



॥ आयकर अपीलीय न्यायाधिकरण, पणजी न्यायपीठ, पणजी में ॥



IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI

BEFORE HON'BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

(Through virtual hearing from Pune)

आयकर अपीलसं. / ITA Nos.232 & 233/PAN/2019

निर्धारणवर्ष / Assessment Years : 2013-14 & 2014-15

Borkar Packaging Pvt. Ltd.,
Lake Plaza, Opp. Nehru Stadium,
Fatorda, Margao, Goa - 403601
PAN:AAACB7618N

..... अपीलार्थी / Appellant

बनाम / V/s.

Asst. Commissioner of Income Tax,
Circle-1, Margao

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Mr R K Pikale ['Ld. AR']

Revenue by : Mr N Shrikanth ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 16/01/2024

घोषणा की तारीख / Date of Pronouncement : 16/01/2024

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

These twin appeals of the assessee are assailed against separate orders of Commissioner of Income Tax (Appeals), Panaji-1 [for short 'CIT(A)'] both dt. 02/05/2019 passed u/s 250(6) of the Income-tax Act, 1961 [for short 'the Act'], which ascended out of respective assessment orders dt. 16/03/2016 and 13/12/2016 passed u/s 143(3) by the Asst. Commissioner of Income Tax, Circle 1, Margao [for short 'AO'] for assessment years [for short 'AY'] 2013-14 & 2014-15.

2. Before espousing the matter on facts anent to AY 2013-14 for adjudication, it is indispensable to replicate grounds challenged by the appellant assessee as under;



1. *On the facts and circumstances of the case, the learned ACIT, C-1, Margao and Hon.CIT(A), Panaji-1 erred in not allowing the 80IC benefit to the extent of Rs.66,189/- due to reallocation of common administrative expenses among the 80IC unit and non 80IC units.*
2. *On the facts and circumstances of the case, the learned ACIT,C-1, Margao and Hon.CIT(A), Panaji-1 erred in disallowing the interest on borrowed funds used for expansion of existing units Rs.8,72,277/-.*
3. At the very outset of virtual hearing, the Ld. AR Mr Pikale did not press first ground raised in the appeal memo, therefore, the ground no 1 is dismissed as not pressed. This leaves us with sole & substantive ground concerning disallowance of interest on borrowed funds used for expansion of existing units amounting to ₹8,72,277/- in the absence of specific capital borrowings.
4. Since the very same issue is also involved in the AY 2014-15, with the agreement of both the rival parties, these twin matters are heard together for a common & consolidated order. Resultantly the adjudication in lead case ITA No.232/PAN/2019 shall *mutatis mutandis* apply to ITA No.233/PAN/2019.
5. Tersely stated facts of the case are that; the appellant is a company engaged in the business of manufacture of Paper Board Cartons. The return of income [for short 'ITR'] filed declaring a total income of ₹6,00,85,756/- by the appellant was revised to ₹5,45,16,100/-, which was subjected to scrutiny where the assessment was completed u/s 143(3) of Act by making total additions of ₹70,49,428/- and while doing so, the Ld. AO invoking proviso to section 36(1)(iii) of the Act has disallowed ₹8,72,277/- representing interest on borrowing utilized for Capital Work-in-Progress [for short 'C-WIP']. Aggrieved assessee unsuccessfully contested the impugned disallowance before first appellate authority [for short 'FAA'], consequently the appellant is before us in the present appeal challenging the disallowance in the absence of specific borrowings.



6. Adverting our attention to page no 5-6 of paper book placed on record Ld. AR Mr Pikale submitted that, in relation to expansion of various units, the assessee during the year under consideration has added ₹2.95 Cr to C-WIP in relation to fixed assets, plant & machinery etc. In absence of specific borrowing, the said addition is funded by general business borrowings against which it has incurred interest ₹12.46Lakhs which it claimed as deduction u/s 36(1)(iii) of the Act. On assessee's representation that 30% of total C-WIP addition made for the year under consideration is out of margin money (own fund) and only balance 70% out of general business loans/borrowings, the Ld. AO did not disturb interest of ₹3.74Lakh attributable to own fund/margin but disallowed the balance 70% of interest ₹8.72 lakhs as attributable general business borrowings invoking proviso to section 36(1)(iii) of the Act. The Ld. AR made out a case asserting that there are no specific borrowings by the assessee for acquisition or creation of new asset within the meaning of proviso to section 36(1)(iii) of the Act. It is contended that, in absence of direct nexus between general capital borrowed and addition made to C-WIP, disallowance is not attracted by proviso to section 36(1)(iii) of the Act.

7. *Per contra* Ld. DR Mr Shrikanth at the outset campaigned that, the proviso to section 36(1)(iii) of the Act did not differentiate between specific borrowing or general borrowing. Once it is accepted that borrowed funds are deployed in creating any asset other than stock-in-trade, the principle of accounting for borrowing cost comes into play. The interest on the portion borrowed fund utilized in creating such asset including C-WIP till it has put to use, invariably partakes the character of cost of such asset and therefore mandates capitalisation. Consequently such interest *de-hors* of deduction u/s 36(1)(iii) of the Act by triggering the proviso thereto.



8. The Ld. DR Mr Shrikanth alluding page no 8-9 of paper book submitted by appellant company, has further contended that, the ratio laid by Hon'ble Supreme Court in '*DCIT Vs Core Health Care Ltd*' reported in 298 ITR 184 (SC) do not recuse the appellant's case for dual reasons; (1) the forgoing ratio has limited application upto AY 2003-04 as the proviso to section 36(1)(iii) came into statute w.e.f. 01/04/2004, resultantly applicable from AY 2004-05 (2) and year under consideration falling posterior to AY 2004-05. In bolstering the correctness of action of both the lower tax authorities in disallowing the interest attributable to general borrowed/loan fund used in creating C-WIP, the Ld. DR also pressed into service the decision of Hon'ble Apex Court rendered in 2012 in case of '*Vardhman Ploytex Ltd Vs CIT*' finds reported at 349 ITR 690 (SC) wherein their Hon'ble Lordship after having considered its earlier decision rendered in 2008 in '*DCIT Vs Core Health Care Ltd.*' (supra) confirmed the prospective operation of proviso to section 36(1)(iii) of the Act from AY 2004-05, thus the disallowance of interest in respect of capital borrowed for acquisition of an asset.

9. After hearing to rival contentions on sole & substantive ground; subject to provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short 'ITAT, Rules'] perused material placed on records, case laws relied upon by the rival parties and duly considered the facts of the case in the light of settled legal position.

10. We note that, the Ld. AO keeping in mind that, 70% of total addition to C-WIP which yet come into operation is funded out of general borrowings and the interest thereon could not be allowed as revenue expenditure by virtue of proviso to section 36(1)(iii) of the Act was disallowed in framing an assessment u/s 143(3) of the Act. In appeal, Ld. CIT(A) echoed the Ld. AO's version and confirmed the disallowance.



11. The moot question here came for our consideration is *'as to whether nature of borrowing determines the character of interest for disallowance by virtue of proviso to u/s 36(1)(iii) of the Act?'* At the outset we are not able to agree with the principle that the nature of the expenditure incurred in raising a loan would depend upon the nature and purpose of the loan. A loan may be intended to be used for purchase of inventory or working capital needs when it is negotiated with the lender/banker, but after raising such loan, company may change its mind and spend it on securing/creating capital assets. Is it the purpose at a time raising loan to be taken into consideration or the purpose it is actually used for whatever reasons? Will the AO decide the case with reference to purpose of borrowed or with reference to utilization? In our considered opinion, it was rightly held in *'Nagpur Electric Light and Power Co. Vs CIT'* [1931] 6 ITC 28 that the purpose for which the loan was acquired is irrelevant to the consideration of the question whether expenditure/interest on such borrowed capital/loan was revenue expenditure or capital expenditure. In our considered view, the treatment to interest as to capital or revenue is neither guided by type of capital/loan borrowed i.e. term loan or cash credit/working capital borrowings etc., nor is determinative to nature of borrowing as to general or specific borrowings. The ultimate test and determining factor is usage of loan/borrowings irrespective of its type i.e. term loan or cash credit and irrespective of its nature. Therefore, once usance test proves application towards creation of asset, then proviso to section 36(1)(iii) comes into play making no distinction between type & nature of loan borrowed for a capital asset and a revenue asset. And to disallow the interest under proviso to section 36(1)(iii) of the Act w.e.f. 01/04/2004 it is necessary for the Revenue to show that the borrowed capital (general or otherwise) was utilized for acquiring new assets or for their extension.



12. In case of 'CIT Vs Vardhman Ploytex Ltd' (supra), the Hon'ble Supreme court while holding the operation of proviso prospectively from AY 2004-05 has categorically held that, with the insertion of proviso to section 36(1)(iii) of the Act any interest on borrowed capital/loans relating to setting up of a new unit in the same line of business or for the purpose of acquisition of the assets of the new unit is to be allowed as a revenue expenditure only when such assets start yielding income and not for any period prior thereto. Their Hon'ble lordships have also reiterate the ratio in 'DCIT Vs Core Health Care Ltd.' (supra) also and made it amply clear that, interest on capital borrowed for the purpose of creation of any capital asset which yet to start operation/production interest upto such stage shall not be revenue but capital in nature and ineligible for deduction prospectively from AY 2004-05 and not prior years.

13. In the light of aforestated discussion, the impugned interest since attributable to such borrowings utilized in creating C-WIP which is yet to put to use/operation or commercial production therefrom yet to start has rightly subjected to disallowance by virtue of proviso to section 36(1)(iii) of the Act and aforestated judicial precedents, for the reason we deem it unnecessary to interfere with the impugned disallowance.

14. In result, these twin appeals of the assessee are **DISMISSED**.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Tuesday 16th day of January, 2024.

-S/d-

S. S. GODARA
JUDICIAL MEMBER

पुणे/ PUNE ; दिनांक / Dated : 16th day of January 2024

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1.अपीलार्थी / The Appellant.

4. DR, ITAT, Panaji Bench, Panaji

Satish

2. प्रत्यर्थी / The Respondent.

5.गार्डफाइल / Guard File

3. The CIT(A)-1, Panaji

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

By Order,

वरिष्ठनिजीसचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.