

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORESHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No. 7009/Mum/2016
(A.Y 2012-13)**

M/s Arch Impex Pvt. Ltd. H-Wing, 4 th Floor, Tex Centre Opp. Saki Vihar Road, Chandivali, Andheri (E), Mumbai- 400072	Vs.	DCIT, Central Circle - 5(1) AIR India Building, Nariman Point, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCA9190Q		
Appellant	..	Respondent

Appellant by :	Ajay Singh
Respondent by :	S.A. Dhyani

Date of Hearing	01.04.2022
Date of Pronouncement	26.05.2022

आदेश / O R D E R

PER AMARJIT SINGH, AM:

The present appeal filed by the assessee and directed against the order passed by the Id. CIT(A)-53, Mumbai, which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961, for A.Y. 2012-13, dated 22.02.2013. The assessee has raised the following grounds of appeal before us.

- “1. *The learned CIT(A) has erred in upholding the contention of the learned DCIT that the appellant has not carried on any business activity during the year and hence no expenses are allowable.*

2. *The learned CIT (A) has erred in law and on facts in not restricting the disallowances to the extent of tax free dividend income of Rs.21,35,700/-.*
3. *The learned CIT (A) has grossly erred in applying section 14A r.w.r. 8D as a matter of routine although the business is not closed down but it is only temporarily lull.*
4. *The learned CIT (A) has erred in restricting the business expenses only to the extent of Rs.65,85,366/- and not the full amount of Rs.521,68,133/-.*
5. *The appellant submits that the above grounds of appeals are alternate, independent and without prejudice to one another.*
6. *The appellant craves leave to add, amend, alter to delete any of the above grounds of appeals.”*

Ground No. 4:

2. In this case the assessment u/s 143(3) was completed on 26.03.2015 assessing the total income of Rs.843,19,559/-. During the course of the assessment the A.O noticed that in the earlier years the assessee company was engaged in the business of merchant exporter and trading of goods. During the year under consideration no such business activity was carried out by the assessee, however, it had incurred expenses like interest payment of Rs.2.15 crores and deferred revenue expenditure of Rs.2.85 crore etc. during the year under consideration. The AO has disallowed the claim of interest expenses stating that these expenses could not be allowed to be set off against the income from rent, capital gain and other sources.

3. Aggrieved, the assessee filed by the appeal before the ld. CIT(A). The ld. CIT(A) stated that like A.Y. 2011-12, the assessee has not derived any revenue from its business operation during the year under consideration. The assessee submitted that it had not closed down the business and actually day to day transactions of business of buying and selling had temporarily been suspended for want of finance. The ld. CIT(A) further stated that he found merit in the assessee's contention that though it had not undertaken any trading or manufacturing operation, it had not

discontinued or closed down its business during the relevant period. The assessee was maintaining its registered office and incurring necessary expenses i.e ROC charges, audit fees etc. for maintaining and retaining its existence as a corporate entity. However, the ld. CIT(A) has disallowed the claim of deferred expenses written off amounting to Rs.284,92,375/- on the basis of similar reasons given for disallowing the identical claim in the preceding assessment year 2011-12. During the year the assessee has also debited interest expenses of Rs.2,15,10,526/- to the P.S.L a/c. The ld. CIT(A) noticed that these interest expenses also included interest of Rs.1,70,90,392/- paid by the assessee to M/s India Infoline Investment Services Ltd. on loan availed during the relevant period. It is also stated that assessee has failed to establish that the aforesaid interest of Rs.170,90,392/- had been paid in respect of funds borrowed for the purpose of its business. It was further noticed that borrowed fund have been diverted to sister concern without charging any interest. It is also stated that assessee has failed to discharge the onus placed on it u/s 36(1)(iii) of the Act to prove that interest bearing funds had been advanced interest free to sister concern due to commercial expediency. Therefore, the ld. CIT(A) has disallowed the interest paid to the extent of Rs.170,90,392/- u/s 36(1)(iii) of the Act.

4. Heard both the sides and perused the material on record. In respect of claim of interest expenses paid to Standard Chartered bank as deferred revenue expenditure to the amount of Rs.284,92,375/-. We find that on identical issue and similar fact the coordinate bench of the ITAT, Mumbai, in the case of the assessee itself vide ITA No. 2763/Mum/2015 has adjudicated the issue in favour of the assessee. Further, the similar issue pertaining to assessment year 2010-11 vide ITA No. 7008/Mum/2016 was also adjudicated by the ITAT, Mumbai, in favour

of the assessee. The relevant operating part of the decision is reproduced as under:

“15. On the other hand, the ld. D.R. relied on the order of the lower authorities.

16. Heard both the sides and perused the material on record. The assessee has taken loan of Rs.25 crore from Standard Chartered Bank at interest Rs.16.50% and 16.75% during the F.Y. 2008-09 to A.Y. 2009-10. A total amount of Rs.474,87,291/- was paid by the assessee to the standard chartered bank as facility/processing fees and claimed deduction of 20% or 1/5 as deferred revenue expenditure on that year onward. With the assistance of the ld. Representatives we have gone through the decision of the coordinate bench of ITAT, Mumbai in the case of the assessee itself for A.Y. 2011-12 supra. The relevant operative para is reproduced as under:

“8. As per our considered view, once the expenditure is accepted as “Revenue Expenditure”, then it is upto the assessee that whether to claim the expenditure in one year or to spread over the said expenditure as per the enduring benefit available with them. For this contention the decision of the Hon’ble Gujarat High Court in the Case of CIT vs. Gujarat State Fertilizer Chemicals Ltd. reported in 358 ITR 323 supported our view. In the case of Gujarat State Fertilizers the assessee has claimed deduction of corporate debt restructuring expenses of Rs. 2.57 crores on payment to financial consultants who provided their professional services in connection with the scheme of corporate debt restructuring by negotiating with the banks and financial institutions, which eventually helped the reduction of the interest burden of the assessee. The Assessing Officer held that the assessee would derive benefit of enduring nature as a result of the corporate debt restructuring exercise and treated all the expenses as capital and disallowed them. The Commissioner (Appeals) held that the expenditure could not be considered to have an enduring benefit. The Tribunal held the expenditure revenue in nature and spread it over a period. On appeal held that for the waiver of the loan, payment had been made to the financial consultants. This was for the purpose of business and was allowable under section 37(1) of the Act. Once the expenditure was held to be revenue in nature incurred wholly and exclusively for the purpose of business, it could be allowed in its entirety in the year in which it was incurred. However, when the expenditure was spread over a period of six years and the assessee had no objection to such revenue expenditure being spread over, though it could have insisted that this amount be allowed in the year under consideration, the Department could not challenge it as the expenditure was revenue in nature.”

Following the decision of the coordinate bench of the ITAT as referred above we find that issue raised before the Tribunal in this year are similar to the issue pertaining to A.Y. 2011-12. Therefore, it would not be appropriate for us to deviate from the view taken in earlier year without pointing out any material change in facts and circumstances in the year consideration. Since identical issue was dealt with by Tribunal in earlier year as cited (supra) in the assessee’s own

case following the principle of consistency we direct the A.O to allow the claim of deduction. Therefore, this ground of appeal of the assessee is allowed.”

Following the decision of coordinate bench of the ITAT on identical issue and similar fact as referred above we direct the A.O to allow the claim of deduction in respect of deferred revenue expenditure to the amount of Rs.2,84,92,375/-. However, the other claim of assessee pertaining to interest expenses of Rs.170,90,392/- paid to M/s India Infoline Investment Services Ltd. was not allowed by the ld. CIT(A) holding that assessee has failed to establish that the borrowed fund was used for the purpose of its business. The ld. CIT(A) held that the borrowed funds have been diverted to the sister concern of the assessee without charging any interest. Even during the course of appellate proceedings before us assessee has not demonstrated from relevant supporting material that claim of interest expenses was pertained to the borrowed fund used for purpose of business of the assessee. Therefore, we don't find any infirmity in the decision of ld. CIT(A) in disallowing the claim of interest expenses Rs.170,90,392/- paid to M/s India Infoline Investment Services Ltd. Accordingly, this ground of appeal of the assessee is partly allowed.

5. The Ground Nos. 2 & 3 are not pressed by the assessee, therefore the same stand dismissed.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 26.05.2022

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 26.05.2022

PS: Rohit

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,
सत्यापित प्रति //True Copy//

(Asst. Registrar) ITAT, Mumbai