

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY(JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 6481/Mum/2011
Assessment Year: 2007-08**

M/s Royal Cushion Vinyl Products Ltd. Vs.
Plot 60 CD, Shlok Building, 1st Floor,
Govt. Ind. Estate, Charkop, Kandivli (W),
Mumbai-400067.

ACIT 9 (3), Aayakar Bhavan
Mumbai-400020

PAN No. AAACR5308P

(Appellant)

(Respondent)

Appellant by : Shri Mayur A Shah,
Respondent By : Smt. Amrita Singh,

Date of Hearing : 17/08/2016

Date of pronouncement: 30/09/2016

ORDER

PER N.K. PRADHAN, A.M

This is an appeal filed by the assessee. The relevant assessment year is 2007-08. The appeal is directed against the order of the Commissioner (Appeals)-20 Mumbai and arises out of the order u/s 143(3) of the Income Tax Act, 1961 (The Act).

2. The first ground of appeal raised by the assessee is that the Id. CIT(A) erred in holding that the AO was justified in disallowing proportionate interest at Rs.4,38,699/- on the ground that interest bearing loans were diverted to give interest free loans.

2.1 The AO noted that the assessee has advanced money free of interest to its group concerns and thereby it has paid interest in borrowed funds. He took into account the fact that similar issue arose for consideration in the assessee's case for preceding

assessment years wherein interest @ 15% was disallowed. The AO followed the same and disallowed Rs.4,38,699/- being interest @ 15% of the loans advanced.

2.2 The ld. CIT(A) came to a finding that no business purpose is involved in diversion of borrowed funds to sister concerns. He was not convinced with the explanation of the assessee that interest free loans advanced to sister concerns was for mutual benefit and in turn for the purpose of business. Therefore, he confirmed the disallowance made by the AO.

2.3 The ld. Counsel of the assessee submitted that the assessee has already disallowed substantial part of the interest u/s 43B and therefore, there is no case for making further disallowance. It was further stated that the assessee has been using business premises of its sister concern free of rent in lieu of interest free advances made to them. It was also submitted that interest free loans advances were made to the sister concerns for mutual benefit and in turn for the purpose of business.

2.4 The ld. DR supported the order passed by the ld. CIT(A) upholding the above addition made by the AO.

2.5 After considering the rival submissions and perusing the relevant material on record, it is noticed that the AO has disallowed the interest in the impugned assessment year as it was disallowed in the preceding years. In ***Ipoh (MM) vs. CIT and Chettiappan (M) Vs. ITO (1968) 67 ITR 106 (SC)***, the Hon'ble Supreme Court has held that the doctrine of *res judicata* does not apply so as to make a decision on a question of fact or law in a proceeding for assessment in one year binding in another year. We find that in the impugned assessment year, the AO has not brought on record, material facts so as to

disallow the interest @ 15%. There was also no material before the Id. CIT(A) to sustain the disallowance made by the AO. In view of the above, the disallowance of Rs.4,38,699/- made by the AO is deleted.

3. The second ground raised by the assessee is that the Id. CIT(A) erred in holding that the AO was justified in disallowing Rs.40,69,289/- out of interest expenditure on the ground that interest bearing funds were allegedly utilized for investment in capital works-in-progress.

3.1 The AO observed from the balance sheet of the assessee that capital works-in-progress of Rs.3,39,00,058/- is shown as on 31/03/2007 while capital works-in-progress as on 31/3/2006 was Rs.3,39,21,418/-. The onus is on the assessee to prove the nexus or otherwise between specific funds and those utilized in capital WIP. He referred to the decision in the case of *CIT vs. Motor General Finance Co. Ltd.* 254 ITR 449. In view of this the AO disallowed 12% of the average capital WIP of Rs.3,39,10,738/- which comes to Rs.40,69,289/-.

3.2 The Id. CIT(A) observed that the assessee was not having enough own funds to source the capital WIP. In view of it, he upheld the disallowance of Rs.40,69,289/- relating to the capital WIP made by the AO.

3.3 The Id. Counsel of the assessee submitted that a substantial part of interest has been disallowed u/s 43B of the Act. It is stated that the interest which has been disallowed u/s 43B cannot be disallowed again under a different head.

3.4 The Id. DR supported the order of the Id. CIT(A) upholding the disallowance of interest of Rs.40,69,289/- made by the AO.

3.5 We have heard the rival submission and perused the relevant material on record. We find that the reliance placed by the AO in making the disallowance of Rs. 40,69,289/- in the case of **Motor General Finance Co. Ltd.(supra)** is misplaced. In the said case the AO ,while making assessment, noticed that the assessee had advanced interest free loans to sister concern while it had itself borrowed money and paid interest. Therefore, the AO disallowed the interest liability of amount advanced to its sister concern. Therefore, the case of the assessee is distinguishable from the above decision relied on by the AO. It has been held by the Hon'ble Supreme Court in **India Cements Ltd. vs. CIT (1966) 60 ITR 52 (SC)** that interest is allowable irrespective of the fact whether the amount has been borrowed for working capital or for acquiring a capital asset. We find that CIT(A) does not dispute the submission of the assessee before him that a substantial part of interest is disallowed u/s 43B of the Act. In view of the above, the disallowance of Rs. 40,69,289/- made by the AO is deleted.

4. The third and fourth ground filed by the assessee in this appeal are that the Id. CIT(A) erred in confirming claim of deduction u/s 40(a)(ia) of Rs.4,05,18,444/- and also by declining to admit fresh evidence filed in the appeal proceedings.

4.1 The AO found that the assessee in its computation of income has claimed Rs.4,05,18,444/- as allowable u/s 40(a)(ia) of the Act. He asked the assessee to file copy of challans evidencing payment of TDS on which the said allowance was claimed. The assessee failed to file evidence as to whether it has deposited the required TDS as envisaged u/s 40(a)(ia) of the Act. Therefore, the AO made a disallowance of Rs. 4,05,18,444/-.

4.2 The ld. CIT(A) observed that every year this issue was being raised including the A.Y. 2006-07 where the assessee merely challenges the action of the AO without making corresponding effort to furnish the requisite documents in its possession to the AO to claim deduction u/s 40(a)(ia). In view of the above, the ld. CIT(A) upheld the disallowance of Rs.4,05,18,444/- made by the AO u/s 40a(ia) of the Act.

4.3 The ld. Counsel of the assessee submitted that copies of TDS challans for A.Y. 2006-07 in respect of delayed payment of TDS have been filed before the ld. CIT(A) which could not be filed before the AO.

4.4 The ld. DR supported the order of the ld. CIT(A) confirming the above disallowance made by the AO.

4.5 After considering the rival submissions and perusing the relevant material on record, we find that in the appeal for the impugned assessment year, the ld. AR of the assessee clearly stated that copies of TDS challans for A.Y. 2006-07 in respect of delayed payment of TDS have been filed only before the ld. CIT(A) which could not be filed before the AO. The ld. CIT(A) did not accept the above additional evidence filed by the assessee.

We find that the Hon'ble Gujarat High Court in the case of ***CIT vs. Om Prakash R. Chaudhary (TA No.412 of 2013)*** has held that “the amendment made in section 40 (a) (ia) of the Income Tax Act, 1961 by the Finance Act 2010, as retrospective in operation, having effect from 1st April 2005 i.e., from the date of insertion of section 40 (a) (ia) of the Act.”

In view of the above, the order of the Id. CIT(A) on the above point is set aside and the above issue is restored to the file of the AO to examine it afresh in the light of the judgment of the Hon'ble Gujarat High Court in the case of ***Om Prakash R. Chaudhary (supra)*** and pass an order after giving reasonable opportunity of being heard to the assessee. In view of the above, the third and fourth ground filed by the assessee are allowed for statistical purpose.

5. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 30/09/2016.

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-

(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai; Dated: 30/09/2016

AKV(On Tour)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai