

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND  
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **846/Chny/2020**

निर्धारण वर्ष / Assessment Year: 2011-12

M/s. Cholamandalam Investment &  
Finance Company Limited,  
No.2, Dare House, NSC Bose Road,  
Parrys, Chennai – 600 001  
**[PAN: AAACC-1226-H]**

Deputy Commissioner of  
Income Tax,  
Company Circle-1(3),  
121, Mahatma Gandhi Road,  
Chennai – 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. Ajit Kumar, CA and  
Shri. Kunal Shah, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. R. Mohan Reddy, CIT

सुनवाई की तारीख/Date of Hearing

: 13.07.2023

घोषणा की तारीख/Date of Pronouncement

: 27.09.2023

**आदेश /ORDER**

**PER MANJUNATHA. G, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 04.03.2020 and pertains to assessment year 2011-12.

2. At the outset, we find that there is a delay of 176 days in appeal filed by the assessee. During the course of hearing,

when defect was brought to the notice of the learned AR present, he has submitted that delay in filing of appeal is mainly due to lockdown imposed by the Govt. on account of spread of Covid-19 infections and in view of the Hon'ble Supreme Court **suomotu** Writ Petition No.3 of 2020, if the period of delay is covered within the period specified in the order of the Apex Court, then same needs to be condoned in view of specific problem faced by the public on account of Covid-19 pandemic.

3. The learned DR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

4. Having heard both sides and considered reasons given by the learned AR, we find that the Hon'ble Supreme Court in **suomotu** Writ Petition No.3 of 2020, has extended limitation applicable to all proceedings in respect of Courts and Tribunals across the country on account of spread of Covid-19 infections w.e.f. 15.03.2020, till further orders and said general exemption has been extended from time to time. We further noted that delay noticed by the Registry pertains to the period of general exemption provided by the Hon'ble Supreme Court

extending limitation period applicable for all proceedings before Courts and Tribunals and thus, considering facts and circumstances of the case and also in the interest of natural justice, we condone delay in filing appeal filed by the assessee.

5. The assessee has raised the following grounds of appeal:

**"1. Disallowance made for prepaid finance charges amounting to INR 12,27,11,592:**

*On the facts, and in the circumstances of the case, and in law, the learned CIT(A) erred in upholding the disallowance in relation to prepaid finance charges amounting to INR 12,27,11,592 relying on the decision of Hon'ble Supreme Court of India in case of Madras Industrial Corp. Ltd vs CIT*

*On the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in distinguishing the decision of Hon'ble Supreme Court of India in case of Madras Industrial Corp. Ltd vs CIT which was dealing with the subject of discount on issue of the debentures, having a different nexus as compared to payment of prepaid finance charges.*

*On the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in concluding, that, the liability to make the payment for finance charges occurred in the current year but the payment was made to secure the benefit over the tenure of loan*

*On the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in appreciating the fact that the prepaid finance charges were to be paid as a pre-condition to obtain the borrowing and were not a contingent liability to be incurred at a future date.*

*Without prejudice to the above and on the facts and circumstances of the case, and in law, the learned CIT(A) erred in considering the submissions filed by the Appellant to direct the learned AO, that, a deduction to the extent of prepaid finance charges disallowed is ought to be allowed in the respective subsequent year to the Appellant.*

**2. Claim of depreciation at the rate of 10% on temporary assets amounting to INR :**

*On the facts and in the circumstances of the case, and in law, the Appellant requests your Honour to direct the learned AO to allow the claim of depreciation @ 10% on the written down value of leasehold premises for the additions made in the preceding financial year i.e. FY 2009-10*

*Your Appellant has made an application before the learned AO to give effect for the above ground. In the event, the learned AO passes the desired order giving effect as requested by Your Appellant, this ground of appeal would stand withdrawn.*

**3. Allowability of education cess paid as an expenditure under section 37(1) of the Act:**

*On facts and in the circumstances of the case, and in law, your Appellant would like to make a fresh legal claim before your Honour to allow the deduction of 'Education Cess and Higher Education Cess' while computing the total income.*

*On facts and in the circumstances of the case, and in law, your Appellant would like to rely on the decision by **Hon'ble Bombay High Court** in case of **Sesa Goa Limited vs JCIT** and **Hon'ble Rajasthan High Court** in case of **Chambal Fertilizers and Chemicals Ltd.**, wherein, it has been held that, the amount paid towards 'cess' cannot be considered equivalent to amount paid towards any 'tax'.*

*On facts and in the circumstances of the case, and in law, your Appellant wishes to draw attention to the fact that this ground was not taken in the appeal filed with the learned CIT(A). However, such omission was neither deliberate nor contumacious but has come up out of the legal position which has come to the notice of the Appellant subsequent to completion of appellate proceedings before the learned CIT(A).*

*The Appellant craves leave to add to, or alter, by deletion, substitution, modification or otherwise, the above grounds of appeal, either before or during the hearing of the appeal.*

6. The brief facts of the case are that, the assessee company filed its return of income for the assessment year 2011-12 on 09.11.2012, admitting a total income of Rs. 60,87,76,411/- and further filed a revised return on 26.07.2012, admitting total income of Rs. 14,41,78,134/-.

During the financial year relevant to assessment year 2011-12, the assessee has claimed prepaid finance charges amounting to Rs. 12,27,11,592/- in the statement of total income. During the course of assessment proceedings, the AO called upon the assessee to explain as to why prepaid finance charges shall not be disallowed. In response, the assessee submitted that although in the books of accounts finance charges has been claimed as expenditure, on the basis of tenure of loan, but in the statement of total income said expenditure has been claimed as deduction, because the assessee has already incurred the expenditure for the purpose of business. The AO, however was not satisfied with the explanation furnished by the assessee and according to the Assessing Officer, finance and other charges amortized over a period in the books of accounts, cannot be claimed as deduction in full in the year of payment, because said finance charges would run over a period of time and further as per the Principle of matching concept of accounting, the corresponding expenditure relatable to income alone needs to be recognized. The Id. Assessing Officer had also discussed the issue in light of Hon'ble Apex Court in the case of Madras Industrial Investment Corpn. Ltd vs CIT reported in [1997] 91 Taxmann

340, and observed that though the liability to pay finance charges is incurred in the year of availing loan facility, the payment is secure a benefit over a number of years. There is a continuing benefit to the business of the company over the period and therefore, the liability should be over the period of loan. Therefore, disallowed prepaid finance charges claimed by the assessee in the computation statement, amounting to Rs. 12,27,11,592/-.

7. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id. CIT(A), the assessee has reiterated its arguments made before the Assessing Officer, in light of certain judicial precedents and argued that the treatment in the books of accounts is not relevant to decide allowability of any expenditure, but what is required to be seen is whether the expenditure has been incurred wholly and exclusively for the purpose of business and further said expenditure pertains to relevant financial year or not. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of the decision of Hon'ble Apex Court in the case of Madras Industrial Investment Corpn. Ltd vs CIT (supra), rejected arguments of the assessee and

sustained additions made by the AO towards disallowance of prepaid finance charges, on the ground that said payment was to secure benefit over the number of years and thus, same cannot be allowed as deduction in the year of payment. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

8. The Id. Counsel for the assessee, Shri. Ajit Kumar Jain, CA and Shri. Kunal Shah, CA, submitted that the Id. CIT(A) erred in upholding the disallowance in relation to prepaid finance charges amounting to Rs. 12,27,11,592/-, by relying upon the decision of Hon'ble Supreme Court in the case of Madras Industrial Investment Corpn. Ltd., vs CIT (supra), without appreciating the fact that, said judgment was dealing with the subject of discount on issue of debentures, having a different nexus as compared to payment of prepaid finance charges. The Ld. Counsel for the assessee, further submitted that there is no dispute with regard to the fact that the assessee has incurred expenditure. Although, for books of accounts, the same has been amortized over the period of loan and classified as prepaid finance charges, but because expenditure was incurred wholly and exclusively for the

purpose of business, the same has been claimed as deduction in the year of payment, and in this regard he relied upon the decision of Hon'ble Supreme Court in the case of Taparia Tools Ltd vs JCIT [2015] 372 ITR 605 and its decision in the case of Indian Cements Ltd vs CIT [1966] 60 ITR 52.

9. The Id. DR, Shri. R. Mohan Reddy, CIT, supporting the order of the Id. CIT(A) submitted that, there cannot be different treatment for any expenditure, i.e., one for the purpose of book and one for the purpose of computation of profits and gains from business and profession. In the present case, there is no dispute with regard to the fact that the assessee itself has classified said expenditure as prepaid and does not pertain to impugned assessment year. Once, the expenditure does not pertain to impugned assessment year, then the question of deduction towards said expenditure does not arise, because as per matching principal of accounting, expenditure corresponding to income earned for the relevant period alone needs to be accounted. The Assessing Officer and CIT(A), after considering relevant facts has rightly disallowed prepaid finance charges and their order should be upheld.

10. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the appellant has amortized finance and other charges in the books of accounts over a period of loan and wherever finance charges pertains to subsequent financial year, the same has been accounted as prepaid finance charges and debited under the head current assets. But, for the purpose of income tax the appellant has claimed total finance charges including prepaid finance charges as deduction, on the ground that said expenditure has been incurred wholly and exclusively for the purpose of business and further expenditure needs to be allowed as deduction in the year for payment. We find that the Hon'ble Supreme Court has considered an identical issue in the case of Taparia Tools Ltd vs JCIT (Supra), and held that once actual payment is made towards any expenditure, merely because a different treatment was given in the books of accounts, could not be factor, which would deprive assessee from claiming the entire payment of interest as deduction in the year of payment. The Hon'ble Supreme Court in the case of Kedarnath Jute Mfg. Co Ltd vs CIT [1971] 82 ITR 363, held that entries in books of accounts is not relevant to decide the

issue of deductibility of any expenditure. In the present case, there is no dispute with regard to the fact that the assessee has incurred the expenditure towards finance charges and also paid during the impugned assessment year itself. Since, the assessee has already paid finance charges, in our considered view, deduction should be allowed towards finance charges including prepaid finance charges, if any, in the year of payment itself, even though, said expenditure has been treated as deferred revenue expenditure or prepaid expenditure in the books of accounts and claimed over a period of loan. The Id. CIT(A), without appreciating relevant facts simply sustained additions made by the Assessing Officer and thus, we set aside the findings of the Id. CIT(A) and direct the Assessing Officer to delete additions made towards disallowance of prepaid finance charges.

11. The next issue that came up for our consideration from ground no. 2 of assessee appeal is depreciation claimed on temporary assets. The Ld. Counsel for the assessee, at the time of hearing submitted that the assessee does not want to press this ground and thus, grounds of appeal filed by the

assessee challenging the disallowance of depreciation on temporary assets is dismissed as withdrawn.

12. The next issue that came up for our consideration from ground no. 3 of assessee appeal is deductibility of education cess paid as an expenditure u/s. 37(1) of the Act. The Ld. Counsel for the assessee, submitted that the assessee does not want to press the ground challenging deductibility of education cess u/s. 37(1) of the Act and thus, ground no 3 of appeal filed by the assessee is dismissed as withdrawn.

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

Order pronounced in the court on 27<sup>th</sup> September, 2022 at Chennai.

**Sd/-**  
**(महावीर सिंह )**  
**(MAHAVIR SINGH)**  
उपाध्यक्ष /Vice President

**Sd/-**  
**(मंजुनाथ. जी)**  
**(MANJUNATHA. G)**  
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 27<sup>th</sup> September, 2022

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF