secretary/DDO,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.