

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. C.N. PRASAD, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.4423/Del/2016
Assessment Year: 2012-13

Blue Stampings & Forgings Ltd., Plot No.12, Sector-25, Faridabad PAN No.AAACB9348K (APPELLANT)	Vs	ACIT Circle-11 CGO Building Faridabad (RESPONDENT)
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Appellant by	Sh. K. C. Singhal, CA
Respondent by	Sh. Manu Chaurasia, Sr. DR

Date of hearing:	10/03/2022
Date of Pronouncement:	10/03/2022

ORDER

PER N. K. BILLAIYA, AM:

This appeal filed by the assessee is preferred against the order of the CIT(A), Faridabad dated 22.02.2016 pertaining to A.Y.2012-13.

2. The grievance of the assessee read as under :-

1. *On the law, facts and circumstances of the case, Ld.*

CIT(A) was not justified in sustaining the disallowance of

interest of Rs.11,10,388.00 paid as ECB loan for purchase of shares of its sister concern M/s. MECA Stamp International, France.

2. *On the law, facts and circumstances of the case, the Ld. CIT(A) was not justified in sustaining the disallowance of proportionate interest of Rs.54,28,510.00 on advance given to its sister concern M/s. MECA Stamp International, France.*

3. At the very outset the counsel for the assessee stated that the issue raised vide ground No.1 has been decided by this Tribunal in favour of the assessee in earlier assessment years. The Counsel supplied the copy of this Tribunal.

4. We have carefully considered the grievance raised vide ground No.1. Facts on record show that the assessee has raised loan of Rs.9 crores from Standard Chartered Bank, Mauritius for acquiring equity shares of MECA Stamp International, France. On such borrowed capital the assessee paid interest of Rs.11,10,388/-. This interest was earlier disallowed by the AO who was of the opinion that the loan raised as ECB was utilized

in making investment in shares and trading in shares is not the business activity of the assessee.

5. An identical issue was considered by this Tribunal in ITA No.2533/Del/2014 and 2578/Del/2018 for A.Y.2008-09. The relevant findings read as under :-

17. So, in view of the facts and circumstances of the case discussed in the preceding paras and following the aforesaid judgments of Hon'ble Punjab & Haryana High Court and Hon'ble Delhi High Court, we are of the considered view that when the assessee company had invested the borrowed money to acquire the control of M/s. MECA Stampings by purchasing 60% of its shares and interest paid on the borrowed funds is allowable deduction u/s 36(1)(iii) of the Act. So, the ld. CIT (A) has erred in disallowing

the deduction claimed on account of interest by the assessee. So, ground no.3 of assessee's appeal in ITA No.2533/Del/2014 is determined in favour of the assessee

6. A similar quarrel arose in A.Y.2009-10 to 2011-12 wherein the coordinate Bench followed its earlier order. The relevant findings read as under :-

4. We have gone through the orders of the authorities below and also the order dated 20/02/2018 passed by the coordinate bench of this tribunal in ITA No.2533/Del/2014, wherein this issue has been discussed and decided vide paragraph numbers 13 to 17 and the relevant portion of the order reads as follows:-

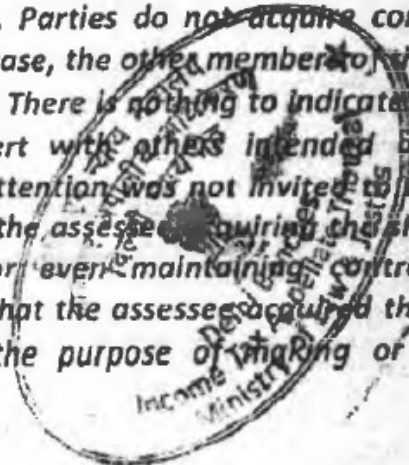
"13. Assessee company found to have debited interest expenses to the tune of Rs.3,39,20,12,010/- on account of investment made in shares of M/s. MECA Stampings France, a foreign company and disallowed the same on the ground that the interest bearing funds have been diverted to make investment in shares which cannot be allowed as business expenditure as claimed by the assessee company. CIT (A) confirmed the disallowance made by the AO.

14. Undisputedly, the assessee company has purchased 60% shares of M/s. MECA Stampings in order to have control over the company. It is a case of the assessee company that assessee company has been actually running the business of M/s. MECA Stampings and has appointed his own Managing Director. Assessee company also contended that the deduction is allowable u/s 36(1)(iii) of the Act and relied upon the decision rendered by Hon'ble Punjab & Haryana High Court in Smt. Satish Bala Malhotra vs. CIT - 391 ITR 256 (P&H) and decision rendered by Hon'ble Delhi High Court in CIT vs. Tulip Star Hotels Ltd. - 338 ITR 482 (Delhi).

15. In the face of the admitted fact that M/s. MECA Stampings has become a subsidiary of assessee company and it is entirely controlled with 60% of its share was with assessee company and the interest paid on the borrowed funds for investment by the assessee company in M/s. MECA Stampings is an allowable deduction u/s 36 (1)(iii) of the Act. Hon'ble High Court of Punjab & Haryana in Smt. Satish Bala Malhotra vs. CIT (supra) decided the identical issue in favour of the assessee company by returning following findings :-

“ Conversely, it is possible that an acquisition of shares is for the purpose of making and earning income. In such a case, if incidentally, a person, together with others in the group, acquires control over the company, it would not necessarily follow that the purchase is for the purpose of gaining control over the company. Merely because the acquisition of shares results in a person or a group of persons acquiring control of whatever nature and to whatever extent, it would not necessarily follow that the purpose of the acquisition was to gain control. That would again depend upon the facts of the case. If the expenditure is laid out or expended wholly and exclusively for the purpose of earning dividends, the fact that the assessee incidentally also acquires control of a company for himself and/or for others would make no difference. He would be entitled to the benefit of section 57(iii) for the purpose for which the shares were acquired was making or earning income and not gaining control. In such a case, gaining control of a company would be purely incidental. It would not even be a motive. Even if it was the motive, it would make no difference so long as the shares were acquired wholly and exclusively for the purpose of making and earning income by way of dividend.

In the present case, the assessee acquired about 28 per cent of the shares in the company. It is true that the Malhotra group owns the entire shareholding in the company. When a party buys shares in a company, it is reasonable to presume that it does so wholly and exclusively for the purpose of making or earning dividend income. If a party expects the company to do well presently or in future, it is but natural that it would seek to acquire as many shares as it can. This too would be wholly and exclusively for the purpose of making or earning income therefrom. Parties do not acquire control for control's sake. In the present case, the other members of the group held 72% of the equity shares. There is nothing to indicate that the assessee herself or in concert with others intended acquiring control for any reason. Our attention was not invited to anything that indicates any reason for the assessee acquiring the shares for the purpose of acquiring or even maintaining control. It is reasonable then to presume that the assessee acquired the shares wholly and exclusively for the purpose of making or earning income.”



16. Similarly, Hon'ble Delhi High Court in *CIT vs. Tulip Star Hotels Ltd.* (supra) decided the identical issue in favour of the assessee company by returning following findings :-

"Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital - Assessee borrowed certain funds which were utilized to subscribe to equity capital of subsidiary company - Subsidiary company used said funds for purpose of acquiring a hotel - Assessee paid interest on borrowed money and claimed deduction for same under section 36(1)(iii) - Assessing Officer disallowed claim of assessee - Tribunal, however, allowed assessee's claim- On revenue's appeal, it was noticed that assessee was in business of owning, running and managing hotels and, for effective control of new hotel acquired by assessee under its management it had invested in a wholly owned subsidiary - Whether in aforesaid circumstances, interest on borrowed capital would be treated as expenditure incurred for business purposes and thus, it was allowable under section 36(1)(iii) - Held, yes [In favour of assessee]"

17. So, in view of the facts and circumstances of the case discussed in the preceding paras and following the aforesaid judgments of Hon'ble Punjab & Haryana High Court and Hon'ble Delhi High Court, we are of the considered view that when the assessee company had invested the borrowed money to acquire the control of M/s. MECA Stampings by purchasing 60% of its shares and interest paid on the borrowed funds is allowable deduction u/s 36(1)(iii) of the Act. So, the Id. CIT (A) has erred in disallowing the deduction claimed on account of interest by the assessee."

5. Inasmuch as the question involved in all these matters is one and the same and it has been decided in assessee's own case, in the absence of any change of circumstances compelling as to take a different view we do not find any reason to deviate from the view that is taken by the coordinate bench of this tribunal. We, therefore, respectfully following the above findings in ITA No. 2533/Del/2014 decide this issue in favour of the assessee and direct the assessing officer to delete the addition made on account of disallowing the interest expense paid on the borrowed funds for making investment in the shares of M/s MECA stampings

France. Grounds of appeal in all these 3 appeals are answered in favour of the assessee.

7. Respectfully following the decision of the coordinate Bench (supra) we direct the AO to delete the impugned addition ground No.1 is allowed.

8. The underlying facts in the issue raised vide ground No.2 are that during the course of the scrutiny assessment proceedings the AO noticed the assessee had advanced money to MECA Stamp International amounting to Rs.4.19 crores which at the end of the previous year total Rs.18279000/-. The assessee was asked to explain the details of advance and its purpose. In its reply the assessee explained that the advance was given for business purposes. The AO was of the opinion that no evidence whatsoever was filed to substantiate that the money advanced was given out of internal accrual and not from borrowed funds. The AO proceeded by disallowing the interest expenditure attributable to the said advance and made addition of Rs.54,28,510/-. The assessee agitated the matter before the CIT(A) but without any success.

9. Before us the counsel for the assessee stated that the advances were given in F.Y.2010-11 and no adverse view has been taken by the AO in the earlier assessment years. The DR stated that no such details were furnished before the AO.

10. We have given a thoughtful consideration to the rival submissions. Page No.25 and 26 of the paper book show that the advances were made in F.Y.2010-11. The contention of the counsel that no adverse inference has been drawn by the AO in the relevant assessment years cannot be brushed aside. However, in the interest of justice and fair play we restore this issue to the files of the AO. The assessee is directed to furnish necessary evidences to show that the advances were made in earlier assessment years on which no adverse inference was drawn by the AO. The AO is directed to examine the same and decide the issue afresh after giving a reasonable opportunity of being heard to the assessee.

11. In the result, the appeal filed by the assessee is allowed in part for statistical purpose.

12. The order is pronounced in the open court on 10.03.2022 in the presence of both the rival representatives.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

NEHA

Date:- 10.03.2022

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	11.03.2022
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	