

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND SHRI
MANJUNATHA.G, ACCOUNTANT MEMBER

ITA No.: 182/CHNY/2022
वर्ष /Assessment Year: 2008-09

TCP Limited,
New No.4, Old No.10,
Sapthagiri Bhavan,
Karpagambal Nagar,
Mylapore,
Chennai – 600 004.

vs. The ACIT,
Central Circle 1(1),
Chennai.

PAN: AAAC 3615K
(Appellant)

(यथ /Respondent)

&

ITA No.: 311/CHNY/2022
वर्ष /Assessment Year: 2008-09

The DCIT,
Central Circle 1(1),
Chennai.

TCP Limited,
vs. New No.4, Old No.10,
Sapthagiri Bhavan,
Karpagambal Nagar,
Mylapore,
Chennai – 600 004.

PAN: AAAC 3615K
(Appellant)

(यथ /Respondent)

Assessee by

: Ms. Vidya, C.A.

□□□□□□□□ /Revenue by : Shri P. Sajit Kumar, JCIT

□□□□□□ □ □□□□□/Date of Hearing : 09.10.2023 □□□□□

□ □□□□□/Date of Pronouncement : 12.10.2023

PER MAHAVIR SINGH, VICE PRESIDENT:

These cross appeals by the assessee and Revenue, are arising out of order of the Commissioner of Income Tax (Appeals)-18, Chennai in ITBA/APL/M/250/2021-22/1039396014(1) dated 04.02.2022. The assessment was framed by the ACIT, Company Circle III(1), Chennai, for the assessment year 2008-09 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 21.12.2010.

Revenue's Appeal in ITA No.311/CHNY/2022

2. The only issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the disallowance made by AO of proportionate interest paid on borrowed funds amounting to Rs.4,91,60,188/- paid in respect of Binny Limited and Rs.19,52,400/- paid in respect of Viceroy Chennai Hotels Pvt. Ltd. For this, Revenue has raised various grounds which are argumentative and hence, need not be reproduced.
3. Brief facts are that the assessee company is engaged in the business of manufacturing and trading of chemicals and in generation of power. The AO during

the course of assessment proceedings noticed that the assessee had obtained loans on interest and paid interest as under:-

On Fixed Loans	Rs.8,46,22,311	On Fixed
Deposits	Rs. 43,62,075	
On Others	Rs.3,56,27,617	

The AO also noticed that in regard to others, the assessee has paid interest to Managing Director amounting to Rs.11,01,961/- out of the interest 'on others' amounting to Rs.3,56,27,617/-. The AO also noticed from the accounts of the assessee that assessee has also advanced a sum of Rs.27,31,12,155/- as interest free loans to its sister concern Binny Ltd., and Rs.1,08,46,667/- to its wholly owned subsidiary company Viceroy Chennai Hotels P Ltd. The assessee before AO explained that this is for business expediency but the AO was not convinced and hence, he bank charged interest at the rate of 9% to 12% on the amount advanced to the assessee and by cumulative effect of compounding the process charges, bank charges, etc., the interest according to him comes to 18% to 22%. Hence, he computed the disallowance by applying a flat rate of 18% and thereby disallowed a sum of Rs.5,11,12,588/- in regard to interest free advance made to its sister concern Binny Ltd., and Viceroy Chennai Hotels P Ltd., and correspondingly disallowed the amount. Aggrieved, assessee preferred appeal before the CIT(A).

4. The CIT(A) after considering the submissions of the assessee and relying on earlier years decision in assessee's own case, deleted the disallowance by observing as under:-

"9.3 The appellant further submitted that the issue was covered in its favour by the decision of the ITAT Chennai in its own case for the A.Ys.1997-98, 1998-99 & 2004-05 in ITA Nos. 1627 to 1629/Chny/2018 dated 08/05/2019 wherein it held as under:-

“It is a well known fact that when funds are pooled in together they get intrinsically mixed up and cannot be physically identified as to from which source funds have been sourced. It is akin to a situation when a pile of water is accumulated from different source then the identity of the source loses its characteristics. In such situation various higher judiciary has held that when funds from different source such as non interest bearing source (own source) and interest bearing source such as equity share capital, general reserves, accumulated profits, Reserves and interest bearing loan received are mixed up by way of introducing them in the books of accounts then there is a presumption that when interest free loan is extended then they are firstly sourced to cover up the entire extend of interest free of loan the balance is met out of interest bearing funds. In the case of the assessee, the assessee's equity share capital, general reserves, accumulated profits and reserves exceeds the interest free loan extended during the relevant assessment years and the same is not in dispute. Therefore, the facts in the case of the assessee are identical to the case decided by the Hon'ble Jurisdictional Madras High Court, Hon'ble Bombay High Court and the Chennai Benches of the Tribunal cited herein above. Hence respectfully following the decision of the higher judiciary we hereby direct the Ld.AO to delete the addition made by disallowing the proportionate interest towards the interest free loan extended for all the relevant assessment years in appeal before us. It is pertinent to mention that the decision cited by the Ld.DR in the case of K. Somasundram & Bros. supra has no application to the case of the assessee because there is no finding in that case regarding the equity share capital, general reserves, and accumulated profits and reserves of the assessee company to be in excess of the interest free loan extended.”

9.4. The appellant submitted that it had accumulated profits of Rs.167,30,35,715 as on 31/03/2008 and Rs.155,86,38,071 as on 31/3/2007 and the current year's profit itself amounted to Rs.56,86,52,18 1/-. The appellant therefore submitted that the advances to sister concerns were not from out of borrowed funds but only out of interest free funds available with them.

9.5. I have considered the submissions of the AR and the reasons given by the AO in the assessment order. As the decision of the ITAT Chennai in the appellant's own case relied on by the AR is binding on me. It is seen that the total advances to sister concerns amounted to Rs.28,39,58,82/- only when the profit of the Current year itself was Rs.56.86 cr. apart from the reserves and accumulated profits to the extent of Rs.155 Cr. If the ratio laid down by the Hon'ble ITAT in the appellant's own case is applied for this year also, then the inevitable conclusion would be that the interest free advances were given out of reserves and accumulated profits and not out of borrowed funds. Hence, the proportionate disallowance made by the AO may not be necessary. Respectfully following the decision of the ITAT referred to supra, I delete the disallowance of Rs.5,11,12,568/- made by the AO and allow the grounds raised on this issue.”

Aggrieved, Revenue is in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the funds advanced to assessee is a continuous process and these are old advances and these have been considered by the Tribunal from assessment year 1997-98 to 2004-05. There is no change in facts and hence, we feel that this issue is fully covered by the Tribunal's decision. Hence, we find no infirmity in the order of CIT(A) and the appeal of the

Revenue is dismissed.

Assessee's Appeal in ITA No.182/CHNY/2022

6. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in disallowing the provisions made for raw materials, stores and spares for an amount of Rs.2,52,68,564/- treating the same as contingent liability. For this, assessee has raised the following ground No.2:-

“2. The Learned AO erred in making a disallowance towards provision made for new materials, stores and spares in the sum of Rs.2,52,68,564/- treating the same as contingent liability.”

7. Brief facts are that the AO while framing assessment and on perusal of audited balance sheet and profit & loss account of the assessee noticed that the assessee has reported a sum of Rs.61.24 crores under the head ‘current liabilities’. The assessee explained and filed details of sundry creditors for expenses of Rs.5,60,85,668/- out of which, the assessee has created provision for Rs.2,52,68,564/- towards raw materials, stores and spares. According to AO, this is merely a provision for future liability and liability is contingent in nature and yet to be incurred. Hence, according to him, this is not an allowable deduction. The AO disallowed the liability which is yet to be incurred for the provision of Rs.2,52,68,564/-. Aggrieved, assessee preferred appeal before CIT(A).

8. The assessee before CIT(A) explained that this liability of raw materials, stores and spares for an amount of Rs.2,52,68,564/- is on account of provision made for all the three divisions i.e., chemical, power and biomass for purchase of raw materials and stores as under:-

Division	Amount (Rs.)
Chemical	6,40,274
Power	2,45,13,952
Bio Mass	1,14,339
Total	2,52,68,564

The assessee before CIT(A) explained that as regards to chemical division amount of Rs.6,40,274/-, the assessee had made purchases and stock of the above goods which were received before

31.03.2008 and assessee has accounted this liability under the head 'provision for raw materials, stores and spares' without crediting the concerned suppliers account. However on receipt of invoice after 31.03.2008, the provision was reversed by giving credit to the concerned suppliers in the accounts for financial year 2008-09 relevant to assessment year 2009-10. The assessee filed paperbook and relevant invoices were submitted vide page Nos.105 to 136 but CIT(A) on perusal of paper-book and in particular, page Nos.105 to 136 noticed that the provision was made for freight expenses payable and labour charges payable and these expenses could not have been included in the closing stock as claimed by the assessee. Hence, he confirmed the disallowance to the extent of provision created for chemical division for an amount of Rs.6,40,274/-. Aggrieved, assessee is in appeal before us.

9. We noted that even now before us, the assessee could not explain how these expenses which are claimed by assessee in the closing stock is allowable i.e., provision in regard to freight expenses payable and labour charges payable. The assessee has not made any payment during the year and even there is no liability incurred for this, rather this is merely a provision. Hence, we find no infirmity in the order of CIT(A) and the same is confirmed.

10. As regards to power division, the assessee has created provision for demurrage payable to M/s. N.R. International amounting to Rs.2,40,55,989/- pertaining to assessment year 200809. The assessee contended that out of provision of Rs.2,40,55,989/- the assessee has paid a sum of Rs.1.65 crores and balance sum of Rs.75,55,989/- was waived by M/s. N.R.

International in the financial year 2008-09 pursuant to negotiations made by the assessee company and assessee has already offered the same as income in assessment year 2009-

10. The CIT(A) going through the submissions of the assessee noted that the party account of N.R. International shows that the assessee has paid a sum of Rs.50 lakhs towards demurrage charges on 19.03.2008 before the year ends but still the assessee shown the same as payable amount under demurrage charges and hence, he confirmed the addition of Rs.50 lakhs being excess provision made in the accounts and sustained the addition.

11. Before us, the ld.counsel could not explain how this is allowable and in our view, since the assessee has paid this amount of Rs.50 lakhs towards demurrage charges already on 19.03.2008, the provision shown as payable cannot be allowed as deduction. Hence, we confirm the order of CIT(A) on this issue.

12. As regards to balance provision of Rs.1,90,55,989/-, the assessee had paid a sum of Rs.1,15,00,000/- in the next financial year and for this, assessee has filed proof before CIT(A) and therefore, he allowed the same but sustained the balance amount of

Rs.75,55,989/- being excess provision made in the accounts. Even now before us, the assessee could not file any evidence or could not explain how this amount of Rs.75,55,989/- is allowable. Hence, we confirm the order of CIT(A) on this issue. Thereby the total amount sustained on account of provision made for power division is Rs.1,25,55,989/- and the order of CIT(A) on this, is confirmed.

13. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition of non-existing sundry creditor liability to the extent of Rs.52,99,235/-

For this, assessee has raised following ground Nos.3 & 4:-

“3. The Learned AO erred in making an addition towards non-existent sundry creditor liability in the sum of Rs.52,99,235/- by comparing the outstanding balance vis a vis the balance reflected in the books of the appellant company based on the statement of account obtained from the concerned supplier.

4. The Learned AO erred in not furnishing the statement of account directly obtained from the party, M/s. Thermodyne Technologies Pvt Ltd to the appellant company for its rebuttal and filing of objections, which admittedly was obtained behind the back of the appellant company, thereby violating the principles of natural justice.”

14. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO while perusal of balance sheet noticed that there is sundry creditors liability outstanding, out of that a sum of Rs.61.24 crores is reported as ‘current liabilities’. Out of this, a sum of Rs.53,37,21,170/- represents gross amount

of outstanding balance of sundry creditors for trade and expenses in respect of all the divisions of the assessee company. The AO while enquiring into the details filed by the assessee in regard to liability of each division separately, he noticed

that in one of the case of creditors namely Thermodyne Technologies Pvt. Ltd., the balance outstanding as on 31.03.2008 was at Rs.71,67,656/-. The AO enquired and noticed from the accounts statement filed by Thermodyne Technologies Pvt. Ltd., that in their books, balance appeared is only Rs.18,68,421/- and therefore there is a variance in the books of the assessee to the extent of Rs.52,99,235/- and which is actually shown as excess outstanding liability by the assessee. According to AO, this being non-existent liability, he added to the total income of the assessee.

Aggrieved, assessee preferred appeal before CIT(A).

15. The CIT(A) noted that the assessee could not file any explanation as to why they have declared excess liability in its books of accounts. He also noted that there Thermodyne Technologies Pvt. Ltd., has declared liability to the extent of Rs.18,68,421/- as against declared by assessee at Rs.71,67,656/-. Since nothing was explained before AO or no evidence was filed to prove its claim, the CIT(A) also confirmed the order of AO. Even now before us, the assessee could not file any evidence or could not make any arguments to support its ground, hence we find no infirmity in the order of CIT(A) and affirm the order of CIT(A) on this issue. This issue of assessee's appeal is dismissed.

16. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition of non-existent liability on account of amount payable to Associated Traders amounting to Rs.5,54,519/-. For this, assessee has raised the following ground No.5:-

“5. The Learned AO erred in making an addition towards amount payable to M/s. Associated Traders in the sum of Rs.5,54,519/- treating the said liability as non-existent without appreciating the facts available on record.”

17. Brief facts are that the AO required the assessee to explain and file details of outstanding liability appearing in its books of accounts in the name of Associated Traders, Agra. The AO noted that the assessee has not filed any detail or evidence with regard to above claim of outstanding liability of Rs.5,54,519/-. He added the same as non-existent liability and disallowed. Aggrieved, assessee filed appeal before CIT(A).

18. The CIT(A) considering the plea of assessee, noted that no discount is payable by assessee to Associated Traders in regard to purchases made by that party. The assessee has made provision in its books of accounts by debiting the discount account and shown the same as outstanding liability. But the assessee could not file any evidence before AO or CIT(A) to explain the outstanding liability. We also noted that there is no evidence that the assessee has given discount to the party and shown only amount

outstanding. We noted that assessee is contemplating recovery of the amount from the party and not treated the same as bad debit. Once the amount is shown as outstanding, the assessee is duty bound to explain the entry by filing evidences. As there is no evidence, the AO is justified in making addition and CIT(A) has confirmed the addition on non-existence of liability and we confirm the same. This issue of assessee's appeal is dismissed.

19. The next issue in this appeal of assessee is as regards to provision made for excise duty on closing stock of finished goods amounting to Rs.65,69,434/-. For this, assessee has raised the following ground No.6:-

“6. The Learned AO erred in making addition towards provision made for excise duty on closing stock of finished goods amounting to Rs.65,69,434/- by treating the same as a future liability.”

20. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the CIT(A) has given directions to the AO for consideration whether on the matching principles, as claimed by assessee, the excise duty was to be included in the closing stock or not. The CIT(A) noted that if matching principle is to be applied then debit of excise duty is to be disallowed automatically if it is included in the closing stock, it should be excluded. The CIT(A) directed the AO vide para 12.6 as under:-

12.6. I have considered the submissions of the AR and the reasons given by the AO in the assessment order. It is settled law that excise duty need not be included in the closing stock as held by the Supreme Court in the case of Dynavision Ltd and Hindustann ZincLtd.(2007(5)-TMI 1995). Even after the

introduction of section 145A, the Bombay High Court has held in the case of CIT Vs. Lokhete Balasaheb Desai SSK Ltd. (2011-6 TMI 481) that excise duty need not be included in closing stock. However, the appellant has contended that the excise duty was included in the closing stock also. If matching principle is applied, if the debit of excise duty is disallowed then automatically if it is included in the closing stock, it should be excluded. The AO may verify whether the appellant had in fact debited excise duty in the profit and loss account and included the same in the closing stock and then allow the claim if included in the closing stock or else disallow the same. The grounds are partly allowed.

21. Before us, the ld.counsel for the assessee stated that she has no grievance against the order of CIT(A) and the AO will verify the factual position. Hence, this ground is dismissed.

22. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO making addition of provision made by assessee for ocean freight from the value of closing stock amounting to Rs.6,60,633/-. For this, assessee has raised the following ground No.7:-

“7. The Learned AO erred in making an addition in the sum of Rs.6,60,633/- towards provision made for ocean freight from the value of closing stock as admittedly, the said value is apparently included in the value of the closing stock which has been taxed by the AO.”

23. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO disallowed the provision made as contingent liability on account of ocean freight charges payable to one Maersk India P Ltd. It was claimed before AO and CIT(A) that assessee has paid a sum of Rs.70,914/- on 24.03.2008 and

if already paid during financial year relevant to assessment year 2008-09, then it was directed to AO to allow the claim after verification. We noted that this matter has already been referred back to the file of the AO for verification of facts and decide accordingly. We don't want to interfere in the findings of CIT(A). Let AO will examine this issue afresh and will decide as per directions of CIT(A). This issue of assessee's appeal is also dismissed.

24. The next issue in this appeal of assessee is as regards to the estimated disallowance of 20% of total repair and maintenance. For this assessee has raised the following ground No. 8:-

“8. The Learned AO erred in making an addition in the sum of Rs.1,05,94,831/- on an estimated basis by disallowing 20% of the total repairs and maintenance on the ground that the appellant company had made only provisions for the same.”

25. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO has made disallowance on estimated basis at the rate of 20% of total expenses incurred on account of repair and maintenance. The assessee before CIT(A) filed ledger accounts without supporting evidences. Hence, he sustained the disallowance made by AO at 20%. We have gone through the assessment order and noted that the AO has purely estimated disallowance at 20% but assessee explained that the assessee company is following a practice of claiming this expenditure towards building repairs and maintenance, plant repairs and maintenance and other maintenance and by this, it has incurred and claimed expenditure of Rs.5,29,74,156/-. The AO has

simply disallowed without verifying and without any basis. We are of the view that disallowance should have some basis. There can be a reason for some personal disallowance and for that estimated disallowance can be to the extent of 10% and hence, we restrict the disallowance at 10% and allow this issue of assessee's appeal partly.

26. In the result, the appeal filed by the Revenue in ITA No.311/CHNY/2022 is dismissed and the appeal filed by the assessee in ITA No.182/CHNY/2022 is partly-allowed.

Order pronounced in the open court on 12th October, 2023 at Chennai.

Sd/-

(□□□□□□□. □□)
(MANJUNATHA.G)

□□□□ सद य/ACCOUNTANT MEMBER

Sd/-

(□□□□□□ सह)
(MAHAVIR SINGH)

□□□ य /VICE PRESIDENT

□□ ई/Chennai,

□□□□□/Dated, the 12th October, 2023

RSR

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1. □□□□ □□□/Assessee

2. □□□ /Revenue

3. □□□□□□□ /CIT

4. □□□□□□□ □□□□□□/DR

5. □□□ □□□□/GF.