

आयकर अपीलिय अधीकरण, न्यायपीठ –“C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
 (समक्ष) श्री पी. एम. जगताप, उपाध्यक्ष एवं श्री ए.टी. वर्की, न्यायिक सदस्य)
 [Before Shri P.M. Jagtap, Vice President (KZ) & Shri A. T. Varkey, JM]

ITA No.1481/Kol/2019
Assessment Year: 2013-14

Income Tax Officer, Ward-3(1), Kolkata	Vs.	M/s. Brahmdeo Sinha & Co. (Hard Coke) Pvt. Ltd. (PAN: AACCB6632J)
Appellant		Respondent
Date of Hearing (virtual)		05.10.2020
Date of Pronouncement		14.10.2020
For the Appellant		Shri JayantaKhanra, JCIT, CIT, DR
For the Respondent		Shri Subash Agarwal, Advocate

ORDER

Per A. T. Varkey, JM:

This is an appeal preferred by the revenue against the order of Ld. CIT(A)-12, Kolkata dated 20-03-2019 for Assessment Year 2013-14.

2. Ground no. 1 of the revenue appeal is against the action of the Ld. CIT(A) in deleting the disallowance of Rs.14,90,864/- made by the AO towards the payment of interest on loan.

3. Brief facts of the case are that the AO noted that the assessee company has given loan to M/s. Brahma Refractories Pvt. Ltd. (in short M/s. BRPL) amounting to Rs.1,24,23,868/- which according to the AO is a related company. According to the AO, the loan was given without interest whereas from a perusal of the P&L Account it appears that the assessee company had incurred interest expenditure of Rs.45,89,999/-. Thereafter, the AO issued show cause notice to the assessee directing it to explain as to why proportionate interest should not be disallowed. According to AO, the assessee pursuant to the show cause notice submitted that this amount was an advance given to sister concern M/s BRPL for purchase of refractory materials which was required for execution of an

agreement with M/s. Tata Metaliks. According to the assessee, since the agreement with M/s Tata Metaliks did not materialise, the advanced amount was refunded by it next year back to assessee. According to the AO, even though he asked the assessee to submit documentary evidence in support of its claim, the assessee/AR failed to file any documentary evidence, therefore, the AO concluded that assessee company provided loan to the related company without any interest from the borrowed fund. Therefore, he disallowed @ 12% on the loan amount given to M/s BRPL to the tune of Rs.1,24,23,868/- which comes to Rs.14,90,864/- from the interest expenditure claimed by the assessee on the borrowed fund. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to allow the ground of appeal of the assessee on this issue. Aggrieved, the revenue is in appeal before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO has disallowed interest @ 12% on the loan amount of Rs.1,24,23,868/- from the interest expenditure claimed by the assessee company of Rs.45,89,999/-. The AO noted that the assessee has given Rs.1,24,23,868/- to M/s. BRPL which is a related company. According to the AO, on one hand loan was given to the sister concern (M/s BRPL) without any interest and on the other hand, the assessee company has borrowed funds for which it incurs interest expenditure, so the AO disallowed the interest @ 12% on the amount lent to the sister concern which comes to R.14,90,864/-. Before the AO it was contended by the assessee that the amount given to M/s BRPL was not loan but it was an advance for purchase of refractory materials for execution of a contract with M/s Tata Metaliks. And before ld. CIT(A) it was clarified by the assessee that the assessee had not given any loan/advance in the relevant AY 2013-14 and the advances were given to M/s BRPL in the earlier years and was for business purposes. It was brought to the notice of the Ld. CIT(A) that no loan was given to the sister concern M/s. BRPL and that the amount was advanced for purchase of raw material to repair, maintain and reconstruct the factory which is made of refractory materials which due to high temperature and exhaustion causes frequent damages. In order to establish the authenticity of this claim the Ld. AR drew our attention to three years' consecutive ledger copy i.e. from 01.04.2011 to 31.03.2012 (schedule 1), 01.04.2012 to 31.03.2013 (schedule 2) and thereafter from 01.04.2013 to 31.03.2014 (schedule 3) which shows that assessee had given advance to M/s. BRPL for

purchase of refractory materials and against the advance amount, M/s BRPL purchased the same which transaction are all through the banking channel and the balance amount was refunded back to the assessee. It is noted from the ledger copy that no advance was made by the assessee in the previous year relevant to the AY 2013-14 and in the earlier years though advances were made by the assessee to M/s BRPL no disallowance on this account was made. In any way the advances were made by assessee company as noted from the above facts discussed that it was for business purpose and the assessee company had regular business activity with the said concern. We note that the AO has not proved any nexus between the interest bearing borrowed Funds and the impugned interest free advance made to the sister concern. Moreover, it was brought to our notice that the assessee's own capital and free reserves are higher than the amount of advance made to the sister concern. We note from page 3 of the paper book wherein the Balance Sheet of the assessee is placed that the own fund of the assessee is to the tune of Rs.3,95,88,707/- and the advance given to M/s. BRPL is less [the advance i.e. Rs. 1,64,07,905/- (opening) and Rs.74,23,869/- (closing)]. Thus, the presumption is that the funds deployed by the assessee company to its sister concern was from own funds. For this, proposition we rely on the decision of Hon'ble Supreme Court in the case of Reliance Utilities & Powers Ltd. Reported in 410 ITR 466 (SC). And we note that the assessee has given the advance to M/s BRPL due to commercial expediency. On this issue let us look at the decision of Hon'ble Delhi High Court in CIT vs. Bharati Tele Venture (2011) 381 ITR 502 (Del) wherein their Lordship's relying on the decision of the Hon'ble Supreme Court in Sasoon J David vs. CIT 118 ITR 261 (SC) held " *The Hon'ble Supreme Court further held that though the borrowed amount was not utilized by the assessee in its own business and had been advanced as interest free loan to the sister concerns, but that is not relevant. What is relevant is whether the advanced such an amount to its sister concern as a measure of commercial expediency.* " This assessee's claim that the advanced amount to its sister concern M/s BRPL was for commercial expectancy was not controverted by the AO. When the assessee claimed that the advance given to the sister concern as a measure of commercial expediency, then the AO should put himself in the shoes of a prudent business man and see whether the transfer of fund was based on commercial expediency or with a view to make profit as held by Hon'ble Supreme Court in S. A Builders vs. CIT 288 ITR 1 (SC). And moreover the interest expenditure claimed by

the assessee could not have been disallowed unless AO is able to show that there was no nexus between the expenditure and the purpose of business (which need not necessarily be the business of assessee itself) (refer S.A. Builders(supra). Moreover, the AO ought not to have disallowed notional interest without following the procedure prescribed by the statute ie,without rejecting the books of account. Thus, from all angles discussed (supra), we find no infirmity in the order of the Ld. CIT(A) and confirm the order of ld. CIT(A) and dismiss the ground of appeal of the revenue.

5. Ground no. 2 of the revenue is against the action of the Ld. CIT(A) in deleting the addition made by the AO of Rs.2,04,32,959/- on account of suppression of profit.

6. Brief facts of the case are that the AO noted from perusal of the P&L Account that cost of material consumed has increased considerably when compared to the earlier years and reproduced a chart below:

AY	2012-13	2013-14
Sale of product	93.56 crore	12.02 crore
Material consumed	5.83 crore	8.58 crore
Percentage of cost of material	61%	71%

According to the AO, there is an increase of 10% of material cost without proportionate increase of sale. So he show caused the assessee to explain the reason as to why GP addition should not be made. According to the AO, the assessee/AR neither appeared nor filed any documentary evidence against the SCN, so the AO concluded that the assessee company did not have any documentary evidence to prove that GP is lower than the last year. Therefore, the AO increased the profit by Rs.2,04,34,959/- by making the calculation as under:

$$\text{Rs. } 8,58,11,947/61 \times 100 = \text{Rs. } 140675322 \text{ (Sales as per AY 2012-13)}$$

$$\text{Addition to be made Rs. } 140675322 - \text{Rs. } 120242363 = \text{Rs. } 20432959$$

Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who was pleased to delete the same. Aggrieved, the revenue is in appeal before us.

7. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO noticed the abnormal consumption of material in the year under consideration which was at Rs.8.58 cr. And the sale of products were at Rs.12.02 cr. The AO noted the cost of consumption of material in the preceding year was only Rs.5.83 cr. And the sales was at Rs.93.56 cr. Taking note of this, the AO was of the opinion there was abnormal consumption of material in the year under consideration, so he gave show cause notice to the assessee calling for explanation as to why there was consumption of materials increased to 71% when the consumption was only at 61%. According to the AO, the assessee failed to explain the higher consumption of material, so the AO made presumptive assumption (based on the calculation supra) that the assessee had actual sale of Rs.14,06,75,322/- (on production of consumption percentage of 61% of last year). Therefore, according to AO, Rs.2,04,32,959/- was the suppressed sale. On appeal, the Ld. CIT(A) noted that there was no material before the AO to conclude that the assessee had more sales than it disclosed in the P&L Account. The Ld. CIT(A) noted that the AO erroneously substituted 61% of last year to the actual consumption of this year. The Ld. CIT(A) has noted that the coal rates of the current year substantially increased over the last year and that 71% consumption is in value terms. The assessee brought to the note of the Ld. CIT(A) that the quantitative consumption of materials which is discernible from the tax audit report shows that quantitative consumption figure is same as last year. In this factual background the Ld. CIT(A) found that the AO erred in adopting the percentage of consumption of material as 61% when the cost / value of consumed material was 71% and so the Id. CIT(A) deleted the notional addition. We note that the quantity of consumption of raw material of this year of coal is same as that of the last year and the only difference is in respect of the increase cost / value of raw materials which increased the value to 71%. This fact could not be controverted by the Revenue before us. So, the GP of assessee dropped because cost of consumed raw material for production of the product increased and correspondingly sales figure did not increase, so consequently the G.P of assessee got reduced. Therefore, the AO's exercise to compute the suppression of sales is based on

conjectures and surmises and therefore, the order of AO is erroneous. Therefore, the Id. CIT(A) rightly deleted the addition which needs no interference from our side and, therefore, we confirm the order of Id. CIT(A) and dismiss this ground of appeal of the revenue.

8. In the result, the appeal of revenue is dismissed.

Order is pronounced in the open court on 14th October, 2020

Sd/-

P. M. Jagtap)
Vice President

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated :14th October, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant –ITO, Ward-3(1), Kolkata.
2. Respondent –M/s. Brahmdeo Sinha & Co. (Hard Coke) Pvt. Ltd.
307, BIA Merlin Chamber, 18, British Indian Street, Kolkata-700 069.
3. CIT(A)-12, Kolkata. (sent through e-mail)
4. CIT- , Kolkata
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar
ITAT, Kolkata.