

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 238/Mum/2021

(A.Y: 2016-17)

Excel industries Ltd 184-87, Excel Estate, SV Road, Jogeshwari (West)Mumbai – 400102	Vs.	The CIT-CC 6(3) 19 th Floor, Air India Bldg, Nariman Point, Mumbai – 400 021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACE2488F		
Appellant	..	Respondent

Appellant by :	Mr.Kirit Kamdar. AR
Respondent by :	Mr.Ajay Kumar. DR

Date of Hearing	13.01.2022
Date of Pronouncement	19.01.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the CIT(A)-54, Mumbai passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal.

- 1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the action of the AO in disallowing a sum of Rs. 1,00,50,000/- out of interest paid attributable to loan to a subsidiary.*
- 2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the action of the AO in levying an amount of Rs. 5,42,910/- on account*

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of interest u/s 115P for dividend distributed under section 115-O, for which dividend distribution tax had already been paid.

3. On the facts and in the circumstances of the case and in law, the CIT(A) erred in not adjudicating the ground on additions made to book profits u/s 115JB.

2. The Brief facts of the case are that, the assessee company is engaged in the business of manufacturing of chemicals, environmental products, chemicals, comprising of industrial, specialty chemicals and pesticides intermediates etc. The assessee has filed the return of income for the A.Y 2016-17 on 17.10.2016 with a total income of Rs. 23,92,43,730/- and the Book profits computed u/s 115JB of the Act of Rs. 36,36,98,092/-. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance to the notice the assessee has submitted the details. The A.O on perusal of the balance sheet as on 31.03.2016 found that the assessee has disclosed the capital work-in-progress of Rs.3,19,36,769/-. The A.O has called for the details and the nexus of source of funds which were utilized for capital expenditure before the assets are put to

use and the proportionate interest expenses to be treated as capital expenditure.

3. Whereas the assessee has filed a letter on 14.12.2018 referred at Para 3 of the A.O order explaining the nexus of capital expenditure and sources of funds.(i) Whereas the A.O found that in the A.Y.2015-16 similar issue was dealt and proportionate interest expenses are treated as capital expenditure and depreciation on such disallowance was allowed once the assets are put to use in the subsequent year and disallowed Rs. 23,05,497/- in the current Asst year.(ii) On the second disputed issue, the A.O made disallowance u/s 14A r.w.r 8D(2) of the IT Rules of Rs. 17,20,492/-(iii) The A.O. found that the assessee has claimed Rs.8,69,759/- as bad debts written off during the year. The assessee has filed the information explaining the summary of bad debts written off accounts and the CBDT circular but the A.O has not accepted the assessee's submissions in respect of debit balances of receivables and the security deposit of Rs. 6,53,152/-was disallowed (iv) the A.O. observed that the assessee has diverted the interest bearing borrowed funds for non business

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purpose. The assessee has advanced the loan to its subsidiary company M/s. Kamaljyot Investments Ltd of Rs. 8,40,00,000/- and no interest is charged. The assessee has filed the explanations on internal accrual of funds and commercial expediency and benefits to the assessee.

4. The A.O has considered the earlier year assessment records and found that the interest expenses component has been estimated between the average rate i.e 12% to 15%. The A.O. has estimated interest at 12%, as the assessee has utilized borrowed funds for non business purpose loan to M/s. Kamaljyot investment and disallowed Rs.1,05,00,000/- u/s 36(1)(iii) of the Act and finally assessed the total income of Rs. 36,36,98,092/- and the income assessed as per book profit u/sec 115JB of the Act Rs. 37,88,42,244/- and passed the order u/s 143(3) of the Act dated 17.12.2018.

5. Aggrieved by the order, the assessee has filed a appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee, and the findings of the Assessing officer. In respect of disallowance of the interest expenses

attributed towards capital work-in-progress, the CIT(A) has followed the earlier year order in assessee's own case and directed the A.O to delete the addition. Similarly, the CIT(A) has granted relief to the assessee in respect of disallowance u/s 14A r.w.s 8D(2) of the Rules and directed the A.O to recompute the disallowance u/s 14A of the Act considering the investments which yielded exempt income. On the disputed issue of disallowance of bad debts, the CIT(A) has granted relief relying on the Hon'ble Supreme Court decision in the case of TRF Ltd Vs. CIT, 323 ITR 397(SC) and directed the A.O. for the deletion. Whereas in the other grounds of appeal including disallowance of interest attributed to loan of subsidiary company the CIT(A) has confirmed the addition and dismissed the grounds of appeal and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before Honble Tribunal.

6. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the A.O by disallowing the interest attributed to loan given to subsidiary company without considering the

fact that the loan was provided for business purpose and there exist commercial expediency. On the second disputed issue, the CIT(A) has erred in confirming the action of the A.O in levying interest u/sec 115P of the Act of Rs. 5,42,910/- on dividend distribution tax paid. In respect of additions made by the A.O in calculation of Book Profits u/sec 115JB of the Act the CIT(A) has not adjudicated the ground of appeal. The Ld.AR substantiated his submissions with the judicial decisions and Coordinate Bench of the Tribunal decisions. Contra, the Ld.DR supported the order of the Ld. CIT(A).

7. We heard the rival submissions and perused the material available on record. The Ld. AR submitted that the assessee has provided interest free loan to its subsidiary company out of its own funds and on commercial expediency. The Ld. AR emphasized that the interest which is attributed to the loan provided to the subsidiary company was allowed in earlier years in assessee's own case and supported the submissions with the Honble Tribunal decisions. The Ld.AR demonstrated the annual report, where the facts of own funds and loan provided to the

subsidiary company was disclosed. We find the submissions of the Ld.AR are realistic and the own funds of the assessee as on 31.03.2016 are Rs. 20,706.30 lakhs whereas the loan given to the subsidiary company of Rs.1,140 lakhs. The Ld.AR relied on the catena of judicial decisions where the own funds are more than borrowed funds and the portion of disallowance of interest charged by the A.O does not hold good and the submissions of the Ld.AR are supported with the Audited financial statements. We find that the Hon'ble High Court of Mumbai in the case of CIT Vs M/s Reliance Utilities and Power Ltd 313 ITR 340 (Mumbai) has held that "If the interest free funds available to the assessee sufficient to meet its investments and at the same time the assessee has raised a loan which can be presumed that investments were from the interest free funds". We considering the factual aspects, financial statements, the assessee's own case and the ratio of the decision of Hon'ble High Court of Bombay find that since the own funds of the assessee are more than loan provided to the subsidiary company on business exigencies and commercial expediency there is no question of

charging of interest on loan provided. Accordingly, we direct the Assessing officer to delete the addition and allow the ground of appeal in favour of the assessee.

8. On second disputed issue with respect to levy of interest u/sec115 P of the Act, on dividend distribution tax paid u/sec115-O of the Act, the Ld. AR has substantiated with the annual report in respect of dividend declared at page 49 to 51 of the paper book and the assessee has filed a rectification petition on 10.04.2018. We find these facts are to be verified and the A.O has not made any observations on this issue in the Assessement Order, accordingly we restore the disputed issue to the file of the A.O for verification of facts and decide on merits. On the third disputed issue in respect of additions made u/s 115JB of the Act, the contentions raised by the Ld.AR that the additions made under the normal provisions for determining the total income cannot be added again while computing the book profits u/sec115 JB of the Act We find that the provisions of section 115JB of the Act are a self contained code and no adjustments can be made to the Book Profit except those provided in Explanation 1 of Section 115JB of

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the Act. We also rely on the ratio of the Honble Supreme Court Decision in M/s Apollo Tyres Ltd Vs CIT (SC) (255 ITR 273) and direct the Assessing officer to delete the additions made under normal provisions while computing the Book Profits U/sec115JB of the Act and allow the ground of appeal.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 19.01.2022.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 19.01.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

*ITA No. 238/Mum/2021
Excel Industries Ltd, Mumbai.*

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सत्यापित प्रति //True Copy//

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(Asst. Registrar)
ITAT, Mumbai