IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "J" : MUMBAI

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND
SHRI P.M.JAGTAP, ACCOUNTANT MEMBER

ITA. No. 1180 & 1181/Mum/2010
Assessment year 2005-2006 & 2006-2007

DCIT, Circle 2 (2) Mumbai – 20.	vs.	M/s. Marchon Textiles Industries Ltd. Mumbai-400059 PAN AABCM9475F
(Appellant)		(Respondent)

For Appellant : Shri P.K.B. Menon (D.R.)
For Assessee : Shri Vijay Mehta, (A.R.)

Date of Hearing : 23-08-2011
Date of pronouncement : 23-08-2011

ORDER

PER D. MANMOHAN, V.P.

1. These appeals by the Revenue pertain to the assessment years 2005-2006 and 2006-2007. Since the issue involved in both the appeals is identical we proceed to dispose of the appeals by a common order for the sake of convenience. Grounds raised by the Revenue are extracted for immediate reference.

> *1. The Order of the CIT(A) is opposed to law and facts of the case.*
>
> *2(a). On the facts and in the circumstances of the case and in law CIT(A) erred in deleting the disallowance of interest expenses of Rs.1,22,86,301/- (Rs.1,01,59,364/- for A.Y. 2006-2007) which was charged @ 12% on advances paid to Commercial Construction Corpn, Satguru Homes & Dosti Corpn. Without any commercial and any business expediency.*
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> *2(b) On the facts and in the circumstances of the case and in law CIT(A) erred in not appreciating the fact that the alleged trade advances paid by the assessee did not result in subsequent acquiring of the flats from the persons to whom advances were paid and these were sham transactions.*

> 3. *For these and other grounds that may be urged at the time of hearing, the decision of the CIT(A) may be set aside and that of the Assessing Officer be restored."*

2. Admittedly, Assessing Officer sought to bring to tax notional interest income on the ground that the assessee ought to have charged interest at 12% on the loans advanced to various parties. The case of the assessee was that the amounts were advanced in the course of its business and while returning such amounts some of them have compensated the assessee in monetary terms, though not under the nomenclature interest. The Assessing Officer, however, proceeded on the footing that the assessee has no justifiable reason to advance amounts to certain parties without proper agreements and that too without charging any interest and thus concluded that the entire arrangement appeared to be sham. Under the circumstances, he calculated the interest receivable on interest free advance and loans and since such interest exceeds the interest paid by the assessee, the entire interest debited to the P & L account amounting to Rs.1,22,86,301/- (for A.Y. 2005-2006) and Rs.1,01,59,364 (for A.Y. 2006-2007) was disallowed by the Assessing Officer by holding that the interest paid by the assessee is not connected to the business carried on by the assessee.

3. On an appeal filed by the assessee, the learned CIT(A) observed that the assessee had justifiable reasons for advancing the amounts in its capacity as a prudent businessman. At any rate, notional interest cannot be added to the taxable income. In fact, the Assessing Officer has not added any notional income but merely sought to disallow interest paid by the assessee presumably on the ground that the interest bearing funds were not utilised for business purpose. In paras 8.3 and 8.4 of the Order for A.Y. 2005-2006 the learned CIT(A) observed that the interest paid by the assessee pertains to the amount of Rs.20 crores borrowed from GE Capital at an interest rate of 7.5% p.a. This amount was directly advanced on the same date to Lakshdeep Investment & Finance Pvt. Ltd. from whom it had

received interest @ 10%. Thus, no part of the borrowed funds were utilised for giving interest free advances so as to disallow any part of the interest paid by the assessee. He categorically observed that the Assessing Officer failed to demonstrate that the assessee had used borrowed funds for giving interest free advances. Under the circumstances, disallowance made by the Assessing Officer were set aside.

4. Though the Revenue strongly relied upon the reasons given by the Assessing Officer, learned DR was unable to contradict the findings of the learned CIT(A) with regard to factum of non-utilisation of the interest bearing funds for giving interest free advances. Such being the case, we are of the view that the Revenue has not made out a case for disallowing the claim of interest paid by the assessee. We, therefore, affirm the Orders passed by the learned CIT(A) and dismiss the appeals filed by the Revenue.

Order pronounced in the Open Court on 23-8-2011.

Sd/- Sd/-
(P.M.JAGTAP) **(D.MANMOHAN)**
ACCOUNTANT MEMBER **VICE PRESIDENT**

Mumbai, Date 23rd August, 2011.
VBP/-
Copy to

1. DCIT, Circle 2 (2), Mumbai.
2. M/s. Marchon Textiles Industries Ltd., Marchon House, J.B. Nagar, Andheri-Kurla Road, Andheri (E), Mumbai-400059 PAN AABCM9475F
3. CIT(A)-5, Mumbai
4. CIT-2, Mumbai
5. DR 'J' Bench
6. Guard File

(True copy) By Order

Asst. Registrar, ITAT, Mumbai Benches
MUMBAI.