

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

श्रीजी.एस.पन्नू, लेखा सदस्य, एवं श्रीअमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI G.S.PANNU, AM AND SHRI AMARJIT SINGH, JM

आयकर अपीलसं./I.T.A. No.6233/Mum/2012
(निर्धारणवर्ष / Assessment Year: 2009-10)

Asst. Commissioner of Income Tax 25(2) C-11, Pratyakshakar Bhavan R. No.108, Bandra Kurla Complex, Bandra (East) Mumbai - 400051	बनाम/ Vs.	M/s. Metform Corporation 601-602, Sidharth Arcade, LT Road, Borivali(W) Mumbai - 400092
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No. : AAAPM9883D		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपीलसं./I.T.A. No.6232/Mum/2012
(निर्धारणवर्ष / Assessment Year: 2009-10)

Asst. Commissioner of Income Tax 25(2) C-11, Pratyakshakar Bhavan R. No.108, Bandra Kurla Complex, Bandra (East) Mumbai - 400051	बनाम/ Vs.	M/s. Metcraft Engineering Corporation 601-602, Sidharth Arcade, LT Road, Borivali(W) Mumbai - 400092
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No. : AAAPM1677M		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Dr.K.Shivaram (Senior Advocate)
--------------	------------------------------------

Department by:	Shri M.Rajan
----------------	--------------

सुनवाईकीतारीख / Date of Hearing:29.09.2016
घोषणाकीतारीख /Date of Pronouncement: 29.12.2016
आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the above mentioned appeal against the order dated 09.07.2012 passed by the Commissioner of Income Tax (Appeals)35, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the assessment year 2009-10.

ITA No.6233/Mum/2012 - M/s. Metform Corporation

2. The revenue has raised the following grounds:-

- “1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition of Rs.13,20,512/- made by A.O. without appreciating the fact that there was no compliance with the provisions sec 260C by the assessee and no transactions was shown in Part ‘B’ of 26AS of the assessee. The Ld.CIT(A) erred in not considering the fact that the process of production does not show generation of any scrap out of the raw materials and the sale was made outside the books.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition of Rs.9,11,707/- made by A.O. without appreciating the fact that the assessee failed to prove that the assets were usable during the assessment procedure and did not produce any detail in this regard.*

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition of Rs.3,52,576/- made by A.O. without appreciating the fact that the assessee had failed to provide supporting evidences to prove that Pvt. Ltd. company on which investment of Rs.13,50,000/- was made was a subsidiary of the assessee corporation during the assessment proceedings.*
4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition of Rs.7,86,895/- made by A.O. without providing any reasonable basis and without appreciating the provisions of the proviso to section 36(1)(iii) of the Act.*
5. *The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and that of the A.O. be restored.”*

3. The brief facts of the case are that the assessee filed its return of income electronically on 27.09.2009 declaring taxable income to the tune of Rs.39,26,500/-. At the relevant time the assessee was assessed in central circle 37 Mumbai. Notice u/s.143(2) of the Income Tax Act, 1961(in short “the Act”) was issued by the concerned officer i.e. the DCIT Central Circle 37 within the time allowed for issue of such notice. Thereafter, in pursuance of the said notice, the assessee filed its letter dated 05.08.2010 and submitted the copies of physical return along with the computation of income and Tax Audit Report u/s.44AB of the Act. Thereafter, the case was transferred from the jurisdiction of the central circles vide orders

dated 30.05.2010 issued by the concerned the Chief Commissioner of Income Tax Central-II Mumbai and had been reverted back to its original jurisdiction, the ITO Ward 25(2)(2), Mumbai. The CIT-25 assigned this case to the charge of the present assessing authority. Accordingly notice u/s.142(1) of the Act dated 13.07.2011 was issued. The assessee is a manufacturer and is having its factory at 510, Village Chinchgrah, Bhiwandi Wada Road, Taluka Wada, Distt. Thane. The Assessing Officer disallowed the excise duty balance to the tune of Rs 32,23,648.and disallowed an amount or Rs 1,28,56,976.on account of scrap sale and also disallowed depreciation of Rs.40,71,128- and disallowed the interest to the tune of Rs64,77,802.and 7,21,834. Total to the tune of Rs 71,99,636 in view of the provision contained in section 36(1)(iii) and disallowed the provident fund to the tune of Rs 25,487 and also disallowed an amount of Rs 2,15,654. on account of difference of interest which was subsequently allowed by the CIT(A) by virtue of order dated 09.07.2012, hence the revenue has filed the present appeal before us.

ISSUE NO.1:-

4. Under this issue the revenue has challenged the deletion of scrap sale of Rs.70,32,414/- which has been treated by the Assessing Officer as unaccounted sale. Before going further, it is necessary to advert the finding of the CIT(A) on record:-

“6.3 I have carefully considered the findings of the assessing officer and reply filed by the representative of the assessee. It is also noted that there is no dispute over the generation of scrap at the rate of 2.91% equivalent to 124.22 metric tons. As per the assessee representative, the said quantity was generated as scrap which was sold at Rs.25,97,221/- and duly reflected in the sales. Therefore the question of any addition did not arise while the assessing officer has assumed that there is no sale of scrap shown by the assessee and therefore he has worked out the value of scrap on the basis of market value of finished goods and made addition of Rs.70,32,414/-.

On going through the submission and record, it is seen that similar type of scrap were generated in earlier years and the sale value have been accepted by the department. The assessing officer has not given any reason for taking the value of scrap sales at the price of finished goods sale, since the appellant agreed that there is no dispute over quantity of scrap sold which is already appearing in the sales. Therefore, it is argued that there is no reason to make any addition in respect of sale of scrap which is already accounted. The appellant has also submitted that the scrap generated is usual as per norms prescribed by

the Director General of Foreign Trade. Standard Input Output Norms for SI. No.C692 is notified by DGFT in the handbook (Vol.2) 2002-07. The relevant portion of item no.C692 of DGFT notification is reproduced hereunder:

SI No.	Export Item	Quantity	Import Item	Qty. Allowed
C692	Items Manufactured out of GP Sheets	1Kg	GP Sheets/ Coils/ Secondary	1.050 kg.

5. On appraisal of the said order, it came into the notice that it is not in dispute that the generation of scrap was @ 2.91% equivalent to 124.22 metric tons. The CIT(A) has allowed the scrap sale in view of the norms prescribed by the DGFT of foreign trade wherein the normal scrap can be allowed to the extent of 5%. The scrap of the assessee was to the extent of 2.91% which was found within the limit. The scrap record was maintained by the assessee in RG 1 which was verified by the excise department. Moreover, in earlier years also the scrap was sold and accepted by DCIT u/s.143(3) of the Act in view of the order dated 30.12.2010 for A.Y.2008-09. In view of the above said reasons, we are of the view that the CIT(A) has decided this issue judiciously and correctly which is not require to be interfere with at this appellate stage.

ISSUE NO.2:-

6. The revenue has raised the issue of allowance of depreciation by the CIT(A) to the tune of Rs.9,11,707/-. Before going further, it is necessary to advert the finding of the CIT(A) on record:-

“7.3. I have carefully considered the submissions of the assessee and gone through the Profit & Loss Account and details of depreciation claimed and found that there is no reason to disallow the depreciation on the aforesaid additions made to fixed assets. Accordingly, I direct the assessing officer to allow the depreciation of Rs.9,11,707/- on the additions made to Fixed Asset.

The CIT(A) has considered the assessment of the assessee in which the assessee submitted the details of assets along with tax audit report, the annexure of the addition to the fixed assets. The purchase has also been submitted and the record in connection with put to use in the said assessment order has also been furnished. In fact the assessee made an addition to the existing fixed asset in the building to the tune of Rs.2,19,990/-, plant and machinery of Rs.27,16,063/- and electrification of Rs.65,448/- and accordingly the depreciation was claimed. The Assessing Officer declined the claim of the assessee on the basis of the finding in case M/s. Metcraft Engineering Corporation. No independent views were given for declining the

claim of the assessee. In view of the said circumstances when the assessee has demonstrated his case justifiably by proceeding the record as well as working, therefore, in view of the said circumstances, we are of the view that the CIT(A) passed the order on this issue judiciously and correctly which is not require to be interfere with at this appellate stage.

ISSUE NO.3 & 4:-

7. Issue no.3 & 4 are interconnected, therefore, are being taken up together for adjudication. Under these issues the revenue has challenged the deletion of disallowance on the basis of section 36(1)(iii) of the Act to the tune of Rs.3,52,576/- and also and also challenged the deletion of the disallowance of the interest expenditure incurred towards the acquisition of fixed assets to the tune of Rs.7,86,895/-. Before proceeding further the finding of the CIT(A) on the above said issues is hereby reproduced below:

“8.3 I have considered the observations of the Assessing Officer and reply submitted by the assessee. The Assessing Officer has disallowed proportional interest on the following 2 items:

1. Interest of Rs.7,21,384/- on investment of Rs.42,00,000/- in shares of private limited company.

2. Interest of Rs.64,77,802/- in respect of acquiring of assets for expansion of existing business.

Both the issues are dealt as under:

a) **Interest of Rs.7,21,834/- on investment of Rs.42,00,000/-:-**

In this respect, the assessee representative has submitted his reply and strongly relied on the decision of CIT Vs. Tulip Star Hotel reported in 338 ITR 483 where under the similar circumstances, it was held that investment in shares of private limited company for acquiring controlling interest is for business purpose and no interest is disallowable u/s.37. while disallowing the above interest, the Assessing Officer has considered that the interest is not allowable u/s.36(1)(iii). On going through the detailed reply submitted by the assessee and more particularly relying on the above decision of Tulip Star Hotel, I am of the view that the investment of Rs.42,00,000/- made in the shares of Private Limited Company is for business purpose. Therefore, any interest paid on borrowed funds for acquiring the shares are allowable u/s.37. Therefore, Assessing Officer is

directed to delete the disallowance of interest of Rs.7,21,834/-

b) Interest of Rs.64,77,802/-

I have gone through the reply submitted by the Assessee representative which has been reproduced as above and noted that out of the total additions of Rs.3,76,91,181/- a sum of Rs.1,15,58,555/- was in respect of previous year and shown as capital work in progress and balance of Rs.2,61,32,626/- has been added during the year and against the said addition, the partners has brought Rs.1,29,05,331/- by way of addition to their capital account. It was also noted that the term loan of Rs.2 crores received on 16.03.2009 for further expansion of which interest of Rs.1,13,973/- was capitalized. The Authorized Representative has strongly argued that since the borrowed funds were utilized for business purpose, therefore, no part of proportionate interest is disallowable. More particularly, where the firm have sufficient capital and accruals of income besides substantial contribution to capital account by the partners. The Assessee's Representative has also relied on the decision of 115 ITR Pg. 195, 34 ITR Pg 265, 120 ITR Pg.240, 208 ITR Pg 616 and 332 ITR Pg. 627 stating

that even if borrowed funds are used to acquire assets not used during the year still interest paid on borrowed funds were allowable. In some of the above decisions, it was also held that borrowed funds used for capital expenditure were also allowable. It was also explained by the Authorized representative that it is an undisputable fact that the assets acquired are for business purpose and for earning the income. Therefore no part of interest is disallowable. On going through the facts of the case, more particularly relying on the above decisions, I am of the opinion that the assessing officer has erred in disallowing proportionate interest of Rs.64,77,802/-

In the result, this ground is allowed.

8. On appraisal of the above mentioned order the CIT(A) has deleted the disallowance of interest of Rs.7,21,831/- on investment of Rs.42,00,000/- in a share of private limited company. In fact the assessee purchased the equity share of Rs.13,50,000/- of M/s.Metacraft Engineering Pvt. Ltd. which is the subsidiary company of assessee company. The said investment was not made with the intention to not to earn the dividend income which is strategic investment and expended a sum of Rs.30,01,501/- on account of fixed assets (dies and moulds) which were put to use immediately after acquisition and the said amount was paid out of running business.

The CIT(A) allowed the interest in view of the law settled in of CIT Vs. Tulip Star Hotel reported in 338 ITR 483 which does not seems wrong against law and facts. So far the expenditure incurred towards the acquisition of the fixed assets is concerned the same is capital in nature. No doubt the expenditure was in the nature of arbitrary and other expenditure but the same is capital in nature which were put to use immediately after acquisition and the amount was paid out of running business. In view of the said circumstances, we are of the view that the CIT(A) has rightly allowed the said interest / expenditure. Accordingly, these issues are decided in favour of the assessee against the revenue.

9. In the result appeal filed by the revenue is hereby Dismissed.

ITA No.6232/Mum/2012 - M/s. Metcraft Engineering Corporation

10. The assessee has filed the above mentioned appeal against the order dated 03.07.2012 passed by the Commissioner of Income Tax (Appeals) 35, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2009-10.

11. The revenue has raised the following grounds:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition of Rs.1,28,56,976/- made by A.O. without appreciating the fact that there was no compliance with the provisions sec 260C by the assessee and no

transactions was shown in Part 'B' of 26AS of the assessee. The Ld.CIT(A) erred in not considering the fact that the process of production does not show generation of any scrap out of the raw materials and the sale was made outside the books.

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition of Rs.40,71,128/- made by A.O. without appreciating the fact that the assessee failed to prove that the assets were usable independently.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition of Rs.7,21,384/- made by A.O. without appreciating the fact that the assessee had failed to provide supporting evidences to prove that Pvt. Ltd. company on which investment of Rs.42,00,000/- was made was a subsidiary of the assessee corporation during the assessment proceedings.*
4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition of Rs.64,77,802/- made by A.O. without providing any reasonable basis and without appreciating the provisions of the proviso to section 36(1)(iii) of the Act.*
5. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition of Rs.2,15,372/- made by A.O. without appreciating the fact that the assessee did not produce any supporting evidence to substantiate his claim during the assessment proceedings.*
6. *The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and that of the A.O. be restored."*

12. The matter of controversy involved in ITA No.6233/Mum/2012 is also the same which has been involved in the above mentioned appeal. Since this matter of controversy has already been adjudicated in ITA No. 6233/Mum/2012, therefore we decide the issues in this appeal on the same terms and conditions as held in the above said appeal and dismissed the appeal of the revenue.

13. In the result appeal filed by the revenue is hereby Dismissed.

14. In the result both the appeals of the revenue are hereby Dismissed

Order pronounced in the open court on 29th December,
2016

Sd/-

Sd/-

(G.S.PANNU)

(AMARJIT SINGH)

लेखासदस्य / ACCOUNTANT MEMBER

न्यायिकसदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29th December, 2016

MP

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai