

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA**  
[Before Dr. Manish Borad, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 264/Kol/2021**  
**Assessment Year : 2012-13**

Woolvest Merchandise (P) Ltd.  PAN: AAACW 3136 G	Vs.	DCIT, Circle-10, Kolkata
Appellant		Respondent

Date of Hearing	08.12.2022
Date of Pronouncement	02.03.2023
For the Assessee	None
For the Revenue	Smt. Ranu Biswas, Addl. CIT, Sr. DR

**ORDER**

**Per Shri Sonjoy Sarma, JM:**

This appeal of the assessee for the assessment year 2012-13 is directed against the order dated 21.06.2021 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

*"1. That on the facts and circumstances of the case, the National Faceless Appeal Centre (NFAC) [hereinafter referred to as "CIT (A)] has erred both on facts and in law in holding that interest on borrowed funds were excessive to the extent of 5.25/14.25 part of interest and further erred in holding that 9/14.25 part of the interest is to be capitalized to the cost of shares and not allowable as an expenditure against business income.*

*2.1 That the learned CIT(A) has grossly erred in not allowing interest expenditure incurred during the year of Rs 21,99,986/- against*

interest income of Rs 2,48,227/- earned during the year (Net Rs 19,51,759).

2.2 That the learned CIT(A) has erred in totally ignoring the fact that the assessee had Nil borrowing as at the opening of the year and its surplus funds were already invested into shares and further erred in not appreciating the reason why interest was incurred during the year and various details and documents on record.

3.1 That on the facts and circumstances of the case, the learned CIT(A) failed to appreciate that the various unsecured temporary loan taken during the year were at market rates as there was an urgent need of funds and there was no security available to provide against borrowing whereas assessee's own funds were blocked in investment in shares.

3.2 That in any case and in any view of the matter, disallowance for 5/14.25 part of interest by holding it excessive is without any basis and purely based on suspicion and misconception and as such the disallowance of interest for being "excessive" needs to be set aside.

4.1 That the learned CIT(A) failed to appreciate that there is no concept of capitalization of interest to cost of shares and as such interest incurred during the year is a business expenditure allowable against the business income earned during the year.

4.2 That in any case and without prejudice to the other grounds of appeal, the learned CIT(A) ought to have allowed 9/14.25 part of interest as allowable expenditure instead of holding that the same be capitalized to the cost of shares.

5. That various adverse conclusion /findings recorded by the learned Commissioner of Income Tax (Appeals) are factually incorrect and contrary to record, legally misconceived and untenable and further there was no proper opportunity allowed to the assessee.

6. That the appellant craves leave to add, amend or alter any grounds of appeal and that all grounds of appeal are without prejudice to each other.”

2. None appeared on behalf of the assessee.

3. Brief facts of the case are that the assessee has filed its return of income for the A.Y. 2012-13 by showing loss of Rs. 23,67,676/-. The case of the assessee was selected for scrutiny through CASS. Notices were issued u/s 143(2) and 142(1) upon the assessee and in response to such notices, the ld. AR of the assessee appeared before the ld. AO from time to time to represent the case of the assessee. After considering the submissions of the assessee, the AO passed the assessment order u/s 143(3) of the Act by making the following additions:

<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>Business income</i>	<i>(-) 23,67,676/-</i>
<i>Add: disallowance of interest of loan u/s 14A of the Act</i>	<i>19,51,759/-</i>
<i>Disallowance u/s 14A (rule 8D) due to investment in shares</i>	<i>1,47,124/-</i>
<i>Assessed Total Loss</i>	<i>(-) 2,68,700/-</i>

4. Dissatisfied with the above order, assessee preferred an appeal before the ld. CIT(A) where appeal of the assessee was partly allowed.

5. Aggrieved by the above order, assessee preferred an appeal before this Tribunal.

6. At the time of hearing, no one appeared before this Tribunal to represent the case. Although the registry has issued several

notices upon the assessee through RPAD. Hence, we have no other alternative but to decide the appeal ex-parte on the merits of the case with the assistance of Id. DR. While perusing the grounds of appeal filed by the assessee, we find that the assessee has raised multiple grounds of appeal for adjudication before us. However, we have noticed that the effective issue involved in this appeal to adjudicate here is regarding disallowance of interest expenditure incurred during the year of Rs. 21,99,986/- as against the interest income of Rs. 2,48,227/- earned during the year (net Rs. 19,51,759/-). While deciding the issue involved in the present appeal, Id. CIT(A) in his order has given the following findings in relation to the above facts of the case, the relevant extract to this effect is as follows:

*“5.3 Decision: The order u/s 143(3), the statement of facts, and the submissions furnished by the appellant have been considered.*

*5.4 In this case, the AO made disallowance of Rs. 19,51,759/- (Rs. 21,99,986/- interest paid Rs. 2,48,227/- interest earned) on the premise that borrowing was made from a group concern and also that funds borrowed were invested in group concern and that there is no business activity during the year. The AO also observed that funds were borrowed at interest rate of 14.25% from group concerns whereas interest was charged at the rate of 9% on money advanced.*

*From the facts of the case, it is clear that the appellant has paid excessive interest. Therefore a portion of the interest paid which is in excess of interest received i.e. 5.25% on loan taken is to be disallowed. Further, it is also seen that the appellant has shown investment in shares under the head ‘Assets’ in the balance sheet. The shares in balance sheet have been valued at cost and not at ‘cost or market price whichever is lower’. Thus, they are pure investment and not part of inventory. Therefore, interest paid on*

*borrowings made for investment in shares will go towards cost of shares and will be adjusted when the shares are sold and capital gains is computed.*

*Thus 5.25/14.25 part of the interest paid will be disallowed for being excessive interest and the 9/14.25 part of the interest will be capitalized to the cost of shares and will not be allowed as business income during the year. Ground no. 1 and 2 are thus partly allowed.”*

7. We after going through the order of the authorities below and material available on record, we noticed that the assessee at the time of hearing before the ld. CIT(A) could not able to controvert the fact to substantiate its claim by filing any documents or papers and similarly even before us by the assessee nor its representative appeared to controvert the fact. Therefore, it is clearly established that the borrowed fund has been utilized by the assessee to procure the shares of such known and related companies and most of them are unquoted shares, therefore, the interest expenditure as claimed by the assessee as business expenditure is not established and on this ground ld. CIT(A) sustained the order passed by the ld. AO. Therefore, the net interest expenditure of Rs. 19,51,759/- (Rs. 21,95,986 – Rs. 2,48,227/-) in the case of assessee remained as expenditure but the assessee failed to use entire loan fund in business. In such a situation, ld. CIT(A) correctly affirmed the addition made by the ld. AO to the extent of Rs. 19,51,759/- in the hands of assessee. We examined all the facts from the findings of the authorities below and viewed that there is no

infirmary in the order passed by the ld. CIT(A). Accordingly, grounds taken by the assessee are rejected.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 02.03.2023.

Sd/-

Sd/-

(Manish Borad)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 02.03.2023  
*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant- Woolvest Merchandise (P) Ltd., 6, Lyons Range, Kolkata-700001.
2. Respondent – DCIT, Circle-10, Kolkata
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata