<u>आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "डी" मुंबई</u>

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE S/SHRI B.R.BASKARAN (AM) AND SANJAY GARG, (JM)

सर्वश्री बी.आर.बास्करन, लेखा सदस्य एवं श्री संजय गर्ग, न्यायिक सदस्य के समक्ष

आयकर अपील सं./I.T.A. No.5368/Mum/2011

(निर्धारण वर्ष / Assessment Year :2004-05)

Ganjam Trading Co.Pvt.Ltd. New Prakash Cinema Bldg, N M Joshi Marg, Lower Parel, Mumbai-400011	**बनाम**/ Vs.	Income Tax Officer, 6(3)1), Aayakar Bhavan, M.K.Road, Mumbai-400020
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./जीआइआर सं./**PAN/GIRNo.:AAACG3975H**		

अपीलार्थी ओर से / Appellant by :	Shri Firoze Andhyarujina and Shri B S Sharma
प्रत्यर्थी की ओर से/Respondent by :	Shri Durga Dutt

सुनवाई की तारीख / Date of Hearing : 15.7.2014

घोषणा की तारीख /Date of Pronouncement : 12.9.2014.

आदेश / O R D E R

Per B.R.BASKARAN, Accountant Member:

The appeal filed by the assessee is directed against the order dated 04-02-2011 passed by Ld CIT(A)-VI, Mumbai and it relates to the assessment year 2004-05.

2. At the time of hearing, the Ld A.R submitted that the Ground No.1 relating to Speculation loss was decided against the assessee by the Tribunal in its order dated 20-07-2012 passed for AYs 2001-02 to 2003-04 respectively in ITA No. 3724/Mum/2005, 932/Mum/2006 and 1382/Mum/2007. The Ld A.R also furnished a copy of the order passed by the Tribunal. We notice that the issue

urged in Ground No.1 relates to the view taken by the assessing officer to treat the following items as falling under the category of "Speculation loss":-

Fall in the market value of shares	64,025
Profit on sale of shares	58,405
Notional interest	3,00,59,387
(restricted to Rs.1,51,79,050/-)	

The Ld D.R also accepted the factual aspect submitted by Ld A.R. Hence, consistent with the view taken by the co-ordinate bench of Tribunal in the assessee's own case relating to earlier years (referred supra), we confirm the order of Ld CIT(A) on this issue and accordingly this issue is decided against the assessee.

3. The Ground No.2 relates to the disallowance of proportionate interest of Rs.3,24,09,653/- u/s 36(1)(iii) of the Act. The Ground No.3 relates to the disallowance made u/s 14A of the Act. Both the parties agreed that identical issues were considered by the co-ordinate bench in its order, referred supra, and both the issues were set aside to the file of the AO for considering them afresh. Accordingly, both the parties agreed that these issues may be set aside to the file of the AO in this year also. Accordingly, we set aside the order passed by Ld CIT(A) on the above said two issues and restore them to the file of the AO for considering them afresh in the light of discussions made by the co-ordinate bench of Tribunal in the earlier years.

4. The Ground No.4 relates to the disallowance of interest claim of Rs.1.74 crores under sec. 43B of the Act r.w. Explanation 3C thereto. The facts relating to the same are discussed in brief. The assessee had borrowed funds from time to time from M/s Essel Propack Ltd (formerly known as Essel Packaging Ltd) and

such borrowals stood at Rs.9,18,74,719/- as on 1.4.1997. It appears that M/s Essel propack Ltd had availed "Sales tax Deferral Scheme" announced by the Government of Maharashtra. According to the above said scheme, the sales tax collected by the business entities during a particular period can be retained by them and the amount so retained shall be paid to the account of Government in annual installments subsequent to the expiry of prescribed cooling period. Under the above said Scheme framed by the Government of Maharashtra, M/s Essel Propack Ltd was required to pay a sum of Rs.24,37,23,930/- in yearly installments beginning from 2003 to 2010. It appears that an entity named SICOM was designated by Govt. of Maharashtra as the nodal agency for collecting the above said installments.

5. It appears that the assessee herein and M/s Essel Propack Ltd entered into an agreement, as per which the assessee undertook to pay the Sales tax liability of M/s Essel Propack Ltd which would become payable from 2003 to 2010. The "Present value" of Rs.24,37,23,930/-, i.e., the aggregate amount payable from 2003 to 2010, was determined at Rs.5.62 crores. We had already noticed that the assessee herein had borrowed funds from M/s Essesl Propack Ltd and the outstanding amount of loan as on 1.4.1997 was Rs.9,18,74,719/-. In view of the agreement cited above, the assessee herein transferred a sum of Rs.5.62 crores, out of the above said amount of Rs.9.18 crores, to a separate Loan account. The assessee considered the above said amount of Rs.5.62 crores as the amount payable to SICOM (Govt. of Maharashtra). The assessee has provided for interest payable on the above said loan account and claimed the said interest amount as deduction as "Interest payable to SICOM".

6. Under the concept of Net Present Value, the present value of a future amount is arrived at. For example, Rs.100/- deposited today in a fixed deposit scheme carrying simple interest rate of 10%, would have a maturity value of Rs.110/- after expiry of one year and Rs.120/- after the expiry of two years. Hence the Net present Value of Rs.110/- (after one year) or Rs.120/- (after two years) as on today would be Rs.100/-. The above example clarifies that the "Present value" is akin to Principal amount and upon adding interest element every year, the maturity amount would be equal to the amount payable in future. In the instant case also, the assessee has to provide for interest on the Net Present value of Rs.5.62 crores every year and then only it will accumulate to the required level so that the assessee would be in a position to repay the Sales tax liability of M/s Essel Propack Ltd from 2003 to 2010. The payment of the S.T liability of M/s Essel propack is akin to repayment of loan taken from it. The assessee would be in a position to demonstrate the same by furnishing necessary working papers.

7. Since the assessee has shown the interest claim as "Interest payable to SICOM", the AO took the view that it would be hit by the provisions of sec. 43B(d) of the Act. Since the interest was not paid during the year, he disallowed the interest claimed by the assessee by invoking the provisions of sec. 43B(d) of the Act. Since the AO had disallowed the entire interest claimed by the assessee, the AO did not make any separate disallowance with the rider that the same would stand, if the disallowance of entire interest is allowed by any appellate authority.

8. It appears that there is some confusion in the mind of assessee also. Before us, the Ld A.R was inviting out attention to Sales tax deferral Scheme and the circular issued by CBDT with regard to the same. Alternatively, the Ld A.R also submitted that the provisions of sec. 43B(d) would apply to the interest payable on loan taken from any public financial institution or a state financial corporation or a state industrial investment corporation. He submitted that the sales tax deferral scheme cannot be equated to the loan referred to in sec. 43B(d) of the Act.

9. However, we may caution here that we have made the foregoing discussions on the basis of submissions made before the tax authorities and also before us. However, actual nature of agreement has not been examined by the tax authorities. Hence, in our view, the arrangement between the assessee and M/s Essel Prepack Ltd needs to be examined to find out as to whether the observations made above are correct or not. Subject to such verification, in our view, the arrangement made between the assessee and M/s Essel Propack Ltd should be taken as pure finance arrangement. The method of repayment is purely a methodology agreed between them to settle the loan taken by the assessee from M/s Essel Propack Ltd. Though the assessee has shown the amount of Rs.5.62 crores and interest thereon as payable to SICOM (Govt of Maharashtra), in effect, it is a loan taken by the assessee from M/s Essel Propack Ltd. The assessee would repaying the amount directly to SICOM (Govt of Maharashtra) on behalf of M/s Essel Propack Ltd. Hence, in our view, it would not be correct to presume that it was a loan taken from SICOM (Govt. of Maharashtra) or it was falling under Sales tax deferral Scheme.

10. Hence, in our view, the assessing officer is also required to verify as to whether the rate of interest adopted by the assessee to work out the interest claim is reasonable or not, if he is satisfied on verification of the arrangement that it was pure finance transaction. He may also verify that the interest liability accumulated every year along with the principal amount of Rs.5.62 crores would be sufficient to repay the sales tax liability of M/s Essel Propack Ltd beginning from the year 2003 to 2010 and such verification would help to ascertain the rate of interest agreed between the parties and its reasonableness.

11. Subject to the verification of the agreement and the interest workings referred above, we are of the view that the interest liability claimed by the assessee cannot be disallowed u/s 43B of the Act, if it is considered as pure finance arrangement. Accordingly, we set aside the order of Ld CIT(A) and restore this matter to his file with the direction to examine the agreement and also the reasonableness of the interest rate in the light of discussions made supra and take appropriate decision in accordance with the law.

12. Ground No.5 relates to disallowance of interest paid u/s 201(1A) of the Act. The assessee claimed interest amount of Rs.8,76,221/- paid by it u/s 201(1A) of the Act for the delay in payment of Tax deducted at source. The assessee claimed the same as deduction on the plea that it was compensatory in nature and is akin to Sales tax etc. The AO did not accept the said explanation and hence disallowed the same. The Ld CIT(A) also confirmed the said disallowance.

13. Before us, the Ld A.R placed reliance on the decision rendered by Hon'ble Madras High Court in the case of CIT Vs. Chennai Properties & Investment Ltd (1999)(105 Taxman 346) to contend that the interest paid by the assessee u/s 201(1A) of the Act is allowable as deduction. However, a careful perusal of the

said decision would show that the Hon'ble Madras High Court has, in clear words, held that the interest paid u/s 201(1A) could not be allowed as business deduction. The said decision has been rendered by the Hon'ble High Court by placing reliance on the decision of Hon'ble Supreme Court in the case of Bharat Commerce & Industries Ltd Vs. CIT (1998)(230 ITR 733). Hence, we do not find merit in the contentions of the assessee on this issue. Accordingly, we confirm the order passed by Ld CIT(A) on this issue.

14. In the result, the appeal filed by the assessee is treated as partly allowed for statistical purposes.

The above order was pronounced in the open court on 12th Sept, 2014.

घोषणा खुले न्यायालय में दिनांकः 12th Sept , 2014 को की गई ।

Sd sd

(संजय गर्ग /SANJAY GARG) (बी.आर.बास्करन / B.R. BASKARAN)
न्यायिक सदस्य / JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai: 12th Sept ,2014.

व.नि.स./ SRL , Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai