

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI MANOJ KUMAR AGGARWAL (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.5096 /MUM/2019
(Assessment Year: 2015-16)**

ACIT, Circle -3,
2nd Floor, Rani Mansion,
Murbad Road,
Kalyan West,
Maharashtra - 421301

Ashok Radhakishen Mehra
Vs. Shed No. W-114, MIDC,
Phase -II, Manpada,
Dombivli (East),
421204

PAN No. AAYPM8408Q

(Revenue)

(Assessee)

Assessee by : Shri Anant N. Pai, A.R
Revenue by : Shri Brajendra Kumar, D.R

Date of Hearing : 15/02/2021
Date of pronouncement : 18/02/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-1, Mumbai, dated 14.05.2019 which in turn arises from the assessment order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 14.12.2017 for A.Y. 2015-16. The revenue has assailed the impugned order on the following grounds of appeal before us:

- "(1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the legal position envisaged in explanation 3D to clause (e) of section 43B, which states that deduction on any sum, being interest payable shall be allowed only if such interest has been actually paid and any interest referred in the said clause which gets further converted into loan or advance shall not be deemed to have been actually paid.
- (2) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee did not have positive balance in his cash credit account on a single date prior to the filing of return.
- 3) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee failed to

furnish any documentary evidence in support of his claim that interest had been paid.

- (4) The appellant craves leave to add, amend, alter or delete any ground of appeal.
- (5) The order of the CIT(A) may be vacated and that of the assessing officer may be restored.”

2. Briefly stated, the assessee who is engaged in the business of processing and manufacturing of chemicals had e-filed his return of income for A.Y. 2015-16 on 27.09.2015, disclosing a total income of Rs.44,58,640/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had debited bank interest expenses of Rs.1,93,79,723/- in his profit and loss account for the year in question. On being queried that as to why the aforesaid interest expenditure may not be disallowed in case the same was not actually paid within the meaning of Sec. 43B(d)/(e) r.w ‘Explanation 3D’, it was submitted by the assessee that as the interest charged by the bank was fully recovered from his bank accounts and nothing was pending for payment since entire amount of interest was paid in the subsequent month thus, the provisions of Sec. 43B(d)/(e) r.w ‘Explanation 3D’ were duly complied. Apart from that, the assessee in support of his claim that no disallowance as per the aforesaid statutory provision was called for in his case took support of the orders passed by the Tribunal in his own case for the preceding years. However, the aforesaid contention of the assessee did not find favour with the A.O. On a perusal of the bank accounts of the assessee it was observed by the A.O that the same revealed a debit balance throughout the year. It was noticed by the A.O that the amount of liability towards the bank stood increased by an amount equal to the interest debited by the bank and the same thus resulted into conversion of interest into further loan or advance. As regards the claim of the assessee that the cheques which were issued by him to the banks towards interest payment equivalent to the

interest amount that was debited by the bank either on the same day or on the subsequent day, the A.O was of the view that the same was not acceptable for the simple reason that on the date of debit of interest by the bank the existing debit balance would further be increased in his overdraft account. In sum and substance, the A.O was of the view that as the interest debited by the bank would get converted into further liability representing the overdrawn amount payable by the assessee thus, any subsequent payments whether equal to the interest debited by the bank or any other amounts would partake the character of repayment of the existing debit being the principal amount of loan and not interest as claimed by the assessee. Backed by his aforesaid conviction, the A.O was of the view that the claim of the assessee that the interest had been actually paid was not factually correct and also not in accordance with the definition of 'actual payment' provided in 'Explanation 3D' to Sec. 43B of the Act. Insofar the certificate issued by the bank of having received the amount towards the interest element was concerned, the A.O was of the view that the same was issued by the bank as per their internal accounting adjustments as per the RBI guidelines and the same had nothing to do with the application of the provisions of Sec. 43B of the Act. In the backdrop of his aforesaid deliberations, the A.O under Sec. 43B(d)/(e) r.w 'Explanation 3D' disallowed the assessee's claim for deduction of interest expenditure of Rs.1,93,79,723/-. At the time of culminating the assessment it was also observed by the A.O that a similar disallowance of interest expenditure was made in the case of the assessee for A.Y 2014-15, and the same was therein carried in appeal by the latter. As regards the reliance placed by the assessee on the order of the Tribunal in his own case for A.Y. 2011-12 wherein a similar disallowance of interest expenditure made by the A.O under Sec.43B(d)/(e) r.w 'Explanation 3D' was vacated by the Tribunal, it was observed by the A.O that the department had not accepted the said order of the Tribunal and had carried the matter further in appeal. On the basis of his aforesaid deliberations the A.O assessed the income of the assessee vide his order passed under Sec. 143(3), dated 14.12.2017 at Rs. 2,38,38,368/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). It was observed by the CIT(A) that the Tribunal while disposing off the appeal in the assessee's own case for A.Y. 2011-12 in ITA No. 2230/Mum/2015 had vacated the disallowance of the interest expenditure that was on identical grounds made by the A.O under Sec. 43B(d)/(e) r.w 'Explanation 3D', and had upheld the order passed by his predecessor. Apart from that, it was noticed by the CIT(A) that following its aforesaid order for A.Y. 2011-12 the Tribunal had thereafter in the assessee's own case for A.Y. 2013-14 and A.Y. 2014-15 in ITA No. 778 & 779/Mum/2018, vide its order dated 27.02.2019 had therein vacated a similar disallowance of interest made by the A.O under Sec. 43B(d)/(e) r.w 'Explanation 3D'. On the basis of his aforesaid observations the CIT(A) deleted the addition/disallowance of interest of Rs.1,93,79,722/- made by the A.O under Sec. 43B(d)/(e) r.w 'Explanation 3D' of the Act.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Departmental Representative (for short 'D.R') relied on the order passed by the A.O. It was submitted by the Id. D.R that as the payments made by the assessee were towards the principal component of the outstanding loans and not towards the interest thus, the A.O had rightly disallowed under Sec. 43B(d)/(e) r.w 'Explanation 3D' the interest expenditure that had remained unpaid by the assessee during the year in question.

6. Per contra, the Id. Authorized Representative (for short 'A.R') for the assessee relied on the order passed by the CIT(A). It was submitted by the Id. A.R that the issue involved in the present appeal was squarely covered by the orders passed by the Tribunal in the assessee's own case for A.Y. 2011-12 in ITA No. 2230/Mum/2015, dated 07.12.2016; A.Y. 2012-13 in ITA No. 219/Mum/2017 dated 17.09.2018; and for A.Y. 2013-14 and 2014-15 in ITA Nos. 778 & 779/Mum/2018, dated 27.02.2019. It was averred by the Id. A.R that as the CIT(A) had followed the view taken by the Tribunal in the assessee's own case for A.Y 2011-12 in ITA No. 2230/Mum/2015 and vacated

the disallowance of interest expenditure made by the A.O under Sec. 43B(d)/(e) r.w 'Explanation 3D' thus, no infirmity therein did emerge from the view taken by the CIT(A). Further, the Id. A.R in order to buttress his claim that no disallowance of the interest under Sec. 43B(d)/(e) r.w 'Explanation 3D' was liable to be made in the hands of the assessee relied on the CBDT Circular No. 07/2006, dated 17.07.2006.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements/circular that have been pressed into service by them to drive home their respective contentions. Before advertng any further, we think it apt to cull out the relevant extract of the statutory provision under which the interest expenditure had been disallowed by the A.O i.e under Sec. 43B(d)/(e) r.w 'Explanation 3D', which reads as under:

"43B. Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of :

- (a) to (c)
- (d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution [or a State financial corporation or a State industrial investment corporation], in accordance with the terms and conditions of the agreement governing such loan or borrowing [, or]
- (e) any sum payable by the assessee as interest on any [loan or advances] from a scheduled bank [or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank] in accordance with the terms and conditions of the agreement governing such loan [or advances],] [or]

.....
[Explanation 3D – for the removal of the doubts, it is hereby declared that deduction of any sum, being interest payable under clause (e) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or advance shall not be deemed to have been actually paid.]"

On a perusal of the aforesaid statutory provision, we find, that the same therein contemplates that any sum inter alia payable by the assessee on any loan or advances from a scheduled bank in accordance with the terms and

conditions of the agreement governing such loan or advances shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in Sec. 28 of that previous year in which such sum is actually paid by him. Further, as per the 'Explanation 3D' it has been clarified that a deduction of any sum, inter alia being interest payable on any loan or advance from a scheduled bank shall be allowed if such interest has been actually paid and any interest which had been converted into a loan or advance shall not be deemed to have been actually paid. In our considered view, the controversy in hand had emerged from the different manner in which Sec. 43B(d)/(e) r.w 'Explanation 3D' had been construed by the assessee and the revenue. As observed by the A.O, as the interest debited/charged by the bank got converted into further liability wherein the existing debit balance would be further increased in the overdraft account thus, any payment of an amount towards interest would partake the character as that of repayment of the existing amount of the principal loan and not the interest claimed by the assessee. We find that the aforesaid issue had been looked into by the **Hon'ble High Court of Madras** in **CIT Vs. Prakash Food & Feed Mills Pvt. Ltd.**, T.C(A) Nos. 775 and 808 of 2014, dated 26.11.2014, wherein the Hon'ble High Court not finding favour with the view taken by the A.O had observed, that as the interest amount paid by the assessee through overdraft/cash credit account was not similar to loan accounts, thus, the 'Explanation 3C' or 'Explanation 3D' to Sec. 43B would not be applicable insofar the interest amount had been actually paid by the assessee through overdraft/cash credit account and the same has not been converted into loan or advance, as the case may be. Backed by its aforesaid observation the Hon'ble High Court had dismissed the appeal of the revenue. We find that following the aforesaid judgment of the Hon'ble High Court of Madras, a coordinate bench of the Tribunal i.e ITAT, Bench 'I', Mumbai in the assessee's own case for A.Y: 2011-12 in ITA No. 220/Mum/2015 had vacated a similar disallowance of interest paid by the assessee on its overdraft/cash

credit account under Sec. 43B(d)/(e) r.w 'Explanation 3D' to Sec. 43B, observing as under:

"4. We have considered the rival contentions of the parties and gone through the orders of authorities below. We have seen that during the assessment from the P&L A/c the AO has observed that assessee has debited an amount of Rs. 57,88,447/- towards bank interest. The assessee was asked to furnish the proof of actual payment and also show-caused as to why the same should not be disallowed, if the same was not actually paid within the meaning of the provision of section 43B(d)/(e) r.w. Explanation 3D thereto. The assessee filed his reply dated 22.01.2014 and contended that all the payments are made during the year, hence the disallowance u/s 43B(d)/(e) is not applicable. The assessee also filed the ledger copy of bank charges and bank interest paid to UBI. The AO not accepted the explanation furnished by assessee and disallowed the interest. Before the Id. CIT(A) it was submitted that the assessee has CC running account, wherein a lot of withdrawal as well as number of deposits. The deposits justify the payments of interest as well as principal amount. On the year ending on 31.03.2011 the total withdrawal were Rs. 42,36,65,395/0 and the deposits were shown at Rs. 39,56,40,419/- and having closing balance of Rs. 2,80,24,975/-. The payments in respect of term loan were also paid. The Id. CIT(A) while considering the appeal of the assessee concluded as under:

"7. I have carefully considered the facts of the ea e, the findings of the AO, the submissions of the AR of the appellant and material placed on record. As per the bank statement, it is seen that during the year under consideration, the bank had provided the following amount of interest against CC Account with UBI:

Date	Interest debited (Rs.)
30.04.2010	94,573
31.05.2010	84,967
30.06.2010	95,701
31.07.2010	2,92,934
31.08.2010	2,22,761
30.09.2010	2,46,311
31.10.2010	2,73,797
30.11.2010	3,36,301
31.12.2010	4,15,025
31.01.2011	3,80,428
28.02.2011	3,16,063
31.03.2011	3,28,139
TOTAL	46,68,742

Immediately, after the above entries, under the head 'Interest Account', the appellant has deposited number of cheques in CC Account, in every month. The AO, however, disallowed the above interest on the ground that the said interest was not paid by the appellant and the payments were made only against principle amount. The AO, however, observed that the debit balance in the CC Account has increased from Rs. 74.61 lakhs to Rs. 2.80 crores. The

AO, did not considered the fact that the OD limit of the appellant was increased to Rs. 3 crores. Therefore, the debit balance of Rs. 2.80 crores, was well within the OD limit provided by the bank.

7.1. The perusal of OD Accounts reveals that interest amount were debited in the OD Account and sufficient amount was deposited after debit of interest, in every month. Therefore, the observation of the AO that said interest was not paid during the year and converted into loan, is not factually correct.

7.2. The contention of the AO that the interest has been converted into loan, on the ground that the balance in OD Account was always remained a debit balance, is not correct as the OD limit of the CC Account was increased from Rs. 1.5 crores to Rs. 3 crore, which was not considered by the AO. Since the Closing balance i.e. (-) Rs. 2.80 crores, as on 31.03.2011, in the OD Account is less than the OD limit of Rs. 3 crores, indicate that the same is on account of principle loan and not on account of interest. Considering the facts of the case in entirety, above discussion and respectfully following the above decisions quoted, the addition made by the AO, on this account is hereby, deleted. This ground of appeal is allowed accordingly.”

5. The Hon'ble Madras High Court in CIT vs. Prakash Foods & Feed Mills P. Ltd. (supra) while deciding the similar ground held as under:

“3. We have heard the learned Standing Counsel appearing for the Revenue and perused the orders passed by the Tribunal and the authorities below.

4. Before advertng to the merits of the case, it would be apposite to refer to the relevant portion of Section 43B of the Act, which reads as under:

Section 43B. Certain deductions to be only on actual payment: Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of-

(a) ***

(b) ***

(c) ****

(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State Financial Corporation or a State Industrial Investment Corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or

(e) any sum payable by the assessee as interest on any loan or advances from a scheduled bank in accordance with the terms and conditions of the agreement governing such loan or advances, or

(f) *** Explanation 3C.- For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (d) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or borrowing shall not be deemed to have been actually paid.

Explanation 3D.- For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (e) of this section, shall be allowed if such interest has been actually paid and

any interest referred to in that clause which has been converted into a loan or advance shall not be deemed to have been actually paid.

5. The department declined to grant the benefit of deduction on interest paid primarily on the plea that the amount has not been actually paid and transfer of amount from one account to another account cannot be treated as paid. However, the Tribunal repelled the said plea by interpreting Section 43B of the Act and held that overdraft/cash credit accounts are not similar to loan accounts. The Tribunal further observed that the interest amount has been actually paid by the assessee through Overdraft/Cash Credit account and, therefore, set aside the disallowance made under Section 43B of the Act.

6. A bare reading of Explanations 3C and 3D to Section 43B of the Act provides an answer to the problem by making it clear that where interest amount has not been converted into loan or borrowing (or) loan or advance, as the case may be, there is no question of denying the benefit of deduction. In the case on hand, the interest amount has been actually paid by the assessee through Overdraft/Cash Credit account and the same has not been converted into loan or borrowing (or) loan or advance, as the case may be.

7. For the foregoing reasons, these appeals are dismissed by answering the question of law against the Revenue and in favour of the assessee.”

6. Thus, in view of the ration of the decision of Madras High Court (supra), we find that the ground of appeal raised in the present appeal is covered against the revenue, thus we do not find any illegality or infirmity in the order passed by Id. CIT(A).

7. In the result, appeal of the Revenue is dismissed.

As the facts and the issue involved in the appeal of the assessee for the year in question remains the same as were there before the Tribunal in the assessee's own case for A.Y. 2011-12 in ITA No. 2230/Mum/2015, we, thus, respectfully follow the same. Accordingly, finding no infirmity in the view taken by the CIT(A) who in our considered view had rightly directed the A.O to vacate the addition/disallowance of the interest expenditure of Rs.1,93,79,722/- made by him under Sec. 43B(d)/(e) r.w 'Explanation 3D' of Rs.1,93,79,722/-, we uphold his order.

8. Resultantly, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 18.02.2021

Sd/-

Manoj Kumar Aggarwal
(ACCOUNTANT MEMBER)

Mumbai, Date: 18.02.2021
PS: Rohit

Sd/-

Ravish Sood
(JUDICIAL MEMBER)

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "A" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai