

IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

|                                      |
|--------------------------------------|
| ITA Nos. 3370 & 3371/Bang/2018       |
| Assessment years : 2013-14 & 2014-15 |

|   |     |   |
|---|-----|---|
| Mplex Networks Pvt. Ltd.,<br>No.109, 3 <sup>rd</sup> Floor, K.H. Road,<br>Bengaluru – 560 027.<br><b>PAN: AAFCA 3629K</b> | Vs. | The Assistant Commissioner<br>of Income Tax,<br>Circle 4(1)(2),<br>Bengaluru. |
| APPELLANT   |     | RESPONDENT  |

|               |   |   |
|---------------|---|---|
| Appellant by  | : | Shri Yogesh Joiode, CA                                  |
| Respondent by | : | Shri Priyadarshi Mishra, Addl.CIT(DR)(ITAT), Bengaluru. |

|                       |   |            |
|-----------------------|---|------------|
| Date of hearing       | : | 07.09.2021 |
| Date of Pronouncement | : | 27.09.2021 |

**ORDER**

*Per Chandra Poojari, Accountant Member*

These two appeals by the assessee are directed against the different orders of the CIT(Appeals) both dated 26.10.2018 for the assessment years 2013-14 & 2014-15. Certain grounds are common in these appeals, hence they were heard together and disposed of by this consolidated order for the sake of convenience.

2. The first common ground is with regard to disallowance of interest on the reason that interest bearing funds was utilised for the purpose of capital work-in-progress as follows:-

|               |               |
|---------------|---------------|
| AY 2013-14    | AY 2014-15    |
| Rs.104,32,894 | Rs.204,61,517 |

3. For these assessment years, the AO observed that the assessee is having interest bearing funds as well as interest free funds which is in the ratio of 1:2 in AY 2013-14 and 1.25:1 in the AY 2014-15. According to him, interest bearing funds has been used for the purpose of capital work-in-progress. Accordingly in the ratio of interest bearing funds and interest free funds, he computed the disallowance toward interest bearing funds used for the purpose of capital work-in-progress, which worked out at Rs.104,32,894 and Rs.204,61,517.

4. Before the CIT(Appeals), the assessee pleaded that the ratio between the interest bearing funds to the non-interest bearing funds was roughly 5:1 and at best, interest disallowance to be made in the same ratio. However, the CIT(Appeals) rejected it in view of the fact that assessee in its own admission during the assessment stage admitted that both interest bearing funds and interest free funds were utilized towards work-in-progress. Further, the assessee did not furnish relevant bifurcation of funds for examination by the AO. According to the CIT(A), the assessee's plea made at the first appellate stage before him is in the nature of an after-thought. Accordingly, he rejected the claim of assessee.

5. The Id. AR submitted that the assessee placed necessary material before the CIT(Appeals) to demonstrate that the assessee is having interest free funds to invest in the capital work-in-progress. Therefore, there was no question of utilising interest bearing funds towards capital work-in-progress. Even the ratio worked out by the AO with regard to the interest bearing funds and interest free funds is also incorrect and there is no need to disallow any notional interest on this count. He pleaded to reverse the orders of lower authorities.

6. On the other hand, the Id. DR relied on the orders of the lower authorities.

7. We have heard both the parties and perused the material on record. The main contention of the Id. AR is that assessee is having enough interest free funds to invest in the capital work-in-progress. More so, the ratio worked out between interest bearing funds and interest free funds is wrong. In our opinion, the assessee has to demonstrate that enough interest free funds is available with it to invest in the capital work-in-progress. The CIT(Appeals) observed that it was the assessee's own admission during the assessment stage that both interest bearing funds and interest free funds were utilised towards work-in-progress. The argument of the assessee is contrary to this admission. We are of the view that it is appropriate to remit the issue to the file of AO. Accordingly, we set aside the order of the CIT(Appeals) on this issue and remit the issue to the AO for fresh examination after due opportunity to the assessee with a direction to the assessee to demonstrate that there were enough interest free funds to invest in the capital work-in-progress by producing the necessary cash & fund flow statement, etc. The AO will pass the order afresh in accordance with law.

8. The next common ground is regarding to disallowance of the amount u/s. 36(1)(iv) r.w.s. 2(24)(x) of the Act with regard to employees contribution to the recognized employees provident fund after the due date mentioned in the Provident Fund (PF) Act as follows:-

| AY 2013-14   | AY 2014-15  |
|--------------|-------------|
| Rs.26,86,712 | Rs.2,40,254 |

9. The contention of the Id. AR is that the above payments have made within the due date for filing the return of income u/s. 139(1) of the Act, though it was after the due date prescribed in the corresponding statute.

10. The Id. DR relied on the order of CIT(Appeals).

11. We have heard both the parties and perused the material on record. In our opinion, if the employees contribution towards provident fund has been made by the assessee on or before the due date for filing the return u/s. 139(1) of the Act, though after the due date prescribed in the corresponding statute, the same cannot be disallowed u/s. 36(1)(iv) r.w.s. 2(24)(x) of the Act as held by the Hyderabad Bench of the Tribunal in the case of *Salzgitter Hydraulics (P.) Ltd. V. ITO, 189 ITD 676 (Hyd. Trib)* wherein the issue was decided in favour of the assessee placing reliance on the following judgments:-

- (i) CIT v. Merchem Ltd. [2015] 61 taxmann.com 119 / 235 Taxmann 378 / 378 ITR 443 (Ker)
- (ii) CIT v. Gujarat State Road Transport Corpn. [2014] 366 ITR 170 (Guj)
- (iii) CIT v. South India Corpn. Ltd. [2000] 108 Taxman 322 / 242 ITR 114 (Ker)
- (iv) CIT v. GTN Textiles Ltd. [2004] 269 ITR 282 (Ker)
- (v) CIT v. Jairam & Sons [2004] 134 Taxman 503 / 269 ITR 285 (Ker)

12. Accordingly, this issue is remitted to the file of the Assessing Officer to verify whether the above contribution towards provident fund has been made within the due date of filing the return of income u/s. 139(1) of the Act and thereafter the AO has to pass fresh assessment order.

13. With regard to the next common ground on the disallowance of the amount of Rs.1,91,592 and Rs.2,40,254 for AYs 2013-14 & 2014-15 respectively u/s. 36(1)(v) r.w.s. 2(24)(x) of the Act with regard to employees

contribution to the recognized employees state insurance scheme after the due date mentioned under the specified Act, as discussed in the earlier ground with regard to employees contribution to provident fund, this ground is remitted to the AO with similar directions.

14. The next ground raised by the assessee in ITA No.3370/Bang/2018 for the AY 2013-14 is with regard to disallowance of interest on loan paid to NBFC of Rs.84,21,607 u/s. 40(a)(ia) of the Act where no TDS was deducted at Rs.27,32,393. The AO observed that the assessee paid interest of Rs.84,21,607 to NBFC viz., India Bulls. Since the assessee was required to deduct tax u/s. 194A and failed to do so, disallowance of Rs.84,21,607 by invoking the provisions of section 40(a)(ia) of the Act was made, which was confirmed by the CIT(Appeals).

15. We have heard the rival submissions. The submission of the Id. AR that interest payment made to NBFC was duly accounted by the recipient in their respective return of income. However, the assessee could not furnish necessary documentary evidence in respect of the claim. The Id. AR pleaded that the issue may be remitted to the AO to enable the assessee file the necessary certificates to prove that the recipient has paid tax on this interest received from the assessee. However, the assessee has not placed before us an iota of evidence to show that the recipient has duly accounted this interest received from the assessee and offered the same to tax. In the absence of primary evidence before us, we are not in a position to appreciate the argument of the Id. AR. The disallowance u/s. 40(a)(ia) of the Act is justified and the same is confirmed. This ground of the assessee is dismissed.

16. The next ground by the assessee in ITA No.3371/Bang/2018 for the AY 2014-15 is with regard to disallowance of Rs.18,34,740 u/s. 37 of the

Act with regard to interest on late payment of TDS. This ground was not pressed before us and accordingly the same is dismissed as not pressed.

17. In the result, both the appeals are partly allowed for statistical purposes.

Pronounced in the open court on this 27<sup>th</sup> day of September, 2021.

Sd/-  
( BEENA PILLAI )  
JUDICIAL MEMBER

Sd/-  
( CHANDRA POOJARI )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 27<sup>th</sup> September, 2021.

*/Desai S Murthy/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.