

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : H : NEW DELHI

BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA Nos.5775 &6724/Del/2013  
Assessment Years : 2002-03 & 2003-04

Tractel Tirfor India Pvt. Ltd.,  
302, Harsh Bhawan,  
64-65, Nehru Place,  
New Delhi.  
PAN: AA ACT4320R

Vs. ITO,  
Ward-16(4),  
New Delhi.

(Appellant)

(Respondent)

Assessee By : Shri Ajay Kumar Singhal, CA  
Department By : Shri Rajiv Ranka, Sr. DR

Date of Hearing : 28.01.2016  
Date of Pronouncement : 28.01.2016

ORDER

PER R.S. SYAL, AM:

These two appeals by the assessee relate to the assessment years 2002-03 & 2003-04. Since both the appeals are based on almost similar facts and common grounds of appeal, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

A.Y. 2002-03

2. The only issue raised in this appeal is against the confirmation of disallowance of Rs.14,94,377/- towards interest paid to Canara Bank in respect of Nasik unit.

3. Succinctly, the assessee at the material time was engaged in the manufacturing of material handling equipments. In the audit report filed along with return of income, it was mentioned that the company had become sick and was registered with the BIFR during the year ending 31.3.1996 and that on the basis of the decision of the BIFR, the Nasik Unit of the company was taken over by M/s Hindustan Parson Ltd. (HPL). The assessee claimed deduction, *inter alia*, of interest to the tune of Rs.14,94,377/- with the narration 'Working capital loan (Nasik).' The AO opined that since Nasik unit had been transferred to HPL way back in 1996, there was no justification for claiming any interest in respect of such unit against the chargeable income. On being called upon to adduce reasons for justifying such deduction, the assessee stated that in the meeting held on 27.1.1997 before the BIFR to review the progress

made in the implementation of the Scheme transferring Nasik unit, HPL took over the working capital liability of Nasik unit only to the extent of Rs.12.54 lac, being the amount equal to the value of current assets, thereby leaving the balance amount of bank loan of over Rs.1 crore in the hands of the assessee alone which devolved on its Faridabad unit. The AO did not allow deduction of interest amounting to Rs.14,94,377/- on such loan liability of Nasik Unit, as in his opinion, full liability devolved upon HPL and it was a voluntary act on the part of the assessee to take upon itself the remaining loan liability of the transferred unit, on which no deduction of interest was allowable. He further invoked the provisions of section 43B for making the disallowance as, in his opinion, such interest was not even paid. The Id. CIT(A) affirmed the view taken by the AO.

4. We have heard the rival submissions and perused the relevant material on record. There is no dispute on the fact that Nasik unit of the assessee was transferred to HPL, pursuant to BIFR order. It is further noticed that the original order of BIFR was amended by way of a

Corrigendum on 20<sup>th</sup> September, 1996, as per which the transfer of Nasik unit to HPL was subject to the condition of transferring bank liability only to the extent of current assets. Joint valuation of current assets was carried on and such current assets were valued at Rs.12.54 lac. Resultantly, the working capital liability to this extent alone was taken over by HPL, while the remaining amount remained with the assessee with the consent of both the parties. This arrangement is further evidenced from summary record proceedings of the hearing held on 27.1.1997 before BIFR, a copy of which is available on pages 35-41 of the paper book. From the above narration of facts, it is evident that HPL took over bank liability only to the extent of Rs.12.54 lac, being the value of current assets and the remaining bank liability in respect of Nasik unit remained with the assessee alone. It is in respect of this remaining liability with the opening balance as on 1.4.2001 at Rs.87,93,963/- that the assessee claimed deduction of interest to the tune of Rs.14.94 lac, which has been denied by the Revenue authorities. In our considered opinion, there can be no reason to disallow deduction of such interest because of the fact that the Nasik unit was that of the

assessee alone and HPL took over the bank liability only equal to the value of current assets at Rs.12.54 lac, thereby leaving the remaining bank liability with the assessee on which interest for the year came at Rs.14.94 lac. Since this liability was incurred by the assessee for the purpose of its business of Nasik unit, interest on such loan has to be allowed as deduction. Our view is fortified by the judgment of the Hon'ble Supreme Court in the case of *Veecumsees vs. CIT (1996) 220 ITR 185 (SC)*, in which that assessee was doing business of jewellery and also running a cinema theatre. Interest on capital borrowed for construction of cinema theatre, even after sale of cinema theatre, was held to be deductible in the hands of the assessee because the loan was obtained for the purpose of business. In our considered opinion, this judgment squarely governs the facts of the instant case. Setting aside the impugned order on this score, we allow deduction of interest to the tune of Rs.14.94 lac.

5. As regards the AO's point of view for making disallowance u/s 43B, being non-payment of interest to the bank, we again find no force

in the same. A copy of the bank statement is available at page 42 onwards of the paper book, which demonstrates that after charging of interest, there are deposits in the same bank account to the tune of Rs.15 lac and odd. Such deposits have been made during the current year. These facts indicate that there is no violation of section 43B because the amount deposited in the bank account is more than the amount of deduction of interest. We, therefore, allow this ground of appeal.

6. In the result, the appeal is allowed.

A.Y. 2003-04

7. The only issue raised in this appeal is against the disallowance of interest of Rs.25,16,266/- paid to Canara Bank in respect of Nasik unit. Both the sides are in agreement, as has also been recorded by the AO, that the facts and circumstances of the deduction of interest by the assessee and its disallowance by the AO are *mutatis mutandis* similar to those of the assessment year 2002-03. In view of our decision in the foregoing paras, we hold that the assessee is otherwise entitled to deduction of interest.

8. As regards the applicability of section 43B, though there is no specific reference to this provisions, but the AO made reference to the same reasons for disallowance as were given by him in his order for the A.Y. 2002-03. Going by that and applying the doctrine of incorporation, it has to be assumed that the AO has also invoked section 43B for disallowance of interest in the current year as well. The ld. AR did not readily had a copy of bank statement to demonstrate that interest to the tune of Rs.25,16,266/- was paid by means of deposits in the bank account. Under such circumstances, we set aside the impugned order and remit the matter to the AO for examining Canara bank statement of the assessee to check if the deposits in the bank account are more than the claim for deduction of interest to the tune of Rs.25.16 lac. If it is so, then, the deduction should be allowed and in the otherwise scenario deduction should be restricted equal to the amount of such deposits. Needless to say, the assessee will afforded a reasonable opportunity of being heard in such fresh proceedings.

9. In the result, the appeal is allowed for statistical purposes.

The order pronounced in the open court on 28.01.2016.

Sd/-

[SUDHANSHU SRIVASTAVA]  
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]  
ACCOUNTANT MEMBER

Dated, 28<sup>th</sup> January, 2016.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.