

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.202/MUM/2024
(Assessment Year :2015-2016)**

Sangir Plastics Private Limited 3 rd Floor, Mandhana Enclave, Bagur Nagar, Goregaon West Mumbai - 400104	Vs.	Deputy Commissioner of Income Tax, Circle 8 (1)(1), Mumbai Room No.624, 6 th floor, Aaykar Bhavan, Maharshi Karve Road, Mumbai - 400020
PAN/GIR No.AABCS3737J		
(Appellant)	..	(Respondent)

Assessee by	Shri. Prakash Jotwani
Revenue by	Shri. P.D. Chougule
Date of Hearing	16/05/2024
Date of Pronouncement	22/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 06/12/2023 passed by NFAC Delhi for the quantum of assessment passed u/s.154 for A.Y.2015-16.

2. The brief facts are that, here in this case assessee had filed return of income for A.Y.2015-16 on 30/09/2015 declaring total income of Rs.7,95,57,120/-. In the tax audit report filed in the

return of income, the Tax Auditors in item 21(i) of Form No.3CD which require reporting on amount inadmissible under proviso to Section 36(1)(iii) had inadvertently reported the amount of Rs 32,95,767/-. Thereafter, assessee's case was selected for scrutiny and assessment order u/s.143(3) was passed on 22/12/2017 determining total income at return income of Rs.7,94,57,120/- i.e. on the returned income. Afater more than two years, ld. AO issued a notice u/s.154 on 06/02/2020 stating that there is a mistake apparent from record within the meaning of Section 154 proposing to rectify following mistake:-

“(i) The tax auditor has certified an amount of Rs.32,95,767/- in tax audit report in form 3CD as inadmissible under the proviso to Section 36(1)(iii). However, the same was not disallowed in computation of income and added back to total income”

3. In response assessee submitted a detailed reply and clarified in the following manner vide reply dated 27/02/2020.

“Rs. 3295767/- is the Bank Interest and Bank Charges incurred on acquisition of Fixed assets which is duly capitalized under the head of particular assets for the period till the asset was put to use. The above referred amount are not debited to the Profit and Loss Account for the year under review. We are enclosing herewith a Certificate from the Tax Auditor mentioning that the amount was inadvertently mentioned in Tax Audit Report.

Further in this connection we are enclosing herewith the following details:

a. Detail of addition to Building highlighting the amount of interest and bank charges capitalized. (Annexure A)

- b. Detail of addition to Plant and Machinery highlighting the amount of interest and bank charges capitalized. (Annexure B)
- c. Detail of Capital WIP (Plant & Machinery) highlighting the amount of interest and bank charges capitalized. (Annexure C)
- d. Detail of addition to Electrical Installation highlighting the amount of interest and bank charges capitalized. (Annexure D)
- e. Detail of Bank Charges (Annexure E1) highlighting the amount of bank charges credited for capitalization purpose and after deducting the same the net amount is shown in Profit and Loss Account for the year under review, a detailed grouping for Bank charges(Annexure E 2 a), miscellaneous expenses (Annexure E 2 b) and Schedule 28 (Annexure E3) for other expenses is given.
- f. Detail of Interest on Term Loan (Annexure F1) highlighting the amount of Interest credited for capitalization purpose and after deducting the same the net amount is shown in the Profit and Loss Account for the year under review, a detailed grouping of Interest Expenses (Annexure F2) and Finance cost Schedule 27 (Aruvexure F3) is given.
- g. Note 11 of Fixed Asset showing the additions made during the year (Annexure G)
- h. Statement showing detail of interest and bank charges capitalized on purchase of Fixed Assets. (Annexure H)

From the above supporting documents it is crystal clear that Rs. 32,95,767/- is duly capitalized under specific asset heads and as the same has not been debited to Profit and Loss Account therefore no question of disallowance u/s 36(1)(iii) arises. Therefore we strongly object on your proposed rectification u/s 154 of the Act.”

4. Thereafter, again in response to notice assessee again clarified this issue in the following manner vide letter dated 02/03/2020.

*“In continuation with our letter no: SSR/IT/19-20/142 dated 27.02.2020 in which we have made our submission about your proposed rectification u/s 154 of the Act for Rs. 32,95,767/-. **In which we have explained that above amount was incurred as bank charges and interest on the purchase of Fixed Assets by the Assessee which were duly capitalized under the specific head of the Assets. The detail for the same has already been submitted.***

Now we are submitting the details of Loans and Advances given which is as under:

<i>Sr. No</i>	<i>Particular</i>	<i>Amount(in Rs.)</i>	<i>Detail Annexure</i>
<i>1</i>	<i>Long Term Loans and Advances</i>	<i>1,58,34,942/-</i>	<i>A</i>
<i>2</i>	<i>Other Non-Current Assets</i>	<i>2,83,26,342/-</i>	<i>B</i>
<i>3</i>	<i>Short-Term Loans and Advances</i>	<i>9,30,93,170/-</i>	<i>C</i>
<i>4</i>	<i>Other Current Assets</i>	<i>21,15,309/-</i>	<i>D</i>

From the above detailed annexures it is clearly exhibited that no interest free loans and advances is being given by the Assessee. All the balances lying in Loans and Advances (Long term), Non-Current Assets and Loans and Advances (Short term), Current Assets is for the purpose of business and accordingly as we explained in our earlier letter that it was typographical error made while preparing and submitting the tax audit report for which we have already submitted fresh certificate from the Tax Auditor that it was wrongly mentioned under the clause 21(i) of the 3CD report u/s 36(1)(iii) of the Act.

In view of the above we request you to please do not make any addition u/s 36(1)(iii) and accordingly do not initiate the rectification u/s 154 of the Act.”

5. Again third time ld. AO issued the same notice on 11/02/2022 on same issue without seeing the earlier replies and in response assessee again clarified in detail vide letter dated 20/02/2022 and reiterated again. Despite the above clarifications on three occasions and submitting of details and repeatedly stating that assessee has not made any claim of interest in profit & loss account and rather it has been capitalised, ld. AO still proceeded to disallow the amount of Rs.32,95,767/- u/s.36(1)(iii) without assigning any reason, nor taking into cognizance of so many replies filed in response to notices issued u/s.154/-.

6. Before the ld. CIT(A), assessee again reiterated the same and pointed out that there is no such interest which can be disallowed, because interest has not been debited to the profit and loss account and Chartered Accountant had already issued a certificate that while preparing the Form 3CD against amount inadmissible u/s.36(1)(iii) was a typographical error, because the said amount is pertaining to bank interest and bank charges incurred for acquisition of a fixed asset which has been duly capitalised in the books of accounts. However, the ld. CIT (A) again in a very summary manner without even looking into the submissions and clarifications or whether such claim has been made in the P & L account has dismissed the appeal in the following manner:-

“The grounds raised have been carefully considered and found that during the course of rectification proceedings, the assessing officer has indicated the issue to the appellant and in turn, the appellant has submitted its explanation including the records in

support of its claim. The assessing officer after examining the same came to the conclusion that there was an issue of inadmissible required under proviso to Sec. 36(1)(iii). Accordingly brought to tax.

The submissions made during the course of appellate proceedings have been considered and found that the appellant had reiterated the stand taken before the assessing officer along with the materials submitted.

In the light of the above, considering the fact that the Form 3CD uploaded by the appellant and certified by the Chartered Accountant originally is required to be considered. Therefore, the action of the assessing officer in disallowing the inadmissible amount of Rs.32,95,767/- u/s 36(1) (iii) is upheld. Hence, the grounds raised are dismissed.”

7. After hearing both the parties and on perusal of the facts and material on record, we find that both at the level of AO as well as at the level of 1d First Appellate Authority, nobody has even acknowledged the clarification / submissions made by the assessee clearly pointing out that the interest and the bank charges of Rs.32,95,767/- has not been debited to the profit and loss account at all nor has been claimed as deduction. Despite this, simply based on reporting in TAR, disallowance has been made. Once assessee has not debited the interest in the profit and loss account nor has been claimed and of all this fact was brought on record and clarified repeatedly before the authorities below, then where is the question of any disallowance. Apart from that Chartered Accountant has already given a certificate of clarification which too has been ignored. That shows complete non-application of mind by both the authorities for a very simple issue. Accordingly, the disallowance made by the 1d. AO and as

confirmed by the ld. CIT (A) is deleted and appeal of the assessee is allowed.

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

Order pronounced on 22nd May, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 22/05/2024
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai