

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA
BEFORE DR. A.L.SAINI, AM & SHRI K. NARASIMHA CHARY, JM

आयकर अपील सं./ITA No209/KoI/2014

(निर्धारण वर्ष / Assessment Year :2002-2003)

DCIT, CC-XXV, 110, Shantipally, 5 th Floor, Kolkata-700107	Vs.	M/s DPIL Limited, 4B, Hungerford Street, Suvira House, Kolkata-700017
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCD 1665 N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri Biswanath Das, JCIT
निर्धारिती की ओर से /Assessee by : Shri Agnibesh Sengupta, Advocate
सुनवाई की तारीख / **Date of Hearing** : **16/11/2016**
घोषणा की तारीख/**Date of Pronouncement** **05/12/2016**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the revenue, pertaining to the assessment year 2002-2003, is directed against the order passed by Id. Commissioner of Income Tax (Appeals)-IV,Kolkata, in Appeal No.160/CIT(A)-IV/04-05, dated 30.09.2013, which in turn arises out of assessment order passed by the Assessing Officer (AO) Under Section143(3) of the Income Tax Act 1961, (in short the 'Act'), dated 15.02.2005.

2. Brief facts of the case qua the assessee are that the assessee filed its return of income on 30.10.2002 along with the audited balance sheet and the tax audit report, declaring a loss of Rs.5,18,44,247/-. The case was selected for scrutiny u/s.143(3) of the Act and the AO has completed the assessment by making the addition on account of interest on term loan, proportionate expenses on account of exempted income U/s 14A,

interest on term loan for acquisition of Tea Estates firms and on account of loan payment to provident fund dues. The assessee is a manufacturer of tea and has its tea gardens located in Assam, Darjeeling and Dooars.

3. Aggrieved from the order of AO, the assessee filed appeal before the Id. CIT(A), who has allowed the appeal partially observing the followings :-

4.3 I have perused the assessment order and the submission made by the appellant. It is not in dispute that the appellant incurred interest expenditure on the term loan of Rs.37.50 Crores taken from the ICICI Bank for the acquisition of two tea estates namely, Katalguri Tea Estate in Dooars, West Bengal and Tippuk Tea Estate, Assam in the Financial Year 1999-2000. This interest expenditure was shown separately in the Balance Sheet as an item of deduction from Reserves and Surplus as explained in Note No 5 in Schedule 17 to the Accounts and claimed as expenditure allowable under Section 36(1)(iii) of the Act.

The A.O. made the disallowance of such interest on the ground that interest on term Loans was incurred for a period before the date on which such asset was first put to use. The A.O. also found force, for making such disallowance, from Schedule 16 clause (5) of the notes on account of Annual Financial Statement wherein the Auditor mentioned that "Interest on borrowing for acquisition or tea estates now held by the company by virtue of amalgamation of companies as approved by the Hon'ble High Court at Calcutta is not related to regular business activities of the company and has therefore been adjusted against appropriate balances of Reserves and Surplus."

However, I find that both the tea estates namely, Katalguri Tea Estate in Dooars, West Bengal and Tippuk Tea Estate, Assam were taken over on a going concern basis. Hence, capitalization of interest with cost would not be proper in the case of the appellant. It is also seen that the appellant incurred interest expenditure on Loan which was used exclusively for the purpose of acquisition of Tea Estates.

In the case of DCIT vs. Core Healthcare Ltd. (2001) 251 ITR 61 (Guj), the Hon'ble High Court of Gujarat held that Interest paid towards borrowings made for the purpose of acquiring new machineries in an existing business, though pertaining to the period prior to commencement of production, was allowable as deduction under s.36(1)(iii). The relevant portion of the order, for the sake of convenience, is reproduced as under: -

"Business expenditure - Interest on borrowed capital-Acquisition of capital assets for new units of existing business - For applicability of s. 36(1)(iii) the only requirement is that the interest must be in respect of capital borrowed for the purposes of business-Sec. 36(1)(iii) nowhere stipulates that such borrowing has to be only on revenue account- There is also no requirement that the capital asset for the acquisition of which the borrowings were made should have been put to use -Expln. 8 to s. 43(1) nowhere provides that the interest pertaining to the period prior to the asset being first put to use has necessarily to be capitalized and will not be allowed as deduction under s. 36(1)(iii)- Said Explanation does not in anyway curtail the scope of s. 36(1)(iii)--Assessee had capitalized the interest but has given up its claim for depreciation on larger amount of actual cost of machines purchased out of borrowings – Therefore, deduction was allowable in respect of interest on borrowings though pertaining to the period prior to commencement of production.

I also find that in the Asst years 2001-02 and 2003-04, the AO made the similar disallowance which was deleted by the Hon'ble ITAT, Kolkata vide order in ITA No.201/Kol/2005, dated 04.08.2005 (Para no.17) for Asst. Year 2001-02 and ITA No.1420/ Kol/2007 dt. 07.09.2007 (Para-No.8) for Asst Year 2003-04. The relevant portion of the order dt.04.08-2005 in ITA No,201/Ko1/2005 is reproduced below for better appraisal of facts:-

"17. We have considered the submissions and the facts of the case. The Submissions made before the Ld. CIT (Appeals) have been fully considered. We have also considered various decisions on which reliance was placed by the Id. Counsel of the assessee. After careful consideration we find that the Id. CIT(Appeals) has correctly decided the issue. The relevant portion of his order is reproduced below :-

*"3.8 I have considered the rival submission carefully. In this case the company borrowed from ICICI Bank Ltd. for acquisition of tea estate on 01- 4-1999 and interest was paid in the post acquisition period to ICICI Bank. Such payments of interest are allowable under section 36(1)(iii) of the IT. Act and the issue is settled as in the case of Challapalli Sugar ltd. Vs. CIT (1975) 98 ITR 167(SC) and Calico dyeing Vs. CIT (1958) 34 ITR 265 (Bombay). It seems that the main contention of the Assessing officer has been the comment in the schedule 16 Clause 5 of the notes on accounts of Annual financial Statement which stated :-
"Interest on borrowing for acquisition of tea estates now held by the company by virtue of amalgamation of companies as approved by the Hon'ble high Court at Calcutta is not related to regular business activities of the company and has therefore been adjusted against appropriate balances of Reserves and Surplus. Thus, the assessee*

itself states that this expense is not in the normal course of business.

It seems that the Assessing Officer has not appreciated the fact of the case. The expense do not relate to the regular activity of the business means that the appellant is not in the regular business of acquiring Tea 'Estates and due to acquisition this year, the interest liability has been incurred. Such interest payments are deductible under section 36(1)(iii).

In view of the fact: and circumstances of the case as discussed above, the Assessing officer is directed to delete the disallowance on account of interest payment.

Accordingly the decision of the Id. CIT (Appeals) is upheld and the ground 'taken by the Revenue is dismissed'.

Since the facts of the present case, which is for the Asst. Year 2002-03, are, in no way, different from those of the Asst. Years 2001-02 & 2003-04, I do not think it would be proper to take a view contrary to what has been-decided by the Hon'ble ITAT in the Asst. Years 2001-02 & 2003-04.

Under the circumstances respectfully following the order of the Hon'ble High Court in the case of DCIT v Core Healthcare Ltd. (Supra) and the orders of the Hon'ble jurisdictional tribunal in appellant's own cases for the Asst. year 2001-02 and Asst. 2003-04 in ITA No.201/Kol/2005 & ITA No.1420/Kol/2007, respectively, I hold that the interest amounting to Rs.4,25,05,039/- incurred on account of the term loan taken for the expansion of the existing business activities of the appellant is allowable as a deduction u/s 36(1)(iii) of the Income Tax Act 1961. Hence, the AO is directed to delete the disallowance of Rs.4,25,05,039/- made in the assessment. This ground of appeal is, thus, allowed.

4. Not being satisfied with the order of CIT(A), the Revenue is in appeal before us and has taken the following grounds of appeal :-

1. In the facts and circumstances of the case the Ld. CIT(A) erred in restricting the expenditure attributable to dividend at only 1% of dividend credited in an arbitrary manner without any proper basis,

2. In the facts and circumstances of the case the Id. CIT(A) erred in arriving at the conclusion that no interest bearing fund has been invested for acquiring of assets yielding dividend on the basis of balance sheet figure for the A.Y.2002-03 and thus entirely ignoring investible fund (both own fund and loan) available in the A.Y. 1998-99, which is the year of investment.

3. In the facts and circumstances of the case the Ld. CIT(A) erred in deleting the disallowance of interest on borrowed loan which was in fact utilized for acquiring capital assets and the interest on such loan is nor allowable.

4. In the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition for non deposit of Provident Fund contribution on the basis of additional submission made by the assessee without providing opportunity of being heard to the AO, thus, violating the provisions of Rule 46A of the I.T.Rules, 1962.

5. The appellant is crave the leave to include any additional ground(s) or to make any addition, alteration, modification and remodelling or withdrawing of the grounds.

5. The 1st ground relates to expenditure attributable to dividend at only 1% of dividend (exempted income) to be disallowed as an expenditure u/s.14A of the Act.

5.1 Ld. DR for the Revenue has stated that the assessee has credited an amount of Rs.1,03,97,000/- on account of dividend received and has treated the same as exempted income u/s.10(33), however, the corresponding direct and indirect expenses attributable to earning of this exempted income has been omitted to be added back in violation of Section 14A of the Income Tax Act. Since the assessee has held the dividend earning shares as investment and has not deducted any expenditure out of the dividend income. The dividend earning shares were held as an investment by the assessee and, hence, it is impossible to believe that no expenditure, however, small it may be, has been incurred for earning the above income from dividend. It has also been judicially held by Hon'ble Supreme Court in the case of CIT Vs. United General Trust Ltd., 200 ITR 488, that proportionate management expenses have

to be deducted from the gross dividend. The earning of dividend requires help from the management of the company and other staff members to collect the dividend warrant deposit it in the bank and also to attend the banking activities in this behalf. Therefore, it cannot be said that no proportion of staff expenses has been incurred to earn dividend income. Further, the assessee maintains a consolidated cash book wherein both receipts out of sale proceeds and receipts out of interest bearing fund is entered and utilized. Therefore, some element of interest bearing fund being utilised for the purpose of investment is definitely not ruled out. Hence, the addition made by the AO is justified.

5.2 On the other hand, Id. AR for the assessee has submitted that the issue under consideration is squarely covered by from assessee's own case. The Hon'ble Tribunal 'B' Bench Kolkata in ITA No.144/Kol/2005 in assessee's own case observed as follows :-

8. We have considered the submissions and the facts of the case. We have also perused carefully various submissions made before the CIT(Appeals) and before us. We are in agreement with the Ld. Counsel for the assessee that there is no evidence of incurring any expenditure directly for earning dividend income but it cannot be said that earning of dividend is an independent activity of the assessee. The earning of dividend income and running of the business are connected in some way or the other. Therefore, through there is no direct evidence to show that the assessee has incurred expenditure "on earning of dividend income, some expenditure indirectly incurred for earning of dividend income cannot be denied, Therefore, a token amount or expenditure is to be disallowed. In our considered opinion, the disallowance of Rs.50,000/- will meet the ends of justice. Accordingly, the A.O. is directed to restrict the disallowance of expenditure at Rs.50,000/- This disposes or ground No.1 in both the appeals.

Ld. AR for the assessee submitted that the assessee company did not invest in the share of Warren Tea limited out of the borrowed fund. This

can be corroborated by the fact that the shareholders own funds as enumerated in the facts which is much in excess of the value of even the total investment of the assessee company. It is submitted that the assessee company besides uses of its own funds exclusively for the purpose of investments, interest debited in the profit & loss accounts represents cost of borrowings incurred by the assessee for the purpose of working business activities.

5.3 Having heard the rival submissions, perused the material available on record, we are of the view that there is merit in the submissions of the assessee, as the propositions canvassed by the Id. AR for the assessee are supported by Hon'ble ITAT Judgment in assessee's own case and the facts narrated by the assessee. There is no evidence of incurring any expenditure directly for earning of dividend. Therefore, there is no direct evidence to show that the assessee has incurred expenditure for earning of dividend income, however, some expenditure indirectly incurred for earning of dividend income cannot be denied. Therefore, an estimated amount of expenditure has been disallowed by the Id. CIT(A). Moreover Section 14A of the Income Tax Act does not apply to the assessment year 2001-02. Considering the factual position, we are of the view that the Id. CIT(A) has already passed a logical order and we do not find any reason to disturb the order of the Id. CIT(A). Therefore, we confirm the order of Id. CIT(A).

5.4 In the result, appeal filed by the Revenue on this ground is dismissed.

6. Next ground No.2 relates to ground No.1, which we have already adjudicated, therefore, it does not require any separate adjudication.

7. Ground No.3 relates to disallowance of interest on borrowed loan which was utilised by the assessee for acquiring capital asset.

7.1 Ld. DR for the Revenue has stated that the assessee has claimed the deduction of Rs.4,25,05,039/- on account of interest on term loan for acquisition/purchase of business activities. The assessee has claimed the interest on term loan as a revenue expenditure. The assessee borrowed loan and the loan was utilised for the purpose of acquisition of two Tea Estates namely, Katalguri Tea Estate in Dooars, West Bengal and Tippuk Tea Estate, Assam. Ld. DR argued that it is not a recurring business expenses and it has not been debited in the profit and loss account by the assessee but has been shown as an appropriation of the reserves and surplus. Ld. DR further stated that assessee has claimed the interest as business expenditure u/s.36(1)(iii). The assessee considered the said loan for the purpose of business and interest thereon were claimed as revenue expenditure which is wrong. Ld. DR stated that the said expenses is not allowable u/s.36(1)(iii) since it is not incurred by the assessee by doing normal business. The assessee has taken the loan for the purpose of purchase of tea garden therefore it is capital in nature. That is, it is expansion of the business of the assessee, therefore, it is capital expenditure. The assessee has himself shown in Schedule 16 clause 5 of the Notes on account of his annual financial statement that interest on borrowing was incurred by the assessee for acquisition of Tea

Estates for the purpose of amalgamation of the companies as approved by the Hon'ble High Court at Kolkata. Interest on borrowing is not related to the business activities of the assessee. Therefore, it has been adjusted against the reserve and surplus of the assessee. Thus, the assessee itself states in his financial statement that this expense is not in the normal course of the business. Therefore, the loan taken by the company for expansion of business and that is why the interest on the said loan should not be allowed as a revenue expenditure.

7.2 On the other hand, Id. AR for the assessee has stated that as per Section 36(1)(iii), deduction would be allowed in respect of amount of interest paid in respect of capital borrowed for the purpose of business. Ld. AR submitted that whatever be the accounting treatment, the fact remains that the interest on loan for acquisition is revenue charge irrespective of the treatment in the balance sheet. Ld. AR stated that interest on loan borrowed for acquisition of business is to be recorded as business expenditure as written in the statement itself and in that context the AO disregarded this fact and related it to the accounting treatment as followed by the assessee. The Income Tax Act is a separate legislation and the AO must not traverse the limits of taxation statute and embark upon the accounting treatment and disclosure made by the assessee company under the provisions of the Companies Act, 1956. Ld. AR further pointed out that in the assessee year 2001-02 and A.Y.2003-04, Id. AO attempted a similar disallowance but the same was deleted by the ITAT Kolkata Bench vide its order in ITA No.201/Kol/2005, dated 4-8-2003 for

the A.Y.2001-02 and ITA No.1420/Kol/2007, dated 7-9-2007 for A.Y.2003-04.

7.3 Having heard the rival submissions, perused the material available on record, we are of the view that there is merit in the submissions of the assessee, as the propositions canvassed by Id. AR for the assessee are supported by the judgments of the Hon`ble ITAT Kolkata Bench in assessee's own case and the facts narrated by him. Ld. AR pointed out that both the tea Estates namely, Katalguri Tea Estate in Dooars, West Bengal and Tippuk Tea Estate, Assam were taken over on a going concern basis. Hence, capitalization of interest with cost would not be proper in the case of the assessee. It is also seen that the assessee incurred interest expenditure on Loan which was used exclusively for the purpose of acquisition of Tea Estates. We also observe that in the assessment year 2001-02 and 2003-04, the AO made the similar disallowance which was deleted by the Hon`ble ITAT, Kolkata vide order in ITA No.201/Kol/2005, dated 04.08.2005 for Asst. Year 2001-02 and ITA No.1420/ Kol/2007 dt. 07.09.2007 for Asst Year 2003-04. Since the facts of the present case, which is for the Asst. Year 2002-03, are, in no way, different from those of the Asst. Years 2001-02 & 2003-04, therefore,we do not think it would be proper to take a view contrary to what has been-decided by the ITAT Kolkata Bench in the Asst. Years 2001-02 & 2003-04 in assessee's own case. Therefore, we do not find any reason to disturb the order passed by Id. CIT(A). In the result, appeal filed by the revenue on this ground is dismissed.

8. 4th Ground of appeal relates to addition for non-deposit of provident fund contribution.

8.1 Ld. DR for the revenue has submitted that assessee has quoted an amount of Rs.39,03,804.70 on account of employees and employer's contribution to Tippuk Tea Estate but has deposited only Rs.30,76,775.71 out of the above. The balance unpaid amount of Rs.8,27,029/- is, therefore, to be disallowed.

8.2 Ld. AR for the assessee has submitted that it is the fact that Tea Estates situated in Assam are guided by the Provident Fund and Pension Fund Act, 1968 framed under the Assam Tea Plantations Provident & Pension Fund Act, 1965. This Scheme has special features. It is apparent from the Scheme that the employer has an additional obligation towards settlements and payments of advances to a member. It was, therefore, necessary on the part of the assessee to adjust such payments before any deposit is made with the appropriate authorities from the Provident Fund collections and contributions. Accordingly, the assessee after adjusting such settlements, advance etc. from collection of Rs.39,03,804.70, from the Tippuk Tea Estate situated in Assam, deposited net balance of Rs.30,71,774.81 as per the provision of law. Obviously, the difference between collection and deposit of Provident Fund amounting to Rs.8,27,029/- was the net effect of settlement and advances given to members under the guidance of the Assam Tea Plantation Provident Fund and Pension Fund Scheme. The issue is also

covered by the assessee's own case in ITA No.822/kol/06:DPILV.DCIT, order dated 29-12-2006.

8.3 Having heard the rival submissions, perused the material available on record, we are of the view that there is merit in the submissions of the assessee, as the propositions canvassed by Id. AR for the assessee are supported by the facts narrated by him above. Ld. AR for the assessee pointed out that it is necessary on the part of the assessee to adjust such payments before any deposit is made with the appropriate authorities from the Provident Fund collections and contributions. The difference between the collection and deposit of Provident Fund amounting to Rs.8,27,029/- was the net effect of settlement and advances given to members under the guidance of the Assam Tea Plantation Provident Fund and Pension Fund Scheme. Considering the above factual position, we do not find any infirmity in the order passed by Id. CIT(A), therefore, we do not hesitate to confirm the order passed by Id. CIT(A). Accordingly, we confirm the order of Id. CIT(A).

8.4 In the result, appeal filed by the Revenue on this ground is dismissed.

9. In the result, appeal filed by the Revenue on all the grounds are dismissed.

Order pronounced in the open court on this 05/12/2016.

Sd/-
(NARASIMHA CHARY)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 05/12/2016

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-DCIT, CC-XXV, Kolkata
2. प्रत्यर्थी / The Respondent.-M/s DPIL Ltd.
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, कोलकाता / ITAT, Kolkata