

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.1310/Del./2016
(Assessment Year : 2012-13)**

M/s. JMC Automotive Components Pvt. Ltd., vs. ITO, Ward 2 (1),
Plot No.2, Dabua Nawada Road, Faridabad.
Dabua Extension Industrial Area,
Faridabad – 121 001.

(PAN : AABCJ6600R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rajiv Ahuja, Advocate
REVENUE BY : Shri Prakash Dubey, Senior DR

Date of Hearing : 14.07.2021
Date of Order : 13.08.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. JMC Automotive Components Pvt. Ltd.
(hereinafter referred to as 'the assessee') by filing the present
appeal sought to set aside the impugned order dated 05.01.2016
passed by the Commissioner of Income-tax (Appeals), Faridabad
qua the assessment year 2012-13 on the grounds inter alia that :-

“1. That on the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax Appeals (hereinafter referred to as 'CIT (An, grossly erred in confirming the addition of Rs.9,80,782/- made u/s 40(a)(ia) of the income tax act, 1961 which is bad in law and called for.

(Ground No-1)

2. That on the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax Appeals (hereinafter referred to as 'CIT (A)'), erred in confirming the addition of Rs.2,68,529/- made u/s 36(1)(iii) of the income tax act,1961 which is bad in law and not called for.

(Ground No-2)

3. That on the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax Appeals (hereinafter referred to as 'CIT (A)'), erred in confirming the addition of Rs.1,40,946/- of difference in the rate of interest which is bad in law and not called for.

(Ground No-3)

4. That on the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax Appeals (hereinafter referred to as 'CIT (A)'), erred in confirming the addition of Rs.1,42,500/- made u/s 36(1)(iii) of the Income Tax Act, 1961 which is bad in law and not called for.

(Ground No-4)”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee is into the business of manufacturing of Automotive Sheet Components. During the scrutiny proceedings, Assessing Officer (AO) noticed that the assessee claimed interest expenses of Rs.1,34,78,923/- under the head “interest expenses” which were paid to few Non-Banking Financial Corporations (NBFC) from the banks. Interest paid to the NBFC for the year under assessment is without deducting Tax Deducted at Source (TDS). AO by invoking the provisions contained under section 194A of the Income-tax Act, 1961 (for

short 'the Act') disallowed an amount of Rs.21,20,492/- u/s 40(a)(ia) of the Act and made addition thereof to the total income of the assessee. AO also made addition of Rs.2,68,529/- on account of disallowance of interest u/s 36(1)(iii) of the Act on the ground that since the machinery is not put to use advance payment made to (i) M/s. Chi Young Machinery Co. Ltd., (ii) M/s. Sagar Scientific Works Pvt. Ltd., (iii) M/s. Philips Corporation, (iv) M/s. Precision Moulds, (v) M/s. Prowell Precision Inc., (vi) M/s. S.K. Industries, (vii) M/s. S.R. Engg. Works, (viii) M/s. Super Control & Automation, and (ix) M/s. Universal Infratech, it is not admissible for payment of interest.

3. AO also made addition of Rs.7,24,761/- on account of excessive bill discounting charges paid to one M/s. Sandhar Enterprises on the ground that assessee has availed that bill discounting facilities from two related parties, namely, Sandhar Enterprises and Sandhar Automotives (Dhumspur).

4. AO also made an addition of Rs.1,51,500/- by way of disallowance of proportionate interest qua the advance made to M/s.Anant Raj Industries Ltd. & M/s. Jawahar Chits Pvt. Ltd. to the tune of Rs.1,42,500/- & Rs.9,000/- respectively and thereby applied the interest @ 12% per annum u/s 36(1)(iii) of the Act.

5. Assessee carried the matter before the Id. CIT (A) by way of filing appeal who has partly allowed the same. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1

7. AO has disallowed an amount of Rs.21,20,492/- u/s 40(a)(ia) of the Act for not deducting the TDS before making payment to six companies, detailed as under :-

Sr.No.	Name	Amount
1	Intech Capital Limited	1,81,897
2	Bajaj Auto Finance Ltd.	3,64,286
3	Barclays Investments & Loan	5,51,437
4	Magma Finance Corp. Ltd.	2,35,853
5	Religare Invest Ltd.	4,46,241
6	India Bulls	3,25,176
	Total	21,20,492

8. However, Id. CIT (A) restricted the addition made by the AO to Rs.9,80,782/- on the ground that during appellate proceedings, assessee filed original copy of prescribed certificate u/s 201 of the Act from four parties, namely, (i) Intech Capital Ltd, (ii) Magma Finance Corp. Ltd., (iii) Religare Invest Ltd., and (iv) India Bulls

Finance Services Limited to the tune of Rs.1,32,440/-, Rs.2,35,853/-, Rs.4,46,241 & Rs.3,25,176/- respectively totaling Rs.11,39,710/-.

9. Ld. AR for the assessee challenging the impugned order passed by the ld. CIT (A) firstly contended that there is a factual error in the total amount of addition made by the AO u/s 40(a)(ia) of the Act as total of the amount paid to six companies, referred to in that table extracted at preceding para 7, comes to Rs.21,04,890/- whereas as per assessment order total has been wrongly computed at Rs.21,20,492/-. Since this is a factual error on the face of record AO is directed to provide relief of Rs.15,602/- made on account of excess addition due to totaling error u/s 40(a)(ia) of the Act. Ld. CIT (A) provided the relief to the tune of Rs.11,39,710/- and accordingly, net addition now under challenge comes to Rs.9,80,782/-.

10. Ld. AR for the assessee contended that during appellate proceedings, assessee failed to get the certificate u/s 201 of the Act from Bajaj Auto Finance Ltd. in whose case interest amount of Rs.3,64,286/- has been allowed. Ld. AR for the assessee contended that in case of Barclays Investment & Loan, no certificate would be obtained as Bank has closed its retail operation

in India. Certificates obtained from Bajaj Auto Finance Ltd. are available at page 170 to 173 of the paper book.

11. In these circumstances, we are of the considered view that when the assessee has obtained the certificate from M/s. Bajaj Auto Finance Ltd. u/s 201 of the Act after first appellate proceedings, the AO is to allow the same after due verification. So far as interest disallowed in case of Barclays Investment & Loan is concerned, assessee's contention is that it has closed its operation in India. AO is directed to conduct the proper enquiry from the available sources if certificate issued by Barclays Investment & Loan finds corroboration from some other record and the issue may be decided accordingly after providing an opportunity of being heard to the assessee. Consequently, ground no.1 is determined in favour of the assessee for statistical purposes.

GROUND NO.2

12. Assessee has made advances to 9 companies, detailed in preceding para no.2 of this order, for purchase of plant and machinery during the year under assessment. AO disallowed the interest to the tune of Rs.2,68,529/- @ 12% per annum on the advance made by the assessee as the plant and machinery was not put to use. Ld. CIT(A) confirmed the addition.

13. Ld. AR for the assessee contended that the entire advance was given by the assessee for purchase of part of the replacement machinery which was ordered in the regular course of business and not for extension of existing business. It is further contended by the ld. AR for the assessee that the assessee company was incorporated in the year 2006 and during the year, total assets were capitalized/put to use by the assessee under the head “plant & machinery” at Rs.2.34 crores and out of total machinery, imported machinery put to use is Rs.1.44 crores and all these details are available at page 34 of the paper book. It is further contended by the ld. AR for the assessee that this issue is covered in favour of the assessee by the **order dated 16.11.2016 passed by the coordinate Bench of the Tribunal in case of assessee in ITA No.6441/Del/2015 for AY 2011-12.**

14. We have perused the order (supra) passed by the coordinate Bench of the Tribunal. Ld. DR for the Revenue merely contended that this order is of Single Bench and cannot be followed by the Division Bench. At the same time, ld. DR for the Revenue has failed to controvert the issue decided by the coordinate Bench of the Tribunal in the preceding year in assessee’s own case. So, in these circumstances, when issue has been decided on the basis of

relevant statutory provisions, it can be followed in the interest of justice.

15. So, following the order (supra) passed by the coordinate Bench of the Tribunal, we are of the considered view that when expenditure/advances paid in question for purchase of plant and machinery by the assessee during the year under assessment was not for extension of any existing business, the same is allowable u/s 36(1)(iii) of the Act. So, the addition made by the AO and confirmed by the Id. CIT (A) is ordered to be deleted. Consequently, ground no.2 is determined in favour of the assessee.

GROUND NO.3

16. AO made an addition of Rs.7,24,761/- on account of excessive bill discounting charges paid by the assessee to Sandhar Enterprises and Sandhar Automotives (Dhumspur) on the ground that assessee has failed to bring on record any documentary evidence regarding existence of any such agreement between the parties to substantiate its claim without interest. However, the Id.CIT(A) restricted this addition to Rs.1,40,946/- by returning following findings :-

“20. However on the other hand the appellant has been unable to justify the difference in the rate of interest of 16% and 19% paid by the appellant for the bill discounting charges to two associate concerns. On one hand the appellant is paying bill discounting charges from 15% to 16% to Sandhar (Dhumaspur) and on the other hand the appellee is paying

19% charges to Sandhar Enterprises. In this regard, a detailed working of the interest expenses paid by the appellant to both the parties was obtained during the course of appellate proceedings. The differential rate of interest of both the concern was worked out i.e. approximately 3% on the various bills and it is seen that the excess interest paid by the appellant to Sandhar Enterprises works out to Rs. 1,40,946/- which the appellant is unable to justify. Thus the addition made by the AO is restricted to this amount and the appellant gets a relief of Rs.5,83,815/- out of the total addition of Rs.7,24,761/-. Thus this ground of the appeal is party allowed.”

17. We have perused the aforesaid findings returned by the Id. CIT (A). When the facts have come on record that in case of Sandhar Automotives (Dhumspur), the assessee is paying bill discounting charges from 15% to 16% but, at the same time, it is paying bill discounting charges @ 19% to Sandhar Enterprises which is reconcilable and as such, excess interest paid by the assessee to Sandhar Enterprises to the tune of Rs.1,40,946/- has been rightly disallowed by the Id. CIT(A). So, we find no ground to interfere in the findings returned by the Id. CIT (A). Consequently, ground no.3 is determined against the assessee.

GROUND NO.4

18. AO made addition of Rs.1,51,500/- on account of proportionate disallowance of interest to M/s. Anant Raj Industries Ltd. & M/s. Jawahar Chits Pvt. Ltd. to the tune of Rs.1,42,500/- & Rs.9,000/- respectively. Ld. CIT (A) however deleted the addition of Rs.9,000/- made by the AO in case of M/s. Jawahar Chits Pvt.

Ltd., however confirmed the addition of Rs.1,42,500/- in respect of M/s. Anant Raj Industries Ltd. which is under challenge before the Tribunal.

19. Ld. AR for the assessee contended that identical ad hoc addition made by the AO by calculating the interest @ 12% per annum has been deleted by the **coordinate Bench of the Tribunal in assessee's own case for AY 2011-12** (supra) by returning following findings:-

“4. Ground number 2 is directed against the disallowance of interest computed on ad hoc basis at the rate of 14% of Rs.3,49,151/-.

4.1. The assessee has interest-free funds of Rs.1,59,83,901/-. The addition in question was not given during the year. The presumption is that interest-free funds were utilised for giving interest-free loans/advances, as held by the Honourable Mumbai High Court in the case of CIT vs Reliance Utilities & power Ltd. reported in 313 ITR 340 (Mum).

4.2. Applying the propositions laid down by the Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd.(supra) to the facts of this case we have to necessarily hold that the A.O. should presume that interest free funds have been utilized for giving interest free advances. The assessee has demonstrated that it has sufficient interest free funds. Hence no disallowance can be made on this ground also. Moreover, the decision Hon'ble Supreme Court in the case of CIT vs. S.A. Builders Ltd. 288 ITR 1 (S.C.) clinches the issue in favour of the assessee. Thus for all these reasons this ground of the assessee is allowed.”

20 We have perused the order (supra) passed by the coordinate Bench of the Tribunal which is on the identical issue. When assessee is having huge interest free funds at its disposal, the presumption lies in favour of assessee that interest free funds were

utilized for giving interest free advances. So, following the order (supra) passed by the coordinate Bench of the Tribunal which had followed judgments rendered by **Hon'ble Supreme Court in case of CIT vs. S.A. Builders Ltd. 288 ITR 1 (SC)** and **Hon'ble Bombay High Court in case of CIT vs. Reliance Utilities & Power Ltd. 313 ITR 340 (Mum.)**, we are of the considered view that addition made by the AO and confirmed by the Id.CIT(A) is not sustainable, hence ordered to be deleted. So, ground no.4 is determined in favour of the assessee.

21. Resultantly, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in open court on this 13th day of August, 2021.

**SD/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**SD/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 13th day of August, 2021
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Faridabad.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**