

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH ‘T’,MUMBAI
BEFORE SHRI D.KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No.2230/Mum/2015 for (Assessment Year : 2011-12)

ACIT Circle-3, 2 nd Floor, Rani Mansion, Murbad Road, Kalyan(W), Kalyan-421301.	Vs.	Shri Ashok Radhakishen Mehra Prop. Of M/s Crystal India, W-114, MIDC, Phase-II, Manpada Road, Dombivli (E)-421204 PAN: AAYPM8408Q
(Appellant)		(Respondent)

Revenue by : Mr. Saurabh Kumar Rai (DR)
Assessee by : Mr. Vinay Mehta (AR)
Date of hearing : 07.12.2016
Date of Pronouncement : 07 .12.2016

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JM:

1. This appeal by the Revenue filed u/s 253 of the Income-tax Act (‘Act’) is directed against the order of Ld. Commissioner of Income-tax (Appeals) [for short ‘the CIT(A)] –I, Mumbai dated 29.01.2015 for Assessment Year (AY) 2011-12. The Revenue has raised the following grounds of appeal:

- 1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the legal position envisaged in explanation 3D to clause (e) of section 43B, which states that deduction on any sum, being interest payable shall be allowed only if such interest has been actually paid and any interest referred in the said clause which gets further converted into loan or advance shall not be deemed to have actually been paid.*
- 2) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee did not have positive balance in his cash credit account on a single date prior to filing of return.*
- 3) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the closing balance of Rs.280 crores as on 31.03.2011 in the OD account being less than the Op limit of Rs. 3 crores, indicates that the same is on account of principle loan and not on account of interest.*

4) Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating the fact that the assessee failed to furnish any documentary evidence in support of his claim that interest had been paid.

2. Brief facts of the case are that the assessee is engaged in manufacturing and processing blended solvents under the name of Proprietorship concern ' M/s. Crystal India', filed its return of income for relevant AY on 23.09.2011 declaring total income of Rs. 74,94,211/-. The assessment was completed u/s 143(3) of the Act on 28.02.2014. The Assessing Officer (AO) while framing the assessment disallowed the interest of Rs. 57,88,447/- claimed on OD/CC Account u/s 43B(d)/(e) r.w. Explanation 3D. On appeal before the Id. CIT(A), the addition made by AO by way of disallowance was deleted. Thus, aggrieved by the order of Id. CIT(A), the Revenue has filed the present appeal before us.
3. At the outset, Id. AR of the assessee argued that this case is squarely covered by the decision of Madras High Court in CIT vs. Prakash Foods & Feed Mills P. Ltd. and T.C.(A). Nos. 775 and 808 of 2014 dated 26.11.2014 and the decision of Kolkata Tribunal in ACIT vs. Shubh Gautam in ITA No. 414/Kol/2010. On the other hand, Id. DR for Revenue relied upon the order of AO.
4. We have considered the rival contentions of the parties and gone through the orders of authorities below. We have seen that during the assessment from the P&L A/c the AO has observed that assessee has debited an amount of Rs. 57,88,447/- towards bank interest. The assessee was asked to furnish the proof of actual payment and also show-caused as to why the same should not be disallowed, if the same was not actually paid within the meaning of the provision of section 43B(d)/(e) r.w. Explanation 3D thereto. The assessee filed his reply dated 22.01.2014 and contended that all the payments are made during the year, hence the disallowance u/s 43B(d)/(e) is not applicable. The assessee also filed the ledger copy of bank charges and bank interest paid to UBI. The AO not accepted the explanation furnished by assessee and disallowed the interest. Before the Id. CIT(A) it was submitted that the assessee has CC running account, wherein a lot of withdrawal as well as number of deposits. The deposits justify the payments of interest as well as principal amount. On the year ending on 31.03.2011 the total withdrawal were Rs. 42,36,65,395/0 and the deposits were shown at Rs. 39,56,40,419/- and having closing balance of Rs. 2,80,24,975/-.

The payments in respect of term loan were also paid. The Id. CIT(A) while considering the appeal of the assessee concluded as under:

“7. I have carefully considered the facts of the case, the findings of the AO, the submissions of the AR of the appellant and material placed on record. As per the bank statement, it is seen that during the year under consideration, the bank had provided the following amount of interest against CC Account with UBI:

Date	Interest debited (Rs.)
30.04.2010	94,573
31.05.2010	84,967
30.06.2010	95,701
31.07.2010	2,92,934
31.08.2010	2,22,761
30.09.2010	2,46,311
31.10.2010	2,73,797
30.11.2010	3,36,301
31.12.2010	4,15,025
31.01.2011	3,80,428
28.02.2011	3,16,063
31.03.2011	3,28,139
TOTAL	<u>46,68,742</u>

Immediately, after the above entries, under the head 'Interest Account', the appellant has deposited number of cheques in CC Account, in every month. The AO, however, disallowed the above interest on the ground that the said interest was not paid by the appellant and the payments were made only against principle amount. The AO, however, observed that the debit balance in the CC Account has increased from Rs. 74.61 lakhs to Rs. 2.80 crores. The AO, did not consider the fact that the OD limit of the appellant was increased to Rs. 3 crores. Therefore, the debit balance of Rs. 2.80 crores, was well within the OD limit provided by the bank.

7.1. The perusal of OD Accounts reveals that interest amount were debited in the OD Account and sufficient amount was deposited after debit of interest, in every month. Therefore, the observation of the AO that said interest was not paid during the year and converted into loan, is not factually correct.

7.2. The contention of the AO that the interest has been converted into loan, on the ground that the balance in OD Account was always remained a debit balance, is not correct as the OD limit of the CC Account was increased from Rs. 1.5 crores to Rs. 3 crore, which was not considered by the AO. Since the Closing balance i.e. (-) Rs. 2.80 crores, as on 31.03.2011, in the OD Account is less than the OD limit of Rs. 3 crores, indicate that the same is on account of principle loan and not on account of interest. Considering the facts of the case in entirety, above discussion and respectfully following the above decisions quoted, the addition made by the AO, on this account is hereby, deleted. This ground of appeal is allowed accordingly.”

5. The Hon'ble Madras High Court in CIT vs. Prakash Foods & Feed Mills P. Ltd. (supra) while deciding the similar ground held as under:

“3. We have heard the learned Standing Counsel appearing for the Revenue and perused the orders passed by the Tribunal and the authorities below.

4. Before advertng to the merits of the case, it would be apposite to refer to the relevant portion of Section 43B of the Act, which reads as under:

Section 43B. Certain deductions to be only on actual payment: Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of-

*(a) ****

*(b) ****

*(c) *****

(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State Financial Corporation or a State Industrial Investment Corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or

(e) any sum payable by the assessee as interest on any loan or advances from a scheduled bank in accordance with the terms and conditions of the agreement governing such loan or advances, or

*(f) *** Explanation 3C.- For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (d) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or borrowing shall not be deemed to have been actually paid.*

Explanation 3D.- For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (e) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or advance shall not be deemed to have been actually paid.

5. The department declined to grant the benefit of deduction on interest paid primarily on the plea that the amount has not been actually paid and transfer of amount from one account to another account cannot be treated as paid. However, the Tribunal repelled the said plea by interpreting Section 43B of the Act and held that overdraft/cash credit accounts are not similar to loan accounts. The Tribunal further observed that the interest amount has been actually paid by the assessee through Overdraft/Cash Credit account and, therefore, set aside the disallowance made under Section 43B of the Act.

6. A bare reading of Explanations 3C and 3D to Section 43B of the Act provides an answer to the problem by making it clear that where interest amount has not been converted into loan or borrowing (or) loan or advance, as the case may be, there is no question of denying the benefit of deduction. In the case on hand, the interest amount has been actually paid by the assessee through Overdraft/Cash Credit account and the same has not been converted into loan or borrowing (or) loan or advance, as the case may be.

7. For the foregoing reasons, these appeals are dismissed by answering the question of law against the Revenue and in favour of the assessee.”

6. Thus, in view of the ration of the decision of Madras High Court (supra), we find that the ground of appeal raised in the present appeal is covered against the revenue, thus we do not find any illegality or infirmity in the order passed by Id. CIT(A).
7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 7th December, 2016.

Sd/-

(D.KARUNAKARA RAO)
ACCOUNTANT MEMBER

Mumbai; Dated 07/12/2016

S.K.PS

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai