आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री आर. के. पांडा, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI R.K. PANDA, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos. 1340 & 1341/PN/2014
निर्धारण वर्ष / Assessment Years : 2008-09 & 2010-11

Kay Bouvet Engineering Ltd.,
N-3, Addl. M.I.D.C., Satara

PAN : AABCK4669H

.......अपीलार्थी / Appellant

बनाम/Vs.

Dy. Commissioner of Income Tax ,
Satara Circle, Satara

......प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni
Revenue by : Shri Hitendra Ninawe

सुनवाई की तारीख / Date of Hearing : 19-10-2016
घोषणा की तारीख / Date of Pronouncement : 30-11-2016

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These two appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-III, Pune dated 19-03-2014 common for the assessment years 2008-09 & 2010-11.

Since, the issues raised in both the appeals are common the appeals are taken up together for adjudication and are decided by this single order.

2. The brief facts of the case as emanating from records are: The assessee is a Private Limited Company and is engaged in the business of manufacturing of Sugar Mill Machinery and fabrication and assembly of heavy engineering machines. During the course of scrutiny assessment for the assessment year 2008-09 the Assessing Officer inter alia made additions of ₹7,56,321/- in respect of contract receipts from Hyderabad Industries Ltd. and disallowance of ₹37,26,611/- u/s. 36(1)(iii) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). In assessment year 2010-11 the Assessing Officer made disallowance of ₹29,43,757/- u/s. 36(1)(iii) of the Act.

Aggrieved by the assessment orders for the respective assessment years, the assessee filed appeals before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) rejected the contentions of the assessee in respect of aforesaid additions/disallowances. Now, the assessee is in second appeal assailing the findings of Commissioner of Income Tax (Appeals) in confirming the additions in both the assessment years.

3. Shri M.K. Kulkarni appearing on behalf of the assessee submitted that ground Nos. 1 and 2 in the grounds of appeal for assessment year 2008-09 are in respect of action of Commissioner of Income Tax (Appeals) in upholding the additions of ₹7,56,321/- in respect of

contract receipts from Hyderabad Industries Ltd. The ld. AR contended that admittedly before the Assessing Officer the assessee was not in a position to reconcile the difference between the amounts shown in Form 26AS and the amounts reflected in books of account of the assessee. The addition has been made on the basis of information contained in Form 26AS. However, the assessee furnished reconciliation certificate from M/s. Hyderabad Industries Ltd. before the Commissioner of Income Tax (Appeals). The reconciliation certificate furnished by the assessee was not considered by the Commissioner of Income Tax (Appeals) and the contentions of the assessee were rejected in an arbitrary and unjustified manner.

3.1 In respect of ground No. 3 in the appeal for assessment year 2008-09 the ld. AR submitted that the authorities below have erred in making disallowance of ₹37,26,611/- u/s. 36(1)(iii) of the Act on account of interest paid. The authorities below have ignored the fact that the assessee had sufficient interest free funds at the time of making advances. The ld. AR referred to the balance sheet for assessment year 2008-09 placed on record at pages 15 to 22 of the paper book. The ld. AR pointed out that as on 31-03-2008 the assessee had Reserves and Surplus to the tune of ₹9.77 crores as against the loans and advances of ₹3.54 crores only. The ld. AR further referred to ledger account of M/s. Kay Pulp and Paper Mills Ltd., a sister concern of the assessee to whom advances were made at pages 36 and 37 of the paper book. The ld. AR contended that the opening balance as on 1st Aprile, 2007 was ₹1.56 crores and the closing balance was ₹3.65 crores. Thus, during the period relevant to the assessment year 2008-09 the assessee had advanced ₹2.09 crores only. No addition can be made on account of disallowance of interest if the assessee is able to show that the assessee had sufficient own interest free funds for making advances. Moreover, the funds were advanced to the sister concern out of business exigencies. The assessee had given corporate guarantee for the loan taken by the sister concern. The ld. AR in order to buttress his submissions placed reliance on the following decisions :

i. Commissioner of Income Tax Vs. Coimbatore Salem Transport (P) Ltd., 61 ITR 480 (Mad.);
ii. Dy. Commissioner of Income Tax Vs. Assam Industrial Development Corporation Ltd., 87 TTJ 1067 (ITAT-Gau.);
iii. P. Jayantilal & Co. (P) Ltd. Vs. Dy. Commissioner of Income Tax , 97 TTJ 100 (ITAT-Mum);
iv. Commissioner of Income Tax Vs. Radico Khaitan Ltd., 274 ITR 354 (All.).

The ld. AR contended that similarly, in the assessment year 2010-11 the assessee had sufficient own interest free funds for making advances and loans to its sister concern. The Revenue has not been able to show from records that the assessee has diverted interest bearing funds for making interest free advances to sister concerns.

3.2 The ld. AR stated at the Bar that he is not pressing ground No. 4 raised in the appeal for assessment year 2008-09.

4. On the other hand Shri Hitendra Ninawe representing the Department vehemently defended the findings of Commissioner of

Income Tax (Appeals) and prayed for dismissing both the appeals of the assessee. In respect of ground Nos. 1 and 2 raised in the appeal for assessment year 2008-09, the ld. DR submitted that the Commissioner of Income Tax (Appeals) has considered the alleged reconciliation certificate issued by M/s. Hyderabad Industries Ltd. A perusal of the certificate which is placed at page 38 of the paper book would show that M/s. Hyderabad Industries Ltd. has not stated that the tax has been deducted twice on the same amount. The certificate reiterates that tax has been deducted at source on the payments made. The contents of the certificate have been reproduced by the Commissioner of Income Tax (Appeals) in his order. In respect of ground No. 3 in the appeal for the assessment year 2008-09 and the solitary ground raised in the assessment year 2010-11 in respect of disallowance of interest u/s. 36(1)(iii) of the Act, the ld. DR submitted that the assessee has not been able to show business exigency for making interest free loans and advances. The interest free funds of the assessee are locked in some other investments and the assessee has diverted interest bearing funds to the sister concern. The assessee has not placed on record any document to show that interest free funds were used for discharging loan liability of the sister concern. In respect of case law relied on by the ld. AR, the ld. DR submitted that the same are not applicable and are distinguishable on facts. The assessee has not been able to show any common business interest with the sister concern.

5. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. We have also considered various documents and the case laws on which

the ld. AR of the assessee has placed reliance to fortify his submissions. The first issue in appeal for assessment year 2008-09 is with respect to addition of ₹7,56,321/-. The addition has been made on account of difference between the payments shown in Form 26AS and the books of account of the assessee. The contention of the assessee is that M/s. Hyderabad Industries Ltd. has deducted TDS twice on the same payment. First at the time of advance payment of ₹7,41,576/- and second time while issuing invoice of ₹7,56,744/-. These payments are in fact one. At the time of assessment proceedings the assessee had not furnished any document to reconcile the difference. During the First Appellate proceedings, the assessee furnished certificate issued by M/s. Hyderabad Industries Ltd. A perusal of the certificate at page 38 of the paper book shows that the deductee has only certified the details of payments made and TDS deducted thereon. The deductee has nowhere mentioned that the TDS was deducted twice in respect of the same payment. The Commissioner of Income Tax (Appeals) has considered the said certificate and even reproduced the relevant extract of same in the impugned order. The Commissioner of Income Tax (Appeals) after considering all the facts and documents, upheld the addition by holding as under :

> *"4.4.2.2 It can be seen that the deductor has nowhere stated that the tax has been deducted twice of the same amount or there was excess deduction of tax and It would appear that the entire amount of Rs.18,93,966/- had been credited to the account of the appellant. Even presuming that what was actually due to the appellant was Rs.l1,52,390/- (Rs.7,56,744 + 3,95,646), the ledger extract account furnished by the appellant shows the gross amount at Rs.11,37,645/-. Therefore, the natural presumption would be that the appellant accounted for only the advance payment received of Rs.7,41,576/- while the balance payment of Rs. 7,56, 744/- was remained to be accounted*

for. Therefore, in my considered view, there Is no infirmity in the action of the Assessing Officer in adopting the figure reported In 26AS and accordingly, the addition of Rs.7,56,321/- towards contract receipts is upheld. Keeping in view the findings at paras 4 to 4.4.2.2 herein above, ground of appeal no.2 is held to be partly allowed."

6. Thus, the contention of the assessee that the Commissioner of Income Tax (Appeals) has failed to consider the certificate does not hold ground. The Commissioner of Income Tax (Appeals) has made addition after considering the certificate. The ld. AR has not been able to show from records that the advance payment made to the assessee and the amount mentioned in the invoice are in fact the same amount. The only conclusion that can be drawn from the details furnished by the assessee is that both the amounts are different on which the deductee has rightly deducted TDS at the time of payment. In the facts and circumstances of the case, we do not find any infirmity in the findings of Commissioner of Income Tax (Appeals) in confirming the addition. Accordingly, ground Nos. 1 and 2 raised by the assessee in appeals for assessment year 2008-09 are dismissed.

7. The issue raised in ground No. 3 in assessment year 2008-09 and the solitary ground raised by the assessee in assessment year 2010-11 relate to the common issue of disallowance of interest expenses u/s. 36(1)(iii) of the Act. The contention of the ld. AR is that the assessee has advanced interest free loans to its sister concern to M/s. Kay Pulp and Paper Mills Ltd. from interest free funds available with the assessee. The assessee has drawn our attention to the balance sheet as on 31-03-2008 at page 15 of the paper book. As per the balance

sheet the assessee has Reserves and Surplus to the tune of ₹9,76,99,579/- and the assessee has advanced interest free loan to its sister concern to the tune of ₹3.48 crores. The ld. AR has also referred to the ledger account of M/s. Kay Pulp and Paper Mills Ltd. at page 36 of the paper book to show that opening balance of advances as on 01-04-2007 was ₹1.57 crores and the closing balance as on 31-03-2008 was ₹3.65 crores. Thus, the advance during the year was to the tune of ₹2.09 crores only. As regards the details of the advance and the availability of the funds for the assessment year 2010-11 is concerned, the assessee has not furnished any details. The assessee further has not shown from records that the loans and advances were made from the surplus funds and the borrowed funds were not diverted for funding the repayment of loans of sister concern. The Revenue has also failed to bring on record any material to establish the nexus between the interest bearing funds of the assessee and funds advanced to the sister concern. Under such circumstances, we are of the considered view that this issue needs revisit to the file of Assessing Officer.

The Assessing Officer shall re-adjudicate this issue de novo after examining the relevant records and also keeping in view the ratio laid down by the Gauhati Bench of the Tribunal in the case of Dy. Commissioner of Income Tax Vs. Assam Industrial Development Corporation Ltd. (supra). Accordingly, ground No. 3 raised in the appeal of the assessee for assessment year 2008-09 and the appeal of the assessee for assessment year 2010-11 are allowed for statistical purpose.

8. The ld. AR of the assessee has stated at the Bar that he is not pressing ground No. 4 raised in the appeal for assessment year 2008-09. Accordingly, the same is dismissed as not pressed.

9. In the result, the appeal of the assessee for assessment year 2008-09 is partly allowed for statistical purpose and the appeal of the assessee for assessment year 2010-11 is allowed for statistical purpose.

Order pronounced on Wednesday, the 30th day of November, 2016.

Sd/-	Sd/-
(आर. के. पांडा / R.K. Panda)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30th November, 2016
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-III, Pune
4. आयकर आयुक्त / The CIT-III, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच, पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune