

आयकर अपीलीय अधिकरण ,इन्दौर न्यायपीठ ,इन्दौर
**IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE**

श्री सी.एम.गर्ग ,न्यायिक सदस्य

तथा

श्री ओ.पी.मीना ,लेखा सदस्य के समक्ष

**BEFORE SHRI C. M. GARG, JUDICIAL MEMBER
AND
SHRI O.P. MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A. No. 593/Ind/2013		
निर्धारण वर्ष/ Assessment Year: 2005-06		
M/s. Moira Steel Limited, Shanivar Darpan Press Complex, A.B. Road, Indore	vs.	Dy. CIT, 1(1), Indore.
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN: AABCM2051K		
अपीलार्थी की ओर से/Appellant by		Shri C.P.Rawka, C.A.
प्रत्यर्थी की ओर से/Respondent by		Shri Mohd. Javed, DR
सुनवाई की तारीख/Date of hearing		02.03.2017
उद्घोषणा की तारीख/Date of pronouncement		03.03.2017

आदेश /O R D E R

PER O.P. MEENA, ACCOUTANT MEMEBR

This appeal is filed by the assessee against the order of Id. Commissioner of Income tax (Appeals)-I, Indore,[hereinafter referred to as the CIT(A)] dated 30.08.2013. This appeal

pertains to Assessment Year 2005-06 as against appeal decided in respect of assessment order dated 16.12.2010 passed u/s. 143(3)/147 of Income Tax Act, 1961(herein after referred to as "the Act) by the DCIT, 1(1), Indore [hereinafter referred to as the AO].

1. The sole ground relates to confirming the disallowance of interest of Rs. 4,36,874/-.

1.1 Succinctly, facts as culled out from the orders of lower authorities are that the assessee has filed return of income declaring loss of Rs. 13,48,849/- on 31.10.2005. The assessee company has not paid any MAT as claimed to be sick company registered with BIFR. During the course of assessment proceedings, it was noticed that the assessee has claimed interest of Rs. 8,07,778/-, whereas the assessee has given advance of Rs. 1,15,51,278/-. Therefore, the assessee was asked to furnish details of these advances and interest charged thereon. In response to which, it was submitted that no interest on loans of Rs. 47,94,670/-was charged as these were

given to parties as business transaction. On perusal of the details, the AO found that there may not be any business transaction looking to the nature of the business of the assessee in respect of following parties. Hence, the assessee was required to explain as to why interest on the same has not been charged and to be disallowed.

	Rs.	Disallowance of interest
1.Smt. Sadhna Todi	3,08,484/-	24,049/-
2.NICG Combines Pvt.Ltd.	19,20,735/-	2,48,497/-
3.Shri Vimal Todi	3,00,762/-	42,106/-
4.AVI Educational & Cultural Society	19,00,000/-	22,166/-
5.Smt. Nidhi Singhania	3,25,000/-	45,500/-
6.Shri Pawan Singhania	39,689/-	54,556/-
Total	47,94,670/-	4,36,874/-

Since the assessee has failed to furnish explanation regarding non-charging of interest on the loans/advances given as mentioned above. Hence, the AO worked out disallowable interest in respect of above parties as mentioned in column

no.3 above table and disallowed the same by observing that the assessee has diverted its interest bearing funds for non-business purposes and has, thus, inflated the expenditure of interest, which was otherwise not required at all. In support of his contention, the AO also placed reliance on the decision of Hon'ble Allahabad High Court in the case of CIT vs. H.R. Sugar Factory Pvt. Limited, (1991) 187 ITR 363 (All) and also placed reliance on the decisions in the case of CIT vs. Motor General Finance Limited, 254 ITR 449 (Del), Indian Metals & Ferro Alloys Limited vs. CIT, (1992) 193 ITR 344 (Orissa) and Phalthan Sugar Works Ltd. vs. CWT, (1994)208 ITR 989 (Bom).

1.2 Being aggrieved with the order, the assessee carried the matter before the ld. CIT(A). In the appeal, the ld. CIT(A) noted that initially the assessee replied that the loans and advances are related to business, but when the AO asked to specify the nature of business with these six parties, the assessee could not establish any business relation. Hence, the CIT(A) observed

that the loans and advances of Rs. 47,94,670/- given to the six parties is without any business purpose. The onus was on the assessee to show that such advances were not out of interest bearing funds, but the assessee failed to establish the same. If interest bearing funds from Bank, MPFC and others has gone into extending such non-interest bearing and non-bearing advance, then the disallowance u/s 36(1)(iii) of the Act is fully justified. The ld. CIT(A) also placed reliance to fortify his view on the decision of Abhishek Industries Limited, 286 ITR 1 (P & H) & Madhav Prasad Jatia,1 18 ITR 200 (S.C.) and confirmed the disallowance so made.

1.3 Being aggrieved, the assessee has filed this appeal before the Tribunal. The Ld. Counsel for the assessee submitted that the assessee has paid interest of Rs. 3,58,074/- to Bank, Rs. 4,02,148/- to MPFC and Rs. 42,556/- to others totalling to Rs. 8,02,778/- and the assessee company has earned interest income of Rs. 3,48,683/- (Rs. 2,93,583 + Rs. 55,100/-) as

reflected in Schedule I to profit and loss account. The Ld. Counsel for the assessee submitted that there was no interest payment except the interest payment of Rs. 8,02,778/- paid to Bank, MPFC and others as against which the assessee was having interest free loans of Rs. 1,48,59,514/- as against alleged interest free advances of Rs. 47,97,670/-. Therefore, prima facie, there is no element of not charging the interest from the parties as stated in the assessment order and appellate order. The payment of interest to financial institution and Bank has no nexus with the advancing non-interest bearing loans. As against interest payment of Rs. 42,556/- paid to others, the assessee has received interest of Rs. 2,93,583/- and Rs. 55,100/-. As such, no disallowance of interest is called for.

1.4 On the other hand, the ld. DR submitted that during the course of assessment proceedings except claiming that the loans given to parties were business transactions, no other explanation was provided in support of their claim that the

loans and advances amounting to Rs. 47,94,670/- to six parties were given for business purposes, whereas, On the other hand, the assessee has taken loan from Bank as well as MPFC on which interest of Rs. 3,58,074/- and interest of Rs. 4,02,148/- respectively has been paid. The AO has clearly established that the loans and advances given to six parties were not for the business purposes or motive. Therefore, the AO has correctly made disallowance of interest on account of diversion of interest bearing funds for non-business purposes by relying on the decision of Hon'ble Allahabad High Court in the case of CIT vs. H. R. Sugar Factory Private Limited, (1991) 187 ITR 363 (All), wherein it was held that had this money been not advanced to the directors, it would have been available to the assessee for its business purposes and to that extent it may not have been necessary to borrow from the banks. The ld. DR further submitted that the assessee has also not been able to establish any business relation with the aforesaid parties and also failed to establish that the same were

not given out of interest bearing funds from the Bank, M.P.F.C. and others. Therefore, the order of the ld. CIT(A) may be upheld.

1.5 We have considered the facts, rival submissions and perused the material available on record. We find that the assessee has paid interest of Rs. 3,58,074/- to Bank, Rs. 4,02,148/- to MPFC and Rs. 42,556/- to others totalling to Rs. 8,02,778/- on the loans and advances taken. It is noticed that the assessee had given advances of Rs. 1,15,51,278/- as is reflected in the balance sheet of the assessee. The AO examined the same and found that the advances of Rs.47,94,670/- to aforesaid six parties as mentioned in table given in para 1.1 above, no interest was charged. Therefore, it is a clear cut case of diversion of interest bearing funds for non-business purposes and, thus, inflating of expenditure on account of interest. We also find that the abovesaid six parties including Directors of the assessee company to whom interest free loans

and advances were given, have no business dealing with the assessee company. We find that Ld. Authorized Representative of the assessee has claimed that interest free loans of Rs. 1,48,59,514/- were available with the assessee company. However, no evidence has been adduced to establish that interest free advances were given out of these interest free loans/advances. We further find that the assessee has made investment in fixed assets of Rs. 5,03,72,792/- and investment of Rs. 5,09,780/-, hence, there is no surplus fund which could have been utilized for giving interest free advances or loans.. Further, we find that the assessee has failed to furnish any explanation regarding non-charging of interest on the aforesaid advances before the AO during the course of assessment proceedings and also before the CIT(A). We find that the assessee has failed to discharge its primary onus in support of his claim that interest free funds were available out of which the aforesaid interest free advances were given and that the advances given were for the business purposes. Therefore, the

AO was right in applying the ratio of the decision of Hon'ble Allahabad High Court in the case of CIT vs. H.R. Sugar Factory Pvt. Limited, (1991) 187 ITR 363 (All), wherein it was held as under :-

“Had this money been not advanced to the directors, it would have been available to the assessee for its business purposes and to that extent it may not have been necessary to borrow from the banks.”

Further, our view is also supported by the decision in the case of Abhishek Industries Limited, 286 ITR 1 (P & H) & Madhav Prasad Jatia, 18 ITR 200 (S.C.) as relied upon by the Id. CIT(A). In the light of above facts, the ground of appeal taken by the assessee is dismissed.

1.6 In the result, the appeal of the assessee is dismissed.

The order pronounced in the open court on 3rd March, 2017.

Sd/-
(सी.एम.गर्ग)
न्यायिक सदस्य
(C.M.GARG)
JUDICIAL MEMBER

Sd/-
(ओ.पी.मीना)
लेखा सदस्य
(O.P.MEENA)
ACCOUNTANT MEMBER

दिनांक /**Dated :3rd March, 2017**

