

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 2241/Del/2013  
Asstt. Year. 2003-04

Singhal Strips Ltd. 440/1, Bhola Nath Nagar, Shadhara, Delhi-32	Vs.	DCIT, Circle 8 (I), New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri R.S. Singhvi, CA Shri Satyajit Goel, CA
Department by :	Sh. N.K. Bansal, Sr.DR
Date of Hearing	22/01/2019
Date of pronouncement	11/02/2019

**ORDER**

**PER O.P. KANT, A.M.**

This appeal by the assessee is directed against order dated 05/02/2013 passed by the Ld. Commissioner of Income-tax (Appeals)-XI, New Delhi [in short the Ld. CIT(A)] for assessment year 2003-04 raising following grounds:

- 1. "That on the facts and circumstances of the case CIT(A) was not justified in passing order without giving proper reasonable opportunities of being heard.*

2. (i). *That on the facts and circumstances of the case, the CIT(A) was not justified in confirming addition of Rs1,75,73,101/- in respect of interest to banks and financial institutions u/s 43B on the alleged ground that liability in question is a contingent liability.*

(ii). *That claim of interest is a determined liability as per terms of loan and observation that same being contingent liability is without any basis and factually incorrect.*

3. *That the assessee company has been declared as sick industrial company as such liability is not payable and as such provisions of section 43B are not applicable.*

4 (i). *That on the facts and circumstances of the case, the CIT(A) was not justified in confirming addition of Rs9, 13,560/- in respect of Excise duty u/s 43B.*

(ii) *That there is no dispute that claim is in respect of actual liability and also supported from audited accounts.*

5. *That orders of lower authorities are not justified on facts and same is bad in law."*

2. Briefly stated facts of the case are that the assessee is before the Tribunal in second round of the proceedings. In first round of the proceeding the Tribunal in ITA No.3940/Del/2007 vide order dated 9.9.2009 restored the matter on following two additions to the file of the Assessing Officer, on the plea of the assessee that it had intimated about the applicability of the Sick Industrial Companies (special provision) Act, 1985 which was not considered in proper perspective by the lower authorities:

- (i) the addition of interest amounting to Rs. 1,75,73,101/- due to financial institution on term loans and cash credit accounts u/s 43B of the Act.
- (ii) The addition of Rs. 9, 13, 560/-towards excise duty u/s 43B of the Act.

3. In compliance to the order of the Tribunal (supra), the Assessing Officer asked the assessee to provide a copy of the rehabilitation scheme/proposal prepared, following the direction of the Board of Industrial and Financial Reconstruction (BIFR) dated 13/08/2002. The Ld. Assessing Officer has noted that no such scheme of rehabilitation scheme was made available to him. The said scheme was not even made available before the Ld. CIT(A) in second round of appellate proceedings, and accordingly , she upheld the finding of the Ld. Assessing Officer. Aggrieved with the finding of the Ld. CIT(A), the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

4. Before us, the assessee filed two paper books containing pages 1 to 9 and 1 to 30 respectively. The Ld. Counsel referred to the order of the Tribunal in the case of the assessee in ITA No. 3940/del/2007 (i.e. in first round of the proceedings) and submitted that the Tribunal directed the Assessing Officer to consider the applicability of the Sick Industrial Companies ( Special Provisions )Act, 1985. The Ld. Counsel relying on the decision of the Hon'ble High Court of Calcutta in the case of CIT Vs. J K Corporation Limited reported in 331 ITR 303 submitted that power of the Board for Industrial and Financial Reconstruction under the Special Provision Act has overriding effect

over the Income Tax Act and thus no disallowance could be made u/s 43B of the Income Tax Act.

5. He further referred to page 3 and 9 of paper book containing pages 1-9 and submitted that the total interest in dispute of Rs. 1,75,73,101/- claimed during the year under consideration consisted of interest of Rs. 1,14,35,504/- toward working capital loan and interest of Rs. 61,37,597/- towards Term loan. The Ld. Counsel submitted that according to the provisions of section 43B of the Act during relevant time, interest payable on term loan from a schedule bank was required to be considered for allowability on payment basis. Thus according to him, the interest payable towards working capital loan has been incorrectly disallowed by the lower authorities ignoring the provisions during relevant period.

6. He further referred to pages 19 to 23 of paper book containing pages 1 to 30, which are copy of balance sheet ending as on 31<sup>st</sup> of March 2008 and profit and loss account for the period from 01/04/2007 to 31/03/2008 and submitted that in the previous year corresponding to assessment year 2008-09, the assessee has written back liability no longer required of Rs. 10,59,13,100/- which included the interest liability in dispute also.

7. On the contrary, the Ld. DR submitted that the Assessing Officer is justified in sustaining the addition in the second round of the proceeding due to the reason that the assessee has not filed any document of rehabilitation scheme prepared following the direction of the order of the BIFR dated 13/08/2002 and thus the assessee has not followed the direction of the Tribunal (supra). On the other arguments it was submitted that no such ground was raised before lower authorities.

8. We have heard the rival submissions and perused the relevant material on record. The assessee is before the Tribunal in second round of the proceedings. In first round of the proceeding the matter was restored to the Assessing Officer with following directions:

*“7. We have heard the rival contentions and perused the material available on record. From the perusal of orders of lower authorities it is seen that the assessee had intimated about the applicability of Sick Industrial Companies Act, (supra) which has not been considered in proper prospective. In view thereof, we are inclined to set aside these issues back to the file of AO to decide the same afresh in accordance with law after giving assessee a reasonable opportunity of being heard.”*

9. The dispute before us is whether the applicability of the Sick Industrial Companies Act (supra) has been properly examined by the lower authorities or not. The assessee in the paper book containing 30 pages has filed a copy of the order of the BIFR (supra). In the said order, the BIFR directed as under:

*“14. The Bench further directed as under :-*

*a) The company should submit their acceptable; viable, 'fully tied up and comprehensive rehabilitation proposal with or without OTS and with or without co-promoter within a period of four weeks to the OA with copies to all concerned.*

*b) The company in their proposal should also indicate clearly how the company would be capable of meeting the changed market conditions and, made themselves viable and when they would turn their net worth positive, which period should not be more*

*than 2-3 years and they should also wipe out their accumulated losses within 4-5 years.*

***c) The company should give in their proposal names and addresses of all central/ state government authorities (like sales tax, "CBDT, DGFT, land development authority, income tax, water authority etc., wherever applicable), concerned department of Central/State Government, banks, financial institutions etc. From whom reliefs/concessions were required in the proposal u/ s 19 of the Act, clearly indicating reliefs and concessions to be provided by them also.***

*d) The OA on receipt of such a proposal of the company should consider the same in a joint meeting of all concerned by circulating the agenda papers to all concerned. If any viable, acceptable, proposal would emerge in the joint meeting, they would formulate the DRS of the company and submit the charge holders u/s 22A of the Act. However, in case the unit was working, the current assets could be utilised for running day to day operations subject to keeping proper records thereof and routing all transactions through the account with the company's financing bank(s) only."*

10. Thus it is evident that the assessee company was directed to give proposal containing name and address of the government authorities including the CBDT ( which is apex body for matters related to income tax) from relief or concession were required.

11. The Assessing Officer and the Ld. CIT(A) in the second round of the proceeding, asked the assessee to submit the comprehensive rehabilitation scheme submitted by the assessee and whether the

same was considered in joint meeting as referred in para 14(d) of the order of the BIFR (supra). It is evident from the assessment order and impugned order of the Ld. CIT (A) that no such scheme was submitted before them. The Ld. Council of the assessee was asked specifically by the bench to provide such a copy of the scheme. However neither any such scheme nor any such order in view of para 14(d) of the BIFR (supra) was produced before us. The Ld. Counsel before us relied on the decision of the Hon'ble High Court of Calcutta in the case of JK Corporation Limited (supra) . In the said case the Hon'ble High Court held that the Sick Industrial Companies (Special Provisions) Act, 1985, is a special act and the scheme framed thereunder is binding upon everyone, as it has assumed the character of conclusions by virtue of section 18(4) and also section 18(8) and once a scheme is framed by virtue of section 32(1) , the scheme overrides all other provisions of the law including the Income Tax Act, 1961 and other instrument or document having effect by virtue of any law. In view of the above decision, it is evident that the schemes would override the provisions of the Income Tax Act. However no such scheme had been produced by the assessee either before the lower authorities or before us and thus the assessee cannot be allowed the benefit of the Sick Industrial Companies Act( supra).

12. The Ld. Counsel has raised another issue that provisions of section 43B during relevant period did cover only the interest paid toward term loans from the scheduled banks and not other interest either toward the working capital loan or otherwise. The provisions of section 43B in existence during relevant period are reproduced as under:

*“ Certain deductions to be only on actual payment*

43B Notwithstanding anything contained in any other provision of this Act, a deduction other- wise allowable under this Act in respect of

(a)<sup>1</sup> any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or]

(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees,<sup>2</sup> or]

(c)<sup>3</sup> any sum referred to in clause (ii) of sub- section (1) of section 36,]<sup>4</sup> or]

(d)<sup>5</sup> any sum payable by the assessee as interest on any loan or borrowing from any public financial institution<sup>6</sup> 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,]

(e) any sum payable by the asesee as interest on any term loan from a scheduled bnank in accordance with the terms and conditions of the agreemtn governing such loan

(f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee,

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 section 28 of that previous year in which such sum is actually paid by him:<sup>7</sup>

Provided that nothing contained in this section shall apply in relation to any sum referred to in clause (a)<sup>8</sup> or clause (c)]<sup>9</sup> or clause (d)] which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub- section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assese along with such return :

Provided further that no deduction shall, in respect of any sum referred to in clause (b), be allowed unless such sum has actually been paid in cash or by issue of a cheque or draft or by any other mode on or, before the due date as defined in the Explanation below clause (va) of subsection (1) of section 36, and where such payment has been made otherwise than in cash, the sum has been realised within fifteen days from the due date.]]



*Explanation<sup>1</sup> 1].- For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (a) or clause (b) of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1983 or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.]<sup>2</sup>*

*Explanation 2.- For the purposes of clause (a), as in force at all material times, "any sum payable" means a sum for which the assessee incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law.]*

*<sup>6</sup> Explanation<sup>4</sup> 3].- For the removal of doubts it is hereby declared that where a deduction in respect of any sum referred to in clause (c)<sup>5</sup> or clause (d)] of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1988 , or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.]]<sup>6</sup>*

*Explanation 3A – For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (e) of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1<sup>st</sup> day of April, 1996 or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.}*

*Explanation 3B. For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (f) of this section is allowed in computing the income, referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1<sup>st</sup> day of April, 2001 or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.}*

*Explanation 4.- For the purposes of this section,-*

*(a) " public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956 );*

*(b) " State financial corporation" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951 );*

*(c) " State industrial investment corporation" means a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956 ), engaged in the business of providing long- term finance for industrial projects and approved by the Central Government under clause (viii) of sub- section (1) of section 36.]”*

13. The Ld. Counsel has also raised the alternative plea that the assessee has already written back the said amount of interest under section 41(1) of the Act as miscellaneous income in assessment year 2008-09 and therefore no disallowance should be made in the year under consideration.

14. The above arguments of the Ld. Counsel are not maintainable due to following reasons :

- (i) We have noted that both the arguments related to working capital loan interest not covered under the provisions of section 43B of the Act and written back of the interest liability under section 41(1) of the Act in AY 2008-09, had not been raised before the lower authorities and first-time these arguments have been made before the Tribunal. We also note that these issues have not been raised before us by way of any additional grounds of appeal.
- (ii) The provisions of section 43B during relevant period also contain the subsection (c), which includes interest in respect of the loans from financial institutions . In our opinion, any working capital loan from such financial

institution is also subject to the provisions of section 43B of the Act during relevant period. From the evidences containing balance sheets and profit and loss account etc presented by the Ld. counsel, it is not clear whether the interest on working capital loan was related to financial institutions covered by subsection (c) of 43B during relevant period or related to scheduled banks covered by subsection (d) of 43B during relevant period . On this issue further investigation of facts is required.

- (iii) In the year under consideration the dispute is in respect of allowabilty of claim of interest expenditure under the provisions of section 43B of the Act, which is allowed only on payment basis. The claim of interest expenditure written back under section 41(1) of the Act in subsequent years, were never raised or evidence in support thereof filed before the lower authorities.

15. In view of aforesaid discussion, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly we uphold the same. The grounds of the appeal of the assessee are dismissed.

16. In the result, the appeal of the assessee dismissed.

The order is pronounced in the open court on 11<sup>th</sup> February, 2019.

sd/-

**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

sd/-

**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 11/02/2019

***Veena***

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi