

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "F" BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.4777/Del/2016  
Assessment Year : 2009-10**

ACIT, Circle-21(2), Room No.199C, 1 <sup>st</sup> Floor, C.R.Building, I.P.Estate, New Delhi.	vs	Quippo Energy (P.) Ltd., D-2, Saket Palace, Saket, New Delhi-110017. PAN-AAACQ1675Q
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Sh. Govind Singhal, Sr.DR	
<b>Respondent by</b>	Smt. Alka Arren, Adv.	
<b>Date of Hearing</b>	05.08.2021	
<b>Date of Pronouncement</b>	23.08.2021	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the Revenue for the assessment year 2009-10 is directed against the order of Ld. CIT(A)-7, New Delhi dated 03.06.2016. The Revenue has raised following grounds of appeal:-

1. *"On the facts and circumstances of the case, the Ld.CIT(A) erred on facts and in law by admitting additional evidence and deleting an amount of Rs.11,70,000/- and Rs.11,44,415/- when the assessee could not produce the genuineness of the sundry creditors at the time of assessment despite giving sufficient opportunity.*
2. *On the facts and circumstances of the case, the ld.CIT(A) erred in deleting Rs.1,47,85,097/- amount of expense which is of capital nature.*
3. *On the facts and in the circumstances of the case, Ld.CIT(A) erred in deleting the disallowance made on short payment of TDS.*

2. Facts giving rise to the present appeal are that the assessee had filed its return of income on 30.09.2009 of Rs.61,08,204/- and paid tax under MAT on book profits amounting to Rs.2,07,08,618/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 ("the Act") on 14.03.2011. Thereafter, the case was selected for scrutiny under CASS. While framing the assessment, the Assessing Officer noticed that the assessee had various sundry creditors. The assessee was asked to provide the details of sundry creditors exceeding above Rs.1,00,000/- vide questionnaire dated 22.09.2010. In response thereto, the assessee submitted details of sundry creditors vide letter dated 04.02.2011. Out of the list of sundry creditors, the Assessing Officer noticed that the five sundry creditors being Deutz Power Systems GmbH; Clarke Energy Ltd.; Symatic Engineering Pvt.Ltd.; Surya Industries; and Green Power International P.Ltd. were the top creditors. The assessee was asked to furnish confirmation from all the aforesaid sundry creditors vide order sheet dated 05.12.2011. The Assessing Officer has recorded that many more opportunities were given. Despite having given sufficient opportunity, confirmation of only three sundry creditors namely M/s. Kantilal Chimanlal; M/s. Swati Switch Gears India Pvt.Ltd.; and M/s. Green Power International Pvt.Ltd. was furnished.

3. Thus, in the absence of confirmations from sundry creditors, the Assessing Officer made addition of Rs.2,80,55,795/- being unverified credit. Further, the Assessing Officer noticed that as on 31.03.2009, the amount of capital work in progress was Rs.22,69,56,000/- out of fixed assets amounting to Rs.75,75,35,000/- i.e. 29.96% of the total fixed assets. However, from the Tax Audit Report's Annexure "D", it was noticed that a very small amount of interest

of Rs.26,74,988/- was capitalized. It was noticed that the loans outstanding as per the balance sheet of the assessee, were secured and term loans amounting to Rs.46,63,34,000/-. The Assessing Officer was of the view that these loans were taken to finance future assets of company. A query was raised to the assessee in this regard. In response to the query of the Assessing Officer, the assessee filed its reply vide letter dated 21.12.2011. Further, submission was made vide letter dated 23.12.2011 in this regard. The Assessing Officer however, did not accept the explanation of the assessee. He proceeded to make disallowance of interest of Rs.1,49,86,193/- out of the total interest claimed by the assessee, as being the amount of expense which was of capital nature. As per Assessing Officer, it ought to have been capitalized alongwith work in progress as loan on which this interest had been paid, was for creation of fixed assets which was yet to be capitalized. Further, the Assessing Officer disallowed the unpaid bonus of Rs.9,15,250/-, provision of leave encashment of Rs.6,30,381/- and amount deduction of tax of Rs.1,34,545/- and further disallowance of Rs.1,49,535/-.

4. Aggrieved against this, the assessee preferred the appeal before Ld.CIT(A) who partly allowed the appeal of the assessee. Thereby, Ld.CIT(A) deleted the additions made in respect of sundry creditors namely, Symatic Engineering Pvt. Ltd. and Surya Industries amounting to Rs.11,70,000/- and Rs.11,44,415/- respectively. The other addition of Rs.2,57,41,795/- was confirmed. In respect of proportionate disallowance of interest of Rs.1,49,86,193/-, Ld.CIT(A) partly allowed the grounds thereby, deleted the addition of Rs.1,47,85,097/- and confirmed the addition of Rs.2,01,096/- in this respect. However, in respect of the disallowance of bonus and leave encashment of Rs.9,15,250/- and

Rs.6,30,389/- were confirmed. Further, the addition made on account of short deduction of tax amounting to Rs.1,34,545/- was deleted and confirmed the addition of Rs.1,49,535/- made on account of disallowance of legal and professional charges paid to Shri Rahman Rahman Haq without deducting tax at source. In respect of the additional ground raised by the assessee, the direction was given to the Assessing Officer for verification of deduction of tax at source.

5. Aggrieved against this, the Revenue is in appeal before this Tribunal.

6. Ground No.1 raised by the Revenue is against the deletion of addition of Rs. 11,70,000/- and Rs.11,44,415/- made on account of unverifiable sundry creditors.

7. Ld. Sr. DR submitted that Ld.CIT(A) was not justified in deleting the additions. He supported the orders of the Assessing Officer.

8. Ld. Counsel for the assessee opposed the submissions of Ld. Sr. DR and reiterated the submissions made in the summary of arguments. Summary of arguments of the assessee are reproduced as under for ready-reference:-

***1.0. "Deletion of addition on account of unconfirmed sundry creditors by admitting additional evidence (Rs.23,14,415/-) [Ground No.1 of Departmental appeal]***

*1.1 In the order u/s 143(3), the AO added the outstanding balances of following creditors in the absence of confirmations from suppliers: [Para 4 & 5 at Pg. 2 of the AO's order]*

*a) Clarke Energy Ltd. - Rs. 2,57,41,795/-*

*b) Symatic Engineering (P) Ltd- Rs. 11,70,000/-*

*c) Surya Industries - Rs. 11,44,415/-*

*Details of above creditors were sought by the AO only at the fag end of assessment proceedings.*

*1.2 During the course of hearing before the Ld. CIT(Appeals), the assessee submitted confirmations obtained from creditors. Subsequently, a remand report was sought from the AO on the evidences [being confirmation from parties] filed by the appellant. In the remand report, the AO prayed not to accept additional evidences and failed to give any comments on the merits of the issue as well as on confirmations submitted [Para 5.3 of CIT(A)'s order]. The assessee filed its response to the remand report vide reply dated 13-03-2015.*

*1.3 The Ld. CIT(Appeals) deleted the addition made by the AO towards balances of Symatic Engineering (P) Ltd (Rs.11,70,000/-) and Surya Industries (Rs.11,44,415/-) on the contention that the balances with respect to them are confirmed and verified and there is no basis to sustain the additions made by AO. [Para 5.5 at Pg. 4-5 of the CIT(A)'s order]. The addition on account of Clarke Energy Ltd. (Rs. 2,57,41,795/-) was confirmed.*

*1.4 The Ld. CIT(Appeals) admitted the additional evidence only after providing opportunity to the AO and obtaining his response. Hence, order of the CIT(A) is liable to be confirmed. Hon'ble Jurisdictional ITAT in ACIT -vs.- Dentsply India (P) Ltd (IT A No. 31/Del/2011) (Del ITAT) held as under:*

*"The powers of the CIT(A) to admit additional evidence are not only in situations where the evidence could not be produced before lower authorities owing to lack of adequate opportunity but also in situations where the fresh evidence would enable the CIT(A) to dispose of the appeal or for any other substantial cause."*

*Similar view has been given in following decisions:*

- ITO -vs.- M/s.Xo Infotech Ltd. (ITA No.3342/DeV2013)(Ahd. ITAT)*
- CIT -vs- Virgin Securities & Credits (P) Ltd. (2011) 332 ITR 396 (Del ITAT)*

1.5. As regards the above sundry balances, the brief facts of the same is as under:

*Symatic Engineering (P) Ltd (Rs. 11,70,000/-)-The balance outstanding on 31-03-2009 represents advances for purchases paid by cheque during the year, against which purchases have been made in the subsequent year. Debit balances of creditors on account of advances for purchases made to suppliers cannot treated as income as held by Hon'ble Mumbai ITAT in DCIT -vs.- M/s Charak Pharmaceuticals (ITA No. 4667/Mum/2010).*

*Surya Industries (Rs.11,44,415/-) - The balance outstanding on 31-03-2009 represents sum payable on account of purchases made during the year. The said sum was paid in the subsequent year.*

1.6 *Ledger accounts and confirmations for both these above parties were verified by the Ld. CIT(Appeals) and granted partial relief. Hence, the grounds raised by the department is liable to be dismissed.”*

9. We have heard the rival contentions and perused the material available on record. We find that Ld.CIT(A) has given a finding on fact in para 5.5 of the impugned order which reproduced hereunder for ready-reference:-

5.5. *“The Ld. AR has stated that copy of letter confirming the balance from Clarke Energy Ltd. is filed as per page 112 of the written submission. I have perused the said confirmation. There is no reference of any amount payable by the appellant company to creditor MIs Clarke Energy Ltd. As the balance is not verified and no confirmation is furnished with respect to MIs Clarke Energy Ltd. no interference is called for in the addition made by AO of Rs.2,57,41,795/- which is confirmed. In so far as credit appearing in the name of M/s Symatic Engineering (P) Ltd. and Surya Industries is concerned, ledger account of the said vendors and confirmations have been duly furnished. As the balance with respect to these creditors are confirmed and verified there is no basis to sustain the additions made by the*

*Assessing Officer with respect to these entities at Rs.11,70,000/- and Rs.11,44,415/- respectively, which is directed to be deleted. This ground of appeal is partly ruled in favour of the appellant.”*

10. It is stated on behalf of the assessee that the evidences in the form of confirmation were forwarded to the Assessing Officer for his Remand Report, therefore, due opportunity was given to the Assessing Officer.

11. Having perused the material available on record, we do not see any infirmity in the order of Ld.CIT(A) as the assessee has filed confirmation which has been verified by Ld.CIT(A) hence, Ground No.1 raised by the Revenue is dismissed.

12. Ground No.2 raised in the Revenue's appeal is against the deletion of addition of Rs.1,47,85,097/-, the expenses which were treated as capital in nature.

13. Ld. Sr. DR supported the order of the Assessing Officer and submitted that the Assessing Officer has rightly treated the expenditure as of capital nature since the assessee had obtained secured loan in the form of terms loans for the purpose of financing future assets.

14. On the contrary, Ld. Counsel for the assessee supported the order of Ld.CIT(A) and reiterated the submissions as made in the written submissions. The submissions of the assessee are reproduced herein below for ready-reference:-

**2.0 “Deletion of disallowance of interest expenditure which is of capital nature (Rs. 1,47,85,097/-) [Ground No.2 of Departmental appeal]**

2.1 The assessee has debited to Profit & Loss Account an amount of Rs. 5,00,20,327/- towards interest expenses. In the order u/ s 143(3), the AO made disallowance of interest on unscientific proportionate basis at Rs.1,49,86,193/- allocating the interest towards capital work in progress [Para 7 at Pg. 4 & 5 of the AO's order]

2.2 Out of total interest of Rs. 500,20,327/-, interest expenses to the tune of Rs. 3,94,80,262/ - pertains to opening balance of loans from OBC, IDFC and SIFL which were transferred to the assessee under duly approved scheme of arrangement. Further, out of this interest expenses, an amount of Rs. 26,74,988/- pertains to loan from OBC & SIFL sanctioned for specific purchases and capitalized in the books of accounts. Accordingly, balance interest amount of Rs. 3,68,05,274/- (Rs. 3,94,80,262/-less Rs. 26,74,988/-), being revenue expenditure was claimed as deduction u/s 36(1)(iii) of the Act.

Further, balance interest amounting to Rs. 1,05,40,065/- [Rs. 500,20,327/- less Rs. 3,94,80,262/-] pertains to secured and unsecured loans of Rs. 35,70,13,698/- & Rs. 6,64,83,348/- respectively from Srei Infrastructure Finance Ltd. obtained during the year and utilised for business.

2.3 The Ld. CIT(Appeals) examined all the details, balance sheet, loan agreements and correctly considered investment in fixed assets and CWIP before deducting depreciation at Rs.83,17,32,000/- (Rs. 60,47,76,000/- plus Rs 22,69,56,000/ -) instead of erroneous amount considered by the AO [Para 8 at Pg. 5 of the AD's order).

2.4 The Ld. CIT(A) at Para 6.4 at Pg 8-9 of its order, re-computed the disallowance at Rs. 28,76,084/ - which pertains to Capital work in progress. Since Rs. 26,74,988/ - was already capitalized by the assessee, balance disallowance of Rs. 2,01,096/ - was duly confirmed. Relevant

extracts of the CIT(Appeals)'s order is as under (Para 6.4, Page 9 of the CIT(A)'s order):

*In the light of these facts, computation made by the AD by considering the entire interest expenditure and the incorrect figure of the fixed assets and WIP is not in order. The correct computation would be as under:*

*(Interest during the year x WIP)/WIP (1,05,40,065 x 22,69,56,000)/83,17,32,000 = Rs. 28,76,084/-*

*As the appellant company has capitalised Rs. 26,74,988/- out of the interest payment during the year, the proportionate disallowance would work out to Rs.2,01,096/- (28,76,084 - 26,74,988). The balance disallowance i.e. Rs. 1,49,86,193 - Rs. 2,01,096 = Rs. 1,47,85,097 is directed to be disallowed.*

2.5 *The CIT(Appeals) after due verification of the facts and documents, has recomputed the disallowance and granted partial relief to the assessee. Further, the error made by the AO in applying unscientific and baseless calculation of disallowance of interest was duly rectified. In the absence of any error in the calculation made by the Ld. CIT(Appeals), the grounds raised by the department is liable to be dismissed.”*

15. We have heard the rival contentions and perused the material available on record. Ld.CIT(A) has decided this issue by observing as under:—

6.4. *“I have considered the assessment order and the submissions furnished by the Ld.AR. The statement of loans and interest payment clearly shows that out of the total interest payment of Rs.5,00,20,595/- claimed by the appellant company, interest of Rs.3,94,80,262/- was on account of opening balances of loans pursuant to scheme of arrangement between the appellant company with M/s. Quippo Infrastructure Equipment Ltd. (QIEA) and M/s. Quippo Construction Equipment Ltd. (QCEL) approved by the Hon'ble High Court of Delhi and the Hon'ble High Court of Andhra Pradesh vide their orders dated ....11.2008 and 05.12.2008 respectively.*

The said arrangement became effective from 01.04.2008. Pursuant to the said scheme, secured loan of Rs.28,42,96,628/- and unsecured loan of Rs.3,40,17,000/- stood transferred from QIEL w.e.f. 01.04.2008 to the appellant company. The total interest payment on loans obtained during the year is Rs.1,05,40,065/-. There is therefore, merit in the contention of the ld. AR that interest on opening balance of loans should not be considered for computing the proportionate disallowance. It is also noted from the computation of interest disallowance made by the AO that he has considered the investment at Rs.75,75,35,000/- (Rs.53,05,79,000/- Fixed Assets + Rs.22,69,56,000/- WIP) instead of Rs.83,17,32,000/- (Rs.60,47,76,000/- Fixed Assets+ Rs.22,69,56,000/- WIP) which is evident from schedule 4 fixed assets of the audited accounts annexed at page 44 of the written submission. The appellant company has capitalized Rs.26,74,988/- out of the interest expense of the Rs.105,40,065/- as per annexure D of the tax audit report filed and annexed as page 77 of the written submissions. In the light of these facts, the computation made by the AO by considering the entire interest expenditure and the incorrect figure of the fixed assets and WIP is not in order. The correct computation would be as under:

$$\frac{\text{Interest during the year}}{\text{Fixed assets}} \times \text{WIP} = \frac{1,05,40,065}{83,17,32,000} \times 22,69,56,000 = \text{Rs.}28,76,084/-$$

6.5. As the appellant company has capitalized Rs.26,74,988/- out of the interest payment during the year, the proportionate disallowance would work out to Rs.2,01,096/- (28,76,084-26,74,988). The balance disallowance i.e. Rs.1,49,86,193 - Rs.2,01,096 = Rs.1,47,85,097/- is directed to be deleted. This ground of appeal is partly ruled in favour of the appellant.”

16. Ld.CIT(A) has pointed out that from the computation of interest disallowance, the AO had considered investment of Rs.75,75,35,000/- against Rs.83,17,32,000/-. This fact is not rebutted by the Revenue. It is seen that Ld.CIT(A) has computed the income at Rs.28,76,084/- against computation

made by the Assessing Officer at Rs.1,49,86,193/-. The Revenue could not point out any error in the computation by Ld.CIT(A). Therefore, we do not see any infirmity into the finding of Ld.CIT(A), the same is hereby affirmed. Ground No.2 raised by the Revenue is, thus rejected.

17. Ground No.3 raised by the Revenue is against the deletion of disallowance made on account of short payment of TDS.

18. Ld. Sr. DR supported the order of Assessing Officer.

19. On the contrary, Ld. Counsel for the assessee supported the order of Ld.CIT(A) and reiterated the submissions as made in the written submissions. For the sake of clarity, written submissions of the assessee are reproduced as under:-

**3.0. “Deletion of disallowance on account of short payment of TDS (Rs. 1,34,545/-) [Ground No.3 of Departmental appeal]**

3.1 The assessee has paid legal and professional charges of Rs. 3,00,000/- to M/ s Gensol Consultants Pvt Ltd. In the order u/ s 143(3), the AO made ad-hoc disallowance u/ s 40(a)(ia) of the Act as follows [Para 12 at Pg. 5-6 of the AO's order] :

<b>Particulars</b>		<b>Amount (Rs.)</b>
TDS Deducted	(A)	Rs. 17,042/-
Rate of TDS	(B)	10.3%
Amount on which correct TDS deducted	(C=A/B)	Rs. 1,65,455/-
Total expenses	(D)	Rs. 3,00,000/-
Balance	(E=D-C)	Rs. 1,34,545/-

3.2 The Ld. CIT(Appeals) deleted the disallowance made by the AO holding that TDS deduction made in earlier year by transferor company has not been considered by the AO [Para 9.3 & 9.4 at Pg. 16-17 of the CIT(A)'s order].

3.3 The details of impugned professional charges and TDS deducted thereon are as below:-

<b>Sl.No.</b>	<b>Amount of expense</b>	<b>Service Tax (Rs.)</b>	<b>Total (Rs.)</b>	<b>Date of payment</b>	<b>Amount of TDS</b>	<b>TDS Deductor</b>
1.	1,50,000	18,540	1,68,540	16-08-2007 (AY 08-09)	17,360	QIEL (Demerged company)
2.	1,50,000	15,450	1,65,450	23.03.2009 (AY 09-10)	17,042	Assessee (Resulting company)
<b>Total</b>	<b>3,00,000</b>				<b>34,402</b>	

The amount paid by QIEL has been transferred to the assessee under duly approved scheme of demerger which has been claimed by assessee as expenses in its books of accounts. Sec. 40(a)(ia) provides that expenditure shall be disallowed in case tax has not been deducted thereon or after deduction has not been paid. In the instant case, TDS of Rs. 17,360/- and Rs. 17,042/- on entire amount of Rs. 3,00,000/- has been duly deducted and deposited. Hence, disallowance u/ s 40(a)(ia) for expenses in the nature of reimbursements is not sustainable.

3.4 Without prejudice, Section 40(a)(ia) isn't applicable to short deduction of TDS as held in following decisions:

- M/s Neemrana Hotels Pvt Ltd. -vs.- DCIT [ITA No.98/Del/2017]
- UE Trade Corporation (India) Ltd -vs.- DCIT [ITA No.2303/Del/2011) (Del ITAT)
- CIT -vs.- S. K. Tekriwal (ITA No. 183/Kol/V2012) (Cal HC).”

20. We have heard the rival contentions and perused the material available on record. We find that the Assessing Officer made disallowance on account of short deduction of tax. As per the Assessing Officer, the assessee ought to have deducted the tax at source @ 10.3% on the payment of Rs.3,00,000/- made to the M/s. Gensol Consultant (P.) Ltd. Ld.CIT(A) while deleting the addition has relied upon the decision of Hon'ble Calcutta High Court in the case of CIT vs

*S.K.Tekriwal 361 ITR 432 [Cal.]* and decision of Co-ordinate Bench of this Tribunal rendered in the case of *UE Trade Corporation (India) Ltd. vs DCIT in ITA No.2303/Del/2011*. The Revenue has not pointed out any contrary binding precedents therefore, we do not see any infirmity in the finding of Ld.CIT(A) and the same is hereby affirmed. Ground No.3 raised by the Revenue is thus, rejected.

21. Ground No.4 raised by the Revenue is general in nature, needs no adjudication.

22. In the result, the appeal of the Revenue is dismissed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 23<sup>rd</sup> August, 2021.

***Sd/-***  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\*Amit Kumar\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI