

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.424/Kol/2023  
Assessment Year: 2014-15**

Microsec Resources Pvt. Ltd. 7, Azimganj House, Camac Street, Kolkata-700017. (PAN: AABCG2396M)	Vs.	Deputy Commissioner of Income Tax, Central Circle- 2(3), Kolkata.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Giridhar Dhelia, FCA  
Respondent by : Shri Sanjiv Kumar Paul, Addl. CIT

Date of Hearing : 14.06.2023  
Date of Pronouncement : 21.06.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Appeal No. ITBA/NFAC/S/250/2022-23/1050371971(1) dated 03.03.2023 passed against the assessment order by DCIT, Central Circle-2(3), Kolkata u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 19.02.2016 for AY 2014-15.

2. Brief facts of the case are that assessee is a Non-banking Financial Company (NBFC) registered with Reserve Bank of India (RBI) vide registration no. B-05.06241, dated 21.04.2006 and is engaged in the business of grant of loans and advances and dealing with shares and securities. Assessee filed its return of income on 30.09.2014 reporting

total income of Rs.19,14,110/-. Assessee had issued Deep Discount debentures (DDD), details of which are tabulated as under:

<u>Sl No.</u>	<u>Issue Price</u>	<u>Maturity Value</u>	<u>Discount Expenses</u>	<u>Issue Date</u>	<u>Maturity date</u>	<u>Period</u>
1.	50,00,000	10,00,00,000	9,50,00,000	01.06.1999	31.05.2019	20 Years
2.	1,00,00,000	7,50,00,000	6,50,00,000	13.12.2001	12.12.2021	20 Years
3.	1,00,00,000	7,50,00,000	6,50,00,000	17.12.2001	16.12.2021	20 Years

2.1. Assessee worked out an amortization table of discount portion of DDD on the implicit interest rate on these debentures. The said amortization table is reproduced as under:

<b>MICROSEC RESOURCES PRIVATE LTD.</b>					
<b>Details of Discount Written Off on issue of Deep Discount debentures.</b>					
<b>Amount to be written off each year</b>					
<u>Sl No.</u>	<u>Finacial Year</u>	<u>Series-I</u>	<u>Series-II</u>	<u>Series-III</u>	<u>Total</u>
1	1999-2000	6,73,276	-	-	6,73,276
2	2000-2001	9,16,724	-	-	9,16,724
3	2001-2002	10,64,854	3,53,316	3,53,316	17,71,486
4	2002-2003	12,36,920	10,97,397	10,97,397	34,31,714
5	2003-2004	14,36,789	12,13,715	12,13,715	38,64,219
6	2004-2005	16,68,955	13,42,363	13,42,363	43,53,681
7	2005-2006	19,38,635	14,84,646	14,84,646	49,07,927
8	2006-2007	22,51,892	16,42,011	16,42,011	55,35,914
9	2007-2008	26,15,767	18,16,055	18,16,055	62,47,877
10	2008-2009	30,38,440	20,08,548	20,08,548	70,55,536
11	2009-2010	35,29,410	22,21,443	22,21,443	79,72,296
12	2010-2011	40,99,715	24,56,904	24,56,904	90,13,523
13	2011-2012	47,62,172	27,17,323	27,17,323	1,01,96,818
14	2012-2013	55,31,675	30,05,345	30,05,345	1,15,42,365
15	2013-2014	64,25,518	33,23,896	33,23,896	1,30,73,310
16	2014-2015	74,63,794	36,76,212	36,76,212	1,48,16,218
17	2015-2016	86,69,841	40,65,871	40,65,871	1,68,01,583
18	2016-2017	1,00,70,769	44,96,832	44,96,832	1,90,64,433
19	2017-2018	1,16,98,067	49,73,472	49,73,472	2,16,45,011
20	2018-2019	1,35,88,315	55,00,634	55,00,634	2,45,89,583
21	2019-2020	23,18,460	60,83,672	60,83,672	1,44,85,804
22	2020-2021	-	67,28,512	67,28,512	1,34,57,024
23	2021-2022	-	47,91,832	47,91,832	95,83,664

2.2. Based on this amortization table of DDD, assessee had been charging the discount to its P&L Account every year since FY 1999-2000. In the year under consideration, assessee has charged a sum of Rs.1,30,73,310/- as discount on DDD. The accounting methodology adopted by the assessee towards this transaction is reported as under:

*“a. The difference between redemption value and the issue price of debentures is the amount of discount which the issuer has to claim as expenses over the tenure of Debentures. Accordingly on an annual basis, discount on DDDs is being written off by the issuer.*

*b. Discount on DDDs is an expense in the hands of the Issuer Company and this principle has been clearly upheld by the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Ltd. 225 ITR 802 (SC), copy of which was duly provided to the Assessing Officer. The Hon'ble Supreme Court has clearly established that such discount on DDDs has to be allowed over the tenure of the DDDs.”*

2.3. In the course of assessment, Ld. AO disallowed this claim by holding that it is covered u/s. 40A(2) since the relation between the assessee and the debenture-holder falls within the provisions of sec 40A(2)(b) of the Act being related party. Assessee contended before the Ld. AO that the issue is squarely covered by the decision of coordinate Bench of ITAT, Kolkata in assessee's own case for AY 2005-06 in ITA No. 1321/Kol/2008 vide order dated 13.02.2009 which was followed for AY 2003-04 and 2006-07, vide order dated 10.06.2011. It was also submitted the Hon'ble Coordinate Bench while allowing the claim of the assessee has placed reliance on the decision of Hon'ble Supreme court in the case of Madras Industrial Investment Corporation Ltd. Vs. CIT 225 ITR 802 (SC). However, Ld. AO completed the assessment by making the disallowance and assessed the

total income at Rs.1,49,87,420/-. Aggrieved, assessee went in appeal before the Ld. CIT(A).

2.4. Ld. CIT(A) dismissed the appeal on a technical ground by holding that there is a delay in filing the appeal. Before Ld. CIT(A), assessee had submitted that appeal was filed manually on 16.03.2016 for which the appeal filing fees of Rs. 1000/- was deposited vide challan no. 10354 dated 12.03.2016. Appeal was filed within thirty days of passing of the assessment order. Thereafter, in order to ensure on-line filing of the same appeal in the Tax Portal, Form 35 was filed again electronically on 11.06.2016. Ld. CIT(A) considered the on-line filing of Form 35 dated 11.06.2016 and arrived at a conclusion that it is a delayed filing, since there was no petition on record for condonation of delay and dismissed the same.

2.5. Before the Ld. CIT(A), assessee had furnished its office copy of Form 35. It was filed manually which did not bear the signature of the appellant. Ld. Counsel had submitted that it is a general practice that in the office copy, signatures of the appellant are generally not taken. However, in the copy, which has been filed manually, the signatures are placed and to corroborate the same, a copy of manually filed Form 35 with proper acknowledge stamp of the office of Commissioner of Income Tax (Appeals)-20, Kolkata dated 16.03.2016 was also furnished. Thus, it was claimed that assessee has filed its appeal within the prescribed limitation and Ld. CIT(A) is wrong in dismissing the appeal on a technical ground on account of delay in filing. Aggrieved, assessee is in appeal before the Tribunal.

3. Before us, ld. Counsel reiterated the facts already narrated above which are not repeated for the sake of brevity. Ld. Counsel referred to the decision of Coordinate Bench of ITAT. Kolkata in its own case for AY 2005-06 (supra) wherein the issue in the present appeal has been elaborately dealt with. In the said decision, reliance has been placed on the decision of Hon'ble Apex Court in the case of Madras Industrial Investment Corporation Ltd. (supra). The observations and findings given by the Coordinate Bench in this respect is reproduced as under:

*"5. We have carefully considered the submissions of the Ld. Representatives of both the parties and the authorities below. There is no dispute to the fact that the assessee-company has issued DDDs as per details mentioned hereinabove, The assessee-company has worked out an amortization, table of DDDs with implicit interest rate, the details of which are given by the A.O. at page 3 of the assessment order. The department has not disputed the said facts. On the basis of the said amortization schedule, the assessee-company has spread over the difference in the redemption value of the debentures and the issue price of debentures over the period of twenty years. We observe that the fund raised by the assessee is used for its business purposes. Therefore, the fund raised by the assessee is an integral part of profit making process and accordingly the expenditure on such debentures ahs to be treated as revenue expenditure. Thus such an expenditure is an allowable expenditure. With regard to year of allowability, it is evident that the payment of the premium payable by the assessee i.e. the difference between the issue price and the maturity price is the benefit to be derived over a number of years i.e. over a period of twenty years, the period for which debentures have been issued, We are of the considered view that the decision of the Hon'ble Apex Court in the case of Madras Industrial Investment Corporation Ltd. squarely applies to the facts of the case before us. The Hon'ble Apex Court in the Head Note has made the following observation:-*

*"When a Company issues debentures at a discount, it incurs a liability to pay larger amount than what it has borrowed. The liability to pay the discounted amount over and above the amount received for the debentures, is a liability which has been incurred by the company for the purpose of its business in order to generate funds for its business activities. The amounts so obtained by issue of debentures are used by the company for the purposes of its business, This would, therefore, be expenditure."*

*Further, the above issue has also been considered by the ITAT, Delhi Bench in the case of Escorts Ltd. -vs- ACIT [104 ITD 427], In the said case, the assessee raised funds by way of issuance of secured premium notes (hereinafter to be referred to in short SPNs) which are redeemable at a premium partly at the end of 4th, 5th, 6th and 7th year. It was held that, the liability to pay the premium amount over and above the face value of SPNs on redemption is a liability incurred by the assessee for the purposes of its business by generating funds, which were utilized for its business activities. Thus, such an expenditure is an allowable expenditure, It was held that with regard to year of allowability, the payment of premium results in securing of benefit over a number of years. The benefit is spread over the, entire period of seven years. Therefore, the expenditure is allowable over the entire period of SPNs till redemption. It was held that the assessee has correctly claimed deduction only in respect of the proportionate premium relatable to the year in question. Further, the similar issue has also been considered by the ITAT, Bangalore Bench in the case of DCIT -vs- Insotex (India) Ltd. [103 ITD 211]. In the said case, it was held that provision for interest on Deep Discount Bonds issued by the assessee-company tenable for a period of 25 years, the provision made by the assessee on such incremental value is an accrued liability and the same is allowable as business expenditure.*

*6. Since the issue involved before us is covered by the aforesaid decisions, we hold that the Ld. CIT(A) has rightly allowed the expenditure of Rs.43,35,306/- as revenue expenditure in respect of the Deep Discount Debentures issued by the assessee company. Accordingly, we reject the ground of appeal taken by the Department by upholding the order of the Ld. CIT(A).”*

4. This decision of the Coordinate Bench was subsequently followed in assessee's own case for AY 2003-04 and 2006-07 in ITA No. 648 & 649/Kol/2010 dated 14.06.2011 allowing the claim of the assessee. On this, Ld. Sr. DR could not bring anything to controvert the same.

5. We have heard the rival contentions and perused the material available on record. We find that there is no material change in the facts and the applicable law as well as nothing has been brought on record by the Ld. Sr. DR to controvert the findings given by the Coordinate Bench in assessee's own case for the preceding years, referred above.

Accordingly, respectfully following the decision of the Coordinate Bench stated above and considering the facts on record, we allow the claim of the assessee. Grounds taken by the assessee in this respect are allowed.

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

Order pronounced in the open court on 21st June, 2023.

Sd/-

(Sanjay Garg)  
Judicial Member

Sd/-

(Girish Agrawal)  
Accountant Member

***Dated: 21st June, 2023***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent:.
  3. CIT(A), NFAC, Delhi
  4. CIT,
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata