

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.4665/M/2019
Assessment Year : 2011-12**

M/s. MAPE Advisory Group Pvt. Ltd., 13/14, 1 st Floor, Nirlon House, Dr. Annie Besant Road, Worli, Maharashtra – 400 030 PAN No. AACCM8193M	DCIT 5(2)(2), Room No.571, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)	(Respondent)

Present for:

Assessee by : Shri Vijay Shah, A.R.
Revenue by : Shri Raghuv eer Madana, D.R.

Date of Hearing : 15.11.2021
Date of Pronouncement : 23.11.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 30.04.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. There are two issues raised by the assessee in the grounds of appeal. One is against the order of CIT(A) upholding the addition of Rs.11,80,119/- as made by the AO u/s 36(1)(iii) of the Act towards interest on loans to subsidiary and second is whether there was mistake apparent from records and assessee could take recourse of provisions of section 154 of the Act for rectification thereof.

3. The facts in brief are that the AO, during the course of assessment proceedings, noted that assessee has advanced interest free loan to subsidiary company amounting to Rs.1,36,23,329/- whereas on the other hand it has borrowed interest bearing funds and paid interest of Rs.11,80,119/- during the year. Accordingly the AO issued show cause notice to the assessee as to why the proportionate interest on the loan to subsidiary should not be disallowed and added to the income of the assessee. The assessee replied the show cause notice vide letter dated 3.3.2014 by submitting that there have been inter corporate transfer of funds between the assessee and its subsidiary Mape Security P Ltd. out of commercial and business expediency. The assessee also referred to the disclosure made in the annual accounts to the effect. The assessee also filed a calculation sheet of interest which showed that if the transaction for the entire year are taken into account then the interest works out to be payable to the subsidiary and not receivable. However the AO overlooked this factual aspect qua the interest and applied interest rate of 12% on Rs.1,36,23,329/- the amount

outstanding at the year end and thus calculated the interest receivable from subsidiary at Rs.16,34,800/- which is an apparent mistake in the order. However since the assessee has claimed interest only of Rs. 11,80,119/-, the disallowance was restricted to that amount and added the same to the income of the assessee in the assessment framed u/s 143(3) of the Act dated 19.03.2014. Thereafter the assessee moved a rectification petition before the AO however the same was rejected on the ground that there no apparent mistake in the order and hence the assessee is in appeal before us.

4. In the appellate proceeding, the ld CIT(A) also upheld the order of AO that proceedings u/s 154 of the Act does not lie in this case as there is no apparent mistake and thus dismissed the appeal of the assessee.

5. After hearing both sides and perusing the material on records, we note that the rectification application u/s 154 of the Act has been filed by the assessee seeking rectification of mistake which has occurred while calculating the interest on loan to subsidiary. We note that there were transfer of funds from both sides i.e. from the assessee to the subsidiary and from the subsidiary to the assessee however at the financial year end, net payable to the assessee was Rs.1,36,23,329/-.We have also examined the overall calculation of interest and find that if the cross transactions are taken into consideration for the whole year, then instead of interest receivable, there comes out to be interest payable by the assessee. So certainly the rectification application moved by the assessee was maintainable

which was summarily rejected by the AO and so by the Id CIT(A). Therefore considering the facts of the case we are unable to agree to the conclusion drawn by the Id CIT(A) on this issue. Accordingly we set aside the order of Id CIT(A) direct the AO to delete the disallowance of Interest of Rs.11,80,119/-. The appeal of the assessee is allowed.

6. At the time of hearing the Id AR also pointed out that assessee has there was second issue in the rectification application moved by the assessee before the AO qua allowing the credit of TDS of Rs.10,04,793/- deducted by M/S Tamilnadu Petroproducts Ltd and TDS of Rs.55,150/- deducted by Karvy Stock Broking Ltd aggregating to Rs.10,59,943/- on the ground that the income have been offered to tax in this year. The AO rejected the rectification application on the ground that the as per form 26AS TDS payment are not reflected in AY 2011-12 but appearing form 26AS for AY 2012-13.

7. The Id CIT(A) did not adjudicate the issue though it was reference for there in the appellate order.

8. After considering the rival contentions of both sides and perusing the materials on records, the undisputed facts are that the assessee has returned the income received from M/S M/S Tamilnadu Petroproducts Ltd on which TDS of Rs.10,04,793/- was deducted and similarly income received from Karvy Stock Broking Ltd as also returned on which TDS of Rs.55,150/- was deducted by Karvy Stock Broking Ltd. However the deductors deposited the TDS in the next year and thus it was appearing in the form 26AS of AY 2012-13. In

our opinion the assessee should be allowed the benefit of TDS in the current year in which income is offered to tax irrespective of the year in which it was deposited by the deductor. Even this treatment is in accordance with the provisions of section 199 of the Act. Accordingly we direct the AO to allow the credit of TDS of Rs.10,59,943/- in the current year. The issue raised by the assessee is allowed.

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

Order pronounced in the open court on 23.11.2021.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 23.11.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.