

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , R.L. NEGI, JM

आयकर अपील सं./ ITA NO. 1419/Chd/2019

निर्धारण वर्ष / Assessment Year : 2011-12

M/s IOL Chemicals and Pharmaceuticals Ltd. Industrial Area-A, Ludhiana	बनाम	Addl. CIT Range-7, Ludhiana
स्थायी लेखा सं./PAN NO: AABC11842A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Ashwani Kumar, CA
Shri Aditya Kumar, CA
Shri Bhavesh Jindal, CA

राजस्व की ओर से/ Revenue by : Smt. C. Chandrakanta, CIT

सुनवाई की तारीख/Date of Hearing : 15/04/2021

उद्घोषणा की तारीख/Date of Pronouncement : 21/06/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the assessee against the order dt. 13/08/2019 of the Ld. CIT(A)-3 Ludhiana.

2. Following grounds have been raised in this appeal:

1. That order passed u/s 250(6) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-3, Ludhiana is against law and facts on the file in as much as she was not justified to arbitrarily uphold a disallowance of Rs. 26,81,157/- made by the Ld. Assessing Officer out of Interest Account by resort to provisions of Sec. 36(1)(iii).

2. That she was further not justified to arbitrarily uphold that a sum of Rs. 51,14,705/- (Actual figure is Rs. 51,41,705/-) and Rs. 1,80,694/- out of Interest Account deserves to be capitalized without giving any benefit of depreciation.

3. *That she was further not justified to arbitrarily uphold the addition of Rs. 35,60,870/- made by the Ld. Assessing Officer by resort to provisions of Sec. 41(1) on account of outstanding balances of sundry creditors for a period of more than three years.*

3. Vide ground no. 1 the grievance of the assessee relates to the sustenance of disallowance of Rs. 26,81,157/- made by the A.O. under section 36(1)(iii) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

4. Facts of the case in brief are that the assessee filed its return of income on 29/09/2011 declaring loss of Rs. 26,41,16,886/- under the normal provisions of the Act and the income was shown at Rs. 7,92,46,075/- under section 115JB of the Act, thereafter the assessee filed revised return on 29/09/2011 showing a net loss of Rs. 26,41,16,886/- and income under section 115JB of the Act was revised to Rs. 9,04,31,275/- Later on the case was selected for scrutiny.

4.1 During the course of assessment proceedings the A.O. noticed that the assessee had given funds to M/s G. Drugs and Pharmaceuticals Ltd. (GDPL) its associated concern, the balance on the last date was Rs. 2,06,24,284/- which was shown in other debtors. The A.O. asked the assessee to explain as to whether any interest had been charged on the funds given out and that as to why the interest on funds diverted for non business purpose should not be disallowed. In response the assessee submitted as under:

" Regarding your query about disallowance of interest on loan to G Drugs and pharmaceutical Limited (GDPL), it is submitted that GDPL has been merged with the assessee company with retrospective effect from 01.04.2010 as per BIFR order dated 15.03.2012. Hence, question of disallowance of interest on loan to GDPL does not arise. Copy of order is enclosed for your kind reference."

4.2 The A.O. after considering the submissions of the assessee observed that only copy of order of BIFR was furnished and no copy of amalgamation order from the Hon'ble Punjab & Haryana High Court had been furnished, therefore the submission of the assessee were not acceptable. Accordingly the disallowance of Rs. 26,81,157/- was made under section 36(1)(iii) of the Act which was worked out @13% on Rs. 2,06,24,284/-

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

GROUND No. 1 Disallowance of interest u/s 36(1)(iii)

Regarding the disallowance of interest u/s 36(1)(iii), it is submitted that the debit balance is on account of payments made to the third parties by the appellant company on behalf of M/s. G. Drugs and Pharmaceuticals Limited and through cheques from bank accounts to the appellant company wherein sale proceeds as well as the interest free amounts were also received/credited by the appellant. Otherwise also the appellant company is also having sufficient interest free funds available which can be said to have used in making such advance or covers the interest free advances to M/s. G. Drugs and Pharmaceuticals Limited. The detail of interest free funds as were available with the appellant are as under:-

S.No.	Particulars	31.03.2010	31.03.2011
1	Share capital including share premium	100,90,89,800	118,90,89,800
2	Unsecured Loans	17,55,68,004	59,74,14,914
	Total	118,46,57,804	178,65,04,714

From the above it is very much clear that the appellant had raised interest funds from its resources more than Rs. 60,18,46,910/- during the year under appeal and had much more interest free funds than the amounts advanced to its sister concern M/s G. Drugs and Pharmaceuticals Limited.

Your Honour's kind attention is drawn to the latest decision of the Hon'ble Supreme Court in the case of Hero Cycles Limited reported in 379ITR page 347 wherein Their Lordships have held that if the funds available with the assessee are more than the amount advanced, no disallowance of interest is warranted. Keeping in view these facts, the disallowance deserves to be deleted.

Further Your Honour's kind attention is also drawn to the latest jurisdictional High Court judgement in the case of CLT v/s Kapsons Associates (P & H High Court) (2016) reported in 381 ITR p. 204.

Also the issue is decided in favour of the appellant company in the earlier assessment years i.e. 2007-08, 2008-09, 2009-10 and 2010-11 by Ld. CIT-A (4), Ludhiuna. Copy of order of CIT-A(4), Ludhiana for the A. Y.2010-11 is enclosed for your kind reference.

The above ground may kindly be adjudicated in the light of the submissions made above.

5.1 The Ld. CIT(A) however did not find merit in the submissions of the assessee and sustained the disallowance by observing in para 3.4 to 3.6 of the impugned order which read as under:

3.4 I have carefully considered the appellant's submission. I have also gone through the assessment order. I have also carefully considered case laws relied upon by the appellant. I have also considered the earlier orders in the case of assessee company by the CIT appeal -4, while considering identical addition made in earlier years, the same have been deleted. However disagreeing respectfully with the decision of my predecessor CIT appeal-4, I find that the assessee has completely failed to explain the commercial expediency for which the amount of loan extended to its sister concern without interest, whereas, at the same time the assessee had been paying hefty interest on loan taken by it. Assessee has also failed to explain the huge advances given by it, to its sister concern M/S G. drugs and pharmaceuticals Ltd. It is an admitted fact, that the assessee had been using mixed funds, wherein the interest free funds and interest-bearing funds both have been merged. Considered the explanation of appellant of having interest free funds,

3.5 I find that the appellant has failed to explain to demonstrate with the documentary evidence, the availability of interest free funds, on the dates on which the assessee has extended the interest free loans to its sister concern. It is seen that apart from reiterating its contention that assessee has not given any other explanation w.r.t the availability of interest free funds, and its utilization.

3.6 The assessee has explained during the course of assessment proceeding, that the sister concern of appellant namely M/S G. drugs and pharmaceuticals Ltd (GDPL) has been merged with the assessee company with retrospective effect from 1/4/ 2010 as per order of BIFR dated 15th March 2012. However the assessing officer has noticed that the assessee has not submitted the copy of order of BIFR, as the merger of the company has to be approved by the High Court. The assessee has not submitted the copy of amalgamation order from Punjab and Haryana High Court. The assessing officer has also noticed, that if the amalgamation has taken place in that case, the accounts should also have been merged but that is not the case in the case of appellant company.. During the course of appellate proceedings the assessee had ample time and opportunity to further its submission by filing above mentioned documents in support of its contention. However the assessee has merely reiterated the same submissions as relied upon at the time of assessment proceedings. During the entire assessment proceedings and appellate proceedings the assessee has not been able to correlate or substantiate amount given to M/S G. drugs and pharmaceuticals Ltd (GDPL) out of commercial expediency.

Reliance was placed on the following case laws:

- C.R. Auluck & Sons (2014) 360 ITR 93 (P&H)
- S.A. Builders, (2007) 288 ITR 1 (SC)
- CIT Vs. Malyalam Plantations (1964) 53 ITR 140 (SC)
- CIT Vs. Birla Cotton Spinning and Weaving Mills, (1971) 82 ITR 166 (SC)

- Tulip Star Hotels (2012) 21 Taxmann 97 (SC)
- Crescent Organics (P.) Ltd. Vs. DCIT (2014) 49 taxmann.com 128 (Bom)
- Hero Cycles (SC) Civil Appeal No. 514 of 2008
- CIT Vs. Kapsons Associates (2017) 79 taxmann.com 364 (P&H)
- CIT Vs. Abhishek Industries Ltd. 286 ITR 1
- CIT Vs. Orissa Cement Ltd. 258 ITR 365 (Del)
- CIT Vs. H.P. Sugar Factory Pvt. Ltd. (All) 187 ITR 363

6. Now the Assessee is in appeal.

7. Ld. Counsel for the Assessee reiterated the submissions made before the authorities below and further submitted that the debit balance was on account of payment made to the third parties by the assessee on behalf of the M/s G. Drugs and Pharmaceuticals Ltd. It was further submitted that the payment was made through cheques, sale proceeds as well as interest free amount were also received / credited by the assessee in the account of the said company. It was also submitted that the assessee was having sufficient interest free funds available which could be said to have been used in making such advances to cover the interest free advances to M/s GDPL. Reliance was placed on the judgment of the Hon'ble Supreme Court in case of Hero Cycles Limited reported in 379 ITR 347.

8. In her rival submissions the Ld. CIT DR strongly supported the order of the authorities below and further submitted that it is not clear that as to whether the assessee was having interest free advances which were utilized to give the advances to the sister concern, therefore, this issue may be set aside to the A.O. for verification.

9. We have considered the submissions of both the parties and perused the material available on the record. In the present case, the contention of the Ld. Counsel for the Assessee that the assessee company was having sufficient interest free funds available with it which would be said to have been used in making interest free advances to M/s GDPL requires verification at the level of the A.O. therefore this issue is

set aside to the file of the A.O. to be adjudicated afresh in accordance with law after providing due and reasonable opportunities of being heard to the assessee.

10. The next issue vide ground no. 2 relates to the sustenance of addition of Rs. 51,41,705/- and Rs. 1,80,694/- out of interest.

11. As regards to this issue the facts in brief are that the A.O. during the course of assessment proceedings noticed that the assessee had taken term loan for purchase of machinery, he asked the assessee to explain as to why the interest pertaining to loan taken for purchase of machinery should not be disallowed and capitalized to be included as cost of machinery, as and when the same was purchased and put to use. In response the assessee submitted as under:

"Regarding working of interest capitalized on additions to fixed assets, it is submitted that the assessee company has not availed any fresh term loan during the year under consideration which was used for purchase of mixed assets and put to use. Therefore, no addition of interest was made in the capitalization of fixed assets. However, the assessee company has capitalized due interest paid on loan availed on the amount of capital work in progress which is still not capitalized during the year under consideration details of which has already been submitted on 08-01-2014."

11.1 The A.O. however was not satisfied from the submissions of the assessee and made the disallowance of Rs. 1,80,694/- by observing as under:

The assessee's submission is considered but the same are not acceptable because it has taken loan for purchase of machinery during the year. There is gap between the payments made and the date on which machinery is put to use. There is addition to assets to the extent of Rs 2,94,41,623/-. Interest worked out from the date of payments to date of asset put to use comes to Rs.1,80,694/-. Interest relevant to the date of payment to asset put to use is required to be disallowed u/s 36(1)(iii) of the LT. Act Accordingly applying the interest @ 13% on asset put to use i.e. Rs. 1,80,694/- is disallowed and added to the total income. Penalty proceedings u/s 271 (1)(c) are initiated on this point for submitting in accurate particular income.

11.2 The A.O. also observed that the assessee had shown capital work in progress to the extent of Rs. 61,76,82,251/-. He asked the assessee to explain as to why the interest on working capital should not be capitalized. In response the assessee submitted as under:

"Detail of capital work in progress is enclosed herewith for your reference.

Further, the assessee company has the policy to capitalise the interest till the date the asset is put to use and the same is also evidenced by the below mentioned notes to the accounts:-

(A) Borrowing costs

Borrowing costs that are attributable to acquisition or construction of a qualifying asset are capitalised as part of cost of such assets. Qualifying asset is one that necessarily takes substantial period of time to get ready for its intended use. All other borrowing costs are recognised as expenses in the period in which they are incurred.

(B) Fixed Assets

Fixed assets are stated at cost (net of CENVAT) less accumulated depreciation. Cost of acquisition is inclusive of freight, duties, taxes and other incidental expenses and interest on loan taken for the acquisition of qualifying assets up to the date of commissioning of assets.

As per accounting policy being followed year after year, the assessee company has already capitalised sum amounting to **Rs. 87,26,813/-** representing the amount shown under the head capital work in progress (project development account) as is evident from the copy of the account already submitted above. As such the requisite amount of interest has already been capitalised on the amounts used out of borrowed funds in the books of accounts so no further disallowance is warranted on this account"

11.3 The Ld. CIT(A) however did not find merit in the submissions of the assessee and sustained the disallowance, the relevant findings have been given in para 8.5 of the impugned order which read as under:

8.5 The assessee's argument that the interest would be capitalized when the asset is put to use is not acceptable. As per proviso to section 36(1)(iii) of the LT. Act interest is to be capitalized till the date of actual use for the purpose of business. In the instant case it has to be utilized upto end of Financial Year. The assessee has furnished the working of interest from date of payment in respect of Building under construction which comes to Rs. 19,14,381/-. Same is capitalised to building under construction. In respect of capital advances the AR explained that it has gone out of the term loan whose interest has been capitalized. The argument put forth is not acceptable because the entire amount of building under construction, machinery under installation and capital advances is much/more than the term loan utilized. Further, no working in respect of the interest on capital advances has been furnished. Hence, in-absence of details, the interest is worked out at half of the entire year. The capital advances are to the extent of Rs. 4,96,51,140/-. Interest on the same at half of the interest for entire year comes to Rs.32,27,324/- (Rs.49651140 * 13% /2). Total disallowance on this account comes to Rs.51,41,705/-

(Rs.1914381 +Rs.3227324). The interest to the extent of Rs. 51,41,705/- is therefore disallowed and capitalized under proviso to section 36(I)(iii) of the I.T. Act. The same would form part of the assets and depreciation would be allowed accordingly when the asset is put to use. Penalty proceedings u/s 271(I)(c) of the I.T. Act are initiated on this point for furnishing inaccurate particulars of income.

12. Now the assessee is in appeal.

13. The Ld. Counsel for the assessee at the very outset stated that this issue has been adjudicated by the ITAT in assessee's own case, in ITA Nos. 1450 & 1451/Chd/2018 for the A.Y. 2013-14 & 2014-15 vide order dt. 22/04/2019, copy of the said order was furnished which is placed on record.

14. The Ld. CIT DR although supported the orders of the authorities below but could not controvert the aforesaid contention of the Ld. Counsel for the Assessee.

15. We have considered the submissions of both the parties and perused the material available on the record. It is noticed that a similar issue was a subject matter of the assessee's appeal in ITA No. 1450 & 1451/Chd/2018 (supra) wherein vide order dt. 22/04/2019 the issue has been set aside to the A.O. and the relevant findings have been given in para 8 of the order which read as under :

8. Considering the above submissions of the assessee, in our view, the matter is required to be restored to the file of the Assessing officer to duly consider the aforesaid contention of the assessee, examine the details of the finances available with the assessee vis-a-vis amount capitalized by the assessee and decide the issue afresh in the light of the decision of the Hon'ble Supreme Court in the case of 'CIT (LTU) Vs. Reliance Industries Ltd.' (supra). The orders of the lower authorities are set aside and the matter is remanded to the Assessing officer to decide the issue afresh as per the observations made above.

In the result, the appeal of the assessee is treated as allowed for statistical purposes.

16. By respectfully following the aforesaid referred to order, these issues are set aside to the file of the A.O.

17. The next issue vide ground no. 3 relates to the sustenance of addition of Rs. 35,60,870/- made by the A.O. by invoking the provisions of Section 41(1) of the Act.

18. The facts related to this issue in brief are that the A.O. during the course of assessment proceedings asked the assessee to furnish the complete details of sundry creditors of the last three years. From the details of the creditors the A.O. found that certain creditors were outstanding for the last three years. In response the assessee submitted as under:

"As desired, details of sundry creditors which remained outstanding for the last three years are enclosed. Regarding your honour's query as to why these are not treated as cessation of liability and brought to tax u/s 41(1) of the Act, in reply, it is submitted that as a matter of practice, the assessee company review such creditors periodically and as per the decision of the Board of Directors of the company these creditors are written back. However, few amounts were still outstanding which are pending because of some dispute which is to be settled. Because of pending settlement these are not written back and as and when the same is settled, this will be adjusted.

18.1 The A.O. however did not find merit in the submissions of the assessee by observing that the sundry creditors amounting to Rs. 35,60,870/- were outstanding for more than three years, so it was liable to be taxed under section 41(1) of the Act as cessation of liability. Accordingly the addition of Rs. 35,60,870/- was made.

19. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

Addition of Rs.35,60,870/- n/s 41(1) on account of sundry creditors balances outstanding for the last 3 years and has not been paid till now, therefore, it is being brought to Tax u/s 41(1) of the Income Tax Act, 1961 as cessation of liability.

It is submitted that as a matter of practice, the appellant company review such creditors/old outstanding credit balances periodically by the Board of Directors for writing back. A chart showing the present status of credit balance which have been added by the Ld. Assessing officer is enclosed. The perusal of the chart reveals that some payments were made after passing of assessment order and some of them have been written back as per the practice of the appellant company. In two cases, the appellant company has also filed legal suit against the parties, the orders of which are still awaited as on date. Thus in these circumstances the question of taking the balances as a cessation of liability as per the provisions of section 41(1) of the Act and this ground of appeal may kindly be adjudicated accordingly.

19.1 The Ld. CIT(A) after considering the submissions of the assessee sustained the addition by observing in para 8.2 & 8.3 of the impugned order as under:

8.2 I have carefully considered the rival submissions. The appellant has completely failed to substantiate its claim, that these liabilities were still outstanding. In addition to this, the assessing officer observed, that the assessee had not taken any steps at all to recover the dues. During the course of assessment proceedings the assessee could not file any correspondence, in this regard to substantiate its claim, that these liabilities were still pending and the assessee had taken steps to recover these liabilities. The assessing officer has stated, that all the liabilities were pending since 31/03/2007 as per the chart reproduced by the in para-4.6 on page 13 of assessment order. At the time of appellate proceedings the appellant has completely failed to file any satisfactory written submission or any documentary evidence in support of its contention. The appellant has submitted during appellate proceedings, that some payments were made after passing of assessment order and some of them have been written back as per the practice of the appellant company. In two cases, the appellant company has also filed legal suit against the parties, the orders of which are still awaited as on date. Thus in these circumstances the question of taking the balances as a cessation of liability as per the provisions of section 41(1) of the Act and this ground of appeal may be adjudicated accordingly.

8.3. After careful consideration of submission of appellant, it is observed, that the appellant has merely filed a written submission, however the appellant, has not annexed, any documentary evidence w.r.t its claim of payment o some of parties, and filing of legal suits against two parties. In absence of same, the contention of appellant has no force, hence the same is rejected. Accordingly, in my considered view the assessing officer has rightly disallowed the amount of Rs. 35,60,870/- on account of cessation of liability in the section 41 (1). Accordingly the disallowance on account of cessation of liability in the section 41(1) is upheld. These grounds of appeal are therefore dismissed.

20. Now the assessee is in appeal.

21. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that since there was no cessation of the liability, therefore the Ld. CIT(A) was not justified in sustaining the addition made by the A.O. It was further submitted that certain payments were made after passing of the assessment order and amounts of few had been written back as per practice of the assessee company, in two cases the assessee had filed legal suit against the parties and the orders for which were still awaited, therefore the addition made by the A.O. and sustained by the Ld. CIT(A) was not justified.

22. In her rival submissions the Ld. CIT DR submitted that the fact narrated now by the Ld. Counsel for the Assessee that few of the balances were written back and the

payments were made in certain cases were not brought to the knowledge of the A.O. therefore this issue may be set aside to the A.O. for verification.

23. We have considered the submissions of both the parties and perused the material available on the record. In the present case it appears that the facts that payments were made in certain cases after passing of the assessment order and few were written back as per the practice of the assessee company were not brought to the knowledge of the A.O. and the Ld. CIT(A) is also silent on those facts. We therefore deem it appropriate to set aside this issue back to the file of the A.O. to be adjudicated afresh in accordance with law after providing due and reasonable opportunities of being heard to the assessee.

24. In the result, appeal of the Assessee is allowed for statistical purposes.

(Order pronounced in the open Court on 21.06.2021)

Sd/-

आर.एल. नेगी
(R.L. NEGI)

न्यायिक सदस्य/ Judicial Member

AG

Date: 21.06.2021

Sd/-

एन.के.सैनी,
(N.K. SAINI)

उपाध्यक्ष / VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar