

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

Before Sh. A. D. Jain, Vice-President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 5846/Del/2018 : Asstt. Year : 2015-16

Matrix Cellular Services Pvt. Ltd., 7, Khullar Farm, Mandi Road, Mehrauli, New Delhi-110030 (APPELLANT)	Vs	DCIT, Circle-16(2), New Delhi (RESPONDENT)
PAN No. AABCM9420A		

**Assessee by : Sh. A. K. Khanna, CA
Revenue by : Ms. Alka Gautam, Sr. DR**

Date of Hearing: 07.12.2021	Date of Pronouncement: 08.02.2022
------------------------------------	--

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-6, New Delhi dated 04.07.2018.

2. Following grounds have been raised by the assessee:

"1. DCIT Circle 16(2) erred law by disallowing interest payment of Rs. 96,98,713/- on loan of Rs. 16,76,91,624/- from Matrix Cellular International Services Ltd.

2. The learned Assessing officer erred in law by questioning decision of not paying interest in earlier years but paying the same for the year.

3. The Assessing Officer Totally ignored the fact that by paying interest of Rs. 96,98,713/- to Matrix Cellular International Services Ltd. The assessee got waiver Rs.6,61,33,424/- from them.

4. The Assessing Officer totally ignored the fact that the interest payment of Rs. 96,98,713/- was for business purposes only.

5. The Assessing Officer totally ignored the agreement between the assessee and Matrix Cellular International Services Ltd. For waiver of interest up to F.Y. 2013-14"

3. The facts of the case are that return of income was filed on 29.09.2015 declaring total loss of Rs. 78,80,671/-. The assessee company was engaged the business of renting out of handsets and SIM cards.

4. The Assessing Officer noted that during the year under consideration, the assessee company had shown short-term borrowing amounting to Rs.31,33,22,873/ - as on 31.03.2015 and Rs.16,87,01,831/- as on 31.03.2014 and had paid interest expenses of Rs. 96,98,713/- which was claimed to be paid to Matrix International, a group concern. The loan was from group concern and was interest-free advance in earlier years as claimed by the assessee and the assessee had not claimed any interest on financial charges in the earlier year also. Copy of the loan agreement was submitted to the AO in which Matrix Cellular Services International had agreed to waive an amount of Rs.6,19,08,754/- on condition that the balance of Rs. 17.70 crores would be paid back to them subjected to conditions. The assessee submitted calculation of interest of Rs. 96.98 lakhs which was credited to the account of Matric Cellular Services International. It was noted that the interest was worked out for statistical purpose and no outgo finance was involved on account of the interest. Vide order sheet entry dated 08.12.2017, the assessee was asked to show cause as to why interest has been charged only for the year 2014-15 when loan was already with the company from previous year as well and whether interest was actually paid or not. The assessee was also asked to explain why the provision of the agreement specifically contained interest payment only for assessment

year 2015-16. In response, it was submitted that interest at the rate of 10% was charged on outstanding balance after waiving of loan of Rs. 6,61,33,424/-. Since, the assessee did not have any income in the last four years, no interest was charged by Matrix Cellular Services International and that the assessee paid interest of Rs. 96.98 lakhs settlement account with Matrix Cellular Services International. It was also submitted that interest was legitimately paid for business purpose and tax was deducted at source. The AO noted that the assessee had not shown any revenue from operations even for the present assessment year and thus there was no change of circumstances with respect to earlier years.

5. The Assessing Officer observed that the contention of the assessee was not substantiated as assessee had failed to furnish justification as to on which account the interest was actually incurred in the year and also failed to submit the utilization of loan and why such interest was not paid or credited to the account of Matrix Cellular Services International in earlier years.

6. It was concluded that the assessee had failed to submit utilization of fund and its nexus with loan taken with business. It was also held that the assessee had failed to demonstrate that which funds were utilized and how the same were linked to the interest expense for tire year under consideration. It was also noted that the assessee had failed to file bank statement showing evidence of utilization of loan proceeds when such loan was taken. The AO also held that even the agreement talked of the waiver of interest amount and, therefore, there was no reason for granting deduction of interest expenses of Rs.96,98,713/- which has actually not been paid but only

adjusted through book entry. Hence, disallowance of Rs. 96,98,713/- was made u/s 36(1)(iii).

7. Relying on the provisions of section 36(1)(iii) and the decision of the Hon'ble Gujarat High Court in the case of Sarabhai Sons Pvt. Ltd. vs. CIT (201 ITR 465) and the decision of the Hon'ble Madras High Court in tire case of CIT vs. Sujani Textiles Pvt. Ltd. (151 ITR 653), the AO held that the assessee was not eligible for deduction under section 36(1)(iii).

8. The Id. CIT(A) confirmed the addition holding that the assessee failed to establish any direct nexus between own funds vis-a-vis interest free loans and advances given.

9. During the arguments before us, the Id. AR relied on the submissions made before the revenue authorities. The relevant part is as under:

Matrix Cellular Serviced Pvt. Ltd. was formed on 17.11.1999 to carry on the business of services provider to essar Vodafone by getting new mobile connections manage their complaint, collect mobile usage payment from its customers and pay to Vodafone for the connection made through it irrespective of whether customers pays his bill or not. In a way they were acting as delcredel agent.

Over the period Matrix Cellular Pvt. Ltd. had created large customer base and the company also started selling SIM Cards of foreign network and the business grew very fast due to large customer base of Vodafone which included large corporate, houses, their employees, individuals etc and the company was making good profits on foreign SIM card business.

To keep check over working & viability of Domestic business it was decided to form separate company "Matrix Cellular International Services Pvt. Ltd." to exclusively do the business of foreign network SIM card thus Matrix cellular International Services Pvt. Ltd. was formed on 17.11.2005 to do business of International SIM cards for travelers outside India.

The Company Matrix Cellular (International) Services Pvt. Ltd. in short MCIS Was Utilizing infrastructure and brand image of Matrix Cellular and started making good profits from very 1st year itself.

In the mean while the profit liabilities of Matrix Cellular Services Pvt. Ltd. in short MCS started going down due to cut in the commission and down ward charges of Domestic cell phone. Since the infrastructure was common MCS could not reduce overhead as it would have affected the business of MCIS. This could be verified with MOU between MCS & MCIS Matrix Cellular.

International Services Pvt. Ltd. and Matrix Cellular Services Pvt. Ltd. entered into a MOU on 1st April 2008 for sharing of expenses for utilization of common premises, services and manpower & infrastructure. In the processed MCIS advanced money to MCS for meeting business expenses.

As on Feb 2011, CX Partners invested in MCIS. MCS owed MCIS Rs.22.45 crore which was secured in by putting shares in Escrow (Refer 11.18 of the shareholders agreement)

As at year end March 31, 2012, Rs. 24.01 Crores was payable by the assessee to Matrix Cellular International Services Ltd. The amount was secured by 1,700,000 shares (after

considering effect of consolidation and bonus shares) of MCIS in an escrow account. In the event MCS fails to pay the outstanding amount to the company on or prior to October 31, 2012 (original date of July 31, 2012 extended tide board meeting held on July 13, 2012), the investor shall have the right (though not the obligation) to require the existing shareholder to sell/transfer the escrow shares to the investor at a price of Rs. 102.31 Per share.

In the event the investor is unable to purchase the entire escrow shares or the investor decided not to purchase the escrow shares for any reason whatsoever, then the investor shall have the right to require the existing shareholder to transfer the escrow shares to a third party buyer as determined either by the; (a) investor; or (b) existing shareholders and as acceptable to the investor.

Accordingly, Rs.17.39 Crores Mn (Being the estimated realizable amount on sale of escrow shares) has been considered good of recovery and balance Rs. 6,61,34,424/- Mn has been provided as doubtful of recovery in the financial year 2011-2012.

(As on 5th June 2013 another agreement was made between Matrix Cellular International Services Ltd. and the assessee where the assessee was to pay Rs.17,70,00,000/- plus interest compounded @ 10% but due to no business by the assessee, the interest was waived till March 2014.)

In Financial year ended 31st March 2015, the assessee company paid of Rs. 11,21,00,000/- to Matrix Cellular International Ltd. which included interest of Rs.96,98,713/- and Rs.6,61,34,424/-

was waived by Matrix Cellular International Services Ltd. to square up the balance.

*.....
The Assessing Officer has failed to appreciate that by paying interest of Rs. 96,98,713/- to Matrix Cellular International Services (P) Ltd., it could get waiver of loan of Rs.6,19,08,754/- from tire same party. This, waiver of loan has been shown as income in the books of the assessee and beneficial and in the Interest of the assessee.*

The learned Assessing Officer has failed to appreciate note 29 to the Balance Sheet of Matrix Cellular International Services Ltd. which reads as under the company has in financial year March 2012 created a provision of Rs. 66.13 million towards loan considered doubtful of recovery. The Company in financial year ended 31st March 2014 had received Rs. 70 million from MCS (assessee). Further during the year financial year ended 31st March 2015, the company received Rs. 112.10 million towards repayment of loans and interest for the period 1st April 2014 to 31st March 2015 and has written off the provision of Rs.66.13 million made during financial year 2011-12 also shares held under escrow have been released. The Interest amounts till 31st March 2014 have been waived off by the Board of Directors.

Thus, the interest upto 31st March 2014 have been waived off by MCIS the same was not claimed as expenditure by the assessee. As per MOU between assesses and matrix Cellular International Services Ltd. dated 5th June, 2013, it was clearly mentioned that the assesses had to pay compound interest of 10% on outstanding, loan of Rs.17,70,00,000/- but due to penalty of fund the same was waived of up to 31.03.2014 (as per note 29 of balance sheet of Matrix cellular international

services LTD). The Assessing Officer totally ignored the fact that the losses of the assesses at the beginning of the year was Rs.23,43,80,509/- which were met by borrowing.

As per letter dated 12.12.2017 the assesses submitted interest of Rs.97,03,127/- calculated by it where as m/s matrix cellular international services had charged interest of Rs.96,98,713/- as per calculation enclosed this being beneficial to the assesses accepted and paid interest of Rs. 96,98,713/- on which TDS of Rs.9,69,872/- was deduced and paid.

In view of the fact that interest of Rs. 96, 98,713/- on loan was beneficial to the company as it got waiver of loan of Rs.6,61,34,424/- which has been shown as income and offered for tax by the assesses it is such expenditure is for the purpose of the business of the company & is allowable u/s 36(1)(ii).

10. The matter before us has two folds.

11. The assessee contended that by paying interest of Rs.96,98,713/-, the assessee got a waiver of Rs.6,61,34,424/-. The revenue disallowed the interest on the grounds that whether the loan received was for the purpose of business, if so, the proofs and evidences thereof to support the utilization of such loan so that the interest paid can be treated as an eligible deduction and since the assessee failed to prove, the interest is disallowable. While the assessee's contention is that the entire transactions should be viewed holistically, the revenue's contention was that every expense claimed to be allowed has to be utilized for the purpose of business. It was also held that the assessee had failed to demonstrate the utilization of the fund and its nexus with loan for the purpose of business. The assessee has submitted that payment of

interest was beneficial to the company since it got waiver of loan of Rs. 6,61,34,424/-.

12. We have considered the assessment order and the submissions of the assessee. As was the case during assessment proceedings, even during the appellate proceedings the assessee has failed to establish the nexus of the loan taken with the business. It has been submitted that the assessee company has earned interest income of Rs. 22,74,128/- on loan and advances of Rs. 5,25,64,553/-. It is to be noted that the interest on such loans and advances is less than 5%, whereas interest has been paid almost @10% on the loan taken. Further, the assessee has also failed to demonstrate the fund flow for paying of the loan on taking the loan from director. No cogent evidence has been submitted as to how the loan taken as well as the loan given was for business purposes.

13. The assessee relied on the case of CIT Vs. Dhanrajgirji Raja Narasinghirji 91 ITR 544 (SC) wherein it was held that the department cannot prescribe what the expenditure assessee should incur. In the instant involves the issue whether the expenditure incurred was for business purpose or not, which has not been proved by the assessee. The decision of the Hon'ble High court in the case of Dalmia Cement 254 ITR 377 dealing with the issue of Section 37(1) allowances held that there was a nexus between expenditure and the purpose of the business. In the instant case, the expenditure of interest for which the loan has been received has not been shown to be for the purpose of the business. We are not swayed by the observation of the Assessing Officer that earlier year, no interest has been paid but interest has been paid in the current year only. Even, before us, no evidences have been provided to

prove that the loan received earlier was utilized for the business purpose which makes the interest paid or payable allowable under the provisions of Section 36(1)(vii). The arguments that there was no outgoing fund on the contrary, the assessee was a net gainer in form of waiver cannot be considered as a tenable claim. The payment of interest on the loans which have not been proved to be for business purpose and the waiver of the loan are not interrelated but are mutually exclusive. Hence, we decline to interfere with the order of the Id. CIT(A).

14. In the result, the appeal of the assessee is dismissed.
Order Pronounced in the Open Court on 08/02/2022.

Sd/-

(A. D. Jain)
Vice President

Dated: 08/02/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR