

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:1462/CHNY/2019

निर्धारण वर्ष /Assessment Year: 2009-10

&

**C.O No.76/CHNY/2019**

[in I.T.A. No.1462/CHNY/2019]

**The DCIT,**

Corporate Circle -1(2),  
Chennai.

vs.

**Bay Forge Limited,**

Palayanoor PO  
Vedanthangal Road,  
Pukkath Village,  
Madurantakam Taluk,  
Kancheepuram – 603 308.

(अपीलार्थी/Appellant)

**PAN: AAACF 0453D**

(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by  
निर्धारिती की ओर से/Assessee by

: Dr. R. Mohan Reddy, CIT  
: Shri Raghav Menon, Advocate

सुनवाई की तारीख/Date of Hearing : 16.02.2023

घोषणा की तारीख/Date of Pronouncement : 16.02.2023

**आदेश /ORDER**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by Revenue and cross objection by Assessee is arising out of the order of Commissioner of Income Tax (Appeals)-1, Chennai in ITA No.182/CIT(A)-1/2016-17 dated 31.01.2019. The assessment was framed by the DCIT, Corporate Circle-1(2),

Chennai for the assessment year 2009-10 u/s.143 r.w.s. 147 of the Income-tax Act, 1961 (hereinafter the 'Act') vide order dated 23.03.2016.

### **Revenue's Appeal in ITA No.1462/CHNY/2019**

2. The interconnected two issues raised by Revenue in the appeal is as regards to deleting of disallowance u/s.43B of the Act and deleting the disallowance u/s.40(a)(ia) of the Act on the basis of fresh evidence submitted by assessee for the first time before CIT(A) without allowing opportunity to confront to the AO and therefore violated the Rule 46 of the Income Tax Rules, 1962 (hereinafter the 'Rules'). For this, Revenue has raised the following Ground Nos.2 & 3:-

2. The Ld.CIT(A) erred in giving relief to the assessee by deleting the disallowance under section 43B, based on fresh evidence submitted for the first time before the CIT(A) without giving opportunity to the AO under Rule 46A of the Income tax Rules, for verifying the said claim of the assessee based on evidences filed afresh during appellate proceedings.

3. The Ld.CIT(A) erred in giving relief to the assessee by deleting the disallowance under section 40(a) (ia), based on fresh evidence submitted for the first time before the CIT(A) without giving opportunity to the AO under Rule 46A of the Income tax Rules, for verifying the said claim of the assessee based on evidences filed afresh during appellate proceedings.

3. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO during the course of assessment proceedings made disallowance of interest expenditure u/s.43B of the Act by giving reasoning that on the premise that the assessee has not submitted any evidence that the interest to schedule banks were paid from which assessee has borrowed loans. Hence, he disallowed the interest of Rs.4,68,61,230/- claimed as expenditure but actually not paid.

3.1 Similarly, the AO also disallowed interest expenditure by invoking the provisions of section 40(a)(ia) of the Act amounting to Rs.7,78,58,259/- as the assessee has failed to deduct TDS on the interest payment. Therefore the AO invoking the provisions of section 40(a)(ia) of the Act made disallowance. Aggrieved, assessee on both counts preferred appeal before CIT(A).

4. The CIT(A) deleted the disallowance in regard to interest expenditure claimed by assessee and disallowed by AO u/s.43B of the Act by observing as under:-

The submissions of the appellant were considered vis-à-vis the findings of the Assessing Officer. During the appellate proceedings, the appellant furnished details of term loan interest paid to all the Banks concerned.

Letters from the Banks were also furnished substantiate the appellant's claim regarding the quantum of interest and the date of payment of interest on buyer's credit. The details regarding the dates of payment of interest on term loan and on working capital were also submitted for verification. The appellant has thus furnished all the particulars pertaining to the term loan interest amounting to Rs4,40,72,744/- which was paid during the relevant previous year, In the assessment order, the A.O, had stated that the interest of Rs.4.68,61.230/- could not be allowed as the appellant had not submitted any material evidence regarding actual payment. It is noted that even during the assessment proceedings, the appellant had stated that what was remaining unpaid as on 31<sup>st</sup> March 2009 was only Rs.43,41,718/- and not Rs.4,40,72,744/-. It had also been submitted that the said amount of Rs.43,41,718/- was paid subsequently but before the due date for filing the Return of income and hence the question of disallowance u/s. 43B did not arise. The appellant has furnished all the requisite particulars pertaining to this claim of interest expenditure during the appellate proceedings. As the interest has been found to be paid before the due date of filing the return, I find there is considerable merit in the contentions of the appellant. Hence, this disallowance of Rs.4,68,61,230/- requires to be deleted. This ground of appeal for the A.Y.2009-10 is allowed.

4.1 Similarly, the CIT(A) also deleted the disallowance of interest for non-deduction of TDS by observing that entire payment of interest and working capital paid to various banks in India are governed by Banking Regulation Act and hence, there is no liability to deduct TDS u/s.194A(3)(iii) of the Act. The CIT(A) deleted the disallowance by observing as under:-

The submissions of the appellant were considered vis-a-vis the findings of the Assessing Officer. The A.O. had disallowed interest expenditure amounting to Rs.7,78,58,259 /- u/s.40(a) (ia) on the grounds that the appellant had not deducted tax on the interest payments as per the provisions of section 194A. During the appellate proceedings, the appellant

furnished all the details pertaining to the working capital loan of Rs.7,78,58,259/-. It was noted that even during the re-assessment proceedings, the appellant had already submitted that the major portion of the interest paid to others i.e. Rs.7,72,44,306/- represents interest and working capital paid to various Banks in India. The appellant has stated that the entire payment of interest paid for working capital facilities was made to Banking companies which are governed by the Banking Regulation Act. Hence the obligation to deduct tax for such interest payment is governed by the provisions of section 194A(3) (iii) and hence it was not liable to deduct tax on the interest payments.

Taking into account the facts, circumstances and the evidences furnished by the appellant I am inclined to accept the contentions of the appellant. The disallowance of interest expenditure u/s.40(a) (ia) amounting to Rs.7,78,58,259/- requires to be deleted. This ground of appeal is allowed.

Aggrieved, now Revenue is in appeal before the Tribunal.

5. The Id.CIT-DR only relied on the grounds of appeal and stated that the CIT(A) has considered the fresh evidences submitted in the shape of letters from banks, details of dates of payments of interest on term loan and on working capital, which were never produced before the AO. Similarly, the assessee submitted the details of interest and working capital paid to various banks in India for the first time before CIT(A). Hence, he requested that the matter be restored back to the file of the AO for fresh adjudication in term of the documents submitted by assessee before CIT(A) for the first time.

6. Per contra, the Id.counsel for the assessee took us through the letter dated 29.10.2015 filed before the AO during the course of reassessment proceedings and complete details in regard to both the disallowance were filed and the relevant letter reads as under:-

1. It is stated in the notice that the interest of term loan of Rs.4,40,72,744/- was not paid and added to the secured loan as reflected in Schedule 3 of the Audited Accounts. This is erroneous, as the total interest of the Assessee for the F.Y. 2008-09 i.e. A.Y. 2009-10 was Rs.4,40,72,744/-. Please see Schedule 15 of the Audited Accounts. Out of the total interest, a sum of Rs.43,41,718/ being the interest for the last quarter of March 2009 was not paid before 31 March and hence, the said amount was included in Schedule 3 being interest accrued and due. Hence, what was remaining unpaid as of 31 March was only Rs.43,41,718/- and not Rs.4,40,72, 744/-. The said amount of Rs.43,41,718/- was paid subsequently before the due date for filing the Return of Income and hence, the question of disallowance u/s.43B.

2. The details of interest others of Rs.7,78,58,259/- is enclosed. The major portion of interest others ie. Rs.7,72,44,306/- represents interest on working capital paid to banks in India. As such, no TDS need to be deducted on the said interest payment and hence, the question of applicability of Section 40(a) (ia) does not arise. Even on the balance amounts there is no obligation to deduct TDS and hence, the question of applicability of Section 40(a) (ia) on interest others of Rs.7,78,58,259/- does not arise.

He stated that all the details were before the AO and the same were resubmitted before CIT(A). Hence, there is no question of additional evidences or fresh evidences. He argued that the Revenue had not at all argued on merits. Hence, the issue be decided in favour of assessee.

7. After hearing rival contentions and going through the facts of the case, we find that there is no perversity in the order of CIT(A) and the interest disallowance u/s.43B of the Act was rightly deleted that the said amount of Rs.4,40,72,744/- was paid before the due date of filing of return of income and hence, there is no question of disallowance u/s.43B of the Act. Similarly in regard to disallowance of interest for non-deduction of taxes, the entire payment of interest paid for working capital facilities was made to banking companies which are governed by Banking Regulation Act. Hence, the provisions of section 143A(3)(iii) of the Act would not apply. Therefore, we find no infirmity in the order of CIT(A) and even alleged allegation of violation of Rule 46A is not there since the documents are available before the AO during the reassessment proceedings. Accordingly, the appeal of Revenue is dismissed.

### **Cross Objection CO No.76/CHNY/2019**

8. Coming to cross objection of the assessee, the issue raised is regarding reopening of assessment. Since we have adjudicated the issue on merits, the same is dismissed as academic. Hence, the cross objection filed by the assessee is dismissed as academic.

9. In the result, the appeal filed by the Revenue is dismissed and the cross objection filed by the assessee is dismissed as academic.

Order pronounced in the open court on 16<sup>th</sup> February, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**  
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**  
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 16<sup>th</sup> February, 2023

***RSR***

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                         |                   |                     |
|-------------------------|-------------------|---------------------|
| 1. निर्धारिती/Assessee  | 2. राजस्व/Revenue | 3. आयकर आयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF. |                     |