

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.1109/Hyd/2018**
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Agarwal Sponge & Energy Private Limited, Hyderabad. PAN: AAECA8680P	Vs.	Income Tax Officer, Ward-1(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Sunil Kumar Jain, C.A.	
राजस्व द्वारा / Revenue by:	Shri Pranav Kumar, CIT-DR	
सुनवाई की तारीख / Date of hearing:	29/08/2024	
घोषणा की तारीख / Pronouncement:	03/09/2024	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M:

This appeal is filed by M/s. Agarwal Sponge & Energy Private Limited, Hyderabad ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-I, Hyderabad ("Ld. CIT(A)"), dated 09.01.2018 for the A.Y. 2012-13.

2. The facts of the case in brief are that the assessee was a company engaged in the business of manufacturing of sponge iron lump, filed its return of income for A.Y. 2012-13 on 29.03.2013 declaring total income of Rs.Nil. The case of the assessee was selected for scrutiny under CASS and notices u/s. 143(2) and 142(1) of the Income Tax Act, 1961 ("the Act") were

issued to the assessee. After considering the submissions of the assessee, the Learned Assessing Officer (“Ld. AO”) completed the assessment u/s.143(3) of the Act on 30/03/2015 determining the total income at Rs.1,47,78,396/-.

3. Aggrieved with the order of Ld. AO the assessee filed appeal before the Ld. CIT(A), who partly allowed the appeal of the assessee. Then feeling aggrieved with the order of Ld. CIT(A) the assessee is in appeal before us.

4. At the outset, the Ld. AR submitted that, there are three issues involved in the appeal i.e. a) disallowance of interest of Rs.22,97,435/-; b) addition of unsecured loan from Frontline Steel Pvt. Ltd. of Rs.44,93,733/- and c) addition of outstanding amount of Industrial Engineering Consultants of Rs.13,53,500/-.

5. The brief facts with regard to the ground i.e. disallowance of interest of Rs.22,97,435/- are that, the assessee company had given interest free loan to related parties amounting to Rs.2,87,17,946/-. On account of such interest free loans of Rs.2,87,17,946/- the Ld. AO disallowed an amount of Rs.22,97,435/- u/s.36(1)(iii) of the Act, as per his observation in para No.3 of his order, which is reproduced as under :

“ 3. After verifying the information submitted by the assessee company, the assessment is completed as under: -

On verification of records of the assessee, it is noticed that the assessee company had advanced huge amounts to related party concerns viz.,

- | | |
|--|-----------------------|
| <i>1. Agarwal Steel Structures (India) Pvt Ltd</i> | <i>Rs.99,50,000</i> |
| <i>2. Satish & Co</i> | <i>Rs.1,20,00,000</i> |
| <i>3. Bhagwati Fats & Edible oils Pvt Ltd</i> | <i>Rs.57,67,946</i> |

4. Suresh Jimat Lalwani Rs.10,00,000.

Total amounts advanced Rs.2,87,17,946

(At Sino.2,3, & 4, the details of amounts advanced to related party were not mentioned in my show cause letter as they information was furnished subsequent to issue of my show cause notice)

The assessee has neither trading relations nor share interest in the above company & firms. While the assessee paid huge interest to banks and private parties, no interest was charged on the amounts lent to the above related parties. The following is the loan taken from related party and the interest paid

	Loan	Interest paid
1. Agarwal Inds. Pvt Ltd	Rs.18,31,72,105	Rs.29,85,762

The assessee was asked to explain as to why proportionate interest should not be disallowed U/s 36(1)(iii) of the Act.

In response the assessee objected to the same stating that the assessee had interest free funds of Rs.45,90,59,790/- (including borrowed funds, share capital and free reserves). The contention of the assessee is not accepted. The assessee had paid interest on the funds borrowed from related party & sister concerns, similarly, whatever amount given to sister concerns, the interest had to be levied irrespective of whether the assessee company has any interest free loans from various parties.

Further, in the instant case, the assessee has no commercial/trading transactions with the above companies and firms. They are not subsidiary companies either. The assessee has not explained the circumstances under which huge amounts was lent to them.

When the assessee lends its own money, the department cannot make addition towards notionally accrued interest. On the other hand if the borrowed amounts are diverted as interest free advances to the related concerns without having any commercial expedience, the AO is within his right to disallow the interest paid by the assessee to its bankers. In the instant case the assessee was having huge overdraft facility. The interest burden on the assessee was as much as Rs.4.73 Crores. Therefore, there is no question of having own funds. Therefore, an amount of Rs.22,97,435 (9% on Rs.2,87,17,946) is charged and accordingly disallowed and added to the income returned.”

6. Feeling aggrieved with the order passed by Ld. AO, the assessee filed an appeal before the Ld.CIT(A) who dismissed the claim of the assessee contending the same is disallowable u/s.36(1)(iii) of the Act, as per his observation under para No.6.3 of his order which is reproduced as under :

“ 6.3 The submissions of the appellant and the Assessing Officer have been carefully considered. The main submission of the appellant is that the company had enough fund to invest / give loans on interest free to its related parties. Before me, the appellant could not show that existence of surplus funds. The appellant has shown the share capital, reserves, etc. as surplus funds. However, the appellant has not taken the application of funds while calculating surplus. Had the company have surplus funds, then the need for taking loans and paying interest would not have been present. The appellant has paid huge financial charges. Hence, I strongly feel notional interest needs to be disallowed. In absence of any business benefit or otherwise, the interest free loans should be subjected to calculation for notional interest. However, the interest to be calculated should be @ 8%, which is regular bank rates. The addition made by the Assessing Officer regarding notional interest is upheld, however, the quantum of disallowance has to be calculated @ 8%.”

7. Feeling aggrieved with the order of Ld.CIT(A), the assessee is in appeal before us. The Ld.AR submitted that the assessee had an interest free fund of Rs.62,16,16,598/-, the details of which were also furnished before the revenue authorities. However, the interest free advances given to related parties are Rs.2,87,17,946/-. Hence the assessee had surplus interest free fund over the interest free advances given by the assessee. Therefore the disallowance made by the revenue authorities on

account of notional interest are to be deleted. In support of his claim the Ld. AR relied on the decision of co-ordinate bench in the case of Agarwal Industries Pvt. Ltd. in ITA No.812/Hyd/2019 and ITA No.629/H/2012.

8. Per contra, the Ld. DR placed heavy reliance on the order of authorities below and requested to uphold the order of the revenue authorities.

9. We have heard the rival contentions and gone through the record in the light of submissions made by the either side. There is no dispute about the facts that the assessee was having interest free fund of Rs.62,16,16,598/-, which is more than the total amount of interest free advances given by the assessee to the related parties. Further the Ld. AR submitted before us the party-wise details of interest free advances given to the related parties, containing their opening balances, debit / credit during the year and their closing balances. He further submitted that no fresh amounts had been given during the year to the related parties except in the case of Bhagwati Fats and Edible Oil Private Ltd., where there was an increase in closing balance by Rs.41,67,846/-. With regard to increase in closing balance of Bhagwati Fats and Edible Oil Private Ltd. by Rs.41,67,846/-, he submitted the copy of bank statement of Kotak Mahindra Bank (page No.88 of P.B.) and demonstrated that the fresh amounts

had not been given to Bhagwati Fats and Edible Oil Pvt. Ltd. out of any loan funds. However without considering the facts of the case, the Ld. AO made a disallowance of notional interest of Rs.22,97,435/- on account of interest free advances given out of available interest free funds. The identical issues were came before the co-ordinate bench in the case of Agarwal Industries Pvt. Ltd. (supra) in which the Hon'ble Bench held that, if the interest free and own funds are advanced to sister concern and others, the charging of notional interest does not arise. Following the view taken by the Hon'ble Bench in the case of Agarwal Industries Pvt. Ltd. (supra), we also hold that the disallowance of notional interest of Rs.22,97,435/- does not arise. Hence we delete the addition made by Ld.AO amounting to Rs.22,97,435/-. Accordingly, this ground of the assessee is allowed.

10. Now coming to the next ground which is with regard to addition of unsecured loans from Frontline Steel Pvt. Ltd. of Rs.44,93,733/-. The brief facts with regard to this ground are that, there was an outstanding closing balance of Rs.44,93,733/- payable by the assessee to Frontline Steel Pvt. Ltd. The Ld. AO added the same to the total income of the assessee as per his observation in para No.4 of his order, which is reproduced as under :

“ 4. During the course of assessment proceedings, the assessee company furnished confirmation letter from unsecured loan creditors except M/s. Frontline Steels Private Limited and the amount of Rs.44,93,733 is treated as cash credit in the hands of the company and assessed accordingly.”

11. Feeling aggrieved with the order passed by Ld. AO, the assessee filed an appeal before the Ld.CIT(A), who dismissed the claim of the assessee as per his observation in para No.7.3 of his order, which is reproduced as under :

“ 7.3 The submissions of the appellant have been carefully considered. The concerned M/s. Frontline Steel Private Limited are supplier of iron ore and this amount was due to them. The amount was clubbed under unsecured loans in the balance sheet. The appellant submitted the running ledger extract of M/s. Frontline Steel Private Limited for the period from 01.04.2011 to 31.03.2012. On verification, it is found that M/s. Frontline Steel Private Limited is supplying sponge iron for which commission and brokerages were being paid and TDS was also deducted. No confirmation letter or address from M/s. Frontline Steel Private Limited was submitted to show the genuineness, identity of the party. In the absence of proof, the addition made by the Assessing Officer is upheld.”

12. Feeling aggrieved with the order of Ld.CIT(A), the assessee is in appeal before us. The Ld.AR submitted that the assessee had an outstanding closing balance of Rs.44,93,733/-

payable to Frontline Steel Pvt. Ltd. The Ld. AR brought our attention to page No.15, 16 and 17 of the paper book and demonstrated that the PAN, address, the detailed ledger account and confirmation of Frontline Steel Pvt. Ltd. were submitted by the assessee before the revenue authorities. However, the revenue authority without considering all the details available with them, added the outstanding closing balance of Rs.44,93,733/- payable to Frontline Steel Pvt. Ltd. to the total income of the assessee. The Ld. AR further submitted that by submitting all the necessary documents / details of Frontline Steel Pvt. Ltd. before the revenue authorities, the assessee fulfilled his obligation to prove the identity, genuinity and credit worthiness of Frontline Steel Pvt. Ltd. Therefore the Ld. AR prayed before the bench to delete the addition made by the revenue authorities.

13. Per contra, the Ld. DR placed heavy reliance on the order of authorities below and requested to uphold the order of the revenue authorities.

14. We have heard the rival contentions and gone through the record in the light of submissions made by the either side. There is no dispute about the facts that the assessee had submitted the PAN, address, the detailed ledger account and confirmation of Frontline Steel Pvt. Ltd. before the revenue

authorities. In our considered opinion, by furnishing all the details / documents before the revenue authorities, the assessee had fulfilled the primary onus imposed on him under the law. However, the revenue authority without considering all the details available with them, added the outstanding closing balance of Rs.44,93,733/- payable to Frontline Steel Pvt. Ltd. to the total income of the assessee. We are not in agreement with the addition made by the revenue authorities. Therefore we delete the addition of Rs.44,93, 733/-. Accordingly this ground of the assessee is allowed.

15. Now coming to the next ground which is with regard to addition of outstanding amount of Industrial Engineering Consultants of Rs.13,53,500/-. The brief facts with regard to this ground are that, there was an outstanding closing balance of Rs.13,53,500/- payable by the assessee to Industrial Engineering Consultants. During the assessment proceedings, the Ld. AO issued letter u/s.133(6) to Industrial Engineering Consultants and sought balance confirmation. The said letter returned back saying “not known” and “no such assessee”, therefore the Ld. AO added Rs.13,53,500/- to the total income of the assessee.

16. Feeling aggrieved by the order passed by Ld. AO, the assessee filed an appeal before the Ld.CIT(A) who dismissed the claim of the assessee contending that there was difference in the

closing balance in the books of the assessee as compared to the closing balance as per confirmation of Industrial Engineering Consultants.

17. Feeling aggrieved with the order of Ld.CIT(A), the assessee is in appeal before us. The Ld.AR submitted that the assessee had an outstanding closing balance of Rs.13,53,500/- payable to Industrial Engineering Consultants. The Ld. AR further submitted that, the Ld. CIT(A) did not record any objection with regard to the findings of the Ld. AO that letter issued u/s.133(6) of the Act returned back saying “not known” and “no such assessee” and accepted the documents submitted by the assessee before him. However, the Ld. CIT(A) dismissed the claim of the assessee on account of solitary reason that there was difference in the closing balance. In this regards the Ld. AR brought our attention to page No.20 to 26 of the paper book and demonstrated that the PAN, address, reconciliation of difference in the closing balance, the detailed ledger account and confirmation of Industrial Engineering Consultants were submitted by the assessee before the revenue authorities. He also submitted that in the reconciliation statements the reason of difference in the closing balance had been given in detail. However, the revenue authority without considering all the details available with them, added the outstanding closing balance of Rs.13,53,500/- payable to

Industrial Engineering Consultants to the total income of the assessee. Therefore the Ld. AR prayed before the bench to delete the addition made by the revenue authorities.

18. Per contra, the Ld. DR placed heavy reliance on the order of authorities below and requested to uphold the order of the revenue authorities.

19. We have heard the rival contentions and gone through the records in the light of submissions made by the either side. There is no dispute about the facts that the assessee had submitted the PAN, address, reconciliation of difference in the closing balance, the detailed ledger account and confirmation of Industrial Engineering Consultants before the revenue authorities. The closing balance of Industrial Engineering Consultants as per the books of the assessee was Rs.13,53,500/- (Cr.) and the closing balance as per the confirmation of Industrial Engineering Consultants was Rs.27,71,481/- (Dr.). Hence there was difference in the closing balance in the books of the assessee as compared to the closing balance as per confirmation of Industrial Engineering Consultants. Although the assessee had filed the reconciliation statement containing the details of reasons for such differences, the Ld. CIT(A) without considering such reconciliation statement, dismissed the claim of the assessee. In our considered opinion the reconciliation statement submitted by the assessee requires

verification from the books of accounts of the assessee. Therefore, we remand back the issue to the Ld. AO to verify the reconciliation statement from the books of accounts of the assessee and decide on merits. The assessee is also directed to explain the difference in the closing balance with the help of cogent reasoning with evidence, if any. It is needless to mention that the Ld. AO shall provide an opportunity of being heard to the assessee before deciding the issue. Accordingly, the ground of the assess is allowed for statistical purposes.

20. To sum up, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 3rd Sept., 2024.

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.

Dated: 03.09.2024.

** Reddy gp*

Copy of the Order forwarded to :

1. M/s. Agarwal Sponge & Energy Pvt. Ltd., 15-1-52/1, Jagdish Nivas, Old Feelkhana, Hyderabad.
2. ITO, Ward-1(1), Hyderabad.

3. Pr.CIT-I, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,