

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'C', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 28/Del/2018
(Assessment Year : 2014-15)

M/s. Iceberg Foods Ltd., 1081, Aggarwal Millenium Tower-II, Netaji Subhash Place, New Delhi – 110 034 PAN No. AACCA 6027 E (APPELLANT)	Vs.	ACIT Special Range – 04, New Delhi (RESPONDENT)
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Assessee by	Shri Ved Jain, Adv. Shri Ashish Goel, Adv.
Revenue by	Ms. Anima Baranwal, Sr. D.R.

Date of hearing:	17.08.2021
Date of Pronouncement:	08.09.2021

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (A)-35, New Delhi dated 07.09.2017 relating to Assessment Year 2014-15.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of manufacture of food items, bottling of beverages and drinking water. Assessee filed its return of income for A.Y. 2014-15 on

22.11.2014 declaring a loss of Rs.5,71,06,719/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 28.11.2016 and the total loss was determined at Rs.46,41,990/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 07.09.2017 (Appeal No.24/16-17) dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before us and has raised the following grounds:

- i. *“On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.*
- ii. *On the facts and circumstances of the case, the Learned CIT(A) has erred, both on facts and in law, in confirming the addition of Rs.5,23,64,733/- made by AO on account of bank interest invoking the provision of section 43B of the Act.*
- iii. *On the facts and circumstances of the case, the Learned CIT(A) has erred, both on facts and in law, in confirming the above said addition arbitrarily rejecting the evidence brought on record by the assessee to prove that the amount of interest so disallowed was in fact actually paid during the financial year itself.*
- iv. *The appellant craves leave to add, amend or alter any of the grounds of appeal.”*

4. Before us, at the outset, Learned AR submitted that though the assessee has raised several grounds but the sole controversy is with respect to amount disallowed by the AO u/s 43B of the Act.

5. AO during the course of assessment proceedings, noted that assessee had taken loans from Allahabad Bank and those loans were restructured during the year. AO noted that since the interest payable on any loan from a Scheduled Bank is allowable

as deduction only on payment basis as per the provisions of Section 43B(e) of the Act, assessee was asked to justify its claim more so, in the light of Explanation 3D to Section 43B of the Act. Assessee *inter alia* submitted that loan availed from Allahabad Bank were rescheduled by the bank on 29.03.2014. It was further submitted that the amount of pre-structured term loan was paid out of Cash credit limit (CC account) and therefore interest on pre-structured term loan should be treated as being actually paid. With respect to interest on CC limit, it was submitted that before restructuring of loans the limit was Rs.20,00,00,000/- and on the date of restructuring an amount of Rs.21,87,21,328/- was outstanding. It was submitted that after restructuring, out of the aforesaid amount, Rs.12,25,00,000/- was converted into a fresh term loan and the balance Rs.7,75,00,000/- be treated as amount withdrawn as per restructured CC limit. The assessee thereafter submitted that overdue interest at the time of restructuring works out to Rs.1,87,21,328/- (21,87,21,328 – 20,00,00,000) which was paid subsequently before the filing of income tax return and therefore no disallowance u/s 43B of the Act was called for. The submissions of the assessee were not found acceptable to AO. AO was of the view that Explanation 3D to Section 43B of the Act provides that any interest which is payable and has been converted into loan shall not be deemed to actual paid. He was also of the view that the amount of outstanding against the CC limit as on date of pre-restructuring was converted into a fresh term loan on 29.03.2014 and the amount restructured in a fresh term loan included interest on CC limit as well as on pre-restructured terms loan which was

actually not paid but was converted into a fresh term loan, therefore the interest payable cannot be deemed to have been actually paid by the assessee. He accordingly treated the amount of Rs.1,30,99,758/- being interest payable on pre-structured term loan and Rs.3,92,64,975/- being interest payable on pre-restructured CC limit to be disallowable as per the provision of Section 43B of the Act and accordingly worked out the net disallowance at Rs.5,23,64,733/-. Aggrieved by the order of CIT(A), assessee carried the matter before the CIT(A) who upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now in appeal before us.

6. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that assessee had availed term loan as well as CC loan from Allahabad Bank and the Bank charged interests on monthly basis. He submitted that assessee had paid interest on term loans aggregating to Rs. 1,30,99,758/- from time to time on various dates and the details of which are listed at Page 92 of the paper book. He thereafter submitted that assessee had also paid interest on CC account and LC account which was debited on month on month basis by debiting to the Cash Credit account and the interest debited by the Bank was paid out of the amount deposited in the cash credit account arising out of the sale proceedings received by it. With respect to issue of restructuring of the bank loan, he submitted that the bank had reclassified the different loans under different heads and it was not a case of conversion of bank interest into a

loan account but was a case of restructuring of the limits under the different heads as under:

Sl. No.	Nature of Facility	Sanctioned Amount before restructure	Amount Carved Out	Balance Sanctioned Amount after restructuring
1.	Cash Credit Limit	20.00	12.25	7.75
2.	LC Limit	5.00	5.00	NIL
3.	Working Capital Term Loan	NIL	NIL	17.25
4.	Term Loan Account No - 50198822716	0.69	NIL	0.16
5.	Term Loan - 50192825365	5.75	2.09	3.66
6.	Term Loan Account No - 501958825853	3.66	1.32	2.34

7. He further submitted that term loan no 50198822716 with an outstanding balance of Rs 0.16 crore was not structured. He further submitted that the total loans outstanding was Rs 32.59 crore as on 31.3.2013 as against the outstanding of Rs 30.76 crores as on 31.3.2014 which according to him goes to show that the loan had got reduced from Rs 32.59 crore to Rs 30.76 crore even after the payment of interest and thus it was not a case of non payment of interest as on there is no change so far the total loan availed is concerned. He further pointed out from the balance sheet that the total amount of loan from Allahabad Bank was reduced from Rs.32.59 crore (rounded off) (as on 31.03.2013) to Rs.30.79 crore (rounded off) (as on 31.03.2014) even after payment of interest. He submitted that the bank had only reclassified the different loans under different heads as it is not a case of conversion of bank interest into a loan account. He

further submitted that Cash Credit Account is run like a current account and the debit of amount from the Cash Credit Account towards the payment of Term Loan will result into actual payment of interest on Term Loan. He further submitted that according to the prudential norms issued by the RBI in the Master Circular a Term Loan or a Cash Credit is liable to be classified as Non Performing Assets when the interest is due for a period of more than 90 days. He submitted that in the case of assessee, as on 29.03.2014, the credit facility availed by the assessee was not classified as Non Performing Assets as no interest was outstanding as on 29.03.2014. He thereafter submitted that AO had relied on the decision of Hon'ble Delhi High Court in the case of MM Aqua Technologies Ltd but the aforesaid decision has been overruled by Hon'ble Apex Court in Civil Appeal No 4742-4743 of 2021 vide order dated 11.8.2021 whereby the judgement of Delhi High Court has been set aside and the order of Hon'ble ITAT has been restored. He further submitted that identical issue arose in the case of Commissioner of Income Tax, Chennai Vs Prakash Foods & Feed Mills P. Ltd. T.C.(A). Nos. 775 and 808 of 2014 dated 26.11.2014 wherein the Hon'ble High Court had upheld the opinion of Hon'ble ITAT that overdraft/cash credit accounts are not similar to loan accounts and when the interest amount was paid through overdraft/cash credit account, the disallowance made u/s 43B was set aside. He pointed to the copy of the order placed in the paper book. He also relied on the decision in the case of CIT vs. Shreekant Phumbhra (2016) 387 ITR 523 (Cal). He therefore submitted that the interest on Term Loan claim to having been paid by debit to CC Account results into actual

payment of interest on term loans and interest on CC Limit and LC Limit debited on month to month basis to CC Account and fresh credits in the CC Account more than the amount of interest is debit would result into actual payment of interest and hence no disallowance u/s 43B of the Act is called for. He therefore submitted that when interest on Term Loan has been paid by debit to CC Account it would result into actual payment of interest on term loans and interest on CC Limit and LC Limit more so when the fresh credits in the CC Account are more than the amount of interest debited. He therefore submitted that no disallowance is called for under section 43B of the Act.

8. Learned DR on the other hand supported the order of lower authorities.

9. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the disallowance made by the AO u/s 43B of the Act. Before us, it is the submission of the Ld AR that bank has charged interest on term loan on month to month basis and the same has been recovered by debiting it to the cash credit (CC) account of the assessee. The Ld AR has also contended that the amounts of credits (deposits) in the cash credit account are much more than the amount of interest debited by bank. The aforesaid contentions of the Ld AR have not been controverted by Revenue nor has it been found to be untrue.

10. We find that in the case of CIT vs. Prakash Foods & Feed Mills P. Ltd.(supra) the facts were that the assessee was

maintaining Cash Credit/Over Draft account with the bank. For the assessment years 2004-05 and 2005-06, interest was credited to the said account of the assessee. The Assessing Officer held that the term 'paid' means that the amount should have been actually paid and mere transfer of amount from one account to another account cannot be treated as 'paid' and accordingly, he made disallowance under Section 43B of the Act of the interest amount. The order of AO was upheld by CIT(A). When the matter was carried before Tribunal, the Tribunal allowed the appeals filed by the assessee by holding that the interest amount has actually been 'paid' by the assessee through Over Draft/Cash Credit account and that the interest amount has not been converted into loan or advance. The order of the tribunal was upheld by the Hon'ble High Court.

11. In the case of CIT vs. Shreekant Phumbhra [2016] 387 ITR 523 (Cal), CIT(A) had decided the issue in favour of the assessee by holding that the interest accrued on month to month basis had been paid on month to month basis as the deposit of each month was much more than the corresponding interest debited in respective month and as such no part of such interest remained which could be said to have been converted into any loan or advance as on the close of the previous year so as to be deemed not actually paid. The order of CIT(A) was held by Tribunal and upheld by Hon'ble Calcutta High Court.

12. We are of the view that the ratio of the aforesaid decisions are applicable to the facts of the present case. We further find

that the decision of Hon'ble Delhi High Court in the case of MM Aqua Technologies Limited (supra) which was relied by the AO has been vs. CIT has been overruled by Hon'ble Apex Court. Considering the totality of the aforesaid facts we are of the view that AO was not justified in disallowing the expenses u/s 43B of the Act. We therefore set aside the order of the AO on this issue. **Thus the grounds of the Assessee are allowed.**

13. In the result the appeal of assessee is allowed.

Order pronounced in the open court on 08.09.2021

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Date:- 08.09.2021

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Copy forwarded to:

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

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI