

**आयकर अपीलीय अधिकरण, सी, यपीठ,चेन्नई**  
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' (SMC) BENCH : CHENNAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT**

आयकर अपील सं./I.T.A. No.488/CHNY/2023  
निर्धारण वर्ष/Assessment year : 2014-2015.

M/s.Kali BMH Systems Private  
Limited,  
42/6B-2, Melakaveri,  
Kumbakonam,  
Tanjore 612 002.

**Vs.** The Assistant Commissioner of  
Income Tax,  
Circle 1,  
Kumbakonam.

[PAN AADCK 0974H]

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Shri. K. Ravi, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri G. Suresh, IRS, JCIT

सुनवाई की तारीख/Date of Hearing

: 03.01.2024

घोषणा की तारीख /Date of Pronouncement

: 27.03.2024

**आदेश/ ORDER**

This appeal by assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in Order No.ITBA/NFAC/S/250/2023-24/1050107191 (1), dated 24.02.2023. The assessment was framed by the Assistant Commissioner of Income Tax, Circle 1, Kumbakonam for the assessment year 2014-2015, passed u/s.143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dated 22.12.2016.

**2.** The first issue in this appeal of the assessee is with regard to order of the Id. Commissioner of Income Tax (Appeals (in short "CIT (A)) in not considering the jurisdiction grounds ie challenging the jurisdiction of the Id. Assessing Officer. For this, assessee has raised the following grounds:-

^a. The order of the NFAC, Delhi is erroneous in law and opposed to the facts and circumstances of the case.

b. The Change of Jurisdiction effected on 19.04.2016, gathered by the Appellant from the Order of the CIT(A) passed on 22.07.2020 for AY2013-14, has been made without following the Procedures prescribed u/s 127. Also this has been done without Proper Intimation to the Appellant. Therefore, the entire proceedings initiated right from the assessment order passed u/s 143(3) on 22.12.2016 is not valid and hence void under law.

c. The Appellant derives support from the case of M/s YCH Logistics India Pvt. Ltd. Vs. DCIT (2023)(148 Taxmann.com 118), where the Chennai Bench of ITAT had held that "the jurisdictional provision enacted in public interest could never be waived and is always open to challenge even if the issue has not been raised in the first round. It is always open to question or challenge the jurisdictional proceedings as long as the matter has not reached finality".

d. The NFAC, Delhi, after having considered all the material submissions made by the Appellant has not appreciated the principles put forth by the Appellant, instead proceeded to decide the case based on the decision of the Chennai ITAT Bench in the Appellants own case".

**3.** At the outset, the Id. Counsel for the assessee stated that on 19.4.2016, there was change in jurisdiction of assessee from the Assistant Commissioner of Income Tax, Kumbakonam to the Deputy Commissioner of Income Tax, Trichy and according to him, this was gathered by the assessee from the order dated 22.07.2020 of the Id. Commissioner of

Income Tax (A), Trichy for the assessment year 2013-2014, wherein it was intimated that there was change in jurisdiction from the Assistant Commissioner of Income Tax, Kumbakonam to the Deputy Commissioner of Income Tax, Trichy. When it was pointed out to the Id. Counsel for the assessee that the assessment order for the relevant assessment year 2014-15 is passed by the Assistant Commissioner of Income Tax, Circle I, Kumbakonam u/s.143(3) of the Act and there was no change in jurisdiction at all. He could not say anything and hence this jurisdiction issue is dismissed as assessee could not point out what is the defect in the jurisdiction. Hence, this jurisdiction issue stands dismissed.

4. The next issue raised by the assessee is with regard to premium amortised in the profit and loss account out of the 2/3<sup>rd</sup> claimed and disallowed as not relating to the business of the assessee and thereby added a sum of Rs.10,66,667/-. For this, assessee has raised various grounds from "e" to "o", which are argumentative and factual and need not be reproduced.

5. At the outset, it is noticed that the Id. Assessing Officer while framing the assessment noted that in the capital account copies of the partners' account of the erstwhile firm Rs.67.6 lakhs was credited in each of the partners account out of revaluation reserve on 23-03-2007 and on 29-03-2007, Rs. 1,10,00,000/- was drawn by each partner out of the

firm's funds. So a sum of Rs.2.02 crores taken out by three erstwhile partners (present directors of the assessee company) are out of revaluation reserve credited in their current account which was not a profit of the firm distributed to the partners. So the drawal of funds of Rs.2.02 crores by three erstwhile partners through revaluation reserve is not their earned profit. This was only funds of the business of the firm overdrawn by the erstwhile partners. So when these were again brought in on 27-06-2007 they cannot be taken as fresh infusion of funds by directors. The premium amortised in the profit and loss account of the company for the assessment year 2014-2015 is Rs.16,00,000/-, out of which the Id. Assessing Officer disallowed 2/3<sup>rd</sup> of the claim which works out to Rs.10,66,667/- since it is not relating to business of the company he added the same. Aggrieved, assessee preferred an appeal before the Id. CIT(A).

**6.** The Id. CIT(A) relying on Co-ordinate Bench decision of the Tribunal in assessee's own case for earlier assessment years had upheld the action of the Id. Assessing Officer by observing at para 5 & 6 as under:-

*'5. Decision: All grounds are against the disallowance of amortization of premium on debentures. Same issue in the case of the appellant was decided by co-ordinate bench of ITAT Chennai for the assessment years 2008-09, 2009-10, 2010-11, 2012- 13 and 2013-14 (ITA No.1186, 1631, 1632, 1633/Mds/2015 and ITA No.864/Chny/2020) wherein it was held that, the credit on the revaluation of the asset by a firm could not therefore be made to the capital account of any of its partners (and, by*

*implication, to all the partners). During its subsistence, such a credit is not admissible under the Act as well, which regards partnership as a different person, separate and distinct from the partners, so that the transfer of an asset by one to the other is liable for capital gains u/s. 45. In view of the clear bar on such a credit, the question of its withdrawal does not arise. This in fact is also the accounting prescription for any business enterprise. The credit, on revaluation, which may be undertaken for any business purpose, is to a separate account titled 'revaluation reserve'. The same is barred for being withdrawn. Reference in this regard may be made to para 13 of the Accounting Standard (AS)-10, titled 'Accounting for Fixed Assets', issued by the Institute of Chartered Accountants of India. An increase in net book value arising on revaluation of fixed assets is normally credited directly to owner's interests under the heading of revaluation reserves and is regarded as not available for distribution.*

*Could the assessee possibly be entitled to deduction of interest on such borrowings, i.e., to that extent these represent the increase in valuation of a firm's (entity's) fixed (capital) asset/s forming part of the capital structure. We think not; it being without any business purpose. That is, while the inflow of funds by the directors, substituting bank borrowings, would qualify for deduction of interest thereon, that in excess, representing only an increase in the valuation by the firm of its capital asset/s, shall not; the same being sans any business purpose, which alone would entitle the borrowing by an assessee for deduction of interest thereon u/s. 36(1)(iii). This, thus, answers the second question arising in the instant case (refer para 3). It may not be out of place to state here that the disallowance of interest (to the proportionate extent i.e., the enhanced valuation), has nothing to do either with s. 47(xiii) or the swapping of bank borrowings with that by the directors, being issued debentures. Irrespective of the extent of the swapping, the borrowing in excess of the firm's assets, serves no business purpose and, accordingly, interest thereon is disallowable u/s. 36(1)(iii).*

*6. Respectfully following the above decision of the Chennai ITAT in appellant's own case for earlier assessment years, it is held that the assessing officer has correctly disallowed the proportionate amount of premium amortised in the profit and loss account. Hence the appeal is dismissed".*

Aggrieved, assessee preferred an appeal before the Tribunal.

7. I have heard the rival contention and perused the material on record. I find that assessee has not made any argument with regards to merits of the case, even otherwise from the facts of the case, it is clear that the issue of amortised amount of premium of the business of the assessee company is rightly confirmed by the Id. CIT(A) relying on earlier years assessment order (supra) of the Tribunal. Respectfully, following the co-ordinate bench decision, I dismiss the ground of the assessee.

8. In the result, the appeal of the assessee in ITA No.488/Chny/2023 for assessment year 2014-2015 stands dismissed.

Order pronounced on 27<sup>th</sup> day of March, 2024, at Chennai.

Sd/-

(महावीरसिंह )

**(MAHAVIR SINGH)**

उपाध्यक्ष/VICE PRESIDENT

चेन्नई/Chennai

दिनांक/Dated: 27.03.2024.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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