

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.2513/Chny/2018

(निर्धारणवर्ष / Assessment Year: 2015-16)

The Deputy Commissioner of Income Tax, Corporate Circle-I(1) Chennai-34.	Vs	M/s. Amex Garments Pvt.Ltd. 15, AHIM Centre, Nungambakkam, Chennai-600 034.
		PAN: AAACA 4657N
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. AR.V. Sreenivasan, Addl.CIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. S.Sridhar, Advocate

सुनवाईकीतारीख/Date of hearing	:	09.11.2021
घोषणाकीतारीख /Date of Pronouncement	:	30.11.2021

आदेश / ORDER

Per G. MANJUNATHA, AM:

This appeal filed by the Revenue is directed against the order of the learned CIT(A)-1, Chennai dated 21.06.2018 and pertains to assessment year 2015-16.

2. The Revenue has raised the following grounds of appeal:-

"1. The order of the Ld. CIT(A) is contrary to law, facts and circumstances of the case.

2.1 The Ld. CIT(A) failed to appreciate that the assessee was not able to establish the nexus between the business and the loans and the impugned interest to stake a claim of deduction under section 36 of the Act.

2.2 The Ld. CIT(A) failed to appreciate that section 43B of the Act clearly mandates that the deduction under the said section shall be only on actual payment irrespective of the previous year in which the said payment would otherwise be allowable. The provision mandates that all other tests of allowability except that of the time of payment are covered under the said section.

2.3 The Ld. CIT(A) failed to appreciate that for allowing deduction under section 43B of the Act, the requisite condition is that it should have been recorded in the books of account of the previous year to which pertains, prior to making a claim of deduction under section 43B of the Act.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) may be set aside and that of the A.O. restored.”

3. Brief facts of the case are that the assessee is engaged in the business of manufacturing of garments filed its return of income for the assessment year 2015-16 on 28.09.2015 admitting Nil total income. During financial year relevant to assessment year 2015-16, the assessee has claimed deduction for interest paid on loans borrowed from bank on payment basis in terms of provisions of section 43B of the Income Tax Act, 1961. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has not made provision for interest payable to banks in respective financial year on accrual basis and thus, interest

paid on loans borrowed from bank cannot be allowed unless same is provided in books of account on accrual basis. Therefore, he opined that interest paid on loans borrowed from banks is not allowable as deduction and accordingly, made addition of Rs.3.32,96,262/- to total income.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before learned CIT(A). Before the learned CIT(A), the assessee submitted that it has borrowed various loans from Canara Bank, Thousand Lights branch, Chennai and same become NPA as on 31.03.2002. The assessee further stated that bank has classified loans as NPA since 2002 and from that date and until 31.03.2015, there was no transaction in the loan account including interest and thus, the assessee has not provided for any interest on loans in its books of account. It was further submitted that Canara Bank has entered into an assignment agreement on 26.06.2014 for assignment of debt to Edelweiss Asset Reconstruction Companies Ltd. Thereafter, the assessee has settled loan by making one time payment of Rs.5,04,00,000/- as against outstanding loan amount of Rs.1,71,93,738/-. The difference

amount of Rs.3,32,06,262/- has been claimed as deduction u/s.36(1)(iii) r.w.s. 43B of the Income Tax Act, 1961.

5. The learned CIT(A) after considering relevant submissions of the assessee and by relied upon certain judicial precedents, including decision of the Hon'ble Madras High Court in the case of M/s. Chemicals & Plastics India Ltd. Vs. CIT (2003) 260 ITR 193, held that when the assessee has availed loan from bank for the purpose of its business, interest payable in respect of said loan is allowable deduction. Further, said interest was admissible in the respective year to which it pertains, but same was deductible in the year in which such interest was paid to banks in view of specific provisions of section 43B(e) of the Income Tax Act, 1961. Since the assessee has paid interest to banks in financial year relevant to assessment year 2015-16, same is rightly claimed as deduction. Therefore, she opined that the Assessing Officer has erred in disallowing interest u/s.43B of the Act and hence, deleted additions made by the Assessing Officer towards disallowance of interest. The relevant findings of the learned CIT(A) are as under:-

“7. The appellant’s contentions are considered. The first reason cited by the Assessing Officer for disallowing the said amount is that as per the provisions of section 43B, the claim should be otherwise allowable as per the Act. According to the Assessing Officer, as the appellant has not provided in the books of accounts for any interest from assessment year 2002-2003 till the assessment year 2015-16, it cannot be said that the amount was otherwise allowable as per the Act Thus, as per the Assessing Officer, in order to avail deduction u/s.43B on payment basis, the amount claimed should have been provided for in the books of accounts and the claim in this regard should have been made in the respective years even though on the basis of sec 43B they were not, allowable in those years as they remain unpaid. Thus the Assessing Officer has interpreted the term “otherwise allowable under the Act” as requiring the fulfillment of further conditions of making an entry in the books of accounts and also making a claim on due basis in the relevant year even though the amount is allowable on payment basis only during the current assessment year.

8. The Calcutta High Court had occasion to consider a similar issue in the case of Associated Pigment Ltd Vs. CIT (1998) 234 ITR 589. Here, the issue was whether a deduction on account of purchase tax can be allowed in later assessment year on payment basis when those amounts related to an earlier assessment year and the assessee had not made any provision in the books of account of purchase tax in the earlier years to which it relates The Honorable Calcutta High Court in this regard held as under:

In so far as the sum of Rs 2,06,589 was concerned, the Tribunal was not pleased to uphold the allowance of deduction on the ground that in the relevant accounting year provision had

apparently not been made by the assessee in regard to the payment of this purchase tax.

Therefore the entire matter was sought to be remanded for examination as to how the matters had been dealt with by the assessee, in the relevant books, irrespective of the fact that the assessee had paid the total sum of Rs. 3,30,284 in the assessment year in question in which deduction was claimed in regard thereto on the basis of the then introduced section 43B.

Very simply put, our opinion is that there is no part of this section or the Income-tax Act itself which requires that when deduction is claimed on the basis of section 43B, the assessee must satisfy the twin test of both proving actual payment of the due tax or cess in the previous year in question as well as satisfying the Department that due provision had been made in the books in regard to such duty or tax for which payment was made later on.

To introduce this double test would be writing words into the section which neither the Tribunal nor the court is entitled to do. In other parts of the Act, where provision in the books is given a special status, and that is specifically called for but section 43B is not one such section.

The Tribunal therefore, went wrong in law in seeking to open up an enquiry as to the way provision had been made in the books of the assessee in regard to this total sum of Rs. 3,30,284. They also made an error of law in seeking to remand that part of the order which had come before them, if we might use the expression, unchallenged after appeal.

Accordingly both the questions are answered in favour of the assessee. The Tribunal was not correct in directing consideration afresh of the entire payment of Rs. 3,30,284 nor was the Tribunal law in holding that where mercantile system is followed deduction of tax under section 43B is impermissible unless provision was made in the year in which the liability for tax accrued or arose.

We put it on record only for the purpose of completeness, that the matter was once heard before the reference Bench and it is the contention of the assessee that when judgment was

delivered in open court the indications were that both the questions had been, answered in the negative and, therefore, in favour of the assessee, but when the written judgment actually became available as it had appeared that one of the questions had been answered against the assessee. But as that earlier judgment has been recalled we pass the order afresh, this time holding in favour of the assessee on both the issues.

9. *In the case of Chemicals & plastics India Ltd Vs. CIT (2003) 260 ITR 193 (Mad), the jurisdiction High Court had occasion to consider the claim u/s.43B in respect of custom duty paid on raw material which was carried forward as finished goods in the P&L Account. The Honourable Madras High Court allowed the deduction on payment basis in respect of the entire amount paid during the year irrespective of the fact that part of the amount paid was included in the value of the closing stock held at the end of the year. It was held that in view of the specific mandate of section 43B, once the custom duty was paid during the year, the same was admissible as deduction irrespective of the fact that the amount paid has not been separately shown in the P & L Account. The Court held that the deduction cannot be denied merely because the assessee had not shown the amount paid under a separate head and had instead included it in the valuation of the current assets. The relevant part is extracted below:*

The assessment year is 1984-85. The assessee is engaged in the manufacture of Poly Vinyl chloride, rigid PVC pipes and fittings and other items. The assessee had, in the previous year corresponding to the assessment year 1984-85, imported materials required for the manufacture of the assessee's products. The assessee had paid import duty of Rs. 35,09,826. According to the assessee the cost of the imported materials inclusive of duty was taken to the profit and loss account only on consumption basis. The balance of import duty of Rs. 11,58,833 paid on the raw materials held as closing stock,

was taken into the balance sheet and shown as part of current assets. Schedule 15 of the balance sheet set out the current assets, loans and advances, In that schedule, under the heading "Inventories" value of raw materials held in stock was shown. The value of the raw materials stated therein, according to the assessee, includes this stun of Rs. 11,58,833/-.

Similarly excise duty paid on finished goods held as closing stock was shown as part of the inventory under the current assets in the balance sheet.

The assessee's claim under section 43B of the Act for deducting the actual customs duty and excise duty paid on the stock of raw material and finished goods was negated by the Assessing Officer, the Commissioner and finally by the Tribunal, all of whom took the view that as the amounts paid towards customs duty and excise duty had not been shown separately in the profit and loss account, the deduction could not be given.

Section 43B of the Act which provides that certain deductions to be only on actual payment opens with a non-obstante clause in relation to any other provision in the Act, and provides, inter alia that any sum payable by the assessee by way of tax, duty, cess or fee, by whatever names called, under any law for the time being in force shall be allowed irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him, only in computing the income referred to under section 28 of that previous year in which that sum is actually paid by the assessee. The first proviso permits such payment being made even after the close of the previous year, but prior to filing the return of income under section 139(1) of the Act.

The assessee therefore, is entitled to the deduction of the amount of duty paid in the year in which the payment was made. The fact that part of the customs duty was paid in respect of raw materials which remained with the assessee at the end of the rear would not deprive the

assessee of the benefit of claiming the deduction in the year in which duty had been actually paid, So also the right of the assessee to claim deduction for the amount of excise duty paid in the year in which it was paid is unaffected by the fact that part of the duty paid was in relation to finished goods which remained with the assessee at the end of the year.

Section 43B does not stipulate that before an assessee could claim deduction in that year, the assessee should have shown the amounts paid towards duty under a separate head and that the inclusion of the duty element in the valuation of the current assets would disentitle the assessee from claiming the deduction under section 43B.

The fact that the duty paid was not charged to the profit and loss account by itself would not disentitle the assessee from claiming deduction under section 43B. It is open to the assessee to file an adjustment statement before the Assessing Officer. Learned counsel for the revenue submitted that the duty paid is a legitimate charge on the gross profits when the gross profits has been properly ascertained by valuing closing stock as also the opening stock including therein the duty paid on such stock.”

10. *The decision of the Madras High Court has been upheld of the Hon'ble Supreme Court in the case of Berger Paints India Ltd Vs.CTT (2004) 266 ITR 99. The TTAT in the case of ACIT Vs. Mangalam Cement Ltd (2017) 78 taxmann.com 234 (Jaipur-Trib) had occasion to consider claim u/s.43B when no entry was made in books and the liability, was also being disputed by the appellant. The ITAT held as under:*

“We have heard the rival contentions and pursued the material available on record The demand of service tax of Rs. 13,59,941/- was paid on 09.06.2007 as per CESTAT order dt. 16.04.2007, The Land tax of Rs. 54,30,165/- was paid on 29.10.2007 & land tax of s. 19,36,850/- was on 27.10.2007 in

view of the order of Honble Rajasthan High Court dt. 10.10.2007. Further, the land tax of Rs. 54,30,165/- was paid on 07.02.2008 as per the order of Hon'ble Rajasthan High Court dt. 01.11.2007. The service tax and land tax are statutory liabilities which are paid during the year as per the order of the CESTAT and Hon'ble Rajasthan High Court. These are statutory liabilities which pertain to the business carried on by the assessee. The assessee cannot be denied a deduction in respect of these payments merely on account of the fact that these are payments in respect of matters which are contested before the authorities and no expenditure is book in the profit and loss account, The decision of ore Delhi High Court in case of Dharampal Satyapal Sons (supra) supports the case of the asessee. In light of above, we upheld the order of the Id CIT(A) in deleting the disallowance of Rs.1,41 57,121/- u/s 43B made by the AO. In the result, the ground taken by Revenue is dismissed.

Thus it is held that the amounts covered u/s.43B are to be allowed n payment basis and the fact that they are not specifically charged to the P&L Account would not disentitle the assessee from claiming the said amount, Respectfully following the same, this objection of the Assessing Officer is rejected.

11. As regards the second reason cited by the Assessing Officer that the appellant had not utilised the loan for the purpose of its business, it is found that this conclusion of the Assessing Officer is based on certain remarks made by the Bank at the time of conducting stock audit. On the other hand, reference to the Balance sheet of the appellant during the intervening period shows that the amount of loan availed by the appellant remained invested in the business and therefore the Assessing Officer's contention that it has been utilised for non business purposes appears to be incorrect. In view of the same this argument of the Assessing Officer is rejected.

12. As the loan availed by the appellant from Canara Bank has been utilised for the purpose of its business, the interest payable in respect of the same is allowable deduction. The said deduction was

admissible in the respective years to which it pertained but the same was not allowable in those years as no payment of the interest was made in those years. The fact that no accounting entry creating a provision for interest was passed in the books of accounts is not detrimental, to the appellant's claim being made in the relevant assessment year. The claim of the appellant is therefore in accordance with the mandate of section 43B and is hence an admissible deduction. The grounds of appeal of the appellant are therefore allowed."

6. The learned DR for the Revenue submitted that learned CIT(A) has failed to appreciate fact that the assessee was not able to establish nexus between business and loans and impugned interest claimed cannot be allowed u/s.36(1)(iii) of the Income Tax Act, 1961. The learned DR further submitted the learned CIT(A) failed to appreciate that provisions of section 43B of the Act clearly mandates that deduction under said section shall be only on actual payment irrespective of previous year in which said payment would otherwise be allowable. The learned CIT(A) failed to appreciate fact that for allowing deduction u/s.43B of the Act, requisite condition is that it should have been recorded in books of account of the previous year in which it pertains, prior to making claim of deduction u/s.43B of the Act.

7. The learned AR for the assessee, on the other hand, supporting order of the learned CIT(A) submitted that as per provisions of section 43B of the Act interest on term loans borrowed from bank is deductible on payment basis, in the year in which such interest was paid and hence, the assessee has rightly claimed deduction for interest on loans paid to bank for the impugned assessment year, when said interest has been actually paid to banks. The learned CIT(A) after considering relevant facts has rightly deleted additions made by the Assessing Officer and his order should be upheld.

8. We have heard both the parties, perused material available on record and gone through orders of the authorities below. We have also carefully considered reasons given by the learned CIT(A) to delete additions made by the Assessing Officer towards disallowance of interest paid to bank u/s.43B of the Income Tax Act, 1961. As regards first contention of the Revenue insofar as nexus between loans borrowed from bank and business activities of the assessee, the learned CIT(A) has recorded categorical finding that loans have been borrowed for purpose of business of the assessee and hence, there is no

merit in the ground taken by the Revenue to challenge nexus between loans and its utilization in business of the assessee. As regards contention of the Revenue with regard to applicability of section 43B of the Income Tax Act, 1961, we find that as per provisions of section 43B(e) of the Act, interest on loans borrowed from banks and financial institutions is deductible on payment basis in the year in which such interest was actually paid to banks. The contention of the Revenue that before making claim for deduction, the assessee ought to have been recorded such interest in books of account of the assessee for the previous year to which said interest pertains, we find that as per mandate of provisions of section 43B of the Act, deduction is allowable in respect of sum paid including interest as per sub-section (e) of section 43B of the Act, is allowed only on actual payment basis in the year in which such interest has been actually paid to banks or financial institutions.

9. In this case, the learned CIT(A) has recorded categorical finding that the assessee has borrowed loan from Canara Bank, Thousand Lights branch, Chennai before 31.03.2002 and said

loans become NPA in the year 2001-02. The learned CIT(A) has recorded further facts that the bank has classified those loans as NPAs and not provided for any interest from 31.03.2002 and until 31.03.2015. It was further noted that bank has assigned debt in terms of assignment agreement dated 26.04.2014 and assigned total debt due from the assessee company to Edelweiss Asset Reconstruction Companies Ltd. It was further noted that the assessee has settled outstanding debts by making one-time payment of Rs.5,04,00,000/- as against outstanding balance of Rs. 1,71,93,738/- and difference amount of Rs.3,32,06,262/- has been accounted as interest payable on loans. The assessee had claimed deduction for said interest u/s.36(1)(iii) on payment basis in terms of provisions of section 43B(e) of the Income Tax Act, 1961. The learned CIT(A) after considering relevant facts and also by following certain judicial precedents, including decision of the Hon'ble Madras High Court in the case of M/s. Chemicals & Plastics India Ltd. Vs. CIT (supra), had held that once loan availed from bank has been utilized for the purpose of its business, interest payable in respect of said loans is allowable

as deduction. The learned CIT(A) further recorded that deduction towards interest was admissible in respective year to which it pertains, but same was allowable only on payment basis in terms of section 43B of the Act. Since the assessee has made payment of interest on loans for impugned assessment year, it has rightly claimed deduction towards said interest on payment basis, as per provisions of section 43B of the Act. The findings of fact recorded by the learned CIT(A) in light of facts brought out by the Assessing Officer and arguments advanced by the learned A.R for the assessee is in accordance with provisions of section 43B of the Act, which was further supported by decision of the Hon'ble Calcutta High Court in the case of Associated Pigment Ltd. Vs. CIT (1998) 234 ITR 589, where the High Court has considered similar issue and held that even though the assessee has not made any provision in books of account in respect of purchase tax in the earlier year to which it relates, but same is deductible on payment basis in terms of provisions of section 43B of the Act. The Revenue has failed to bring on record any evidences to counter findings of fact recorded by the learned CIT(A) nor

bring on record any decision in favour of the Revenue to support its arguments that before claiming deduction on payment basis in terms of section 43B of the Act, the assessee needs to record such interest in the previous year to which such interest pertains. Therefore, we are of the considered view that there is no error in the reasons given by the learned CIT(A) to delete additions made by the Assessing Officer towards disallowance of interest paid to bank u/s.43B of the Income Tax Act, 1961. Hence, we are inclined to uphold findings of the learned CIT(A) and dismiss appeal filed by the Revenue.

10. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 30th November, 2021

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President

Sd/-
(जी. मंजुनाथ)
(G. Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 30th November, 2021

DS

प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.