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

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

1. आयकरअपील सं. ITA No.1615/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-18)
&
2. आयकरअपील सं. ITA No.1589/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)

ACIT Corporate Circle-1(1) Chennai.	बनाम / Vs.	**M/s. Archean Industries Private Ltd.** #2, North Crescent Road, T. Nagar, Chennai-600 017.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AAACA-7344-J**		
(अपीलार्थी**/Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी कीओरसे/ **Appellant by**	:	Dr.R.Mohan Reddy, CIT & Shri M. Karthikeyan (Addl.CIT) - Ld. Sr. DR
प्रत्यर्थीकीओरसे/**Respondent by**	:	Shri K.M. Mohandass (CA) - Ld.AR

सुनवाई की तारीख**/Date of Hearing**	:	17-10-2024
घोषणा की तारीख **/Date of Pronouncement**	:	14-11-2024

आदेश / O R D E R

Per BENCH:

1.1 Aforesaid appeals by revenue for Assessment Years (AY) 2017-18 & 2018-19 arises out of separate orders of learned first appellate authority. The appeals have common issues. First, we take up the appeal for AY 2017-18 which arises out of an order passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal

Centre (NFAC), Delhi [CIT(A)] on 16-02-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 26-12-2019. The registry has noted minor delay of 21 days in both the appeals, which stand condoned.

1.2 The grounds raised by the revenue read as under: -

1) The order of the learned Addl. CIT(A) is contrary to the facts and circumstances of the case.
2) The Ld CIT(A) has erred in deleting the disallowance u/s 40(a)(ia) of the Act relying on the decision of the ITAT in AY 2014-15 whereas the ITAT had in fact ordered for verification.
3) The Ld CIT(A) has erred in deleting the disallowance u/s 40(a)(ia) for non-deduction of TDS on Bill discounting charges paid by the Assessee.
4) The Ld. CIT(A) has erred in relying on the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Industries Ltd. (2019) which actually supports the revenue's case that the issue is fact based and since the assessee has failed to furnish supporting details, the Ld. CIT(A) ought to have dismissed assessee's appeal.
5) The Ld. CIT(A) has erred in ignoring the failure of the assessee to submit details in its support, thus rendering the order of Ld. CIT(A) perverse.
6) The Ld. CIT(A)'s blanket observation that the assessee's capital and long-term borrowings is more than the interest free loans given is baseless and not supported by acts and details.
7) The Ld. CIT(A) has failed to consider the findings of the assessing officer that the assessee has failed to furnish details of such interest free loans and also failed to substantiate commercial expediency extending interest free loans when the assessee itself was having interest bearing loans.
8. The Ld. CIT(A) has failed to afford opportunity to the Assessing Officer to examine the additional details submitted by the Assessee before the Ld CIT(A) under Rule 46A.

As is evident, the issues that arises for our consideration are disallowance u/s 40(a)(ia) and disallowance of interest u/s 36(1)(iii).

1.3 The Ld. Sr. DR supported the order of Ld. AO whereas Ld. AR submitted that the impugned order has followed the decision of this Tribunal in assessee's own case for AY 2014-15, IT(TP) No.37/Chny/2018 dated 19-10-2022. A copy of the same has been placed on record. On the issue of interest disallowance, Ld. AR has relied on the findings of Ld. CIT(A) as rendered in the impugned order.

Having heard rival submissions and upon perusal of case records, the impugned issues are adjudicated as under.

2. Disallowance u/s 40(a)(ia)

2.1 The assessee paid bill discounting charges of Rs.155.94 Lacs to an entity namely M/s Nivesha Corporate Finance. The Ld. AO, considering the expression 'interest' as per Sec.2(28A), held that the charges would be nothing but interest which would require deduction of tax at source. The amount was a pure financial transaction. The case law of Hon'ble Delhi High Court in the case of M/s Cargill Global Trading Company was held to be distinguishable. Since the assessee did not deduct any TDS against the same, Ld. AO disallowed 30% thereof u/s 40(a)(ia).

2.2 The Ld. CIT(A) relied upon first appellate order for AY 2013-14 and deleted the disallowance. Aggrieved, the revenue is in further appeal before us.

2.3 We find that Tribunal, in AY 2014-15, has accepted the alternative plea of the assessee and held that such a disallowance could not be made if the assessee had furnished Form No.26A. This view has been followed by us in revenue's appeal for AY 2013-14, ITA No.1611/Chny/2024. Therefore, taking the same view and considering the fact that the assessee has furnished the copy of Form 26A for this year also, the corresponding grounds raised by the revenue stand dismissed.

2.4 This issue arises in revenue's appeal for AY 2018-19 also. Facts being *pari-materia* the same, the corresponding grounds stand dismissed.

3. Interest Disallowance u/s 36(1)(iii)

3.1 The assessee claimed interest expenditure of Rs.769.23 Lacs. The same include interest on term loans, hire charges, packing credit and bank charges. However, the assessee advanced loans to related parties for Rs.79.28 Crores and obtained loans of Rs.55.76 Lacs from them. The assessee had long-term borrowings of Rs.79.31 Crores as well as short-term borrowings of Rs.34.58 Crores. The loans to related parties were interest-free loans. Accordingly, Ld. AO proceeded to disallow the interest expenditure u/s 36(1)(iii). In the absence of any satisfactory explanation forthcoming from the assessee, Ld. AO made proportionate disallowance of Rs.622.23 Lacs.

3.2 During appellate proceedings, the assessee submitted that it was engaged in procurement, processing and export of roughly trimmed stones. The group companies were also engaged in similar line of business and the advances were paid during the course of the business. The Ld. AO did not bring on record any evidence to prove that the borrowed funds were utilized for making the advances to related parties. The packing credit loan was working capital facility and it was short term finance offered by the bank to facilitate exports. The utilization of packing credit was regularly monitored by the bank and same could not be used for any other purpose. Such interest paid was for Rs.147.65 Lacs. Similarly interest of Rs.574.41 Lacs was paid on term loan which were granted for specific purposes. Its utilization was also monitored by the banks. It could, therefore, be not alleged that borrowed funds were utilized to make the advances.

3.3 It was further submitted that even otherwise, the assessee had sufficient interest free funds to make the advances. The share capital

and reserves & surplus stood at Rs.115.06 Crores. Reference was made to the decision of Hon'ble Supreme Court in the case of **Reliance Industries Ltd. (410 ITR 466)** to support the submissions on the presumption of usage of borrowed funds. The assessee also referred to the decision of jurisdictional High Court in the case of **Shiv Sahai & Sons (I) Ltd. (428 ITR 363)** holding that when there is nothing on record to show that the borrowed funds have been utilized for non-business purposes and the assessee has substantial capital to cover the advances made for non-business purposes, then no disallowance u/s 36(1)(iii) could be made.

3.4 It was further stated that the assessee made advances as a measure of commercial expediency and the case law of Hon'ble Apex Court in **S.A. Builders Ltd. (288 ITR 1)** would also apply, Similar view was taken in various other judicial decisions which has been enumerated in the impugned order.

3.5 The Ld. CIT(A) concurred that in the absence of any one-to-one finding that borrowed funds were utilized to make the advances, no such disallowance could have been made. The assessee had sufficient interest-free funds in the shape of share capital and free reserves to make the advances. In such a case, the decision of Apex Court in **CIT vs. Reliance Industries Limited [2019] 410 ITR 466 (SC)** would apply. Accordingly, the disallowance was deleted against which the revenue is in further appeal before us. These findings were followed in appellate order for AY 2018-19 also and accordingly, this issue arises in revenue's appeal for AY 2018-19 also.

<u>Our Adjudication on this issue</u>

4. From the facts, it emerges that the assessee has made investments in its related entities which happens to be in the same line of business. Another pertinent fact brought on record by Ld. CIT(A) is that the assessee's share capital and free reserves far exceeds the investments made by the assessee. In such a case, unless nexus of borrowed funds vis-à-vis these investments is established by Ld. AO, it is to be presumed that the investments were made out of own funds. It could also be seen that the Short-Term Loans is packing credit loan which is nothing but working capital facility to facilitate exports. The utilization of packing credit would be regularly monitored by the bank and same could not be used by the assessee for diversion as investments. Similarly, the term loans are for specific purposes which are also subject to monitoring by the banks. Therefore, it could not be alleged that borrowed funds were utilized to make the advances.

5. Even otherwise, the assessee has sufficient interest free funds to make the advances. Therefore, the ratio of decision of Hon'ble Supreme Court in the case of **Reliance Industries Ltd. (410 ITR 466)** would apply to the facts of the case. In this case, Hon'ble Court held that in case interest-free funds were available to assessee which were sufficient to meet its investment in subsidiaries, the deduction of interest expenditure would be allowed to the assessee. The case law of Hon'ble High Court of Madras in **Shiv Sahai & Sons (I) Ltd. (428 ITR 363)** would also apply wherein it was held that when there was nothing on record to show that any interest-bearing funds were diverted by assessee for advancing interest-free loans or for making any investments, impugned disallowance of interest claim of assessee was unjustified.

6. We also find that the investments made by the assessee are to its related concerns who are engaged in similar line of business. Thus, the assessee has established commercial expediency also and the ratio of decision of Hon'ble Apex Court in the case of **S.A. Builders V/s CIT (288 ITR 1)** would apply wherein it was held that the expenditure borne out of commercial expediency would be allowable to the assessee. It was also held by Hon'ble Apex Court that once it was established that there was nexus between the expenditure and purposes of business, which need not be the business of the assessee, deduction u/s 36(1)(iii) was to be allowed. It was further held that the expression 'commercial expediency' is an expression of wide import and includes such expenditure as prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation but yet it is allowable as business expenditure if it was incurred on grounds of commercial expediency. Further, the expression 'for the purpose of business' is wider in scope than the expression 'for the purpose of earning profits'.

7. Considering all these facts, the adjudication of Ld. CIT(A) could not be faulted with in both the years. The corresponding grounds raised by revenue, in both the years, stand dismissed.

8. Assessment Year 2018-19

8.1 The only remaining issue that arises in AY 2018-19 is disallowance of royalty expenses u/s 37(1). The assessee acquired mining rights and paid license fees to government. The Ld. AO held that the payment was to acquire the right to excavate the minerals and not for acquiring minerals. By making these payments, the assessee acquired a capital asset for enduring benefit. Thus, the payment so made would be capital

expenditure. In the instant case, the minerals were part of the land and some mining operations were performed by the assessee to extract it from the earth. Therefore, the amount paid was to bring benefit of enduring nature. Accordingly, the payment of Rs.167.23 Lacs was disallowed u/s 37(1).

8.2 During appellate proceedings, the assessee stated that it was engaged in the business of production and export of landscape granite stones and products such as kerb stones, cobblestones etc. The assessee obtained license to excavate stones in the states of Andhra Pardesh and Karnataka. As per the terms of lease, the assessee was liable to pay royalty towards extraction of stone as a percentage of stone extracted. The payment was nothing but part of cost of goods sold. The payment was not for securing an enduring advantage but charges towards usage of mine based on the quantity of stones extracted. The seigniorage charges were paid for extraction of stone which was stock-in-trade for the assessee's business. The Ld. CIT(A), upon perusal of contractual terms, concurred that the chares paid were not for acquiring the right to extract but the quantum of seigniorage charges was directly proportional to the weight / volume of stone extracted and the charges were recurring payments. The Ld. CIT (A) relied on the decision of Hon'ble Supreme Court in the case of **Gotan Lime Syndicate vs CIT (59 ITR 718)** holding that such expenditure would be revenue in nature. Therefore, the addition was deleted against which the revenue is in further appeal before us.

Our Adjudication on this issue

9. From the facts, it clearly emerges that the assessee has acquired license from state governments which is used in carrying out trading

operations. The stone are extracted, processed and exported to overseas market. The expenditure incurred during this process is on revenue side. The assessee pays royalty which is directly proportionate to the quantity of stone extracted by the assessee. The stones are trading stock for the assessee. Quite clearly, the assessee has not acquired any advantage in capital field but the aforesaid payment is revenue in nature. The ratio of decision of Hon'ble Supreme Court in the case of **Gotan Lime Syndicate vs CIT (59 ITR 718)** would apply. Therefore, no interference is required in the impugned order, on this issue. The corresponding grounds as raised by the revenue stand dismissed.

Conclusion

10. Both the appeals stand dismissed.

Order pronounced on 14th November, 2024

Sd/-	**Sd/-**
(MANU KUMAR GIRI)	**(MANOJ KUMAR AGGARWAL)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 14-11-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :
1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF