

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री जी. मंजुनाथ, लेखा सदस्य एवं श्री राहुल चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
AND SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.1915/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s. Anand Engineering Products Pvt.Ltd. 12/18, Abirami Flats, Ground floor, Ramakrishna Street, T.Nagar Chennai-600 017.	Vs	The Assistant Commissioner of Income Tax, Circle-3 Trichy.
PAN:AAFCA 1512R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. A.S. Ramakrishnan, C.A
प्रत्यर्थीकीओरसे/Respondent by	:	Mrs.R.Uma Maheswari, JCIT

सुनवाई कीतारीख/Date of hearing	:	30.05.2022
घोषणा कीतारीख /Date of Pronouncement	:	02.06.2022

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of the learned Commissioner of Income Tax (Appeals)-1, Trichy, dated 08.05.2019 and pertains to assessment year 2013-14.

2. The assessee has raised following grounds of appeal:-

"1. On the facts and circumstances of the case the Learned Assistant Commissioner of Income Tax erred in re-opening the assessment completed u/s.143(3) and making additions to the assessed income. Assessment was completed u/s.143(3) on 31.03.2016 by accepting the returned income and subsequently was re-opened by issuing a notice u/s. 148 on 23.03.2018, with out recording reasons for re-opening. On a protest for reopening of the assessment by the appellant on 4.10.2018, the reasons for re-opening was let known to the appellant on 23.10.2018.

2. In the written submission before the Commissioner of Income Tax (Appeals), this fact was highlighted and prayed for quashing the assessment redone. Appellant relied on the following judicial pronouncements in support of its claim: CIT v Blue Star Ltd., (2018)162 DTR 302/ 301 CTR 38(Bom); Nandalal Tejmal Kothari v Inspecting ACIT (1998)230 ITR 943 (SC).

3. Surprisingly these submissions were not considered by the Commissioner of Income Tax (Appeals) in his order.

4. The Learned Joint Commissioner of Income Tax had brushed aside the materials submitted by the Appellant in support of the halted project and produced the ledger copies of the Building WIP and the copies of the Balance sheet as on 31.03.2018 in support to establish that the cost incurred on halted project is shown still as WIP in its books.

5. It has been upheld in various judicial pronouncements that, when there is only an expansion of existing business activities, the incidental expenditure for bringing the capital asset are all revenue in nature. The appellant relies on the following judicial pronouncements in support of its claim:

India Cements Vs CIT (1966) 60 ITR 52 (SC); Prem Spinning & Weaving Mills Co. Ltd Vs CIT (1975) 98 ITR 20 (AI!); Veecumsees Vs CiT (1996)133 CTR (SC) 500; Jay Engineering Works Ltd Vs CIT (2007)212 CTR 0562.

6. The appellant also relies on the decision in the case of CIT vs Priya Village Roadshows Ltd (2010) 228 CTR 0271, wherein it has been upheld that when the project is abandoned without creation of a new asset the expenditure related thereto is only that of a revenue expenditure.”

3. Brief facts of the case are that the assessee company is engaged in the business of engineering products has filed its return of income for the assessment year 2013-14 on

18.09.2013 declaring total loss of Rs.2,27,51,993/-. The assessment has been completed u/s.143(3) of the Income Tax Act, 1961, on 31.03.2016 and accepted returned income. The case has been subsequently reopened for the reasons recorded, as per which income chargeable to tax had been escaped assessment on account of non-capitalization of interest paid on loans borrowed for acquisition of asset in light of proviso to section 36(1)(iii) of the Act, and also claiming deduction towards exceptional items. The assessment has been completed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961, and determined total loss at Rs.29,90,216/- by inter-alia, making additions towards disallowance of interest expenses u/s.36(1)(iii) of the Act, and additions towards exceptional items. The assessee carried the matter in appeal before the first appellate authority and challenged additions made by the Assessing Officer towards disallowance of interest u/s.36(1)(iii) of the Act, on the ground that where the assessee has incurred amount for construction of project by taking loans from banks and further, if such project is abandoned, then interest, if any, paid on loans borrowed from banks would be allowed as revenue expenditure, but cannot

be capitalized in terms of provisions of section 36(1)(iii) of the Act. The learned CIT(A), however, was not convinced with the explanation furnished by the assessee and according to the CIT(A), interest component of capitalized expenditure of project, even if abandoned would be capital expenses and hence, cannot be allowed as deduction. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

4. The learned AR for the assessee submitted that reopening of assessment is bad in law and liable to be quashed, because the Assessing Officer has formed reasonable belief of escapement of income on the basis of financial statements filed by the assessee along with return of income without there being any fresh tangible materials. Therefore, in absence of any fresh tangible material, reopening of assessment on very same material amounts to change of opinion, which is not permissible under the law. The learned A.R for the assessee further submitted that as regards additions made towards disallowance of proportionate interest, it was explained to the Assessing Officer that when borrowing cost needs to be capitalized in terms of Accounting Standard-

16, then asset should be qualified asset. However, in this case, the assessee has abandoned project due to various reasons and thus, interest paid on loans borrowed from banks needs to be allowed as deduction.

5. The learned D.R, on the other hand, supporting order of the learned CIT(A) submitted that although, the assessee has shown huge amount in work in progress account, but failed to capitalize interest component, even though, borrowed funds have been utilized for acquisition of capital asset. Therefore, the Assessing Officer has rightly invoked provisions of section 36(1)(iii) of the Act, and disallowed proportionate interest and hence, their orders should be upheld.

6. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The assessee has challenged reopening of assessment on the ground that there is no fresh tangible materials in the possession of the Assessing Officer, subsequent to completion of 143(3) assessment proceedings to form reasonable basis of escapement of income on the issue of disallowance of interest expenses and capitalized through capital work in progress.

However, on the second issue of deduction towards exceptional expenses, the learned A.R for the assessee has fairly conceded that there is escapement of income, but same would have been brought to tax u/s.154 of the Income Tax Act, 1961. Therefore, for above reasons the learned AR argued that reopening of assessment on very same materials amounts to change of opinion, which is not permissible under the law.

7. We have gone through the reasons given by the Assessing Officer for reopening of assessment in light of arguments advanced by the learned counsel for the assessee and we ourselves do not subscribe to the arguments of the learned counsel for the assessee for simple reason that once there is element of escapement of income, then the Assessing Officer can very well look into other issues which come to his knowledge during the course of assessment proceedings. In this case, the counsel for the assessee himself has conceded fact that there is escapement of income on the issue of deduction towards exceptional items. Therefore, once it is proved that there is escapement of income, then additions made by the Assessing Officer towards other issues being

disallowance of interest expenses also in accordance with law. Therefore, we are of the considered view that reopening of assessment u/s.147 of the Act, is valid in the given facts & circumstances of the case and thus, arguments of the assessee are rejected.

8. As regards, disallowance of interest expenses u/s.36(1)(iii) of the Income Tax Act, 1961, it was argument of the assessee before the Assessing Officer that although, interest expenses and other expenditure has been capitalized to work in progress account, but subsequently, project has been abandoned due to various reasons and thus, the assessee did not capitalize interest on borrowed capital to work in progress. We find that the assessee has substantiated its claim with necessary evidences, including Board resolution and argued that project developed by the assessee is abandoned. Once project is abandoned, it ceases to become eligible asset to capitalize borrowing cost to the work in progress account, till such asset is put to use in business of the assessee. In this case, since, project of the assessee was abandoned, expenditure incurred on said project, including

interest, if any, on borrowed capital would be in the nature of revenue expenditure, which needs to be allowed as deduction. This legal principle is supported by the decision in the case of CIT Vs. Priya Village Roadshows Ltd vs. (2010) 228 CTR 271, wherein it has been held that when the project is abandoned without creation of new asset, expenditure related thereto is only that of revenue expenditure. It was further noted that the assessee has incurred amount towards creation of new asset for expansion of existing project. It is well settled principles of law by various judicial precedents that when there is only expansion of existing business, incidental expenditure for bringing capital asset will be revenue in nature and this principle is supported by the decision of the Hon'ble Supreme Court in the case of India Cements Ltd Vs.CIT (1975) 60 ITR 52 and also decision of the Hon'ble Allahabad High Court in the case of Prem Spinning & Weaving Mills Co.Ltd. Vs. CIT (1975) 98 ITR 20. Therefore, we are of the considered view that the Assessing Officer has erred in disallowing proportionate interest expenses and added back to capital work in progress. The learned CIT(A), without appreciating facts has simply sustained additions made by the Assessing

Officer. Hence, we reverse findings of the learned CIT(A) and direct the Assessing Officer to delete additions made towards disallowance of proportionate interest expenses u/s.36(1)(iii) of the I.T Act, 1961.

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

Order pronounced in the open court on 2nd June, 2022

Sd/-
(राहुल चौधरी)
(Rahul Chaudhary)
न्यायिक सदस्य /Judicial Member
चेन्नई/Chennai,
दिनांक/Dated 2nd June, 2022
DS

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.